

## **City of Lexington v. Fairfax County Ordinance Comparison**

The City of Lexington's Ordinance was overturned by the General Assembly and signed by the Governor 4 Apr 2018 (HB 824). It contained 33 regulations not authorized by the General Assembly. Of those 33, Fairfax County has 27 that are the same or harsher than the overturned Lexington elements. Additionally, Fairfax County added 9 more restrictive measures beyond Lexington.

Attached is a table showing the Lexington elements, Fairfax's counterpart, what law is violated and how HB 824 overruled it. The sections and paragraph numbers are shown where each element can be found in their respective Ordinances. Items listed as "PC Amendment" are elements the Fairfax County Planning Commission instructed the Zoning Staff to advertise for follow-on action as part of the Fairfax Zoning Ordinance.

With 5000 Fairfax County hosts already generating \$324M in currently occurring economic activity, the Fairfax County Ordinance will run out of the state at least \$19.44M in currently being collected State Income and Sales Tax that Arlington & Alexandria will be unable to accommodate when Fairfax County expels it. It will walk across the state line to stl-friendlier jurisdictions in MD and DC – a threat Lexington's actions did not pose to the State revenue.

The bottom line: Lexington was instructed to create a registry-only Ordinance.

<b>CITY OF LEXINGTON ORDINANCE</b>	<b>FAIRFAX COUNTY ORDINANCE</b>	<b>Violation</b>	<b>HB 824</b>
Declaration short term rental is non-residential use  (Article XI; 420.11.3 Commercial Uses)	Same  (Article X Accessory Uses, & home occupations Short-term lodging)	<i>Scott v. Walker</i> 274 Va. At 219  VA Attorney General 1/18/17 Advisory to Del Ware	HB 824 §1 (2)
Primary resident only [A]	Same [(1)(B)] & [(3)(A)]	§15.2-983(A) & (B)(1)	HB 824 §1 (2)
Type A, not more than 2BR only & host present (104 nights allowed) [A] & [(B)(7)]	Harsher: 60 nights	§15.2-983(D)	HB 824 §1 (2)
Type B, more than 2 BR and Host is absent 45 nights of allowed 104 nights total [A] & [(B)(8)]	Harsher: 60 nights	§15.2-983(D)	HB 824 §1 (2)
No registry	Harsher: Permit [10-105 and 5(A-C)]	§15.2-983 (B)(1)	HB 824 §1 (5)
No exemptions	Same	§15.2-983 (B)(2)(i-iv)	HB 824 §1 (2)
Business License required [(B)(1)]	Same [Ch 4, Article 7.2]	Subdivision C7 of §58.1-3703	HB 824 §1 (4)
	Harsher: Business License Tax [Ch 4, Article 7.2-25]	Subdivision C7 of §58.1-3703	HB 824 §1 (4)
Transient Occupancy Tax	Same [Article 13]	Subdivision C7 of §58.1-3703	HB 824 §1 (4)
<u>Annual</u> business license [(B)(1)]	Same [ Article 7.2] and <u>Bi-annual</u> permit [ (5)(B)]	Subdivision C7 of §58.1-3703 And §15.2-983 (B)(1)	HB 824 §1 (4)

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No Fee Charged	Harsher: \$200 permit fee [(5)(A)] ~\$81.00 Business License Tax [Article 7.2] \$1782.50 ToT [Article 13]	§15.2-983 (B)(1)	HB 824 §1 (4)
Log Book required for 1 year reviewed on-demand [(B)(2)]	Same [(4)(F)]	<i>Los Angeles v. Patel</i> , 576 US	HB 824 §1 (2)
Revocation on 3 substantiated complaints/year; min 1 year revocation [(B)(4)]	Harsher: Same except complaint not required to be substantiated; Permanent revocation [5(C)]	§15.2-983 (C)(1)&(2) And §15.2-2311	HB 824 §1 (6)
Required to have Off Street Parking provided [(B)(8)]	Harsher: Designated one reserved parking required & must be advertised[2(E) & (4)(E)]	§15.2-983	HB 824 §1 (2)
One property only [(B)(5)]	Same [3(A)]	§15.2-983 (B)(1)	HB 824 §1 (2)
May Inspect once/year for compliance with building codes [(C)(1)]	Harsher: Inspect on-demand [(2)(A)]	Section 103.4 of the Virginia Uniform Statewide Building Code	HB 824 §1 (2)
In emergency: Principal guest is POC [(D)(3)]	Harsher: Authorized Agent [(3)(D)]	§15.2-983	HB 824 §1 (2)
Host or Host designee name & phone # posted conspicuously in stl. Host must answer 24/7 to address problems associated with stl. [(D)(5)]	Harsher: (authorized agent [(1)(A)] & [(3)(D)]	§15.2-983	HB 824 §1 (2)

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Max # of adult guests=6; [(D)(7)] And Principal guest must be 18 y.o. [(D)(6)]	Harsher: 6 adults, no children; [(4)(B)]	2 persons/bedroom and discrimination (familial) rule of Virginia Fair Housing Law	HB 824 §1 (2)
Suspend or Cancel License: 3 or more substantiated complaints in 12 months [(E)(1)(b)]	Harsher: Revocable after 1 complaint; no substantiation required [5(C)]	§15.2-2311	HB 824 §1 (6)
Notice of suspension: ZA shall give written notice that a) Describes basis of cancellation b) Acts needed in order to correct; c) 14 days for written response; [(E)(2)(a-c)]	Same [5(C)]	§15.2-2311	HB 824 §1 (6)
Notice of suspension: Delivered in person or, if host not present, a) by certified mail or email; b) by posting conspicuously on the premises [(E)(3)(a & b)]	Same [5(C)]	§15.2-2311	HB 824 §1 (6)
Notice of suspension: Copied to Cmsr of Revenue to advise the bus license may be revoked [(E)(4)]	Harsher: Revocation is permanent [5(C)]	§15.2-2311	HB 824 §1 (6)
Notice of suspension: Appealable to BZA [(E)(5)]	Harsher: Revocation is permanent [5(C)]	§15.2-2311	HB 824 §1 (6)
Penalties: operating without a license \$500 fine/occurrence [(F)(1-3)]	Harsher: Revocation only [5(C)]	§15.2-2311	HB 824 §1 (6)
TITLE: 45 Nights or Less Rental		§15.2-983(A)	HB 824§1 (1) &(3)

<b>CITY OF LEXINGTON ORDINANCE</b>	<b>FAIRFAX COUNTY ORDINANCE</b>	<b>Violation</b>	<b>HB 824</b>
15 Month Sunset Clause: Limitations on # of nights, off street parking & occupancy limits do not go into effect for licensed stls for 15 months.	Harsher: Effective in 60 days	§15.2-983	HB 824 §1 (2)
No sunset allowed for dwelling units that are not primary residence. [(G)(1)(a-c)]. They became immediately illegal	Same [1(B)]	§15.2-983 (A) & (B)(1)	HB 824 §1 (2)
No signage advertising [(B)(3)}		§15.2-983	HB 824 §1 (2)
Post street numbers where plainly legible, contrasting background, visible from the street, 4" high, 150' from street must have numerical address at roadway entrance as well [(C)(3)]		§15.2-983	HB 824 §1 (2)
No RV, buses or trailers visible or nearby during stl use [(D)(1)]		§15.2-983	HB 824 §1 (2)
Prominent posting of dates for trash and recycling collection in stl [(D)(2)]		§15.2-983	HB 824 §1 (2)
No Rentals less than 1 night [(D)(4)]		§15.2-983	HB 824 §1 (2)
Suspend or Cancel of license: Non payment of ToT [(E)(1)(a)]		§15.2-983 And Subdivision C 7 §1 58.3703	HB 824 §1 (4)
Suspend or Cancel License: Failure to maintain property [(E)(1)(c)]		§15.2-983	HB 824 §1 (6)

CITY OF LEXINGTON ORDINANCE	FAIRFAX COUNTY ORDINANCE	Violation	HB 824
	Changed State's definition of Transient Occupancy [Atch A]	§ 58.1-3819	
	Redesignated stls as Hotel [Atch D, Article 7.2]	§15.2-983 (A)	
	Changed State definition of Hotel [Atch D, Article 13]	12 VAC5-431.10	
	One contract/property [(4)(C)]	§15.2-983 (A)	
	Events not allowed [(4)(D)]	Article I, Virginia Bill of Rights	
	Publicly posting PII permit info [(4)(E)]	§ 59.1-442 Code of Virginia (Personal Information privacy Act)	
	STL prohibited in detached accessory structures [(4)(G)]	§15.2-983	
	\$200 permit fee [(5)(A)] ~\$81.00 Business License Tax [Article 7.2] \$1782.50 ToT [Article 13]	§15.2-983	