



DeKalb County Department of Planning & Sustainability

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Planning Commission Hearing Date: January 9, 2024

Board of Commissioners Hearing Date: January 25, 2024

TEXT AMENDMENT ANALYSIS

AGENDA NO.: 2023-1467 ZONING CASE NO.: TA-24-1246762 COMMISSION DISTRICTS: All

APPLICANT: Department of Planning & Sustainability

SECTIONS OF ZONING ORDINANCE AFFECTED BY AMENDMENTS: CHAPTER 27-ZONING ORDINANCE, TO AMEND SECTION 4.1.3 (USE TABLE) AND TO AMEND SECTION 4.2.15 (BED AND BREAKFAST INN, HOME STAY, AND SHORT TERM RENTAL) RELATED TO THE INTRODUCTION OF REGULATIONS OF SHORT TERM RENTAL ACCOMODATIONS.

REASON FOR REQUEST:

As initiated by District 5 Commissioner, Mereda Davis Johnson, and following subsequent discussions of the Planning, Economic Development, and Community Services (PECS) Committee, the County is exploring an ordinance regulating short-term rentals. This multi-faceted proposal represents the collaboration of the following departments: Planning & Sustainability, Law, Code Compliance Administration, Finance, and the Solicitor-General’s Office. Short-term rentals are currently not regulated, yet they exist and consideration of how to manage them, particularly, within single-family zoning districts is needed.

This proposal introduces a new term and definition. *Short term rental* is: “the rental of a room, lodging or overnight accommodations for a period not exceeding thirty (30) consecutive days.” This term shall encompass the rental of a vacation home, residential dwelling, guestroom, or other overnight lodging that an owner advertises through a marketplace facilitator such as but not limited to Airbnb.com, Booking.com, Hometogo.com and or VRBO.com. Staff has explored and researched how short-term rentals (STR) would fit in DeKalb County. The implementation of the short-term rental ordinance included a regulatory review of cities and counties in the metro area and nationwide show a similar process. The cities of Atlanta, Savannah, and Brookhaven all allow short-term rental by right and have a requirement for a business license. The taxation is at 8%. In summary, the proposed regulatory framework consists of the following:

- Zoning
 - By-right, residential, accessory use (administrative approval)
 - Supplemental Regulations
 - Limited use duration (180 days per calendar year)
- Application fee (new fee required)
- Business License required
- Taxation - 8%

The proposed use table proposes allowing short term rentals in all zoning districts that permit residential uses (RE; RLG; R-100; R-85; R-75; R-60; RSM; MHP; RNC; MR-1; MR-2; HR 1, 2, 3; OI; OIT; M; MU-1; MU-2; MU-3; and MU4-5).

KEY:	P - Permitted use												
	Pa - Permitted as an accessory use												
Use	RE	RLG	R-100	R-85	R-75	R-60	RSM	MR-1	MR-2	HR-1,2,3	MHP	RNC	
Housing and Lodging													
Bed and breakfast	SP	SP	SP				SP	SP	SP	SP			
Bed and breakfast, home stay	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP	
Boarding/Rooming house								SP	P	P			
Convents or monasteries	SP	SP	SP	SP	SP	SP	SP	SP	SP				
Dormitory													
Extended stay hotel/motel													
Fraternity house or sorority house								SP	P	P			
Hotel/Motel													
Short term rental	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	Pa	
Nursing care facility or hospice								P	P				

Use	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Housing and Lodging													
Bed and breakfast	P	P		P	P					P	P	P	✓
Bed and breakfast, home stay													✓
Boarding/Rooming house										P	P	P	✓
Convents or monasteries	P	P								P	P	P	✓
Dormitory	Pa	Pa		Pa	Pa	Pa	Pa		Pa	Pa	Pa	Pa	
Extended stay hotel/motel	SP			SP	SP					SP	SP	SP	✓
Fraternity house or sorority house	SP									P	P		
Hotel/Motel	P			P	P	P				P	P	P	
Short term rental	Pa	Pa					Pa		Pa	Pa	Pa	Pa	✓
Nursing care facility or hospice	P	P		P	P				P	P	P	P	

This proposal was submitted to all five community councils. In addition to “deferral” recommendations, the summary of feedback received is listed below:

- Allowing substantial time for feedback to generate in Engage DeKalb from the community.
- Text Amendment appeared to be based upon an “Honor System” for example, expecting property owners to apply for Business License – Ordinance fails to explain proper and adequate oversight.
- How will Business License monitor STR’s being applied for and paying taxes/fees.
- Clear description of penalties and what they apply to as it pertains to taxes and fees.
- An escalation in offenses (First - \$100, Second -\$500, Third - \$1,000, Fourth - revoked).
- Proper notification to surrounding neighborhood, whether through obtaining letters of support or

through a SLUP.

- Parking regulations per unit.
- Add language that Subdivision Covenants take precedence.
- Proper Staffing levels in both Code Enforcement and Business License Departments, taxes generated from STR's should funnel back into Staff.
- 24/Hr contact information listed online for STR property owners.

* Chapter 24 (Taxation) items are not proposed for discussion by Planning Commission. *

In order to develop a process of adequate oversight and monitoring of STR's with the Business License Department, Staff will need to research best practices of enforcement. Additionally, Staff would like to address concerns of penalties and escalation fees for bad actors and provide a proper parking regulation per unit. Therefore, Staff recommends a two-cycle deferral.

STAFF RECOMMENDATION: TWO CYCLE DEFFERAL.

**AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 24 PERTAINING TO AN EXCISE TAX ON SHORT TERM RENTALS
AND CHAPTER 27 PERTAINING TO ZONING AND FOR OTHER PURPOSES.**

WHEREAS, pursuant to O.C.G.A. § 48-13-51(b), the Governing Authority of DeKalb County is authorized to levy an excise tax at a rate not to exceed (8%) eight percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations; and

WHEREAS, Section 24-84 of the Code of DeKalb County currently provides for a tax of (8%) eight percent on the rent for occupancy of a guestroom in a hotel in the unincorporated area of the county, as authorized by state law; and

WHEREAS, in accordance with state law, one-half of the amount collected above the current rate will be expended for the promotion of tourism, conventions and trade shows by contract with the DeKalb Convention and Visitors Bureau, and the remaining one-half will be expended for tourism product development, including but not limited to capital costs and operating expenses for the Porter Sanford Performing Arts Center; and

WHEREAS, the DeKalb County Board of Commissioners is vested with authority to regulate land use through the adoption of planning and zoning ordinances which reasonably relate to the public health, safety and general welfare of its citizens; and

WHEREAS, the use of residential rooms or dwellings as lodgings has become an increasingly popular option for travelers and tourists seeking temporary accommodations for business affairs, vacations, or other leisure.

NOW, THEREFORE, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapters 24 and 27 of the Code of DeKalb County, as Revised 1988, be amended as follows:

PART I. ENACTMENT

By amending Chapter 24, Article VIII, to add reserved sections to read as follows:

Secs. 24-172 – 24-174. Reserved.

By adding Article IX to Chapter 24 to read as follows:

ARTICLE IX. EXCISE TAX ON SHORT TERM RENTALS ORDINANCE

Sec. 24-175. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

“Innkeeper” means any person that furnishes for value to the public any rooms, lodgings or accommodations located in unincorporated DeKalb County for use as a short term rental.

“Occupant” means any person who, in exchange for compensation, occupies a vacation home, residential dwelling, guestroom, or other overnight lodging for a period not exceeding thirty (30) consecutive days.

“Short term rental” means the rental of any room, lodging or overnight accommodations for a period not exceeding thirty (30) consecutive days. This term shall encompass the rental of a vacation home, residential dwelling, guestroom, or other overnight lodging that an owner advertises through a marketplace facilitator such as but not limited to: Airbnb.com, Booking.com, Hometogo.com and/or VRBO.com.

Sec. 24-176. Imposition; tax rate.

There shall be imposed, assessed, levied and paid an excise tax of (8%) eight percent of the rent for occupancy of a short-term rental in the unincorporated area of the county, as authorized by O.C.G.A. § 48-13-51(b).

Sec. 24-177. Exemptions.

(a) No tax shall be imposed under this article upon any of the following:

- (1) Overnight lodgings, rooms, or accommodations furnished for a period of more than thirty (30) continuous days;
- (2) Overnight lodgings, rooms, or accommodations furnished as a result of an emergency if the occupant certifies in writing that he or she is staying in such accommodations as a result of their residence having been destroyed by fire, natural disaster or other casualty; or
- (3) Overnight lodgings, rooms, or accommodations furnished for a period of one (1) or more days for use by federal, state or local government officials or employees when traveling on official business.

Sec. 24-178. Collection by innkeeper; receipt to occupant and collection schedules.

Every innkeeper operating a short term rental in the county and renting overnight lodgings, rooms, or accommodation not exempted under section 24-177 of this article shall, at the time of collecting the rent from the occupant, give the occupant a receipt therefor upon request. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent that these credits are incurred in accordance with the rate of tax owing on the amount thereof. The County’s Business License Division of the Department of Planning &

Sustainability shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of such tax.

Sec. 24-179. Permit, registration of innkeeper and certificate of authority.

- (a) Every person engaging or about to engage in business as an operator of a short term rental in the county shall obtain a permit issued by the County's Business License Division of the Department of Planning & Sustainability according to the provisions established in chapter 27, article 4 of this Code. Persons engaged in such business prior to the enactment of this article must register with the County's Business License Division no later than 30 days after the date that this article becomes effective. Failure to comply with the permit requirements and/or supplemental regulations established in chapter 27 is a violation of this article.
- (b) Every person engaging or about to engage in business as an operator of a short term rental in the county shall immediately register with the County's Business License Division on a form provided by the Department of Planning & Sustainability. This registration shall set forth the name under which the person or legal entity transacts business or intends to transact business, the location(s) of the person's short term rental and such other information to facilitate the collection of the tax as the Business License Division may require. The registration shall be signed by the owner if a natural person; in case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The Business License Division shall, within ten (10) days after such registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of the registrant. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy. This certificate shall be nonassignable and nontransferable and shall be surrendered immediately to the County's Business License Division of the Department of Planning & Sustainability upon the cessation of business at the location named or upon its sale or transfer.
- (c) If the County's Business License Division of the Department of Planning & Sustainability deems it necessary in order to facilitate initial registration hereunder of innkeepers or prior to the date of imposition of tax as set forth in this article, the Business License Division may prescribe provisions therefor other than those provided in this section. Those provisions shall be made to effect the purposes of this article. For these purposes, those provisions shall be in lieu of those provided herein. The registration and the certificate thereof shall have the same effect as that provided herein.

Sec. 24-180. Determinations, returns, payments.

- (a) *Due date.* The tax imposed by this article shall become due and payable from the occupant at the time of occupancy of any short-term rental in this county, except as provided above. All taxes collected by any innkeeper are due and payable to the Business License Division

of the Department of Planning & Sustainability on or before the twentieth day of the month following each monthly period.

- (b) *Filing of returns.* On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the County's Business License Division of the Department of Planning & Sustainability, in such form as the Business License Division may prescribe, by every innkeeper during that monthly period who has not yet paid the tax, and made return in regard to the related occupation which is the subject of the tax.
- (c) *Contents of return.* All returns shall show the gross rent, taxable rent, amount of tax collected or otherwise due for the related period and such other information as required by the County's Business License Division of the Department of Planning & Sustainability.
- (d) *Delivery of return and remittance.* An innkeeper shall file and deliver the return and a hotel/motel excise tax form, together with the remittance of the net amount of tax due, to the County's Business License Division of the Department of Planning & Sustainability.
- (e) *Collection fee.* Innkeepers collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state sales and use tax under O.C.G.A. § 48-1-1- *et seq.*, as now or hereafter amended.

Sec. 24-181. Deficiency determinations.

If the County's Business License Division of the Department of Planning & Sustainability is not satisfied with the return of the tax imposed by this article or the amount of such tax required to be paid to the county by any innkeeper, it may compute and determine the amount required to be paid pursuant to the procedures outlined in section 24-90 of this chapter.

Sec. 14-182. Determination if no return made.

If an innkeeper fails to make a return under this article, the County's Business License Division of the Department of Planning & Sustainability shall make an estimate of the amount of the gross room rentals of the innkeeper pursuant to the procedures outlined in section 24-91 of this chapter.

Sec. 24-183. Authority of the Department of Planning & Sustainability.

The County's Business License Division of the Department of Planning & Sustainability is hereby authorized to administer and enforce the provisions of this article in accordance with section 24-94 of this chapter.

Sec. 24-184. Penalties and interest for failure to pay tax; license suspension or revocation.

Any innkeeper who fails to pay any tax to the county or any portion of the taxes specified by this article within the time required shall pay a late payment penalty, in addition to the taxes,

plus interest on the unpaid tax or any portion thereof as specified by section 2-112; failure to pay said taxes, penalty and interest shall subject the person to business license suspension or revocation in accordance with section 15-45.

Sec. 24-185. Enforcement; fraudulent returns; violations and criminal penalties.

The provisions of this article may be enforced by authorized county employees, including police officers, code compliance officers, and/or inspectors. Failure to comply with the provisions in this article shall be punishable as provided in section 1-10 of this Code.

(a) *Fraudulent returns.* Any innkeeper who violates a provision of this article; fails to furnish a return, supplemental return or other data required by the Business License Division of the Department of Planning & Sustainability; or who renders a false or fraudulent return, upon citation by an authorized county employee and conviction of the violation in a court of competent jurisdiction, which includes the Magistrate Court of DeKalb County, shall be subject to fine and/or imprisonment in accordance with section 1-10.

(b) *Criminal penalties.*

- (1) Pursuant to O.C.G.A. § 48-13-58.1, it shall be unlawful for any innkeeper to willfully fail to make a return and pay the taxes due under this article by the date provided. If the tax liability is \$10,000.00 or less, any person who violates this section shall be guilty of a misdemeanor. If the tax liability is more than \$10,000.00, any person who violates this section shall be guilty of a felony.
- (2) Pursuant to O.C.G.A. § 48-13-59, any innkeeper who fails, neglects, or refuses to collect the tax as provided in this article shall be deemed guilty of a misdemeanor and shall be liable for payment of the tax himself or herself. Upon a conviction thereof, any person who violates this section shall be subject to a fine of not more than \$100.00 or confinement in the county jail for not more than three (3) months, or both fine and confinement.
- (3) Pursuant to O.C.G.A. § 48-13-60, any innkeeper who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor. Upon conviction thereof, any person who violates this section shall be punished by a fine of not less than \$100.00 but not more than \$300.00 or confinement in the county jail for not less than thirty (30) days nor more than three (3) months, or both fine and confinement.

By amending Chapter 27, Section 4.1.3 (Table 4.1), by replacing it with the Use Table attached hereto as Exhibit 1 to read as follows:

Sec. 4.1.3. – Use table.

Note to Codifier: please insert the Use Table attached hereto as Exhibit 1.

By amending Chapter 27, Section 4.2.15, to add language to read as follows:

Sec. 4.2.15. – Bed and breakfast inn, ~~and home stay~~ and short term rentals.

By adding new subsection C. to read as follows:

- C. The following supplemental regulations apply to all short term rentals:
1. No person shall rent, lease or otherwise exchange for compensation all or any portion of a dwelling unit as a short term rental, as defined by this Code, without first obtaining a permit from the County’s Business License Division of the Department of Planning & Sustainability and complying with the regulations contained in this section.
 2. No permit issued under this section may be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.
 3. Applicants shall submit an application for a short term rental permit to the County’s Business License Division on an annual basis. Application fees shall be established by the Board of Commissioners. Such application shall include:
 - a. Name, address, telephone number and email address of the owner(s) of record of the dwelling unit for which a permit is sought. Applicants shall be limited to owners receiving a current homestead exemption through DeKalb County;
 - b. Address of the dwelling unit to be used as a short term rental;
 - c. Name, address, telephone number and email address of the short term rental agent, which shall constitute his or her 24-hour contact information. An owner may serve as the rental and is responsible for notifying the department of a change to the rental agent and/or any such contact information within five (5) business days of said change;
 - d. Owner’s sworn acknowledgement that he or she has received a copy of this section, reviewed it and understands such requirements;
 - e. The number and location of parking spaces allotted to the premises;
 - f. Owner’s agreement to use his or her best efforts to assure use of the premises by occupants will neither disrupt the neighborhood nor interfere with the rights of neighboring property owners to the quiet enjoyment of their properties; and
 - g. Any other information the County’s Business License Division of the Department of Planning & Sustainability deems necessary to achieve the objectives of this section.
 4. All short term rentals shall be subject to an excise tax pursuant to chapter 24 of this Code.

5. All short term rentals shall be subject to nuisance and noise regulations pursuant to chapter 16 of this Code.
6. No property authorized by this section for short term rentals shall list the property for such use for more than 180 days per calendar year as measured from January 1 to December 31.

By amending Chapter 27, Section 9.1.3 to add the following language to read as follows, in alphabetical order:

Sec. 9.1.3. – Defined terms.

Bed and breakfast: Accessory use of a single-family detached dwelling by the homeowner who resides in the dwelling, to provide sleeping accommodations to customers. Breakfast may also be provided to the customers at no extra cost. ~~For the purpose of this definition, the term “customer” means a person who pays for the sleeping accommodations for fewer than thirty (30) consecutive days.~~ The length of stay for guests in a bed and breakfast may not exceed seven (7) consecutive days, and guests may not re-register for at least thirty (30) days from the termination date of their previous stay.

Home stay bed and breakfast residence: A single-family dwelling in which is provided not more than two (2) rooms for not more than four (4) people for overnight rental and a morning meal to transient persons for compensation on a nightly basis by the occupant of said dwelling. The length of stay for guests in a home stay bed and breakfast may not exceed seven (7) consecutive days, and guests may not re-register for at least thirty (30) days from the termination date of their previous stay.

Hotel/motel: An establishment, other than a bed and breakfast or short term rental, providing, for a fee, sleeping accommodations and customary lodging services, including maid service, the furnishing and upkeep of furniture and bed linens, and telephone and desk service. Guest rooms in hotels are accessed via internal corridors, while motels provide access directly from the exterior to each guest room. Related ancillary uses may include but shall not be limited to conference and meeting rooms, restaurants, bars, and recreational facilities.

Hotel/motel, extended stay: ~~Any building containing six (6) or more guest rooms rented or leased for sleeping purposes for periods less than one (1) month, but in excess of one (1) week, and that contain kitchen facilities for food preparation including, but not limited to, refrigerators, stoves, and ovens.~~ See section 4.2.26.

By adding a new term to read as follows, in alphabetical order:

Short term rental: The rental of any room, lodging or overnight accommodations for a period not exceeding thirty (30) consecutive days. This term shall encompass the rental of a vacation home, residential dwelling, guestroom, or other overnight lodging.

PART II. EFFECTIVE DATE

This ordinance shall become effective one hundred and twenty (120) days after adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this _____ day of 2023.

ROBERT J. PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of 2023.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

CEDRIC HUDSON

Interim Director, Planning and Sustainability
DeKalb County, Georgia

VIVIANE H. ERNSTES

County Attorney
DeKalb County, Georgia

DRAFT