
Coates' Canons Blog: Regulation of Short-Term Rentals and the Effect of S.L. 2019-73

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Chris McLaughlin and I are excited to announce that our publication *Regulation and Taxation of Short-Term Rentals* is available for purchase through the SOG website. This publication is aimed at helping local governments decide how to address the growing issue of short-term rentals by analyzing the legal and practical aspects of local government regulation and taxation and by offering advice on best practices for regulation.

In addition, on January 9, 2020, we are offering a 1-day course that covers the basics of short-term rental regulation and the occupancy tax. You can register for the course [here](#).

Shortly after our book was released, the legislature adopted S.L. 2019-73 (S.B. 483), which extends the periodic inspection statutes to cover properties subject to the North Carolina Vacation Rental Act (G.S. Chapter 42A). Because STRs are clearly subject to the Vacation Rental Act, we now know that STRs are also subject to the periodic inspection statutes. This change limits the ability of local governments to regulate STRs using their housing code enforcement authority. However, absent additional legislation on this issue, we believe that local governments retain their ability to regulate STRs using their zoning authority.

What are the Periodic Inspection Statutes?

Local government inspection departments have a history of establishing residential rental property inspection, permit, and registration (IRP) programs. Tyler Mulligan's blog explores IRP programs in greater detail. Pursuant to G.S. 153A-364 and 160A-424, both cities and counties may perform periodic inspections for hazardous and unlawful conditions in buildings and residential structures if there is reasonable cause to believe that there are unsafe, hazardous, or unlawful conditions therein.

In addition, the statutes also prohibit a local government from:

- adopting or enforcing an ordinance that requires an owner or manager of residential rental property to obtain any permit or permission to lease, rent, or register rental property absent certain exceptions;
- requiring an owner or manager of residential rental property to enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; and
- levying a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.

Effect of S.L. 2019-73 on Local Government Regulation

The limitations outlined above may appear to invalidate local government authority to regulate STRs. After all, the statutes prohibit periodic inspections without reasonable cause and make it unlawful to adopt an ordinance that requires STR owners or operators to register a property or obtain a permit. However, the periodic inspection statutes are aimed only at housing code regulation and enforcement, not land use law enforcement. This is evidenced by the fact that the provisions of the periodic inspection statutes have been recodified to the article on Minimum Housing Code authority in the upcoming re-organization and recodification of the planning and development regulation statutes (see G.S. Article 12 at 160D-12-7). This means that the periodic inspection statutes apply to residential rental properties in the context of housing code enforcement.

The statutes do not divest local governments of their authority to use land use and development regulations to regulate different land uses. Through zoning, local governments commonly define a land use, set reasonable development



standards for that use, and require some level of permitting. For example, B&B's are often regulated as a separate land use. A local government can restrict B&B's to certain zoning districts, require owners to obtain zoning permits, and set operational guidelines, such as requiring parking capacity or limiting occupancy.

Until the law holds otherwise, we believe that local governments may use zoning to regulate short-term rentals. Thus, local governments may adopt reasonable development standards for this land use, just as they do for other types of lodging establishments. *Regulation and Taxation of Short-Term Rentals* provides additional information about STR regulations for those local governments considering whether to regulate this land use.

Links

- www.sog.unc.edu/publications/books/regulation-and-taxation-short-term-rentals
- www.sog.unc.edu/courses/short-term-rental-workshop