
Coates' Canons Blog: Short-Term Rentals and Regulatory Approaches

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In July Chris McLaughlin and I hosted a webinar on the topic of STR regulation and occupancy taxes (available here). We have also written a manual for local governments on these topics, which we hope will be available to readers this summer. In the meantime, I recognize that some local governments are ready to move forward with drafting short-term rental regulations. Therefore, this blog post offers some tips for local officials on how to approach STR regulation and offers ideas of what to include in an ordinance.

Zoning permits for STR use.

Most cities nationwide that regulate STRs have chosen to issue STR permits to short-term rental hosts. In North Carolina, Asheville, Blowing Rock, Cornelius, Lake Lure, and Wilmington have adopted regulations that require STR hosts to obtain zoning permits. Although the City of Brevard recognizes STRs as a land use and regulates these properties, it does not require hosts to apply for a zoning permit. The registration of STRs and the issuance of zoning permits is beneficial because it allows these properties to be more readily identifiable. This is particularly helpful when it comes to audit and tax collection efforts. In connection with a registration program, a local government may charge a reasonable fee that covers the cost of administering the program. For more on setting regulatory fees, see Trey Allen's blog post.

STR as a lawful land use

While most local codes define certain types of lodging, such as hotels and B&B's, short-term rentals typically do not fall within the existing land use definitions. One of the first steps in drafting a STR ordinance is to define short-term rentals as a lawful land use in the local land use code. The cities that regulate STRs in North Carolina have each defined this land use differently. In general, a STR definition reads something like this: *Short-Term Rental means the rental or lease of an attached or detached residential dwelling unit to guests for a duration not to exceed thirty (30) consecutive days.* A jurisdiction may also want to consider defining homestay as a separate land use and regulating it as well. As a reminder, a homestay refers to the rental of a room(s) within a dwelling unit while the owner remains on-site during the rental stay.

Categories of STR regulation

Once a local government has defined STR, it must then decide what types of regulations to adopt. STR regulations usually fall within one of three categories: (1) geographic restrictions, (2) quantitative restrictions, and (3) operational requirements. These regulations, however, are not either/or. Most zoning regulations include a combination of geographic, quantitative, and operational components.

Geographic restrictions: A local government may rely on its zoning authority to regulate STRs depending on their zoning classification (i.e. their location). This is a powerful tool that proves particularly helpful for those communities that wish to exclude STRs from certain zoning districts. The key issue (or point of contention) when it comes to zoning and STRs is whether to allow them in residential zones. Some feel strongly that neighborhoods should not become populated by transient renters staying in de facto hotels—they argue neighborhood character suffers as does affordable housing. Of course, there is a flip side—some argue it is economically beneficial to both the community and property owners if STRs are a permitted use in residential zones. The local government will want to determine where to allow STRs and specify such in the ordinance.

Quantitative restrictions: These regulations place caps or limitations on the use of STRs within a zoning district. For example, STRs may be a permitted use in a residential zone, subject to density cap (e.g. a 500 ft. separation requirement between uses). Another restriction may include a percentage cap (e.g. no more than 5% of residences in the R-1 district are eligible for a STR permit). A requirement that a person may only hold one STR zoning permit is also an example of a

quantitative restriction. In Austin, TX, only 25% of units in a multifamily building within a commercial zone may be rented on a short-term basis. Importantly, a local government may choose to adopt more than one quantitative restriction within a zoning district.

Operational requirements: Operational regulations incorporate performance-like standards to address unit characteristics, host operation, and guest requirements. A few of the more common operational regulations include:

- **Occupancy caps:** This is when a limit is placed on the number of occupants allowed to reside overnight on a property. A typical restriction is two persons per bedroom, plus two or four additional occupants. Occupancy caps help STRs from turning into “party houses.” A local government may want to require hosts to post the occupancy cap in online rental advertisements and within the unit.
- **Designated responsible party:** A local government may require that the property owner designate a local contact person who is available to respond to complaints or other issues that arise during the rental period.
- **Parking:** A local government may designate the parking requirements for STRs based on zoning district.
- **Insurance:** It is becoming more common for a local government to require proof of commercial liability insurance evidencing a certain coverage amount for incidences of personal injury and property damage.
- **Health and safety inspections:** A local government may inspect STRs for compliance with local health and safety standards. If this is too burdensome, an alternative is to create a self-inspection checklist wherein the host certifies that he/she has complied with basic safety requirements. There are many safety requirements that could be incorporated into the checklist, including: (1) mandating that there be operable smoke and carbon monoxide detectors, (2) requiring the posting the 911 address on both the interior and exterior of the dwelling, (3) requiring a fire-extinguisher, and (4) providing an adequate number of trash receptacles.

Regulatory update

In mid-2018, Wilmington adopted STR regulations to allow homestays to operate in most zoning districts and whole-house STRs to operate in some zones (such as the Central Business District). The city continued to debate whether to allow whole-house STRs in its residential and historic zones. But, on February 5, 2019, city council gave the thumbs-up to allow whole-house STRs in these districts. The OK came with two quantitative restrictions, however. The first is a 400 ft. separation requirement between uses; the second is a 2% cap on the number of properties that may be issued a permit in these zones. The ordinance also includes a variety of operational regulations, including the requirement that host carry a commercial liability insurance policy with a minimum coverage amount of \$500,000 per incident of bodily injury and property damage. The ordinance is worth a read and serves as an example how to combine geographic, quantitative, and operational regulations. It is available on the city's website.

Summary

If your local government has questions about moving forward with drafting a short-term rental ordinance, feel free to email me at rbadgett@sog.unc.edu. It is important to draft regulations that serve the specific needs of the local jurisdiction and that are easily enforceable.

Links

- www.sog.unc.edu/courses/webinars/what-do-about-short-term-rentals-local-regulation-and-occupancy-taxes
- www.wilmingtonnc.gov/departments/planning-development-and-transportation/short-term-lodging-old