**Legislative Update to *Regulation and Taxation of Short-Term Rentals***

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**Summary**

In Section II, Part B of *Regulation and Taxation of Short-Term Rentals*, the authors advised that the periodic inspections statutes (G.S. 153A-364 and 160A-424) do not govern short-term rentals (STRs) due to the transient nature of the tenancy associated with these properties.[[1]](#footnote-1) However, thanks to a recent change in the law, the authors’ advice on this issue is no longer accurate. S.L. 2019-73 (S.B. 483), effective July 1, 2019, explicitly 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, STRs are now also subject to the periodic inspection statutes. This change essentially eliminates the ability of local governments to regulate STRs using their housing code enforcement authority. However, absent additional legislation on this issue, the authors believe that local governments retain their ability to regulate STRs using their zoning authority.

**Background**

**What Is the Vacation Rental Act?**

The North Carolina Vacation Rental Act was enacted to regulate the interests of landlords, real estate brokers, and tenants when property owners rent private residences to tourists for vacation, leisure, or recreational purposes for fewer than ninety days. The Act broadly defines the types of “residential property” it covers to include “an apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period.”[[2]](#footnote-2)

Short-term rentals offered by homeowners or property management companies, or advertised on platforms such as Airbnb, VRBO, and HomeAway, certainly fall within the scope of the Vacation Rental Act. And with the enactment of S.L. 2019-73, the legislature has clarified that STRs fall within the scope of the periodic inspection statutes.

**What Are the Periodic Inspection Statutes?**

Local government inspection departments have a history of establishing residential rental property inspection, permit, and registration (IRP) programs.[[3]](#footnote-3) 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.

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;[[4]](#footnote-4)
* 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.[[5]](#footnote-5)

**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&Bs are often regulated as a separate land use. A local government can restrict B&Bs to certain zoning districts, require owners to obtain zoning permits, and set operational guidelines, such as requiring parking capacity or limiting occupancy.

Similarly, a logical argument can be made that local governments may use zoning to regulate short-term rentals. The fact that the Vacation Rental Act separately defines “vacation rentals” provides additional support for the argument that STRs (i.e., vacation rentals) may be regulated as a distinct land use within a jurisdiction. As with other land uses, zoning approval may be required to authorize this use. Therefore, while the periodic inspection statutes would invalidate a law requiring an STR owner to obtain a permit or register a property for the sole purpose of monitoring the location of STRs or for the purpose of levying a special tax on these properties, a requirement to obtain a zoning permit to allow an STR to operate in a residential zoning district is likely permissible.[[6]](#footnote-6) Local governments may also 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.

1. Rebecca L. Badgett & Christopher B. McLaughlin, Regulation and Taxation of Short-Term Rentals 9–10 (UNC School of Government, 2019). [↑](#footnote-ref-1)
2. G.S. 42A-4(2). [↑](#footnote-ref-2)
3. C. Tyler Mulligan, *Residential Rental Property Inspections, Permits, and Registration: Changes for 2017*, Cmty & Econ. Dev. Bull. No. 9 (Mar. 21, 2017). [↑](#footnote-ref-3)
4. An owner of residential rental property may be required to register with a city if any of the following conditions are met: (1) the rental unit(s) have more than four verified violations of the housing code in a rolling twelve-month period, (2) the rental unit(s) have two or more verified violations of the housing code in a thirty-day period, or (3) the property has been identified as falling within the top 10 percent of properties with crime or disorder problems as defined by local ordinance. [↑](#footnote-ref-4)
5. G.S. 153A-364(c), 160A-424(c). Subsection (c) of these statutes also prohibits local governments from requiring an owner or manager of residential rental property to (1) enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy or (2) obtain an inspection before the owner or manager can receive a utility service. This section mandates that a violation of a rental registration ordinance cannot be punishable as a criminal offense. [↑](#footnote-ref-5)
6. Future legislation related to local government authority to regulate STRs or judicial interpretation of S.L. 2019-73 could alter the authors’ advice. [↑](#footnote-ref-6)