

Tips and Tricks: The Regulation of Short-Term Rentals

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The Short-Term Rental Boom



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What is a Short-Term Rental?

Characteristics:

- Residential dwelling unit
- Host
- Transient occupancy
- Limited duration
- Compensation



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Regulatory Authority

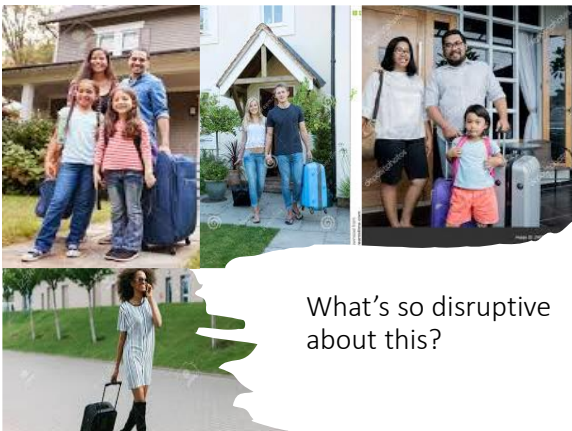
- A zoning regulation may regulate the location and use of buildings. G.S. 160D-702
- Controlling density, traffic congestion, noise pollution, and parking problems and preserving residential character of neighborhoods are legitimate goals of zoning ordinances. *Capricorn Equity Corp. v. Town of Chapel Hill Bd. of Adjustment*, 334 N.C. 132 (1993).

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Regulatory Authority

- Legitimate goals of zoning regulations include:
 - Control density
 - Traffic
 - Noise
 - Parking
 - **Preserve residential character of a neighborhood**
- AND
- Regulations must be reasonable

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What's so disruptive about this?

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The Big Debate: Residential or Commercial Use?



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Hypo

- Mr. King recently purchased a condo in the Little Turtle condo community. Two months later he changed jobs, and he is now required to travel 15 days per month. King decides to rent his condo on Airbnb when he is away.
- The condo association's restrictive covenants provide: **"No lots shall be used for business or commercial purposes."**
- King's neighbor sues Mr. King for violating the covenants because STRs are a commercial use of property.

Has Mr. King violated the restrictive covenants?

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Residential vs. Commercial Use

- Neither [the] **financial benefit** nor the **advertisement of the property** or the **remittance of a lodging tax** transforms the nature of the use of the property from residential to commercial." *Russell v. Donaldson*, 222 N.C. App. 702 (2012).
- Residential use means simply that "the property is used for the habitation of human beings and for those activities such as eating, sleeping, and engaging in recreation which are normally incident thereto." *J. T. Hobby & Son, Inc. v. Family Homes of Wake Cty., Inc.*, 302 N.C. 64 (1981).

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O'Neil v. Conejos Cty. Bd. of Commissioners,
395 P.3d 1185 (Colo. App. 2017).

Facts: Homeowners rented their vacation property on VRBO for a substantial portion of the year. The tax department reclassified the property from residential use to commercial use.

Holding: The use is residential. It is necessary to evaluate the original intended use of the property, its actual current use, and its reasonable future use:

- The payment of sales and lodging taxes and the acquisition of a special permit did not dictate that the property be classified "commercial" because those payments, in and of themselves, say nothing about the predominant intent or usage of property.



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Regulating STRs: The Path Forward



Ordinance Adoption



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Are there provisions in your current land use code that could be interpreted to allow or prohibit STRs in residential zones?



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Step 1: Read the Land Use Code

- *Dwelling Unit (does the definition exclude transients)*
- *Family*
- *Lodging House*
- *Rooming House*
- *Accessory Dwelling*
- *Hotel & Motel*
- *Bed & Breakfast*



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- *Lodging unit: A room or group of rooms forming a separate habitable unit, with or without independent kitchen facilities, occupied or intended to be occupied by transients on a rental or lease basis for periods of less than 14 days.*

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Step 1: Gather Information

- How does the code treat land uses that are not expressly regulated?
 - Are undefined uses automatically prohibited?
 - Are undefined uses treated as the next most similar use?



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Step 1: Gather Information

- Are there existing nuisance ordinances that can be used to regulate STRs?
 - Noise
 - Parking
 - Trash & Recycle

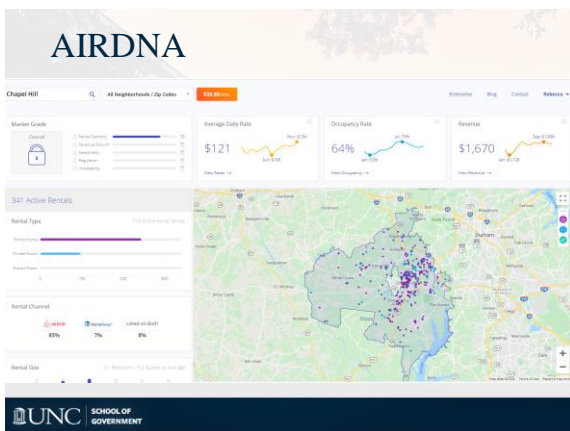
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Step 1: Gather Information

AIRDNA

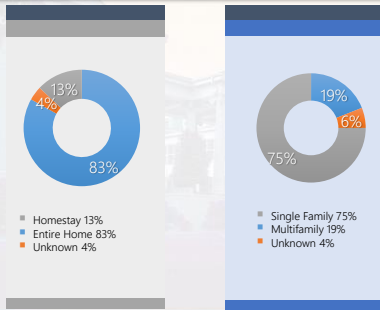
- Evaluates 25 key performance metrics:
 - Number of active listings
 - General location of active listings
 - Occupancy rate
 - Rental revenue
 - Average daily rate

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AIRDNA



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Understand Stakeholder Priorities

Neighbors:

- Parking
- Noise
- Strangers in the neighborhood
- Lack of community feel
- Lack of affordable housing

STR Operators:

- STR revenue is important source of personal income
- Property rights
- Promote economic development
- Consumer demand

Hoteliers:

- Level regulatory playing field
- Impacts to business

Staff:

- Health and safety
- Tax revenue
- Increased nuisance activity
- Affordable housing

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Step 1: Gather Information

Summary

- Does the jurisdiction consider STRs to be a lawful land use? If yes, in what zoning districts?
- Do any existing land use definitions need updated?
- Has the local government received STR complaints?
- How active is the STR market?
- What do key stakeholders identify as their top priorities or concerns?

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Step 2: Identify Planning Objectives We want to regulate STRs because ...

- Protect neighborhood character
- Preserve affordable housing
- Promote economic development
- Ensure safety
- Level regulatory playing field
- Collect taxes

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Step 3: Drafting the Regulations



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Ordinance Framework

- **What** (define STR)
 - Decide on Model 1 or 2
- **Where** (geographic regulations)
 - Determine the zoning districts in which STRs may operate and decide if density restrictions will apply
 - Permit limits
 - Separation requirements
 - Use limitations
- **How** (operational requirements)
 - Identify additional requirements for lawful STR operation
 - Occupancy cap
 - Parking
 - Noise
- **Enforcement**

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Pick a STR Regulatory Model

Model 1

- Homestay (room rental)
- STR (whole-house rental)

Model 2

- Primary STR (rental of room + temporary absence)
- Dedicated STR (primary use is as an STR)

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Model 1

- **Homestay:** The rental of a room(s) within a dwelling unit while the host remains on-site overnight during the rental period.
- **Short-Term Rental (STR):** The rental of an entire residential dwelling unit.
 - The primary resident is temporarily away, or
 - The dwelling is primarily used as an STR (no primary resident)

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Model 2

- **Primary STR:** The rental of a primary residence, either wholly or partly, for a fee for fewer than thirty (30) consecutive days to one party of transient guests at a time.
 - **Primary Residence:** a dwelling that has a primary resident. A primary resident is someone who lives in the primary STR a minimum of ____ days per year.
- **Dedicated STR/Non-Primary STR:** The rental of a dwelling that is not a primary residence to transient guests for a fee for fewer than thirty (30) consecutive days.

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Model 1

Type 1: Homestay



- The rental of a bedroom(s) to guests while the host is on-site overnight

Type 2: STR



- Whole-house rental
- Resident may be temporarily absent, or the dwelling is not a primary residence

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Model 2

Primary STR



- Primary Residence is on-site with guests
- Nightly rental of spare bedroom



- Rental of a primary residence while the primary resident is temporarily absent

Dedicated STR



- No primary resident
- Property used primarily as an STR

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Model 1: Asheville, NC

“Homestay” means a private, resident occupied dwelling unit, with up to two guest rooms where overnight lodging accommodations are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. A homestay is considered a “lodging” use under this UDO. Permitted by right.

“Short-term vacation rental (STRV)” means a dwelling unit with up to six guest rooms that is used and/or advertised through an online platform, or other media, for transient occupancy for a period of less than one month. A short-term vacation rental is considered a “Lodging” use under this UDO.

STRVs are only permitted in the resort zoning district.

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Model 1: STRs in Residential Zoning Districts

City	Homestay (owner on-site)	STR (no distinguishing between primary and dedicated)
Asheville, NC	Allowed	Prohibited in nearly all zoning districts. Allowed in Resort district.
Bloomington, IN	Allowed	Allowed
Savannah	Prohibited	20% per-ward cap in R and mixed-use zones. No cap in commercial zones
Wilmington, NC	Allowed	Allowed in specified zones, including residential: 2% cap, 400 ft. separation requirement

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Example: Model 2

Fort Collins, CO

Primary STR = occupied by the primary resident for a minimum of 9 months per year.

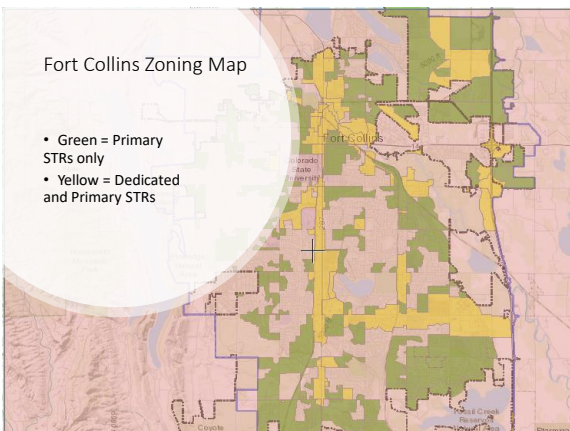
• 546 rentals

Primary STR	Non-Primary STR (Dedicated STR)	Accessory Dwelling Units
<ul style="list-style-type: none"> Room rentals allowed all year. Whole-house STR allowed max of 90-days per year. 	<ul style="list-style-type: none"> Restricted to low & medium density mixed-use and where hotels, motels are permitted. 	<ul style="list-style-type: none"> Accessory dwellings are primary STRs. May only rent one unit at a time.

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Fort Collins Zoning Map

- Green = Primary STRs only
- Yellow = Dedicated and Primary STRs



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Example: Model 2



Primary STR	Dedicated STR	Accessory Dwelling Units
<ul style="list-style-type: none"> Allowed up to 182 days (half year). 	<ul style="list-style-type: none"> Prohibited May apply for a special use permit 	<ul style="list-style-type: none"> Treated like primary STR if primary resident is present 188+ days.

Primary STR shall mean any dwelling unit in which the owner resides for more than 182 days per calendar year. (183 days on-site).

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Example: Model 2



Primary Residence	Dedicated STR	Accessory Dwelling Units
<ul style="list-style-type: none"> 90-day cap when principal resident is not on-site. 	<ul style="list-style-type: none"> Prohibited 	<ul style="list-style-type: none"> Owner must reside in either the primary or accessory unit. Accessory dwellings built after 1/1/2017 cannot be STRs

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Model Comparison

Model 1

- STRs important to tourist industry (beach communities)
- Goal is to regulate STRs, but not ban them
- Goal is to prohibit STRs from operating in residential zones (concerned about neighborhood character)

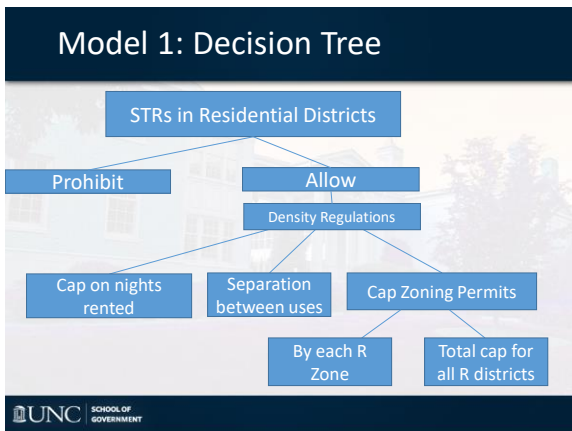
Model 2

- Dedicated STRs are viewed with disfavor by residents
- Concerns that an increase in dedicated STRs will affect neighborhood character
- Value compromise
 - Allow whole-house rentals when residents are temporarily absent
 - Prohibit dedicated STRs in residential neighborhoods

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Model 1	Allowed in R Zones	Allowed in Commercial Zones	Allowed in mixed-use zones
Homestay	Yes	Yes	Yes
STR	Yes No	Usually Yes	Yes No
Model 2			
Primary STR	Yes (homestay) Yes (whole-house) -limited # of days per year (often 95)	Yes	Yes
Dedicated	No	Yes	Maybe

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Don't forget about these...

- Multifamily dwellings
- Accessory apartments



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Operational Regulations

Occupancy Cap: Example: 2 persons per bedroom, plus 2 additional guests
Notice to Neighbors
Designated Responsible Party: A person or company within a designated radius that is a point-of-contact and available to respond to issues within a certain timeframe.
Parking: Example: 1 space for every 2 bedrooms -Reference existing parking ordinance
Special Events (weddings, fundraisers, large gatherings)
Rental period of not less than overnight

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Safety Inspections Likely Prohibited

- North Carolina Fire Marshall's Office
 - Lacks jurisdictional authority to inspect single-family dwellings
- Building Inspections, Art. 11
 - Inspections for permit compliance
 - Ensure compliance with the State Building code
- Minimum Housing, Art. 12
 - Authority to inspect residential structures if there is reasonable cause to believe there are unsafe or unsanitary conditions. G.S. 160D-1207
 - Complaint driven

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Safety Compliance Checklist

- General conditions—premise maintained in a sanitary condition with no accumulation of trash and free of rodent or insect infestations; walls and ceilings maintained in good condition; porches and balconies structurally sound.
- Smoke detectors
- Carbon monoxide detectors
- Address visible from the street
- 911 address posted in the unit
- Fire extinguisher visible near the kitchen

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Proof of Insurance Coverage

- Educate STR operators about insurance requirements
- Airbnb and VRBO offer hosts and guests \$1 million in liability coverage per incident.
- Consider whether to require proof of insurance during the application process

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Enforcement

- Complaint-based enforcement
- Penalties similar to other zoning violations
- Utilize third-party vendor
 - Host Compliance



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Vested Rights and STRs

- **“Grandfathering”**: A method of allowing a “nonconforming use” to continue after enactment of a new restriction.
 - Nonconforming uses are uses that were *not unlawful* until the regulation changed.
- **Amortization**: A grace period of whatever duration a governing board deems appropriate before a nonconforming use must be discontinued?
 - What is a reasonable amortization period?

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Vested Rights and STRs

- STRs expressly prohibited = No right to "grandfathering"
- "Uses not defined herein are prohibited" = Arguably no right to "grandfathering"
- Code does not address undefined land uses = Unclear
- Code allows STRs = Consider "grandfathering" or an amortization period

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STRs and Takings Challenges

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Moratoria

- G.S. 160D-107: A moratoria may not be adopted for development regulations governing residential uses.

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Ordinance Outline

- **What** (define terms)
 - Decide on Model 1 or 2
- **Where** (geographic regulations)
 - Determine the zoning districts in which STRs may operate and decide if density restrictions will apply
- **How** (operational requirements)
 - Identify additional requirements for lawful STR operation
 - Occupancy cap
 - Parking
 - Noise
- **Enforcement**

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Questions?

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