

# SHORT TERM RENTAL

The Brewing Battle Between  
Airbnb and Local Government

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# The Short Term Rental Revolution



## What is an STR

- NCGS 42A-4: “Vacation Rental” - The rental of residential property for vacation, leisure, or recreation purposes for fewer than *90 days* by a person who has a place or permanent residence to which he or she intends to return.
- Most local governments define STR generally as:
  - The rental of property (usually residential)
  - Less than 30 days
  - Advertised through online platform
  - Other characteristics vary by location.

# The Short Term Rental Revolution

- City of Asheville Definition (City Code Sec. 7-2-5)
  - Short-term vacation rental 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.
- Airbnb Definition



# The Short Term Rental Revolution

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How “rich” is “RICH”???

- As of July 2022, the Global STR Market was valued at 100.8 Billion
- Projected to reach 228.9 Billion by 2030
- The United States STR market reached \$19 Billion in 2022
- Approximately 1.5 million STR U.S. listings
- In 2021 North Carolina hosts earned \$75M (6th in the U.S.)
- Buncombe County has approximately 6000 STR units, with over 148,000 bookings in Dec. 2023 alone (a 68% increase since 2019).

**Airbnb Inc. is worth more than \$77 Billion.**

# The Short Term Rental Revolution

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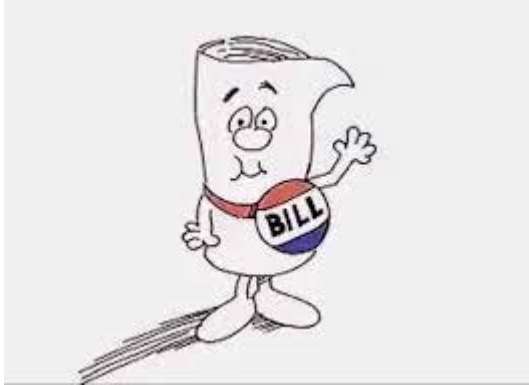
So how can all that economic impact be a bad thing?

- Neighborhood Transformation
- Party House Nuisances
- Subverts Zoning (Lodging v. Residential)
- Housing Supply
- Housing Affordability
- Building Safety Issues

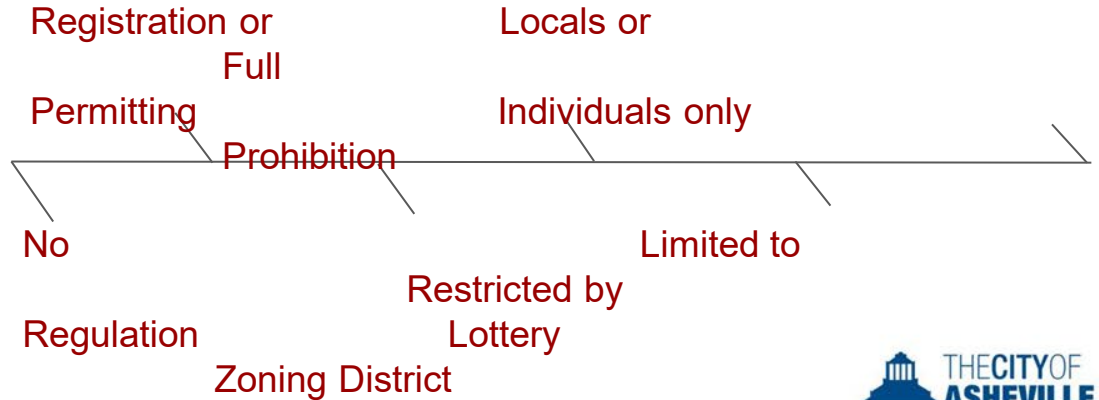


# The Local Government Conundrum

Should STR's be regulated, and how?



## Local Regulation Spectrum



# The Local Government Conundrum

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## Questions for your local government?

- Do you want/need to regulate STR's in your community?
- Should you limit them to certain zoning districts?
- Do you to place any limits on total STR's or enforce "Night Caps?"
- Do you want to distinguish between "Whole Home Rental" and "Homestays?"
- Should you impose conditions on the use of property as an STR?
- Should you limit this on a "Locals only" basis?
- If you move to ban or restrict STR's, what about those already operating?
- What are legal cliffs you must avoid while regulating?

# An Uneasy Alliance

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## Local Government Case Studies

- Boston - Local STR ordinance required platforms to share data and crack down on illegal listings. Airbnb sued, but later settled with the city by adding a requirement for listors to input City issued registration number.
- New Orleans - Original ordinance required owners to occupy STR. Ruled unconstitutional by the 5th Circuit in 2022. City updated the law to require the “operator” to reside in the home, limits total STR’s by lottery system, and prohibits corporate ownership. A new class-action lawsuit has been filed against the City.
- Santa Monica - Due to increasing nuisance complaints from normally quite residential neighborhoods, City adopted an ordinance requiring owner to be present during rental. Airbnb sued, and later settled by agreeing to require each listing to include a license number issued by the City, and limiting each host to only one dwelling at a time, and no more than 2 rooms within the home. Airbnb will also collect \$2 fee for each night’s booking and pass this onto the City to support affordable housing.



# An Uneasy Alliance

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## Local Government Case Studies

- Miami Beach - Ordinance required platforms to display the resort tax account and business tax receipt numbers on each listing, and only allowed STR in certain zones. Airbnb settled paying \$380,000 to the City and agreeing to include verification information on all listings.
- New York - Adopted strict permitting requirements, including having owner present. Rationale: Protection of housing stock, and avoiding nuisance of transient visitors in residential buildings. Airbnb and three hosts sued, but case was dismissed when court found the regulations to be reasonable and not overly broad.

### **Elsewhere.....**

- Airbnb has also entered into cooperative agreements to aid enforcement of local ordinances in the U.S.A. - Eugene, OR; Sante Fe, NM; Chicago, IL; San Francisco, CA; Seattle, WA; Buffalo, NY; etc.
- Worldwide - Nova Scotia, Florence, Mexico City, Hamburg, Buenos Aires; London, San Jose; etc.

# Local Solutions

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## North Carolina Regulations

- Boone - Regulates STRs and homestays, requires permits, treated as lodging in UDO. Includes operational regulations.
- Raleigh - STRs allowed only certain zoning districts, requires permits. Includes operational regulations.
- Greensboro - Only permitted in residential dwelling units, and must obtain zoning permit. Hosts must be local. Max two guests per rented bedroom.

# Local Solutions

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## North Carolina Regulations

- Nags Head - Allowed in all zoning districts, whole or partial house. Parking, occupancy, and insurance requirements are regulated.
- Pinehurst - Pre-existing STRs considered non-conforming uses, no new STR's permitted.
- Southport - Homestays allowed, but regulated, limited to one per person/entity. STR's prohibited within residential districts, except for pre-existing ones. Zoning permit required.

# Local Solutions

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## North Carolina Regulations

- Woodfin - Homestays permitted with conditions, limited to one per person/entity. STR's permitted but regulated and capped as to volume within developments.
- Iredell County - STR's allowed in most zoning districts, but no new units in some districts. All units subject to conditions.
- Buncombe County - STR's allowed with a Special Use Permit. Conditions apply.
- Belmont - STR's allowed in residential or lodging districts. Conditions apply.

# Local Solutions

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## North Carolina Regulations

- Chapel Hill - STR's only allowed in "high-density, mixed-use and commercial areas." Pre-existing STR's were amortized. Homestay equivalent is permitted but regulated.
- Wilmington - No longer requires registration, nor limits density or total volume, but other regulations remain. (Stay tuned for more on that!)
- Asheville - Allows homestays with conditions, whole home STR's only allowed if pre-existing 2018 ordinance or within "Resort" zoning district. (Approx. 1,037 STR's in Asheville - 176 whole home rentals/ 861 homestays.)

# The Court Weighs in

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## Schroeder v. City of Wilmington

- Wilmington Ordinance regulated STR's
  - Density limitation (400 ft. separation requirement)
  - Set total STR cap at 2% of residential properties
  - Held lottery to determine new recipients
  - Required registration of any STR
- The Schrodgers had been operating an STR prior to the ordinance's adoption, so were required to enter the lottery to receive a permit to continue the practice.
- When they failed to receive one of the lottery permits, they filed suit to challenge the ordinance on statutory and constitutional grounds.

# The Court Weighs in

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## Schroeder v. City of Wilmington

- Statutory Background:
  - Originally codified in G.S. 160A-424 (*Cities*) and G.S. 153-364 (*Counties*), the General Assembly established the limits on local government programs to inspect, permit, and register residential property. (Known as “IPR” programs).
  - In 2019, G.S. 42A-3 was amended to specify that IPR programs rules AND LIMITATIONS also apply to properties subject to the Vacation Rental Act, including STR’s.
  - Also in 2019, Ch. 160D was adopted recodifying old statutes dealing with planning and development regulation.
  - IPR statutes were relocated to G.S. 160D-1207, which now apply to STR’s.

# The Court Weighs in

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## Schroeder v. City of Wilmington

- G.S. 160D-1207
  - The key statutory language now states that local governments may not “*require any owner or manager of rental property to obtain any permit or permission under Article 11 or Article 12 . . . to lease or rent residential real property or to register rental property with the local government.*”
    - Article 11 - Building Code Enforcement; Article 12 - Minimum Housing Code
- Central Issue for the Court:
  - What is the scope of the statutory limits of permits, permissions, and registrations for rental of residential property? Does state law preempt the registration program and other elements of the Wilmington short-term rental ordinance?



# The Court Weighs in

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## Schroeder v. City of Wilmington

- From G.S. 160D-1207(c)

Local governments may not...

1. *require any owner or manager of rental property to **obtain any permit or permission** under Article 11 or Article 12 . . . to lease or rent residential real property*
2. **OR to register rental property with the local government.**

# The Court Weighs in

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## Schroeder v. City of Wilmington

- The Superior Court ruled that Wilmington's registration requirement was preempted by State law, but went further by striking down the remainder of the ordinance as well.
- The Court of Appeals interpreted the statutory limitations more narrowly, prohibiting permission and permit requirements prior to rental only under Articles 11 and 12. Restrictions on registration requirements, however, were not limited to those articles.
- Requiring permission or permit under Article 7 (Zoning Authority) lives on!
- Court found the Wilmington registration requirement to be invalid under 160D-1207(c), but allowed the majority of the ordinance to stand.

# The Court Weighs in

## Schroeder v. City of Wilmington

Where did this decision leave local governments?

- G.S. 160D-1207 DOES prohibit local registration requirements for STR's.
- Permitting may be ok under Art. 7, but the Court expressed skepticism. Must be distinct from registration. (I.E. Zoning Compliance, Special Use Permits, Site plan approvals, COA's, etc.)
- Local Governments retain the ability to fully prohibit STR's within zoning districts.



# Enter the Legislature

## The Post Schroeder Landscape

- Registration (and probably permitting) are gone
- But many local governments are still feeling pressure to regulate STR's
- The focus remains on the primary remaining tool - Zoning
- Amortization is a major point of contention
- Property rights vs. Governmental control
- Lobbying efforts to the General Assembly are ramping up



# Enter the Legislature

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## North Carolina STR Legislation (All 3 Bills remains in Rules Comm.)

- **SB 290** - The “No Party House” bill - Would require STR’s to comply with local ordinances related to housing and building codes, and sets maximum occupancy limits (4 persons per bedroom).
- **SB 325** - The “Platform Safe Haven” bill - Would prohibit local governments from regulating online marketplaces, and from requiring such to provide information on its users.
- **SB 667** - The “Local Regulation Death nail” bill - Would strip almost all local authority to regulate or restrict STR’s, except for health, safety, and occupancy limits.

# This is my last slide..... almost

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## Key Takeaways

- Short Term Rental remains big business
- The NC regulatory scheme remains inconsistent
- Many Local governments continue to regulate STR, or even nearly prohibit it entirely
- Registration, and probably permitting, requirements are off the table
- Full prohibition through zoning remains viable
- State action remains possible, if not probable



# Questions?