

ADUs and STRs (and some ABCs)

**Melanie Clark, attorney, Foley and
Lardner LLP**

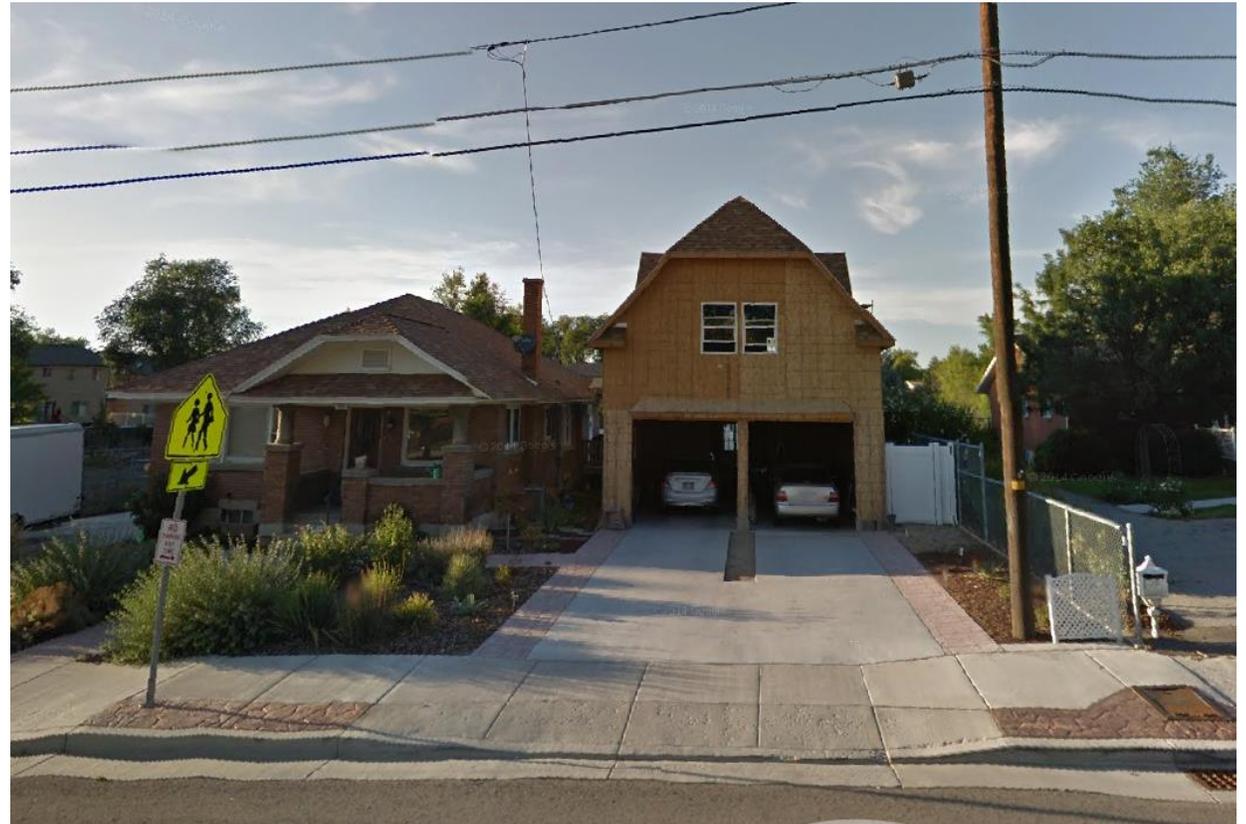
**Todd Shernan, Herriman City attorney
John M. Janson, moderator, consulting
planner**

And some previous help from

Jake Young, CitiDesign

Erin O'Kelley, formerly Millcreek

Daniel Cardenas, Pleasant Grove



Goals of the session (questions? Virtual folks please use the chat button!)

- Provide a foundation of data to address common myths and concerns about ADUs and STRs
- Learn about the basics of creating your own ordinances (and possibly adjusting your existing ordinance)
- Learn from communities with an ADU ordinance
- Learn the pros and cons of STRs





Accessory Dwelling Units

Presented by:
Melanie Clark

April 7, 2023

-
1. What are ADUs
 2. Pros and Cons of ADUs
 3. State Law

What are ADUs?

Statutory Definition

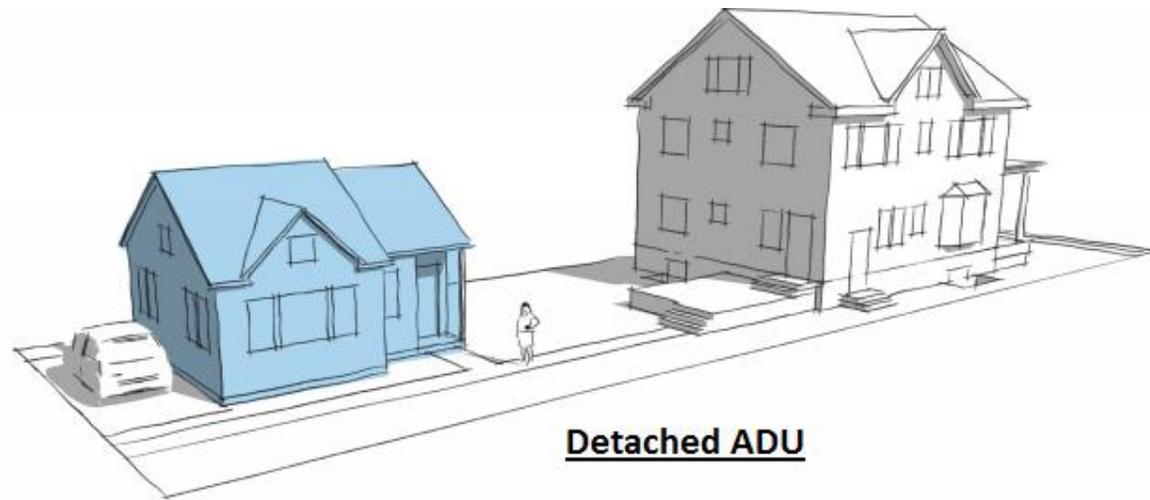
A habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.

Utah Code § 10-9a-103(1).

What are ADUs?



What are ADUs?



Detached ADU

What are ADUs?



What are ADUs?



Accessory Dwelling Units: Housing hiding in plain sight

What are ADUs?

Also Known As:

- accessory apartment
- alley flat
- back house
- backyard bungalow
- basement apartment
- carriage house
- coach house
- garage apartment
- granny flat
- guest house or cottage
- in-law suite
- laneway house
- mother-daughter house
- multigenerational house
- ohana unit
- secondary dwelling unit
- sidekick



Pros and Cons of ADUs

Pros

- Can provide rental income to mitigate increases in cost of living
- Affordability
- Enables family members together, but with their own space
- Can provide housing for a hired caregiver
- Younger residents may prefer smaller spaces with less maintenance
- Can help older residents remain in their community and “age in place”
- Larger client base for existing local businesses
- Lower carbon emissions as compared to single-family homes

Pros and Cons of ADUs

Pros

- Increase housing supply
- Efficient use of existing housing stock
- Can be designed to blend in with surrounding architecture and neighborhood
- No need for additional infrastructure (connect to utilities of primary dwelling)
- Alternative to major zoning changes
- Increases property value and property taxes

Accessory Dwelling Units: Case Study, U.S. Department of Housing and Urban Development Office of Policy Development and Research, Prepared by: Sage computing, Inc., June 2008, huduser.gov/portal/publications/adu.pdf

Pros and Cons of ADUs

Cons

- Parking and additional vehicles/traffic
- Introduce additional rental properties into a stable neighborhood
- Zoning enforcement difficulties

ADU's Summary Brief, Centerville City Utah, Community Development, [Utah.gov/pmn/files/346711.pdf](https://www.utah.gov/pmn/files/346711.pdf)

Pros and Cons of ADUs

What are the most significant challenges to the viability of ADUs in your city, town or county?

| Answer Choices | Responses | |
|---|-----------|----|
| Current ordinance issues or not allowed | 38.10% | 32 |
| Public interest and/or education | 30.95% | 26 |
| Code enforcement | 44.05% | 37 |
| Financing for ADU construction/remodels | 9.52% | 8 |
| Building code compliance | 39.29% | 33 |
| Parking | 41.67% | 35 |
| Other | 15.48% | 13 |

| Answer Choices | Responses | |
|---|-----------|----|
| Nimby-ism (public or neighbors against it) | 40.48% | 34 |
| Administration | 19.05% | 16 |
| Not offered by builders and/or trades not offering remodel services | 2.38% | 2 |
| Fees | 13.10% | 11 |
| Utilities | 25.00% | 21 |
| Assuring owner occupies one of the units (if required) | 51.19% | 43 |
| Total Respondents | | 84 |

Accessory Dwelling Units Use by Utah Cities, Towns & Counties, 2020 Survey, Salt Lake County Regional Development

State Law

Limits Regulation by Counties and Municipalities of Internal ADUs

General Rule:

One internal ADU in a primary detached dwelling must be a permitted use in any area zoned primarily for residential use

Utah Code Ann. §§ 10-9a-530(2) and 17-27a-526(2).

State Law

Can Entirely Prohibit Creating New Internal ADUs:

1. In zoning districts that are **not** primarily for residential use
2. In primary dwellings already containing an internal ADU
3. In attached homes and mobile homes and within detached garages
4. Within a zoning district that:
 - a. Geographically covers 25% or less than the total area zoned primarily for residential use
 - b. Geographically covers 67% or less than the total area zoned primarily for residential use if the main campus of a state or private university with a student population of 10,000 or more is located within the county or municipality
5. In a primary dwelling unit with a failing septic tank
6. On lots with 6,000 or fewer square feet

Utah Code Ann. §§ 10-9a-530(4) and 17-27a-526(4).

State Law

What Regulations are Permitted?

1. May prohibit installation of a separate **utility meter** for the internal ADU
2. May require that the ADU be **designed** so that the appearance of the primary dwelling unit doesn't change
3. May require one additional **on-site parking** space for the ADU (in addition to street parking)
4. May require **replacement of any parking spaces** lost if an ADU is constructed in a previous garage or carport
5. May require the owner to obtain a **license** for renting the ADU
6. May prohibit **renting** the ADU for fewer than 30 consecutive days
7. May prohibit rental all together if the primary dwelling unit is not occupied as the **owner's primary residence**

Utah Code Ann. §§ 10-9a-530(4) and 17-27a-526(4).

State Law

Enforcement

A municipality or county may hold a lien against a property violating ADU restrictions with the following procedure:

1. Provide written notice of violation to the owner (mailed and posted on the property)
2. Hold a hearing regarding the violation (only required if owner files a written objection of the notice being postmarked or posted on the property)
3. Owner fails to cure (14-day cure period for violating a 30-day rental requirement; 30-day cure period for all other violations)
4. Provide written notice of lien to owner (mailed and posted on the property)
5. Record a lien in the county records in an amount up to \$100 for each day the violation continues after the cure period.

Utah Code Ann. §§ 10-9a-530(5) and 17-27a-526(5).

State Law

Notice in Land Records

If a municipality or county issues a rental license or building permit for an internal ADU, the municipality or county may record a notice in the county records with a description of the primary dwelling, a statement that it contains an internal ADU, and a statement that the internal ADU may be used only in accordance with applicable land use regulations. If such a notice is recorded, a copy must be sent to the property owner.

Utah Code Ann. §§ 10-9a-530(6) and 17-27a-526(6).

About Foley

Foley & Lardner LLP is a preeminent law firm that stands at the nexus of the energy, health care and life sciences, innovative technology, and manufacturing sectors. We look beyond the law to focus on the constantly evolving demands facing our clients and act as trusted business advisors to deliver creative, practical, and effective solutions. Our 1,100 lawyers across 25 offices worldwide partner on the full range of engagements from corporate counsel to IP work and litigation support, providing our clients with a one-team solution to all their needs. For nearly two centuries, Foley has maintained its commitment to the highest level of innovative legal services and to the stewardship of our people, firm, clients, and the communities we serve.



FOLEY & LARDNER LLP

[FOLEY.COM](https://www.foley.com)

ATTORNEY ADVERTISEMENT. The contents of this document, current at the date of publication, are for reference purposes only and do not constitute legal advice. Where previous cases are included, prior results do not guarantee a similar outcome. Images of people may not be Foley personnel.

© 2023 Foley & Lardner LLP

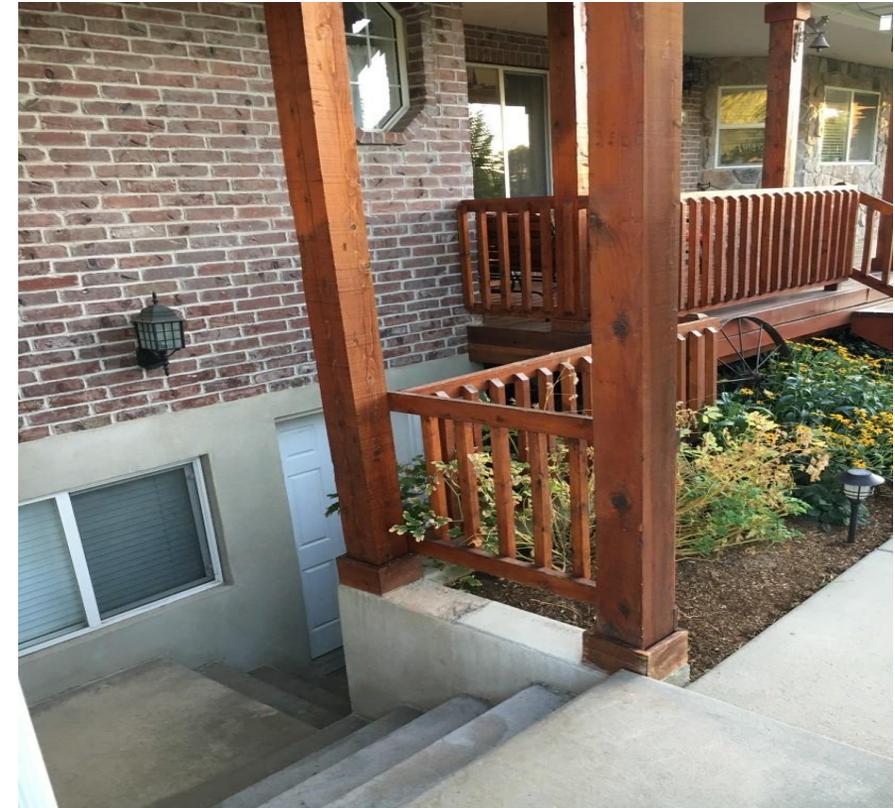
Bigger Issues

- Income versus Housing costs
- Rising interest rates, rising house prices
- More people renting now and in the future.
- The changing American Dream
- National conversation about whether Single Family zones are a thing of the past. Are they discriminatory?
- Headlines about cities that are walking away from zoning for SFDs only.



Typical Internal ADU Ordinance Sections

- Ownership? Can this be a duplex?
- Type allowed internal and/or detached
- Size (no longer allowed)
- Appearance
- Parking (one, just one!)
- Utilities
- Processing – Permitted use! Biz license is ok
- Impact fees
- Illegal Units



Ownership

- Decisions to make
 - Owner has to live in one of the units?
 - Or as a community are you unconcerned with absentee rental duplexes? *(more communities are ok with that these days)*
 - If owner is required to live on the property, how is this enforced?
 - *Suggestion – initial recorded agreement, Deed restriction (?), regulate through business licensing – annual review/certification, fines for complaints*



Type allowed

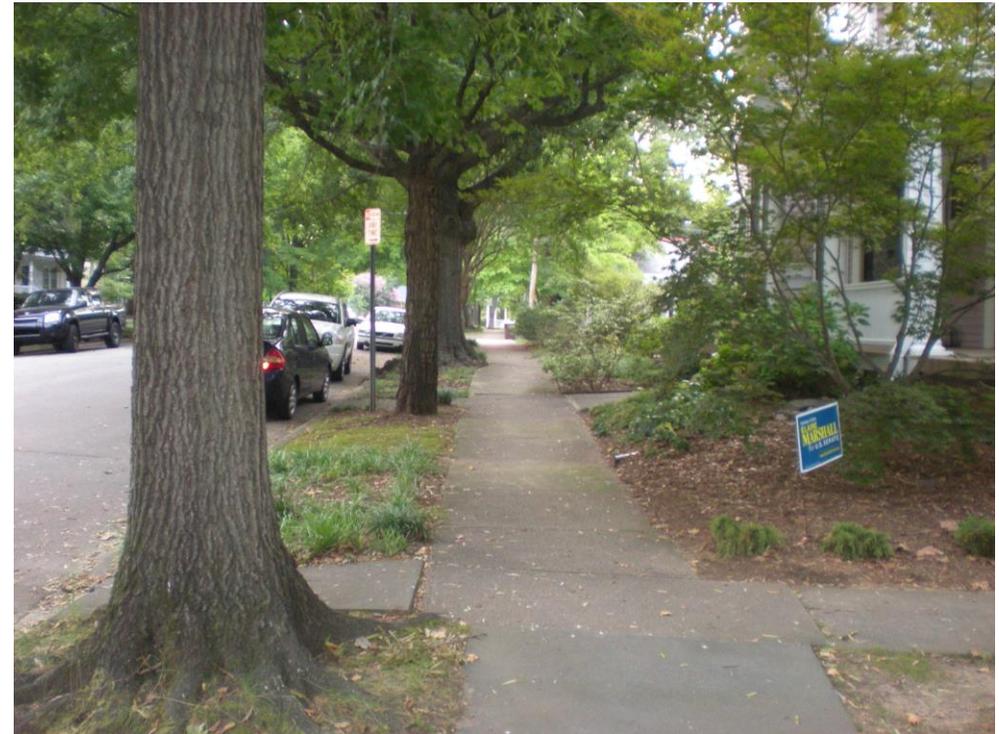
- Decisions to make
 - Only within the existing home
 - Attached (State law calls these internal), as an addition
 - Appearance issue
 - Detached
 - Height, setback, and appearance issues
 - Tiny homes, accessory structure conversions, trailers/storage containers
- *Easiest is just within the home, but is that flexible enough?*



Parking

- No decision – just one parking space can be required
- Studies show that often is enough!

- *Common practice is one extra off-street space, usually not located in tandem with another parking space*



Utilities

- Decisions to make about sewer, water, electricity, etc.
- Separate or not?
 - More independent versus less
- Separate mailbox or not
- Separate house number (unit “B” (required for emergencies))



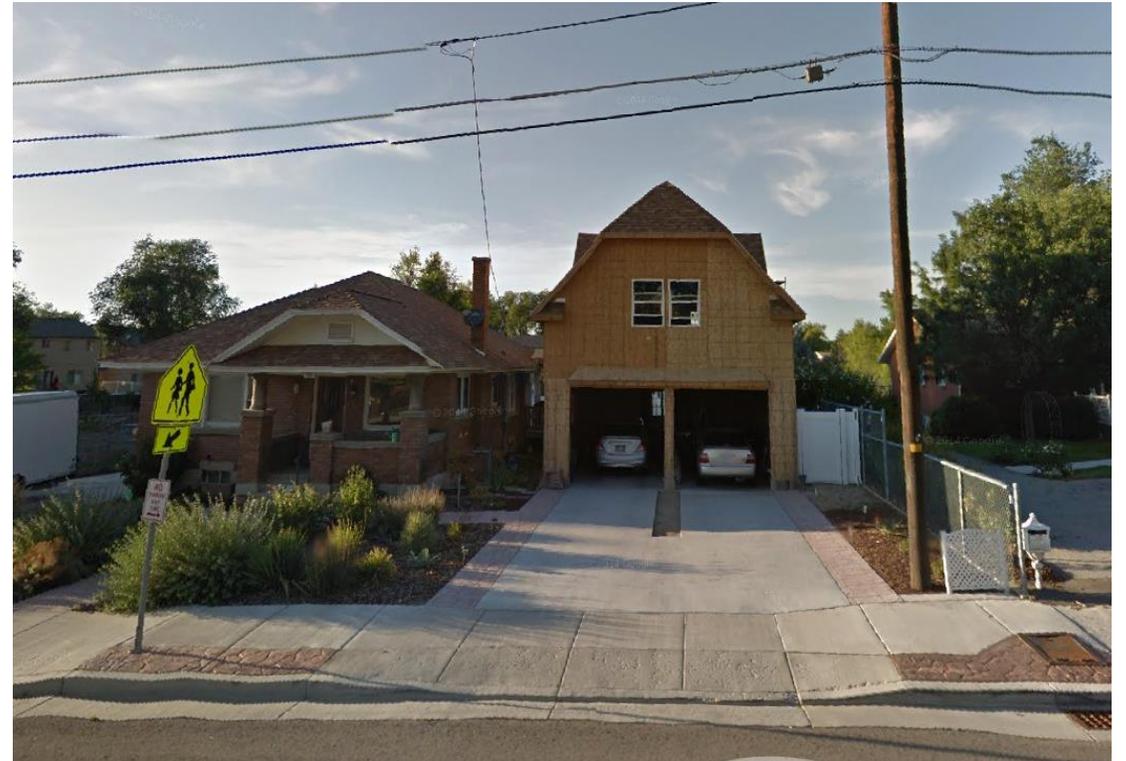
Building Code

- State has adopted the IBC. Cities have little ability to modify those requirements, but the State can
- Potential major building code issues
 - Life safety issues have to be addressed
 - Fire walls
 - Separate heating, functional escape windows
 - Need access to the electrical panel



Processing

- How you will process ADUs is another community decision
- State has mandated permitted use for internal ADUs, Conditional uses could be used for detached but....
 - Hearings or no hearings for detached?
- Standards set as part of a home occupation or is this a separate use?
- Area – cover the whole city or not?
- *Lots of standards? Why go through a public meeting process? If they meet the standards, why go through the neighborhood trauma? (CUs no longer require public hearings!)*



And those pesky impact fees?

- Want to encourage or discourage ADUs?
- Should they “pay their own way” or should they help us meet our affordable housing goals?
- What is their impact?
 - Like an apartment? Just like a larger SFD with a big family?
 - Usually impact fees are tied to the number of bedrooms and that translates to a number of people



How about illegal units?

- Useful to try and make the existing ones legal – if only to make them safe
- IBC is the biggest hurdle and can't be ignored
- Solves insurance issues for the homeowner
- *May be able to provide options for IBC requirements – stick to the major life safety issues. Takes a creative Bl.*

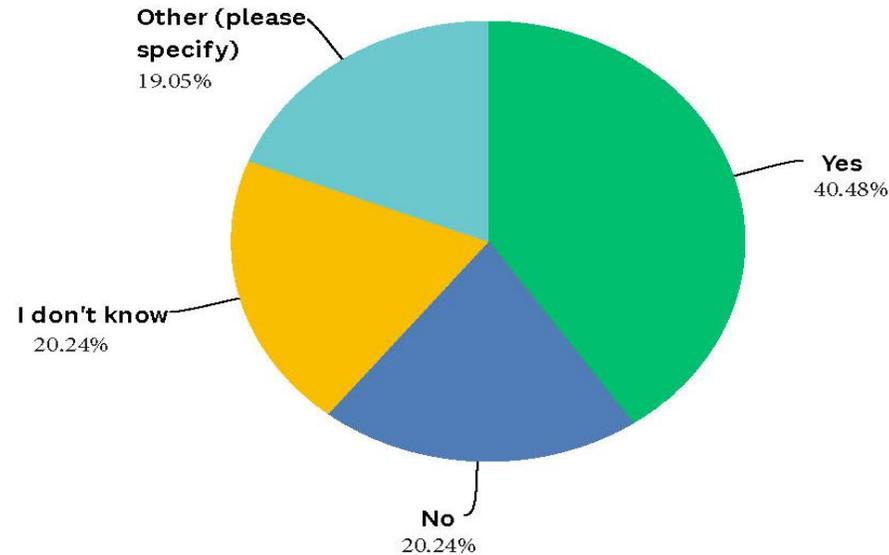


ADU Research

Accessory Dwelling Units use by Utah cities, towns & counties (2020 survey)

Q7 Does your city have illegal ADU's currently in the city, town or county?
If so please list comments below regarding issues.

Answered: 84 Skipped: 4



| ANSWER CHOICES | RESPONSES | |
|------------------------|-----------|----|
| Yes | 40.48% | 34 |
| No | 20.24% | 17 |
| I don't know | 20.24% | 17 |
| Other (please specify) | 19.05% | 16 |
| TOTAL | | 84 |

Millcreek issues

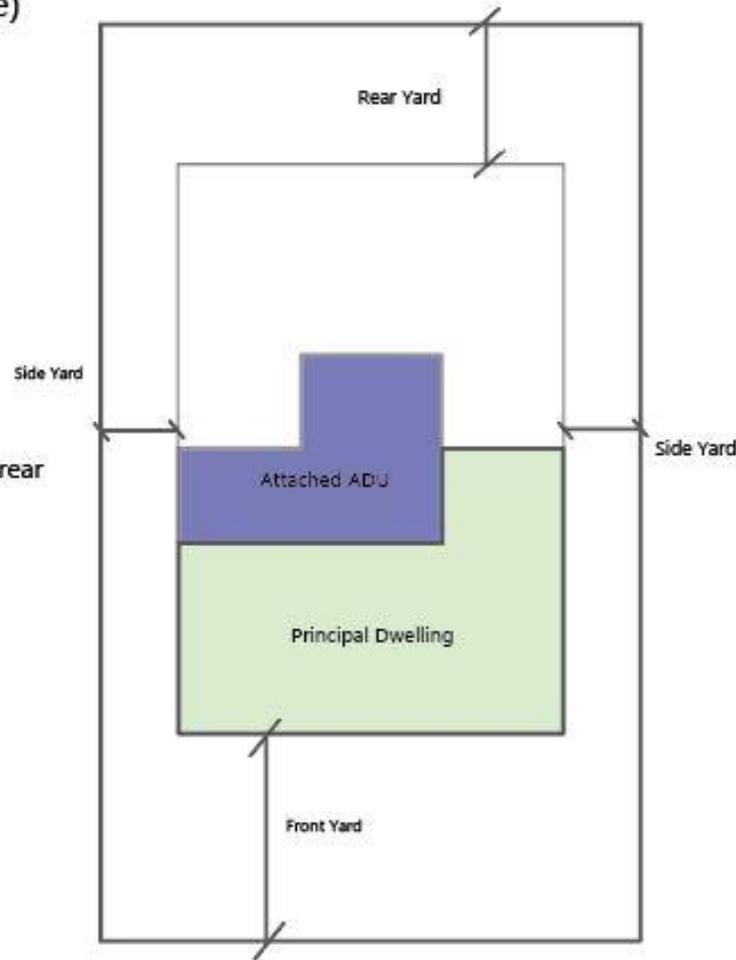
- Online surveys collected feedback, questions, concerns from over 300 Millcreek Residents.

Concerns were narrowed down to the following:

1. Parking & Traffic
2. Density versus neighborhood character
3. Rentals, including STRs
4. Permitting Process
5. Detached ADUs
6. Externalities (noise, air quality, *privacy*)

Development Standards for Attached ADUs (standards still subject to change)

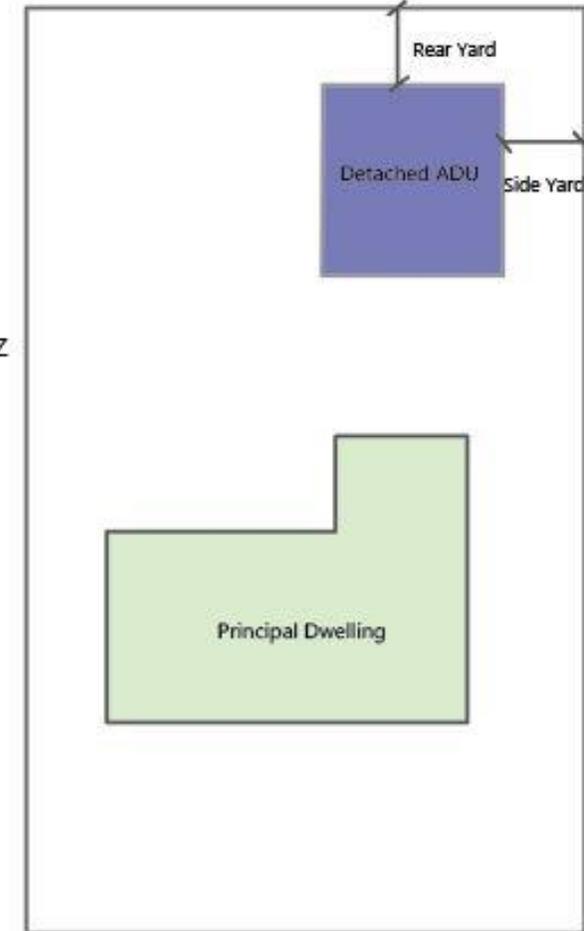
- Owner occupancy required
- Setbacks based on Chapter 19.14 and 19.71
- Lot must be 8,000 SF or greater
- Lot coverage is based on 19.14 and 19.71
- 2 Bedrooms allowed
- 1 ADU (attached or detached) allowed per lot
- Separate entrance may be installed on side or rear
- 1 off-street parking stall per bedroom
- Occupancy limited to 2 adults and children.
- Maximum size is 50% of main dwelling not to exceed 850 Square Feet



Setbacks, lot coverage, height requirements for attached ADUs are the same as the principal dwelling which are based chapter 19.14 & 19.71 of the Millcreek Code.

Development Standards for Detached ADUs (standards still subject to change)

- Owner occupancy required
- 8.5 Feet from the side and rear property line
- 10 Feet from the principal dwelling
- Lot must be 8,000 SF or greater
- Lot coverage is based on underlying zone and RCOZ
- 2 Bedrooms allowed
- 1 ADU (attached or detached) allowed per lot
- Separate may be installed on side or rear
- 1 off-street parking stall per bedroom
- Occupancy limited to 2 adults and children.
- Maximum allowed lot coverage in rear yard is 25%
- Maximum height allowed is 20 feet structure may not be two stories.
- Maximum size is 50% of main dwelling not to exceed 850 Square Feet



We've had ADUs forever!

Pleasant Grove City

Daniel Cardenas, Community Development Director

Ownership

- Must be “owner occupied”
- Definition: “full time residency within the home by the bona fide property owner(s) as shown on the Utah County tax assessment rolls.”

Unit Types Allowed

- Incidental to Main Dwelling
 - Addition
 - Basement
 - Above an attached garage
 - Above a detached garage
 - Detached Structure
 - Tiny Home

Design Requirements

- Single-family residential appearance
 - Two doors on front façade only if one provides direct access to the basement
- Letter “B” in visible place along street frontage
- Separate utility meters allowed but not required
 - Both in owner’s name

Issues/Concerns

- Hard to enforce owner-occupancy with one-time registration
 - No annual renewal
- Difficult to enforce short term rentals
- Cluster Mailboxes
- Fear of Registering
- Public Perception

Positives

- Eases the burden of increasingly high home prices in the valley
- Increases Use of Existing Housing Stock
 - Makes good use of large, existing homes that empty when all children have moved out
- Reduces Sprawl
 - More effective use of infrastructure (Roads, sewer, etc.)
- Aging in Place
 - More affordable housing opportunities for young adults in the city they grew up in
 - Retire in Home/Extra income for retirees
 - Extra income for students and young families

ADUs and STRs

- Can I build an ADU to simply do a short-term rental?
- What prevents me from making it a short-term rental?
- How ya gonna catch me?

- What are the less positive aspects of doing a bunch of STRs?
 - Less affordable housing
 - Long term renters can't find a place – why?



Short-Term Rentals (STRs)

ULUI - Friday, April 7, 2023

Todd Sheeran, City Attorney, Herriman, Utah



Purpose

- Discuss some of the issues driving consideration of locally regulating short-term rentals
- Discuss what the law requires in local land use codes
- Discuss some the tools to manage, promote, or discourage STRs in your community





Background



- Pre 2007 – Vacation Rentals
- The Birth of Airbnb
- Post 2008:
 - Billion-dollar industry in US
 - Over a million listing in the US



Usual STRs

House in Park City



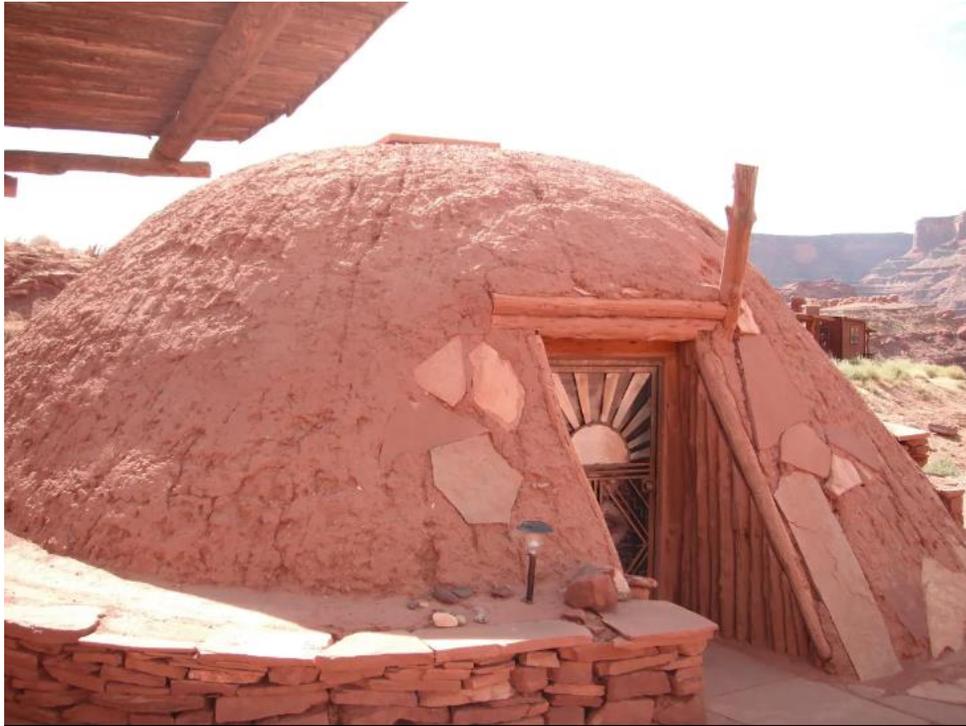
Guesthouse in Heber





Unusual STRs

Mud hut in Moab



Teepee in Hanna





Unusual STRs

Airstream Trailer in Levan



**Bilbo Baggins' House (LOTR)
in Cedar City**





And, yes even a barn in Herriman





Benefits of STRs

Gathering options



VS





Benefits of STRs

Price



vs





Other Benefits of STRs

- Meet people
- Money
 - Tourism = money spent in community
 - Extra income for property owner
 - Transient Room Tax for municipality
- Development opportunities / incentivize development



Issues with STRs

☰ 🔍 The Salt Lake Tribune **DONATE** 👤

See how short-term rentals are taking over the Beehive State

In just two years, the number of... nearly 27%.

KSL.com ☁️ 54° 🔍 👤 ☰ MENU

UTAH Home Counties Police & Courts Bus

St. George looking to crack down on short-term rentals in residential areas

by Ladd Egan | Posted - Aug 8, 2016 at 9:48 p.m.

☰ St George News ☁️ 55

'The resort syndrome': Housing town hall in Ivins features debates on short-term rentals, density

Written by Chris Reed ⌚ March 28, 2023 **STOUT ROOFING INC.**

☰ **TownLift** PARK CITY NEWS

ark City Utah News Newsletters Shop Jobs Weather & Snow Events Webcams Real Estate

Town & County

Summit County Council requests six month suspension of short-term rental licenses

☰ 🔍 The Salt Lake Tribune **DONATE** 👤

Moab, Park City cry foul as Utah lawmakers target rules for vacation homes

Tourist towns worry that the Legislature will harm their efforts to ease the affordable housing crisis.



Issues with STRs

- Loss of residential feel of neighborhood
- Nuisances for neighbors (light, noise, trash, fire safety)
- Parking issues
- AND...
- Housing



Issues with STRs - Housing

- “Our main results imply that for the average neighborhood, Airbnb activity has increased rents by 1.9%, transaction prices by 4.6%, and posted prices by 3.7%.”
 - Garcia-Lopez et al. (2020), *Do short-term rental platforms affect housing markets? Evidence from Airbnb in Barcelona*, Journal of Urban Economics (Vol. 119)



Issues with STRs - Housing

- “[L]ater studies using more sophisticated approaches have found that *the effect of STR on housing prices is smaller than the initial study would suggest, localized in highly touristic areas*, and most likely to affect up-market assets and renters. These effects certainly merit attention in their own right, but it is difficult to conclude that restricting STRs is an effective policy tool to address housing affordability, particular for low-income households. Moreover, there is no strong evidence that restricting or banning STRs would lessen crime or make neighborhoods more desirable.”
 - AirDNA (2021), *Effects of Short-Term Rentals on Local Housing Prices and Rents: A Literature Survey*

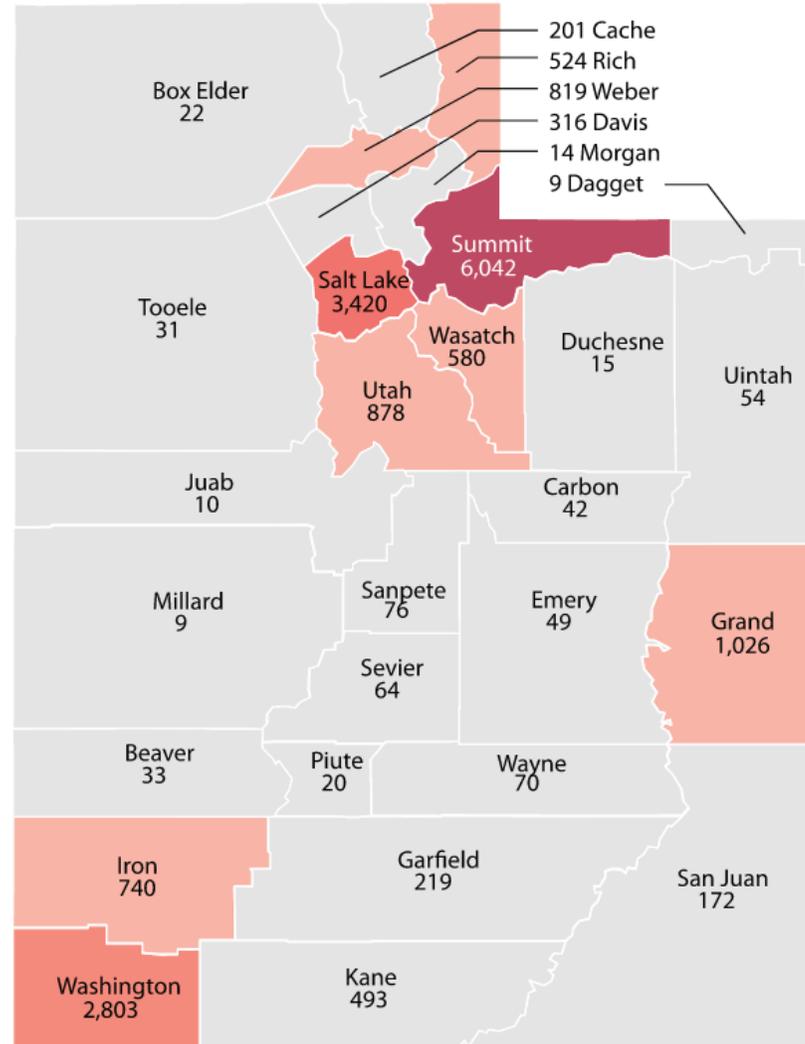


Issues with STRs – Housing in Utah

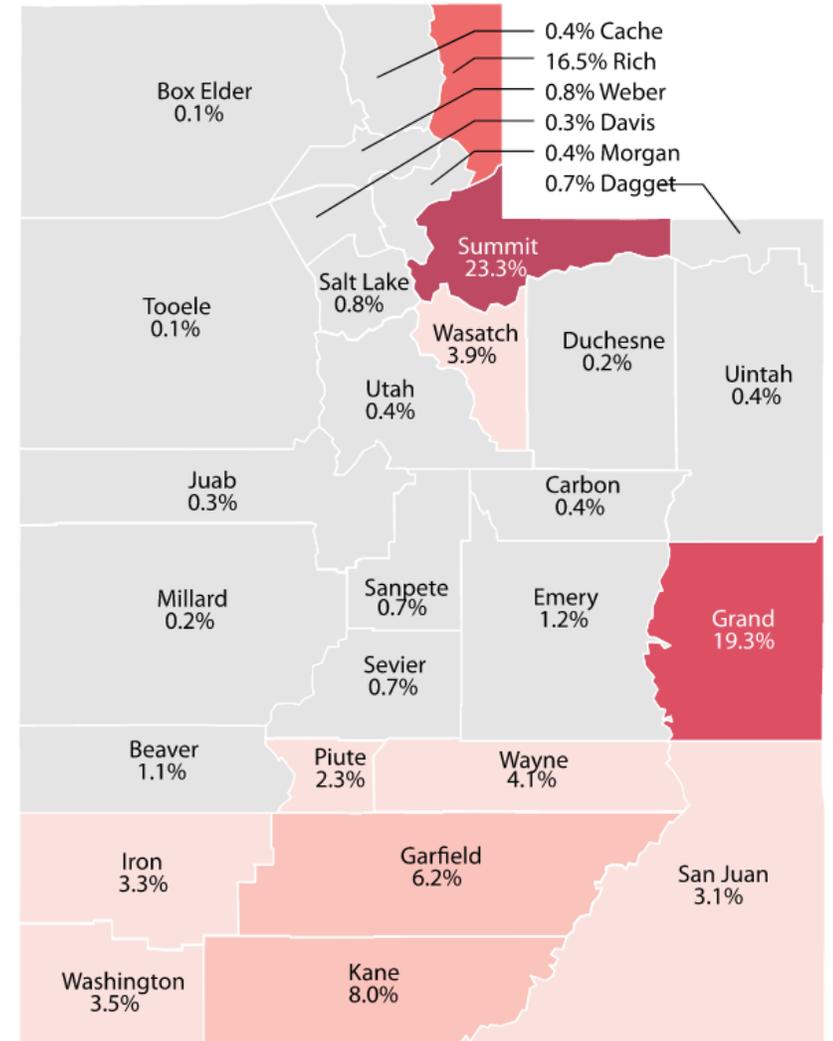
STRs in 2021

- 18,743 total STRs
- STRs account for 1.6% of total housing units

Number of STRs, 2021



STRs as a Share of Total Housing Units, 2021





Regulating STRs – Utah Code

- Defines STRs (generally)
- Cities and counties may not
 - Prohibit an individual from “offering a short-term rental on a short-term rental website,” and
 - “Punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website”
 - This language is referred to as the *Knotwell* language
- Cities may review “an owner’s rental agreement to verify compliance with the municipality’s ordinance”



Bills in the 2023 General Session

HB 291 (Musselman)

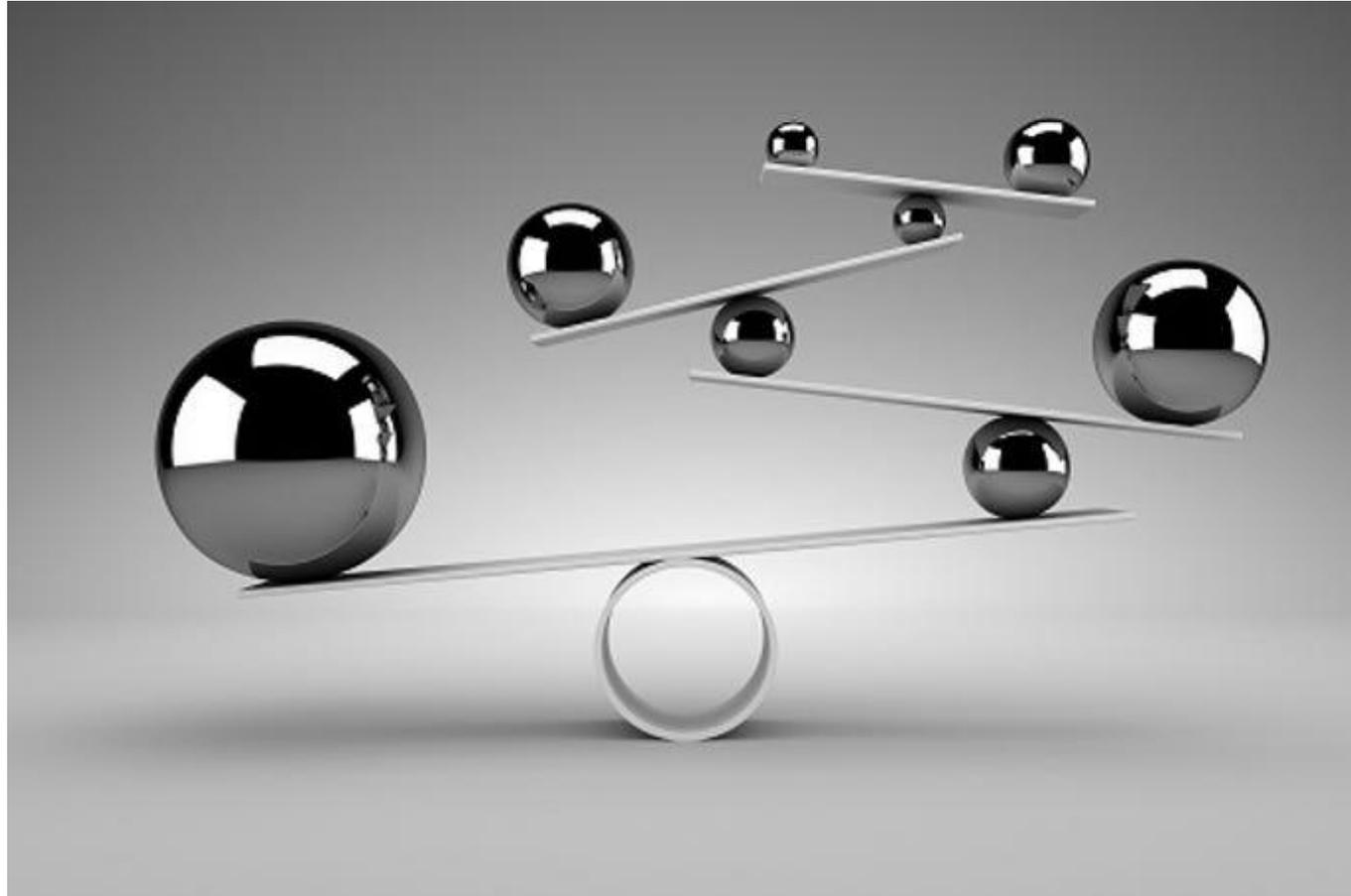
- Defined an STR
- Cleaned up the *Knotwell* language
- Require owners to disclose tax number on listing
- Created a voluntary “pilot” program and, if utilized, provided amnesty to owners
- Did not pass

HB 496 (Bennion)

- Defined an STR
- Required municipalities and counties that allow STRs to adopt additional regulations:
 - Required owners to obtain a permit
 - Owners required to attend a class
 - Restrict number of people in a home
 - Established safety requirements for STRs
- Did not pass



Locally Regulating STRs





No Municipal Regulation

- Let's assume that your city code does not state, one way or the other, whether STRs are permitted or prohibited. In other words, your code is silent on the matter.
- Can a homeowner legally operate an STR in this scenario?
- It depends...



No Municipal Regulation

- Brown v. Sandy City (March 1998)
 - Code did not restrict; STRs allowed
- South Weber v. Cobblestone Resort (May 2022)
 - Code did not restrict, but use was like “lodging”; STRs no allowed
- See Ombudsman Opinions: 257 & 258 (June 2022)
 - Code did not plainly restrict and was not a B&B or lodge; STRs allowed



No Municipal Regulation

- If a city doesn't currently have regulations, that city should consider passing a temporary land use regulation (i.e., moratorium)
 - Allows cities to pause/prohibit STRs, which gives you time to create regulations without going through the 'normal' process
 - Moratorium may not exceed 6 months



Options for Local Regulations

- Zoning
 - Cities are authorized to enact regulations it “considers necessary or appropriate for the use and development of land within the municipality”
 - Preserving the single-family nature of an area is a legitimate public concern
 - Land use regulations have a presumption of validity
- Permit
 - Cities are authorized to regulate “any business within the limits of the municipality ... and may impose fees on businesses to recover the municipality’s costs of regulation”
 - Fees should be directly related to the costs incurred by the city

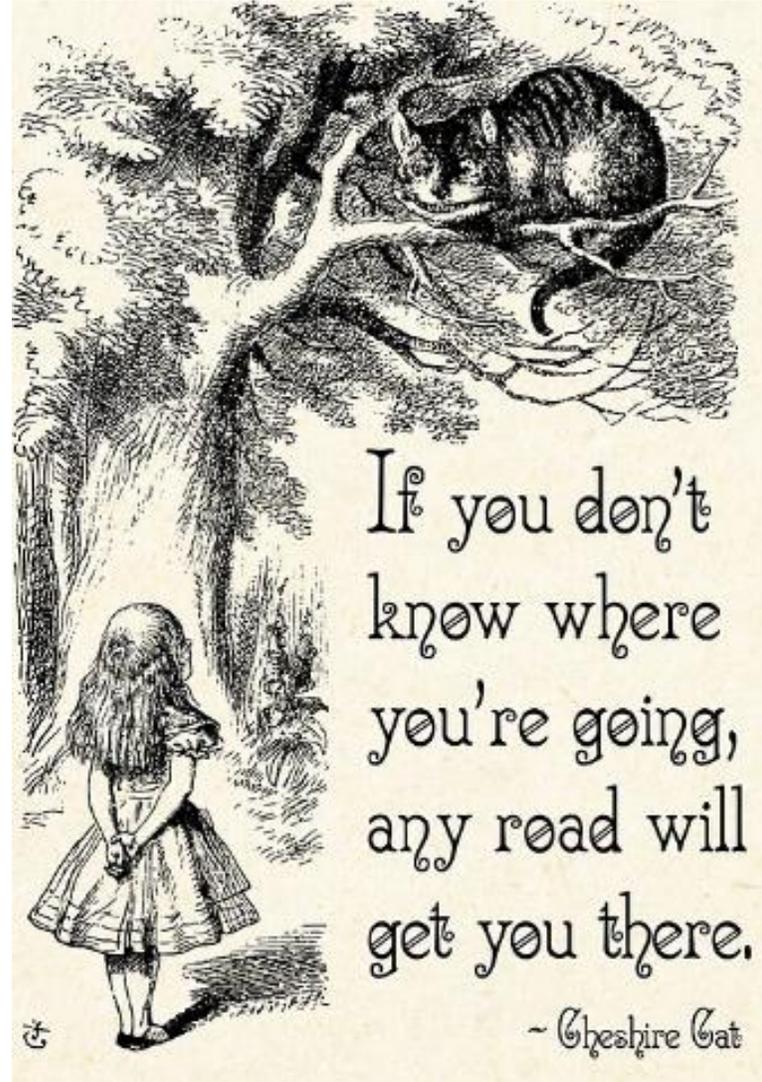


Policy Considerations

- What type of community do you have?
 - Rural? Suburban? Metro? Destination?
- Do you want more people visiting your community?
- Do you have appropriate resources?
- What is your ideology as it relates to property rights?
- What does your general plan say?



Drafting STR Regulations





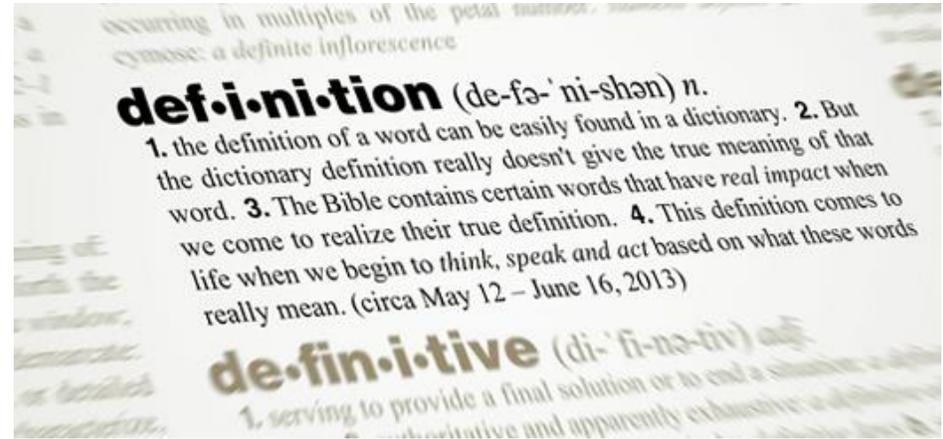
Community Objectives

| No STRs | Limited STRs | Semi-Limited STRs | Allow STRs |
|---|--|--|---|
| <p>Policy (maybe for a tourist community struggling with housing units and affordability):</p> <ul style="list-style-type: none"> • STRs currently take up 23.3% of the community’s housing units. • Due to limited areas for growth and housing affordability issues, the [local government] will prohibit STRs and seek to phase out existing STRs. | <p>Policy (maybe for a community that is located near a popular attraction but relies on visitors spending money in the community):</p> <ul style="list-style-type: none"> • Ensure that traditional residential neighborhoods are not turned into tourist areas to the detriment of long-time residents. • Give owners the option to occasionally utilize their properties to generate extra income from STRs as long as all policies and procedures are met. | <p>Policy (may for large communities that have ample housing units):</p> <ul style="list-style-type: none"> • Respect property owner’s rights to utilize their properties as STRs to help make ends meet. • Provide maximum use for STRs but a means to ensure that homes are not turned into pseudo hotels or “party houses.” | <p>Policy (maybe for a suburban community with ample housing and a struggling downtown):</p> <ul style="list-style-type: none"> • Respect property owner’s rights to utilize their properties as STRs to help make ends meet. • Encourage additional tourism to drive more business to the community stores and restaurants. • Ensure that the City does not lose out on tax revenue that could be invested in much needed services for permanent residents. |



Definitions

- State what an STR is and what it is not
 - STRs are only permitted in a dwelling that is rented for less than 31 days. STRs are not a hotel, motel, B&B, or inn



- Define what a dwelling is and what it is not and whether an STR is allowed in certain types of dwellings



Location

- All zones, no zones, some zones, overlay zones?
Conditional use? Special Use Permit?
- Allow them in external ADUs?
- Limit the number of STRs in neighborhoods?
- Exceptions for development partners?





Other Zoning Regulations

- Parking
- Noise (impose reasonable quiet hours)
- Property maintenance requirements (landscaping, garbage, snow)
- Limit number of people (**caution – definition of family**), rooms, or nights
- Owner-occupancy requirement (**caution**)
- Cross reference to follow all business license requirements



Drafting STRs Regulations - Permits

- Detailed application
- Permits displayed on property
- Evacuation plan
- Local contact, if owner lives xx miles away
- Enforcement / penalties addressed
- Reason for revoking permit
- Length of license, renews
- Appeal language



Final Question

What is your philosophy on government land-use regulations?

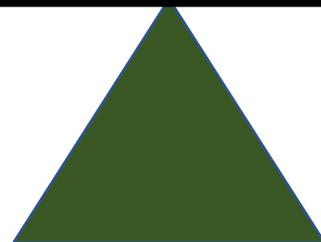
Should the government tell you what you can and can't do on your property?

Should the government tell your neighbor what they can and can't do on their property?

Where do STRs fall?

No Regulation

Heavy Regulation





Thank You

Todd Sheeran

City Attorney

Herriman, Utah

801-446-5323

tsheeran@herriman.org

Questions and thank you!

