



THE UTAH LAND USE INSTITUTE

Short-Term Rentals

Utah Land Use Regulation Topical Series

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SHORT-TERM RENTALS

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Introduction

The Short-Term Rental phenomenon has recently become of significant interest to those engaged in the land use arena. Many of the concerns expressed by neighbors of “STR’s”, local lodging owners, and permanent housing proponents are met with resistance by those who appreciate the extra income that can come from renting a STR in one’s home and the thousands who enjoy the flexibility, privacy, and local flavor that staying in a STR provides.

The Utah Legislature has solidified the ability of local governments to regulate STR’s, but as with other aspects of land use regulation, it can be complicated, and the law has been changing at each recent session. It is hoped that this outline will assist all involved in better understanding the state code and how it relates to local attempts to manage this unique land use.

Those reviewing this may also be interested to read Melanie Clark’s summary of the law related to Accessory Dwelling Units, found in this same series of topical summaries at the Land Use Library at utahlanduse.org. A video of a presentation of both subjects is also available there.

This summary includes changes made to the code by the 2023 General Session of the Utah State Legislature.

1. Relevant Law

- a. Background.
 - i. Before 2008, communities rarely considered regulating STRs.
- b. Definitions.
 - i. “Short-term rental” means a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than 30 consecutive days.³
 - ii. Entities can/should further define what an STR is and is not (e.g., An STR is not a hotel, motel, or B&B).
 - iii. “Dwellings” are not defined by Utah Code.

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² The Office of the Property Rights Ombudsman has provided funding for this update from the 1% surcharge on all building permits in the State of Utah. Appreciation is also expressed to the Division of Housing and Community Development of the Department of Workforce Services for funding the project which produces these topical summaries of land use regulations. The Utah Land Use Institute also expresses continuing appreciation for the ongoing funding provided by the S. J. and Jessie E. Quinney Foundation and the Dentons Law Firm.

³ Utah Code §§ 10-8-85.4(1)(c) (for municipalities) and 17-50-338(1)(c) (for counties).

- c. Current Statutory Regulations.
 - i. Cities and counties may not:
 - 1. Prohibit an individual from “offering a short-term rental on a short-term rental website,” and
 - 2. “Punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website.”⁴
 - ii. Cities may review an STR rental agreement “to verify compliance with the municipality’s ordinance.”⁵
- d. Future Statutory Regulations.
 - i. While the local government prohibitions listed above have not changed since its enactment in 2017, several bills have been proposed since then.
 - 1. 2021 General Session
 - a. [SB 221](#) – **Pro STR Restriction**. Would allow cities to enforce ordinances that prohibit individuals from listing on a short-term rental website and to prosecute such cases unless the STR is located in a zone that allows STRs.
 - 2. 2022 General Session
 - a. [HB 372](#) – **Pro STR Leniency**. Would prohibit cities from restricting “the act of renting a short-term rental if the owner of the short-term rental occupies the residential structure...” Would also prohibit the use of tax revenue to enforce an ordinance prohibiting the act of renting the STR.
 - b. [HB 462](#) – **Pro STR Restriction**. Would repeal Utah Code §§ 10-8-85.4 and 17-80-338.
 - 3. 2023 General Session
 - a. [HB 291](#) – **Pro STR Leniency**. Would create a volunteer program that gave amnesty for illegal renters but increase transient room tax from 1% to 1.5%.
 - b. [HB 496](#) – **Pro STR Restriction**. Would require cities that allowed STRs to include additional regulations, such as required permits and sales tax license, designate local contact if the owner lives over 60 miles away, require STR classes, limit the number of people per home, and additional safety requirements.

2. STR Impacts

- a. Positive Impacts.
 - i. Most people love staying in an STR.
 - ii. STRs provide a different experience than a typical hotel. For example, many STRs are located in residential neighborhoods that may be close to family, have better cooking facilities that allow you to cook at the home, and may have a secluded yard with a basketball court or hot tub.

⁴ Utah Code §§ 10-8-85.4(2) & (3) (for municipalities) and 17-50-338(2) & (3) (for counties). This language is referred to as the “Knotwell” since Representative Knotwell was the bill sponsor in 2017. In listening to HB 253, Rep. Knotwell couched these governmental restrictions as “platforms for speech.” Rep. Knotwell also alleged that most STRs do not impact neighborhood. In other states and localities, advertisement on a short-term rental website creates a presumption of operation.

⁵ Utah Code § 10-1-203.5(4)(b).

- iii. You can generally find STRs cheaper than a hotel.
- iv. Money to the community, money to the homeowner, and money to the local entity.
- v. Can provide unique development opportunities.
- b. Negative Impacts.
 - i. Housing stock.
 - 1. In 2021, there were 18,743 STRs in Utah, a 26% increase in just two years.⁶ STRs account for about 1.6% of Utah’s total housing stock. However, in Summit County and Grand County, STRs account for 23.3% and 19.3% of their total housing stock, respectively.
 - 2. “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%.”⁷
 - 3. “[S]tudies 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.”⁸
 - ii. Disrupts community feel.
 - iii. Nuisance for neighbors (e.g., parking, traffic, noise, light, trash).

3. Regulating STRs.

- a. No Municipal Regulations.
 - i. *Brown v. Sandy City*: The court found that Sandy ordinances did not plainly restrict and the court “must construe existing zoning ordinances strictly against the city.” Accordingly, the court found that STRs were permitted.⁹
 - ii. *South Weber v. Cobblestone Resort*: The court found that South Weber’s ordinances did not expressly restrict STRs but nonetheless found that STRs were similar to “lodging,” which was a prohibited use. Accordingly, the court found that STRs were prohibited.¹⁰
 - iii. Ombudsman Opinions 257 & 258: The ombudsman found that Pine Valley ordinances did not expressly restrict STRs and also found that the use would not be considered a “lodge” or “bed and breakfast,” which were expressly prohibited. Accordingly, the ombudsman found that STRs were permitted.¹¹
 - iv. **Takeaway:** Legal uncertainty exists when a local government does not expressly permit or prohibit STRs.

⁶ Eskic, Dejan (2022), *Short-Term Rental Inventory*, Kem C. Garner Policy Institute.

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). See also Koster, Ommeren, and Volkhausen (2021), *Short-term rentals on the housing market: Quasi-experimental evidence from Airbnb in Los Angeles*, Journal of Urban Economics (Vol. 124) (finding that Airbnb in tourist locations had large effects on property values).

⁸ AirDNA (2021), *Effects of Short-Term Rentals on Local Housing Prices and Rents: A Literature Survey*.

⁹ *Brown v. Sandy City Bd. Of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998).

¹⁰ *S. Weber City v. Cobblestone Resort, LLC*, 2022 UT App 63, 511 P.3d 1207 (Utah Ct. App. 2022).

¹¹ *Christensen v. Washington County*, Office of the Property Rights Ombudsman: Opinion 257 (2022); *Morris v. Washington County*, Office of the Property Rights Ombudsman: Opinion 258 (2022).

- v. If an entity does not have clear regulations, consider passing a temporary land use regulation (i.e., moratorium).¹²
 - 1. Puts a pause on applications, giving you time to create regulations.
 - 2. Does not need to go to the planning commission.
 - 3. Cannot exceed six months.
- b. Local Regulations.
 - i. Zoning.
 - 1. Cities are authorized to enact regulations it “considers necessary or appropriate for the use and development of land within the municipality.”¹³
 - 2. Preserving the single-family nature of an area is a legitimate public concern.¹⁴
 - 3. Land use regulations have a presumption of validity.¹⁵
 - ii. Permit.
 - 1. 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.”¹⁶
 - 2. Fees should be directly related to the costs incurred by the city.
- c. Policy Considerations.
 - i. What type of community do you have?
 - 1. Rural? Suburban? Metro? Destination?
 - ii. Do you want more people visiting your community?
 - iii. Do you have appropriate resources?
 - iv. What is your ideology as it relates to property rights?
 - v. What does your general play say?

¹² Utah Code § 10-9a-504(1).

¹³ Utah Code § 10-9a-102(2).

¹⁴ *Anderson v. Provo City Corp.*, 2005 UT 5, 108 P.3d 701 (Utah 2005) (“The object of preserving the character of single-family residential neighborhoods is, we think, a legitimate one.”)

¹⁵ Utah Code § 10-9a-801(3).

¹⁶ Utah Code § 10-1-203(2).

Sample Policy Considerations

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. • Allow owners to occasionally utilize their properties to generate extra income from STRs as long as all policies and procedures are met. 	<p>Policy (maybe for large communities that have ample housing units):</p> <ul style="list-style-type: none"> • Respect property owners’ 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 owners’ 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.

d. Definitions.

- i. Definitions are essential to drafting local laws. The cases listed above hinge on the definitions found in city ordinances. Draft definitions that are clear and concise.
- ii. Even though Utah Code defines “short-term rental,” a municipality should have its own definition. State what an STR is and what it is not.
 1. Example: Short-term rental means a dwelling, or portion of a dwelling, that is rented for compensation in exchange for lodging for a period of not more than 31 consecutive days. For the purposes of this chapter, the term “short-term rental” shall not include a bed and breakfast, boarding/lodging facility, hotel, motel, or ongoing month-to-month tenancies.
 2. Define what a dwelling is and what it is not.

e. Location.

- i. What zones do you want STRs located in? What about an overlay zone? What about a conditional use permit or special use permit?
- ii. Do you want to limit the number of STRs by geographical locations (e.g., the Willow Creek subdivision is limited to 30 STRs)?
- iii. Do you want to allow STRs in external accessory dwelling units (e.g., apartments above a detached garage)?

- iv. Do you want exceptions for our development partners (e.g., developments larger than 30 acres that offer workforce housing may have 10% of its units as an STR)?
- f. Occupancy.
 - i. **Regulate the use, not the owner.** Suppose a city allows STRs but prohibits out-of-state owners from entering the STR market. In that case, that ordinance may violate the Dormant Commerce Clause, which prohibits governmental entities “from adopting laws that impeded the flow of interstate commerce.”¹⁷ In a recent Circuit Court decision, the court found that an owner-occupied requirement violated the Dormant Commerce Clause.¹⁸
 - ii. Consider reasonable occupancy limits (e.g., HB 496 - occupancy shall be limited to two people per bedroom, plus an additional four people. In no case shall occupancy exceed 16 people.)
- g. Other.
 - i. Address on-street parking (e.g., an STR must have at least one off-street parking available).
 - ii. Have a means of contact when issues arise (e.g., the owner, or owner’s designated contact, must respond to any code enforcement concerns within [xx] hours.)
 - iii. Address garbage, reference local noise regulations, and other safety issues.
 - iv. Make sure your STR land use regulations require and reference your business licensing section.
- h. Permits.
 - i. Require detailed applications, including site plan and parking plan.
 - ii. Consider whether the license and other information need to be displayed for the tenants.
 - iii. Consider how often a license needs to be renewed.
 - iv. Layout the process and procedure for enforcement, penalties, revocation, and appeals.

¹⁷ *Short Term Rental Owners Ass’n of Georgia v. Cooper*, 515 F.Supp.3d 1331, 1350.

¹⁸ In the Fifth Circuit, the City of New Orleans had an ordinance that prohibited STRs unless the STR was “located on the same lot of record as the owner’s primary residence” and the owner has a homestead exception for the property.” *Hignell v. City of New Orleans*, 46 F.4th 317, 326 (5th Cir. 2022). The court found, “The residency requirement discriminates on its face against out-of-state property owners. The City doesn’t just make it more difficult for them to compete in the market for STRs in residential neighborhoods; it forbids them from participating altogether.” *Id.* The Tenth Circuit has not addressed this issue.