

Short-Term Rentals Regulations: Not Always a Day at the Beach for Municipalities

Written By **Clint H. Cogburn** (chcogburn@wardandsmith.com)

March 3, 2021



The explosion of short-term rental properties through North Carolina – from mountain cities to coastal destinations, and cities and towns in between – has resulted in increased scrutiny and regulation by municipalities.

From a purely theoretical stance, these regulations make sense to limit and/or eliminate disturbances to adjacent residential property and within established residential communities. However, the scope of such regulations continues to evolve – specifically, how far can a municipality regulate short-term rentals?

A recent case out of Wilmington suggests that there are, in fact, strict limits to how a city or town can regulate short-term rentals. On February 5, 2019, Wilmington adopted City Code § 18-331, requiring property owners utilizing or intending to utilize their property as a short-term rental to register each applicable property with the City of Wilmington. Additionally, the Wilmington Code required the following: (1) a separation requirement of four hundred (400) feet between the rental property and any other rental property and/or bed and breakfast; (2) a lottery process to determine which properties would be allowed to continue as a short-term rental; and (3) a one-year amortization period for those not permitted to continue – allowing continued operation for one year and a strict deadline to cease operation at the end of the one-year period.

In *Schroeder v. City of Wilmington*, the Plaintiffs had purchased a property with the purpose to use it as a short-term rental. Following the passage of City Code § 18-331, the Plaintiffs lost the ability to rent their property through the lottery and filed suit to challenge the ordinance. The Superior Court of New Hanover County ruled in favor of the Plaintiffs, granting their Motion for Summary Judgment, and finding that City Code § 18-331 was preempted by state law. The Court honed in on the annual registration requirement and its contravention of N.C. Gen. Stat. § 160D-1207. That section of North Carolina statute includes:

In no event may a local government do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission under Article 11 or Article 12 of this Chapter from the local government to lease or rent residential real property or to register rental property with the local government[.]

The statute clearly prohibits a municipality from establishing and keeping a rental registry. A city cannot have

a running database or list of all short-term rental properties within its jurisdiction. Additionally, the statute prohibits short-term rentals from being treated inequitably (in comparison to traditional rental property) as to permitting under the building and housing code. Simply, the city cannot subject those properties to enhanced or extra permitting. Now, this does not impact a municipality's ability to subject such properties to heightened zoning permits. But any such regulation under the building or housing code is strictly prohibited by state law.

In *Schroeder*, the Court found that state law preempted the Wilmington ordinance and that Wilmington's requirement that each short-term rental register with the City was prohibited. Interestingly, the Court struck down the ordinance in its entirety – rather than simply striking the registration requirements and allowing the remainder (the lottery system, the distance requirement, and the one-year amortization period). The Court may have viewed the lottery process as a de facto registry (operationally, it would be tough to have such a lottery and not keep a list of winners and losers). The accompanying amortization requirement would likewise be impacted. This case is currently being appealed and we will update everyone on any additional developments. However, while this is a victory for owners of short-term rental property, municipalities still have several tools in their land-use tool belt to limit short-term rentals. Heightened land use permitting remains a viable option. Use district prohibitions, likewise, remain in play. This area will continue to evolve and change with short-term rentals not slowing down. It is important for those looking to rent their properties (and those impacted by these properties) to carefully consult the applicable ordinances and consult with counsel on potential avenues of relief.

--

© 2024 Ward and Smith, P.A. For further information regarding the issues described above, please contact Clint H. Cogburn.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.