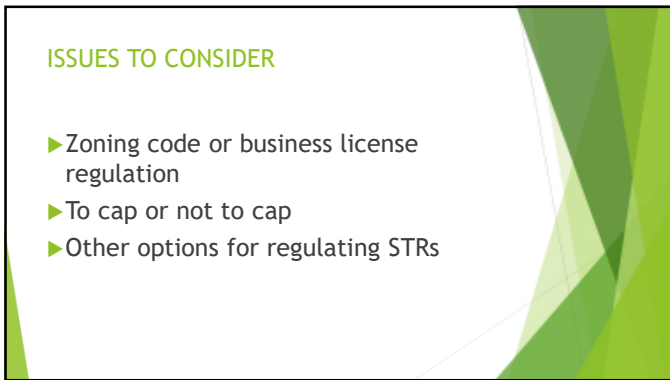


The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice and does not necessarily reflect the opinion or policy position of the Municipal Association of South Carolina.

Consult your attorney for advice concerning specific situations.







**ZONING vs. BUSINESS LICENSE REGULATION
VESTED RIGHTS:**

- ▶ Statutory and common law vested rights for zoning regulations
 - ▶ South Carolina Vested Rights Act. South Carolina Code §§ 6-29-1510, *et seq.*
 - ▶ “when a zoning or building permit has been properly issued and the owner has incurred expenses in reliance thereon, he acquires a vested property right therein of which he cannot be deprived without cause or in the absence of public necessity.” *Pure Oil Div. v. City of Columbia*, 254 S.C. 28, 34-35, 173 S.E.2d 140, 143 (1970)

**ZONING vs. BUSINESS LICENSE REGULATION
VESTED RIGHTS:**

- ▶ No vested rights for business licenses (probably)
 - ▶ “No person can acquire a vested right to continue, when once licensed, in a business, trade or profession which is subject to legislative control and regulation under the police power.” *Dantzer v. Callison*, 230 S.C. 75, 94-95, 94 S.E.2d 177, 188 (1956).
 - ▶ “Licenses confer no property right, but are permits issued pursuant to the State’s police power.” *S.C. Dep’t of Revenue & Tax’n v. Rosemary Coin Machines, Inc.*, 331 S.C. 234, 243-44, 500 S.E.2d 176, 180-81 (Ct. App. 1998).
 - ▶ “A business license must be issued to a taxpayer for a twelve-month period beginning May first and ending April thirtieth.” S.C. Code Ann. § 6-1-400(B)(1)

**ZONING vs. BUSINESS LICENSE REGULATION
OTHER BENEFITS OF BUSINESS LICENSE**

- ▶ Zoning has to go through Comprehensive Plan Zoning procedures
- ▶ Referendum cannot amend zoning code. *l’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

**ZONING vs. BUSINESS LICENSE REGULATION
BENEFIT OF ZONING ORDINANCE**

- ▶ Regulate STRs by district
- ▶ Regulate STRs based on building
 - ▶ Single Family vs. Duplex vs. Multi-Family Housing
- ▶ Possible to do this in business license ordinance?

TO CAP OR NOT TO CAP

- ▶ Putting limit on number of short term rentals is most controversial question
- ▶ Regulating *how* an str is operated is clearly part of government's broad police powers
- ▶ Telling owners they cannot operate an str due to cap is riskier:
 - ▶ Legal issues
 - ▶ Greater burden/loss for owner
 - ▶ More likely to get political and legal pushback

TO CAP OR NOT TO CAP

- ▶ **PURPOSE OF CAP vs. OPERATIONAL REGULATIONS**
 - ▶ CAP ADDRESSES STR DENSITY:
 - ▶ IMPACT CHARACTER OF NEIGHBORHOOD
 - ▶ REDUCE RESIDENTIAL HOUSING STOCK
 - ▶ PUSH OUT OTHER BUSINESSES
 - ▶ PUSH OUT LONG-TERM RENTALS

TO CAP OR NOT TO CAP

- ▶ **PURPOSE OF CAP vs. OPERATIONAL REGULATIONS**
 - ▶ OPERATIONAL REGULATIONS
 - ▶ EXISTING STRs IMPACT ON NEIGHBORS
 - ▶ PARTY HOUSES
 - ▶ REVENUE GENERATION

TO CAP OR NOT TO CAP

- ▶ **CONSTITUTIONAL CHALLENGES**
 - ▶ Almost all challenges have failed:
 - ▶ Not a taking
 - ▶ Owner never had right to operate unregulated business
 - ▶ Property retains substantial value as residence
 - ▶ *Nekrilov v. City of Jersey City*, 45 F.4th 662, 669-70 (3d Cir. 2022)
 - ▶ Not discriminatory
 - ▶ Procedural Due Process

TO CAP OR NOT TO CAP

- ▶ **CONSTITUTIONAL CHALLENGES**
 - ▶ A few successful challenges:
 - ▶ *Zaarari v. City of Austin*, 615 S.W.3d 172 (Tx.Ct.App. 2019)
 - ▶ Texas Court of Appeals invalidated a complete and retroactive ban on non-owner occupied short-term rentals on the grounds that it violated Texas's ban on retroactive laws.
 - ▶ Most local governments grandfather in existing STR licenses.

TO CAP OR NOT TO CAP

- ▶ CONSTITUTIONAL CHALLENGES
 - ▶ A few successful challenges:
 - ▶ *Hignell-Stark v. City of New Orleans*, 46 F.4th 317 (5th Cir. 2022)
 - ▶ Violation of Dormant Commerce Clause to discriminate against out of state owners
 - ▶ Most cities only put cap on non-owner occupied dwelling units
 - ▶ But: "But once again, there's an obvious and straightforward alternative to discrimination: cap the share of housing units that can be used as STRs."
 - ▶ So a cap is OK, but not a complete ban?

TO CAP OR NOT TO CAP

- ▶ Recommendations for Caps on STR licenses:
 - ▶ Grandfather in existing licenses
 - ▶ Exempt owner occupied properties from cap
 - ▶ Don't put cap below existing STR levels

OPTIONS FOR REGULATING STRs

- ▶ Limiting occupancy and parking
- ▶ Requiring local agents
 - ▶ Quick response
 - ▶ Vicarious liability?
- ▶ Three strikes and you're out
 - ▶ Define what is a strike: major vs. minor
- ▶ Generate Revenue
 - ▶ Monitoring STRs is expensive
 - ▶ Higher business license rate
 - ▶ Rental application fees

The Issue(s)

Commentary

We are protecting city's neighborhoods, but job is ongoing



BY DAVID GIBBS

It could be argued that the city's efforts to protect its neighborhoods are a success. The city has managed to preserve its historic character and maintain its high quality of life. However, the job is ongoing. The city must continue to address the challenges of urban development and ensure that its neighborhoods remain vibrant and sustainable.

The city's efforts to protect its neighborhoods are a success. The city has managed to preserve its historic character and maintain its high quality of life. However, the job is ongoing. The city must continue to address the challenges of urban development and ensure that its neighborhoods remain vibrant and sustainable.

What are the goals?

- ▶ STR Density - Preservation of Character
- ▶ New Construction *Specifically for STR*
- ▶ Parking
- ▶ Building Code / Life Safety
- ▶ Nuisance Issues
 - ▶ Noise, Trash, etc.
- ▶ Zoning or Business License Regulation?
- ▶ There is no one-size fits all approach for local governments.



City of Charleston's Approach

Short Term Rental Categories

- ▶ Category 1 - *National Register*
- ▶ Category 2 - *50 years or More*
- ▶ Category 3 - *Primary Residence*
- ▶ STR Overlay

- ▶ Extended Planning Process and Compromise
 - ▶ No "Caps"

- ▶ Administration, Monitoring and Enforcement

- ▶ Zoning Re-Write

Some Stats

- ▶ Charleston has 492 active permits for short-term rentals.
- ▶ The city has issued 717 court summons for non-permitted renting since 2018. Of those, 667 have been adjudicated through court, and the city has collected \$547,847 in court fines.

Affordable Housing & STRs

- ▶ ADU Ordinance and STR Prohibition

- ▶ Accessory Dwelling Unit vs Detached Accessory Structure
 - ▶ Relevance of Building Code - Kitchen
 - ▶ Loophole?
 - ▶ Enforcement Challenges

- ▶ Proliferation of STRs Off-Peninsula

What is the Future of STRs ?



Emerging Legal Issues

- ▶ Restrictive Covenants - SC Code 6-29-1145
- ▶ *Hignell-Stark v. City of New Orleans*, 46 F.4th 317 (5th Cir. 2022) (Dormant Commerce Clause)
- ▶ State Preemption?

Pacaso, Inc. v. Town of Sullivan's Island



“Vacation Rental” Definition

Section 21-203 defines “Vacation Rental” as follows:

Vacation Rental. The commercial use of a Principal Building(s) that is: (1) rented, leased, assigned for tenancies; or (2) made available for use, occupancy, possession, sleeping accommodations, or lodging for one or more persons in return for valuable consideration for any period of less than twenty-eight (28) continuous days duration.

(Emphasis added).

On Jun 9, 2022, at 1:08 PM, Charles Dayton <cdayton@hullswainland.com> wrote:

Good afternoon Mr. George,

This is certainly a concern that we are working to find the appropriate way to address, and by address, I mean mitigate. I am the point of contact for dealing with STR violations, but this occupancy structure does not fall into the category of a STR, since there is no rental contract or similar mechanism in place for the property's use. Our legal team is working on a number of strategies to block this circumstance of this temporary vacation use, and hopefully, one or more of these strategies will be presented to the Board Council soon. In the meantime, I think the strategies employed by the residents in Sylvania County can give some ideas for avenues where you can assist. Specifically, I think that opposition of signage on adjacent properties and other activities outlined in <https://www.sylva.com/str/> will send the message presented here, when the use is not a "vacation home" in a hostile environment, will keep Phocas from wanting to buy future properties on the island if they can't sell their shares.

Please feel free to stay in contact with me for any updates as this moves forward.

Best regards,

Charles

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