



Chelan County Planning Commission

Chair: Ryan Kelso

Vice Chair: Carl Blum

Commissioners District 1: Vicki Malloy, Ryan Kelso, Will Wiggs

Commissioners District 2: Jim Newberry, Randy Baldwin, Jordan McDevitt

Commissioners District 3: Carl Blum, Pat Hammersmith, Greg Becker

REVISED Meeting Agenda

Wednesday, May 27 at 7:00 P.M.

Chelan County Administration Building, Room 1

In response to the [Governor's Proclamation 20-28](#), the Planning Commission will hold all their Meetings via Zoom Video Conference until further notice. To Join Zoom Meeting go to:

<https://us02web.zoom.us/j/85267796777?pwd=SFoyLOpWQ2UzOFNTMVR0WUdYR0xuQT09>

I. Call Meeting to Order

II. Administrative

A. Review/Approval of Minutes from May 13, 2020

III. Public Comment Period

Comment for any matters not identified on the agenda (limit 3 minutes per person)

IV. Old Business

Short Term Rental Workshop – Continued from May 13, 2020 Special Meeting

V. New Business

Set Hearing Dates for Short Term Rental Code Development Hearings and Deliberation

VI. Discussion, at the Chair's discretion

VII. Adjournment

Materials available on the Community Development website

Next Meeting: June 24, 2020 at 7:00 PM

* **All Planning Commission meetings and hearings are open to the public.**

Chelan County Community Development

316 Washington Street Suite 301, Wenatchee, WA 98801 ♦ Phone: (509) 667-6586 Fax: (509) 667-6475



Chelan County Planning Commission

Chair: Ryan Kelso

Vice Chair: Carl Blum

Commissioners District 1: Vicki Malloy, Ryan Kelso, Will Wiggs

Commissioners District 2: Jim Newberry, Randy Baldwin, Jordan McDevitt

Commissioners District 3: Carl Blum, Pat Hammersmith, Greg Becker

Meeting Agenda

Wednesday, May 27 at 7:00 P.M.

Chelan County Administration Building, Room 1

In response to the [Governor's Proclamation 20-28](#), the Planning Commission will hold all their Meetings via Zoom Video Conference until further notice. To Join Zoom Meeting go to:

<https://us02web.zoom.us/j/85267796777?pwd=SFoyLOpWQ2UzOFNTMVR0WUdYR0xuQT09>

I. Call Meeting to Order

II. Administrative

A. Review/Approval of Minutes from May 13, 2020

III. Public Comment Period

Comment for any matters not identified on the agenda (limit 3 minutes per person)

IV. Old Business

Short Term Rental Workshop – Continued from May 13, 2020 Special Meeting

V. New Business

A. None

VI. Discussion, at the Chair's discretion

VII. Adjournment

Materials available on the Community Development website

Next Meeting: June 24, 2020 at 7:00 PM

*** All Planning Commission meetings and hearings are open to the public.**

Chelan County Community Development

316 Washington Street Suite 301, Wenatchee, WA 98801 ♦ Phone: (509) 667-6586 Fax: (509) 667-6475

Chelan County Short-Term Rentals

May 21, 2020 | Supplemental Packet

Code Follow Up

Based on the Planning Commission Study Session held on May 13, 2020, this document starting on page 3 provides some proposed code changes addressing:

- Creation of subareas within the Lake Wenatchee-Leavenworth zip code for Leavenworth, Plain, and Lake Wenatchee. This allows the 1% cap to apply not only countywide but also in these subareas.
- Create an exception to the 1% cap for the Rural Recreational/Residential (RRR) Zone and for Planned Unit Developments that are intended for resorts/second homes.
- Offer tiered permits distinguishing owner-occupied with a simpler permit process, non-owner occupied units with more review/limits, and larger occupancy units with a Conditional Use Permit.
- Allow transferring of a short-term rental permit when there's a sale, one time.
- Determine new permits by a lottery.
- Incorporate criteria for existing units (e.g. like Walla Walla) and for a prior period go back for more than 1 year to account for COVID-19.
- Include appeal process (note already in draft 11.88.280(4)(K)).
- For emergency response, require units have a land line.

County Commissioner Goals for STR Regulations

The Board of County Commissioners provided their vision for the short-term rental (STR) regulations after a session on May 20, 2020. See Attachment A, also excerpted below:

The Board of Commissioners understands that the Planning Commission asked for a statement of intent for developing the code for short-term rentals in Chelan County. The BOCC met in session today and crafted the following statement, which hopefully will give the Planning Commission the direction it needs:

The Board of Commissioners intends to adopt code that addresses the rapid proliferation of short-term rentals in Chelan County. The BOCC wishes to protect the character of residential communities across the county, while allowing for property-owner income from short-term rentals. The BOCC recognizes that STRs are an important part of our economy. However, while many owner/operators manage their properties responsibly, many clearly do not.

Chelan County needs the tools to ensure that all STR owner/operators meet a minimum set of standards. Those standards may include, but are not limited to: parking, garbage, noise, trespassing, privacy, septic capacity, fire risk, consumer safety, signs, hot tubs, pools and spas, occupancy limits by zone and neighborhood, density by zone and neighborhood, commercial and liability insurance, and the availability of STR owner/operators to respond to a complaint within a short-time frame.

To ensure that these standards are met, the BOCC wishes to impose an annual registration fee for STRs to finance the following: fire marshal inspection, health district inspection, permit processing by Community Development Department, and code compliance cost recovery. Enforcement should be sufficient to allow for closure of short-term rentals that repeatedly violate code.

Nothing in the code will be inconsistent with RCW 64.37 or with the Manson and Peshastin Urban Growth Areas. The BOCC wishes to have this process completed by August 2020.

Additional Material

A fact sheet developed in April has been updated in May to reflect the latest schedule and County contact person. See Attachment B.

The packet for the May 13, 2020 meeting included comment emails/letters 1 to 27 from March 28 to May 7, 2020. Ahead of the May 27, 2020 meeting, the latest packet of letters 28-43 are attached along with the overall tracking matrix. See Attachment C.

Chelan County

Draft Short-term Rental Code

DRAFT May 19, 2020

Discussion notes are identified in italicized blue text. Code proposals are in standard text format for all new sections; or, in some cases track changes to amended sections are shown in ~~strikeout~~ or underline. Additional review is pending with the Prosecuting Attorney's office and other adjustments may be proposed. Changes in response to Planning Commission discussion of options on 5/13 are shaded in gray.

Use Allowance Amendments

CHAPTER 11.04 DISTRICT USE CHART

Discussion: Targeted edits are proposed to add short-term rentals to the use table for rural and resource areas. Short-term rentals would be allowed in all rural designations that allow residential or commercial uses including zones where the purpose is recreational residences. The number would be limited by the 1% cap and short-term rental overlays to control density (see new subsection 11.88.280), and thus the zone allowances are more permissive due to other means of limiting such uses. In the Peshastin UGA changes would be made to restrict short-term rentals in residential zones to address Peshastin Community Council comments. Short-Term Rentals are "tiered" with owner occupied as Tier 1, non-owner-occupied as Tier 2, and higher occupancy short-term rentals as Tier 3.

11.04.020 District Use Chart

The use chart located on the following pages is made a part of this section. The following acronyms apply to the following use chart. If a cell in the table is blank, the use listed in the left hand column is a prohibited use in the zone that is the heading for that cell.

- P — Permitted use
- P(1) — Permitted use subject to development standards in Chapters 11.88, 11.93 and/or within the applicable zoning district standards
- P(2) — Permitted use subject to development standards in Chapters 11.88, 11.93 and/or within the applicable zoning district standards, except for on parcels that are twelve thousand square feet or smaller, the use/structure must be located on a lot with an existing single-family residence
- A — Accessory use
- A(1) — Accessory use subject to development standards in Chapters 11.88, 11.93 and/or within the applicable zoning district standards
- CUP — Conditional use permit

District Use Chart

USE/ACTIVITY	RR20	RR10	RR5	RR2.5	RW	RRR	RV	RC	RI	RP	AC	FC	MC
<u>Short-Term Rentals Tier 1 or Tier 2</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(2)</u>			<u>CUP</u>	<u>CUP</u>	<u>CUP</u>
<u>Short-Term Rentals Tier 3</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(1)</u>	<u>P(2)</u>			<u>CUP</u>	<u>CUP</u>	<u>CUP</u>

CHAPTER 11.22 PESHASTIN URBAN GROWTH AREA

Discussion: This set of amendments treats short-term rentals similar in the Peshastin and Manson UGAs. The cap of 1% and limits on the location and share of short-term rentals in UGAs is found in the new subsection 11.88.280.

11.22.030 Permitted, Accessory and Conditional Uses

(1) A district use chart is established and contained herein as a tool for the purpose of determining the specific uses allowed in each use district. No use shall be allowed in a use district that is not listed in the use chart as either permitted, accessory or conditional use, unless the administrator determines, by a written administrative interpretation that may be appealed to the hearing examiner, that an unlisted use is similar to one that is already enumerated in the use chart and may therefore be allowed, subject to the requirements associated with that use and all other applicable provisions.

(2) The following acronyms apply to the following use chart:

Uses:

PRM = Permitted use

ACC = Accessory use

CUP = Conditional use

Where a cell is empty, the use is prohibited in that zone. All of these assume compliance with any and all development standards.

Districts:

R-1 = Low Density Residential

R-2 = Medium Density Residential

R-3 = High Density Residential

C-D = Downtown Commercial

C-H = Highway Commercial

I = Industrial

I-C = Campus Industrial

P-U = Public Use

Land Uses	R-1	R-2	R-3	C-D	C-H	I	I-C	P-U
RESIDENTIAL USES								
Boarding/Lodging House³	PRMACC	PRMACC	PRMACC	CUPACC¹	PRMACC¹	PRM		
Short-Term Rentals Tier 1 or Tier 2¹	PRM	PRM	PRM	ACC	ACC			
Short-Term Rentals Tier 3				P	P			
COMMERCIAL USES								
Hotels/Motels/Lodging Facilities				PRM	PRM	PRM	PRM	-

¹ In existing single-family residences only, as of July 1, 2008.

² Indoor facility only.

³ Per CCC 18.88.170 (4) In any district that permits single-family residences, the renting of rooms to not more than two boarders, roomers, or lodgers is permitted as an accessory use.

CHAPTER 11.23 MANSON URBAN GROWTH AREA

Discussion: This set of amendments treats short-term rentals similar in the Peshastin and Manson UGAs. The cap of 1% and limits on the location and share of short-term rentals in UGAs is found in the new subsection 11.88.280.

11.23.030 District use chart.

The use chart located on the following pages is made a part of this section. The following acronyms apply to the following use chart. If a cell in the table is blank, the use listed in the left hand column is a prohibited use in the zone that is the heading for that cell.

UR1	Urban Residential-1
UR2	Urban Residential-2
UR3	Urban Residential-3
CT	Tourist Commercial
CD	Downtown Commercial
MLI	Manson Light Industrial
UP	Urban Public

P Permitted use—Subject to development standards in Chapter 11.88 and/or 11.93

A Accessory use—Subject to development standards in Chapter 11.88 and/or 11.93

CUP Conditional use permit—Subject to development standards in Chapter 11.93 and/or within this chapter

Table 9.1 – District Use Chart

USE/ACTIVITY	UR1	UR2	UR3	CT	CD	MLI	UP
Vacation-Short-Term Rentals Tier 1 or Tier 2	P¹	P¹	P¹	A¹	A¹		
Short-Term Rentals Tier 3	CUP¹	CUP¹	CUP¹	P¹	P¹		

P¹ = Permitted with Standards

¹ Removed prior proposal showing “PRM” in R-1, R-2, and R-3 zones.

11.23.040 STANDARDS.

~~(3) Vacation-Short-Term Rentals. See 11.88.280 Short-Term Rentals. Vacation rentals, any unit being rented for less than thirty consecutive days, shall be permitted as identified in Section 11.23.030, District use chart. All vacation rentals shall receive an annual permit from January 1st to December 31st, under Title 14 limited administrative review, documenting conformance and agreement to conform to the following provisions:~~

~~(A) Vacation rentals shall maintain the character of the surrounding neighborhood by:~~

~~(i) Providing year-around solid waste receptacles and pickup service. Trash cans, on the right-of-way, should be removed within twenty-four hours of pickup; and~~

~~(ii) Provide at least one off-street parking space, outside of the required setbacks for each two rented bedrooms. Where off-street parking requirements cannot be met the number of rented bedrooms shall be limited; and~~

~~(iii) Noise emanating from any use shall be in conformance with Chapter 7.35; and~~

~~(iv) Occupancy. The maximum number of occupants permitted to stay overnight shall be two people for each bedroom plus two additional persons, excluding children under the age of six; and~~

~~(v) Placing, adjacent to the front door (outside), a legible sign clearly visible to the general public listing the maximum number of occupants permitted to stay overnight, the maximum number of vehicles allowed to be parked on site, and the name and contact information of the local contact person.~~

~~(B) Vacation rentals shall provide a local contact person (within a forty-mile radius) twenty-four hours a day seven days a week. Contact information shall be provided to the adjacent properties, the Manson community council, District 5 fire chief, and the Chelan County sheriff.~~

~~(C) Enforcement. Any violation of the provisions of this chapter is punishable pursuant to Title 16. Enforcement actions may be brought against the owner of the vacation rental home for the conduct constituting the violation.~~

Short-Term Rental Standards

Section 11.88.280 is all new.

CHAPTER 11.88 SUPPLEMENTARY PROVISIONS AND ACCESSORY USES

11.88.280 Short-Term Rental Regulations

(1) PURPOSE

Based on language in Dan Beardslee's proposal.

(A) The purpose of this section is to establish regulations for the operation of short-term rentals as defined in Chelan County Code (CCC) 14.98.1692, within the unincorporated portions of Chelan County. This chapter also establishes a short-term rental land use permit.

(B) The provisions of this chapter are necessary to promote the public health and safety by protecting year-round residents' enjoyment of their homes and neighborhoods by minimizing the impact of short-term rentals on adjacent residences.

(2) TYPE, NUMBER, AND LOCATION

The 1% cap and associated zone allowances are similar to options described in the Chelan County Short-Term Rental Situation Assessment & Options, March 30, 2020. There is a simpler permit allowance in the use tables because their number and density are limited in (A) and (C) below. Tiers of permits are proposed below based on owner occupancy and guest occupancy. Owner-occupied units would be defined by the owner being on site during guest presence or through rental of no more than 30 days (Bend, OR definition; Walla Walla uses 90 days).

(A) Type.

(i) Tier 1: Owner-occupied short-term rentals where either (a) rooms are rented and the owner is personally present at the dwelling during the rental period, or (b) the entire dwelling is rented no more than 30 total days in a calendar year. Portions of calendar days shall be counted as full days.

(ii) Tier 2: Short-term rentals at a dwelling that is not the owner's principal residence or that is rented more than 30 total days in a calendar year.

(iii) Tier 3: Short-term rentals exceeding occupancy limits of 11.88.280(3) or containing group facilities designed to host events such as weddings or parties.

Regarding number, Option 1 would limit all tiers of permits, while Option 2 would limit Tiers 2 and 3 with the cap but not owner-occupied Tier 1.

(B) Number.

Option 1: All Tiers subject to 1% as well as location restrictions.

The annual number of new short-term rental land use permits issued must be capped to one percent (1%) of the total number of permitted short-term rentals in the county as determined through land use permit procedures in subsection (4) below. The number locating in the Leavenworth–Lake Wenatchee Overlay cannot exceed 1% of any subarea within the overlay.

Option 2: All Tiers only allowed in places not subject to location restrictions. Tier 1 not subject to cap. Other Tiers subject to cap.

(i) Tier 1: Short-term rentals are allowed where permitted per subsection (C) and (D).

(ii) Tier 2 and Tier 3: The annual number of new short-term rental land use permits issued must be capped to one percent (1%) of the total number of permitted short-term rentals in the county as determined through land use permit procedures in subsection (4) below. The number locating in the Leavenworth–Lake Wenatchee Overlay cannot exceed 1% of any subarea within the overlay.

The County has applied city zones in UGAs. If there is no reference to allowable uses in city-assigned UGAs there could be confusion since these city zones do not appear within the County Code. The County would allow short-term rentals if

the cities allow them in the subject city zones in the UGA, but the permitting procedures would be those the County adopts. To avoid future nonconformities since cities have different review procedures and operational rules, it may be appropriate to allow existing legal short-term rentals in the UGAs and avoid adding new ones until such time as they annex or until the County adopts city review procedures where feasible (note: the County does not appear to have the same business license regulatory allowances as cities though land use authority is similar).

(C) Zones Allowed. Short-term rentals must be permitted, accessory permitted, conditionally permitted, or prohibited pursuant to:

- (i) Section 11.04.020 applicable to all Rural and Resource Designations, except as limited in Subsection (2)(D) Leavenworth–Lake Wenatchee Overlay, and in Subsection (2)(E) Density Limits.
- (ii) Section 11.22.030 applicable to the Peshastin Urban Growth Area, except as limited in Subsection (2)(E) Density Limits.
- (iii) Section 11.23.030 applicable to the Manson Urban Growth Area, except as limited in Subsection (2)(E) Density Limits.
- (iv) In city-assigned Urban Growth Areas, pursuant to a city’s land use regulations, development standards, and land use designations, where the County has adopted such pursuant to the County-City Memorandum of Understanding filed with the Chelan County Auditor July 8, 1997; provided that, the County’s review procedures in this subsection 11.88.280 must control.

Discussion: Census Tract 9602 is similar in size and boundary as the corresponding zip code. Data about housing and population is produced by federal agencies by census tract as well as by the State Office of Financial Management (OFM). The State OFM also produces data by zip code though federal census data would not be available. Tracking permit applications by zip code could make it simpler to enforce the locational allowances. Another option would be to use finer-grained HUC-12 boundaries, used in watershed planning; however, it would be more difficult to track population and housing information by them. It would allow a more targeted planning boundary to be created. We recommend the Zip Code boundary for the greatest ease of code and permit implementation while still having state population and housing information tracked. To recognize the Planning Commission request to apply the cap to subareas as well as Countywide, a map has been developed and it identifies Leavenworth, Plain, and Lake Wenatchee based on compilations of HUC boundaries.

(D) Leavenworth–Lake Wenatchee Overlay Established. An overlay district within which density limits are applied is hereby established as co-terminus with [Zip Code 98826 – See Attachment A] encompassing Leavenworth–Lake Wenatchee. It is further subdivided into three sub-areas for Lake Wenatchee, Plain, and Leavenworth areas. [See Attachment B.]

Density limits are meant to reduce the share of short-term rentals over time in impacted locations to address community compatibility and housing affordability. In city-assigned UGAs density limits are meant to minimize nonconformities with city regulations particularly where there are city licensing requirements. Recognizing there are likely to be reductions in short-term rentals over time if the percentage share is reduced to a level that appears to have less impact on housing supply the County could begin allowing them again; for example, after three years when the County has determined the 1% cap annually and licensed existing and new ones it may have data supporting the timing of re-opening these areas. The percent share of short-term rentals is “blank” for this draft pending discussion. A rate of 5% percent has been suggested by public comments to date. Data tracked in the situation assessment show the most

affected Zip Codes with over 5% to over 10%. A study of Oregon jurisdictions² found that where short-term rental growth and household formation is increasing at a faster rate than total housing unit growth there can be a constraint on housing affordability; the rate of short-term rental growth has been occurring faster than new home construction in the Leavenworth Zip Code within unincorporated areas. The Zip Codes with greater than 10% share of short-term rentals compared to total dwellings within unincorporated areas include Leavenworth (12.3%) and Manson (11.2%). Peshastin Zip Code is at 5.5%. Chelan is 1.8% and others are less than 1%.

(E) Density Limits.

(i) The number of short-term rentals established in (2)(B) may locate in the zones where allowed in (2)(C), except that no new [Option 1: Tier 1, 2, or 3] [Option 2: Tier 2 and Tier 3] short-term rentals are permitted in the following locations:

- (a) Leavenworth–Lake Wenatchee Overlay
- (b) Residential zones in the Peshastin Urban Growth Area
- (c) Residential zones in the Manson Urban Growth Area
- (d) Residential zones in the UGAs assigned to the cities of Chelan, Entiat, Leavenworth, or Wenatchee

(ii) Exceptions to Density Limits:

(a) Where such units are consistent with this section, density limits do not apply short-term rentals in the Rural Recreational/Residential (RRR) zone, or Planned Unit Development Overlay Districts expressly permitting short-term rentals, or Master Planned Resorts Overlay Districts.

(b) After three years from the effective date of this code (XXX, 2020), new short-term rentals may be established in the locations cited in subsection (2)(E)(i) if the combined percentage of Tier 1, Tier 2, and Tier 3 short-term rentals as a share of total dwelling units is less than X percent (X%) and the applications meet all requirements of this section 11.88.280 as determined by the Director.³ Total dwelling units must be determined based on the latest annual count of total housing units by the State of Washington Office of Financial Management. Short-term rental percentages must be determined at the time the number of allowed short-term rentals is determined per subsections (2)(B) and (3) of this section.

Based on the Planning Commission discussion of code options on 5/13, this section includes a grandfathering and amortization section.

(iii) Nonconforming Short-Term Rental Units in Restricted Zones: Where a zone does not allow short-term rental units, only those short-term rentals that exist as of XXX [effective date] and are compliant with criteria below, will be allowed as nonconforming uses. Such uses may not be significantly changed, altered, extended, or enlarged and must cease

² See copy of study hosted by the City of Olympia's website: <https://engage.olympiawa.gov/4076/documents/5992>.

³ Per 14.98.580 Director. "Director" means the director of the Chelan County department of community development or designee. This term is synonymous with administrator.

after two years from XXX [effective date]. A use shall not be considered lawfully established and existing unless the owner proves all of the following:

- (a) That similar uses were allowed in the subject zones at the time the short-term rental was established, including but not limited to: bed and breakfast, guest inn, boarding house, lodging facility, hotel/motel, or other transient accommodation; and
- (b) That a location was used for short-term rental purposes during January 1, 2019 to XXX [effective date]; and
- (c) That all applicable taxes were fully and timely paid for all short-term rental use that occurred prior to XXX [effective date]; and
- (d) That the short-term rental meets all requirements of subsection (3); and
- (e) That the short-term rental operator has obtained the required land use permits in subsection (4).

After expiration or revocation of the permit authorizing a legal nonconforming short-term rental, no operator shall operate a short-term rental.

(3) SHORT-TERM RENTAL STANDARDS

(A) Primary or Accessory Residence. Short-term rentals must be operated out of an owner's main house or a legally established accessory dwelling unit. In no case, shall an owner or operator make available a recreational vehicle, tent, or other temporary or mobile unit for short-term rental.

Per Planning Commission discussion on 5/13, a provision to allow a CUP for a larger short-term rental is included.

(B) Occupancy.

(i) Overnight Occupancy. The owner or operator must limit overnight occupancy to no more than two guests per bedroom, not to exceed a total of 10 guests including children. Occupancy limits must comply with the International Residential Code. Advertisement of bedrooms is proof of the number of bedrooms.

(ii) Daytime Occupancy. At no time shall the total number of persons at a short-term rental exceed 10 persons, including children.⁴

(iii) Exceeding Nighttime or Daytime Occupancy. In order to exceed daytime or nighttime occupancy limits an operator must obtain a Conditional Use Permit provided that the zone allows short-term rentals as an accessory, permitted, or conditionally permitted use and meets all other short-term rental requirements of this section.

⁴ Discussions with staff have indicated 10 has been considered recently, the same as the overnight occupancy. Other examples: [Ventura County, CA](#) allows a total of the maximum overnight occupancy plus 6 additional persons; twice the night-time limit. [Forsyth County, GA](#), allows 4 plus total overnight guests excluding children.

(C) Parking.

Option 1: (i) At least one additional off-street parking space must be provided for the short-term rental in addition to the parking required for the dwelling per CCC 11.90, Off-Street Parking and Loading.

Option 2: (i) There must be at least one off-street parking space for each bedroom.

(ii) The number of vehicles allowed at the short-term rental must be limited to the number of bedrooms plus one; this requirement must be included in the Property Management Plan per Section (2)(K).

(D) Garbage. Trash containers must be provided. Trash must be in proper containers on collection day. Where curbside recycling is available to the unit receptacles must be provided. Receptacles must be set out on the right-of-way and removed within twenty-four hours of pickup. Trash must be managed in compliance with CCC Chapter 4.04 Garbage. This requirement must be included in the Property Management Plan per Section (3)(K) and good neighbor guidelines per subsection (3)(M).

(E) Noise. Short-term rentals must be operated in compliance with Chapter 7.35 Noise Control. This requirement must be included in the Property Management Plan per Section (3)(K).

(F) Trespass. Owners or operators must provide rules in rental contracts restricting occupants from trespassing on neighboring private property and identify proper routes to public places such as easements to shorelines. Such trespass rules must be included in the property management plan in (3)(K) and good neighbor guidelines per subsection (3)(M).

(G) Signs. All owners or operators must display the address of the residence so that it is clearly visible from the street or access road. The rental must have a sign or other identifier on outside as short-term rental. The sign must be made of natural materials not exceeding two square feet in area and if illuminated, must be indirectly illuminated.

(H) Consumer Safety. All Consumer Safety requirements of RCW 64.37.030 must be met by the owner or operator. Violations are subject to Title 16. Requirements must be included in the property management plan in (3)(K).

(I) Fire Safety and Outdoor Burning. Each owner or operator must include a fire protection plan in their property management plan in subsection (3)(K) to alert renters to respect firewise efforts on a property, or to comply with travel or activity restrictions of CCC Chapter 7.52, Fire Hazard Areas. This includes, but is not limited to, restricting use of outdoor fire places or grills and to properly secure and restrict portable barbeques. The qualified person identified in subsection (3)(J) must notify renters of burn bans.

(J) Qualified Person.

(i) The owner or operator must provide the name, telephone number, address, and email of a qualified person (which can be a person or company) who can be contacted concerning use of the property and/or complaints and can respond to the property within 30 minutes to complaints related to the short-term rental consistent with the requirements

of this section. The owner or operator must provide a valid telephone number where qualified person can be reached 24 hours per day, every day.

(ii) The owner or operator must post a sign of similar materials and dimension as subsection (3)(G) with the contact information of the qualified person. If the permanent contact information changes during the permit period, the new information must be changed on the sign. Renewal applications must provide evidence of the sign. The Director may allow annual mailings to neighboring properties and an interior posted notice for tenants in lieu of an exterior sign where a property's size and visibility make an exterior sign ineffective. The purpose of this sign is so that adjacent property owners and residents can contact a qualified person to report and request resolution of problems associated with the operation of the short-term rental.

(K) Property Management Plan. Vacation rentals must maintain an up-to-date property management plan on file with the Chelan County Community Development Department and property owners within 300 feet of the building within which the short-term rental is located. The property management plan must include the following:

(i) Provide a map clearly depicting the property boundaries of the short-term rental, and the escape route in case of an emergency. The map must indicate if there is an easement that provides access to the shoreline; if so, the boundaries of the easement must be clearly defined. If there is no access, this must be indicated together with a warning not to trespass;

(ii) Provide the unified business identifier number, and the names and addresses of the property owner;

(iii) Designate a qualified person and provide contact information consistent with (3)(j) ; and

(iv) Provide information required for Consumer Safety per (3)(H) and RCW 64.37.030 and fire protection plan per (3)(I).

(v) All units must have an operable landline telephone installed to aid in emergency response.

(L) Annual Permit Number. The owner or operator must include the Chelan County land use permit number for the short-term rental in all advertisements (AirBnB, VRBO, Craigslist, poster, etc.) and marketing materials such as brochures and websites.

(M) Good Neighbor Guidelines. Owners and operators must acknowledge receipt and review of a copy of the good neighbor guidelines. Owners and operators must provide evidence that the good neighbor guidelines have been effectively relayed to short-term rental tenants, by incorporating it into the property management plan, and rental contract, posting it online, providing it in a conspicuous place in the dwelling unit, or a similar method.⁵

(N) Liability Insurance. A short-term rental owner or operator must maintain primary liability insurance consistent with RCW 64.37.050.

⁵ See Bend, Oregon example: See example on page 21 of City of Chelan Ordinance: <https://cityofchelan.us/pdfdocs/2019/12/Ord2019-1570-Short-Term-Rental-Regulations-with-Exhibits.pdf>. Similar to example on page 21 of City of Chelan Ordinance: <https://cityofchelan.us/pdfdocs/2019/12/Ord2019-1570-Short-Term-Rental-Regulations-with-Exhibits.pdf>.

(O) Taxes. The owner or operator must be in compliance with CCC Chapter 6.30 Lodging Tax, and other local sales taxes and state hotel/motel and sales taxes in accordance with the Department of Revenue.

(4) LAND USE PERMITS

Per the draft code, the County would require annual renewal of existing units in one period (e.g. September-October). The Community Development Department would have about 90 calendar days [~60 workdays] to permit the compliant applications (November-January). The Director would report on the new baseline short-term rentals, to establish the maximum number of new short-term rentals by February 1 of the following year. New short-term rentals could apply within a subsequent two month window (e.g. February-March).

If the county finds that the fire and health district do not have sufficient resources to provide inspections within the first permit window, the County could provisionally approve initial short-term rental applications without inspection provided the inspections occur prior to the first renewal and provided there are signed-self-certification forms. This was allowed by the City of Chelan in its short-term rental code. Alternatively a different first-year window could be provided.

(A) Land Use Permit Required. No short-term rental owner or operator may advertise, offer, operate, rent, or otherwise make available or allow any other person to make available for occupancy or use a short-term rental without a valid short-term rental land use permit issued by the Director.

(B) Annual Renewal. Annual renewal of the short-term rental land use permit is required.

(C) Permit Applications. Short-term Rental owners must apply for a land use permit to establish compliance with this code.

(D) Application Acceptance.

(i) From September 1 to October 31 each year, existing short-term rental owners must submit a Short-Term Rental Land Use Application. By February 1 of each following year the Director must report the baseline number of authorized existing short-term rentals and identify the number of new short-term rentals allowed pursuant to subsection (2)(B). From February 15 to March 15, the Director must accept new applications for short-term rentals. Compliant permits will be entered into a lottery by June 1. The lottery must be conducted at a public meeting after the publishing of a legal notice a minimum of 10 days prior to the lottery. The number of issued permits selected by lottery will not exceed the number allowed per the applicable cap in subsection (2)(B). Selected permits remain valid until such time as an annual renewal is required.

(ii) Within the first year of adoption of this code **(effective date XXX, 2020)**, the Director may provisionally approve initial short-term rental land use permits subject to the owner completing a self-certification form provided that inspections in subsection (4)(H) are accomplished prior to the first renewal thereafter.

Term and applicant information is based on language in Dan Beardslee proposal. Nonuse is based on City of Chelan regulations.

(E) Term. A short-term rental land use permit must be issued for a period of one year, with its effective date running from the date the application is due as set forth in subsection (4)(D) above.

and must be renewed annually by the owner or operator provided all applicable standards of this section are met.

(F) Forms and Procedures. Applications for short-term rental land use permits must be on forms provided by the County, demonstrating the application meets the standards required by this section. Permit review procedures must be consistent with Title 14.

(G) Nonuse. All short-term rentals must operate under a current short-term rental land use permit regardless of nonuse. If a property has not been rented in a twelve-month period, renewal of short-term rental land use permit must still be met to maintain the validity of the permit.

(H) Fire, safety, health and building compliance.

(i) Fire and Emergency Safety. Prior to approving the initial short-term rental permit, the applicable fire district or fire marshal must perform a life-safety inspection, except as provided under subsections (H)(iii) and (H)(iv).

(ii) Water and Wastewater. The Chelan-Douglas Health District must inspect the short-term rental to ensure that there is a verifiable legal source of water that meets applicable standards, and an approved on-site sewage disposal system, except as provided under subsections (H)(iii) and (H)(iv).

(iii) The Director may waive inspections under subsections (H)(i) and (H)(ii) associated with the initial short-term rental permit if the owner provides a notarized affidavit from the applicable fire district or fire marshal or Chelan-Douglas Health District that the short-term rental is in compliance with applicable requirements in subsections (H)(i) and (H)(ii).

(iv) The County building official must review each initial short-term rental application to ensure occupancy and other applicable building code requirements are met.

(v) After the unit is approved for rental, a completed self-certification checklist for health and safety is required to be submitted by the owner with each annual short-term land use permit renewal consistent with forms provided by the Director.

(vi) Owner Responsibility. It is the owner's responsibility to assure that the short-term rental is and remains in substantial compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.

(I) Single Transfer of Ownership. The short-term rental land use permit must be issued in the name of the owner. New owners must certify compliance with the conditions of permit approval within 90 days after the closing date of the sale of the property. Written certification must be submitted to the Community Development Department on forms specified by the Director. New owners must apply for a new permit by the annual deadline. Only one transfer of ownership is allowed. At the time of the only transfer, all permits shall include the following provision: "This permit shall automatically expire upon sale or transfer of the property whichever comes first." After a single transfer, the short-term rental permit is no longer valid after the land use permit expiration date. The operator must obtain a new short-term rental permit compliant with this section following expiration or cease operation.

(J) Approval Criteria. To receive approval or renewal, an owner or operator must demonstrate to the satisfaction of the Director that all approval criteria listed below have been satisfied:

- (i) The short-term rental is located in a base or overlay zone that allows its use pursuant to this section.
- (ii) The short-term rental is consistent with density limitations of this section.
- (iii) The short-term rental is consistent with short-term rental standards of this section.
- (iv) The short-term rental is consistent with all applicable health and safety requirements of this section.
- (v) The short-term rental is not the subject of outstanding code violations per Title 16.

The Planning Commission requested an appeal – that is in the draft code already by a cross reference to Title 14.

(K) Appeals of the denial or conditions of short-term rental land use permits or annual renewals must be filed in compliance with Title 14 CCC.

(5) ENFORCEMENT

(A) Within Chelan County jurisdiction, a short-term rental must not operate without an approved and valid Short-Term Rental Permit. Evidence of operation includes advertising, online calendars showing availability, guest testimony, online reviews, rental agreements or receipts.

(B) Enforcement of this section will be in accordance with Title 16 CCC.

Definitions

14.98 DEFINITIONS

“Vacation Rental” is used in Manson UGA code and is defined as “any unit being rented for less than thirty consecutive days.” “Short-term rental” in RCW 64.37 excludes short-term rentals of less than three bedrooms or where the operator occupies the unit for at least six months. The City of Chelan definition is similar but more detailed than the Manson UGA definition, more inclusive than the state definition, and more similar to the discussion of the Board of County Commissioners and public to date. A blend of the Chelan and State definition is proposed.

Note: Consultants and County staff are reviewing definitions for other types of accommodations like bed and breakfasts, temporary dwellings, etc. to ensure ease of implementation and consistency with the Building Code.

14.98.1692 Short-Term Rental

“Short-Term Rental” means a dwelling unit, or portion thereof, that is offered or provided to a guest by a short-term rental owner or operator for a fee for fewer than thirty consecutive nights. They are commonly referred to as vacation rentals. They are a form of tourist or transient accommodations. Short-term rental units may be whole house rentals, apartments, condominiums, or individual rooms in homes. For the purpose of administration and enforcement of this title, the terms “overnight rental,” “nightly rental,” and “vacation rental” are interchangeable with short-term rentals. Subleasing or subletting of units for short-term rental is prohibited if the underlying zone prohibits such use.

The following definition is based on definitions in RCW 64.37, and in some cases the Chelan Municipal Code.

14.98.1693 Short-Term Rental Operator

"Short-term rental operator" means any person who receives payment for owning or operating a dwelling unit, or portion thereof, as a short-term rental unit, or their authorized agent including a property management company or other entity or person who has been designated by the owner, in writing, to act on their behalf.

The following definition is based on definitions in RCW 64.37.

14.98.1694 Short-Term Rental Owner

"Owner" means any person who, alone or with others, has title or interest in any building, property, dwelling unit, or portion thereof, with or without accompanying actual possession thereof, and including any person who as agent, executor, administrator, trustee, or guardian of an estate has charge, care, or control of any building, dwelling unit, or portion thereof. A person whose sole interest in any building, dwelling unit, or portion thereof is solely that of a lessee under a lease agreement is not considered an owner.

16.20. SHORT-TERM RENTAL ENFORCEMENT AND VIOLATIONS

Except for violations of RCW 64.37.030 Consumer Safety, which appears to have a specific process and fine to be issued by a county or city attorney, the code compliance process and civil penalties are consistent with Chelan County Code Title 16. It does not appear that RCW 64.37 limits a county's authority to apply its own code compliance process when reviewing RCW 7.80.010 since it allows a county or city to hear and determine civil infractions according to its own system established by ordinance. Per the discussion by the BOCC on March 31, 2020, on-site citations are allowed. Revocation is similar to the City of Chelan code, except it includes "three strikes" per the BOCC member code options dated January 27, 2020. Note this section is still pending review by the Prosecuting Attorney's office.

16.20.010 Compliance

Short-term rental owner's or operator's must comply with short-term rental regulations in Titles 11 and 14 CCC. Violations and enforcement must be in accord with Title 16 CCC.

16.20.020 Enforcement Procedures, Notices, and Citations

(1) Enforcement Procedures. Except as specified in this Chapter 16.20, all enforcement procedures of Title 16 apply to short-term rental owner's or operator's.

(2) Notice of Violation for Consumer Safety by County Attorney. If an owner or operator is suspected of violating Consumer Safety requirements of RCW 64.37.030, the County Attorney must issue a warning letter to the owner or operator for the first violation. Other procedures or requirements with regard to the warning letter must be consistent with Title 16. For any repeated violations, the County will employ its standard code compliance process consistent with Title 16.

(3) Citations must be issued consistent with Chapter 16.08, provided that citations may be issued on-site at the discretion of the code compliance officer if a violation of Short-Term regulations in Titles 11 and 14 CCC occurs. Alternatively, the citation may be accomplished in another manner consistent with Title 16.

16.20.030 Civil Penalties

(1) Civil penalties must be consistent with Title 16 including Chapter 16.16. except as identified in (2) below.

(2) The first violation of Consumer Safety requirements of RCW 64.37.030 is a class 2 civil infraction under chapter [7.80](#) RCW with a fine of one hundred twenty-five dollars (\$125). The fine for repeated violations must be consistent with CCC 16.16.010 Assessment Schedule.

16.20.030 Revocation

(1) Repeated failure of the owner or operator to timely and reasonably respond to a complaint(s) relayed by code compliance officers are grounds for civil fines, revocation, or other penalties consistent with Title 16.

(2) The following conditions may result in revocation of land use permits granted under short-term rental regulations in Titles 11 and 14 CCC:

(A) Failure to renew a short-term rental land use permit pursuant to CCC 11.88.280 short-term rental regulations and Title 14 is grounds for immediate revocation of the permit.

(B) Failure to meet the criteria of CCC 11.88.280 Short-Term Rental Regulations is grounds for immediate revocation of the short-term rental land use permit.

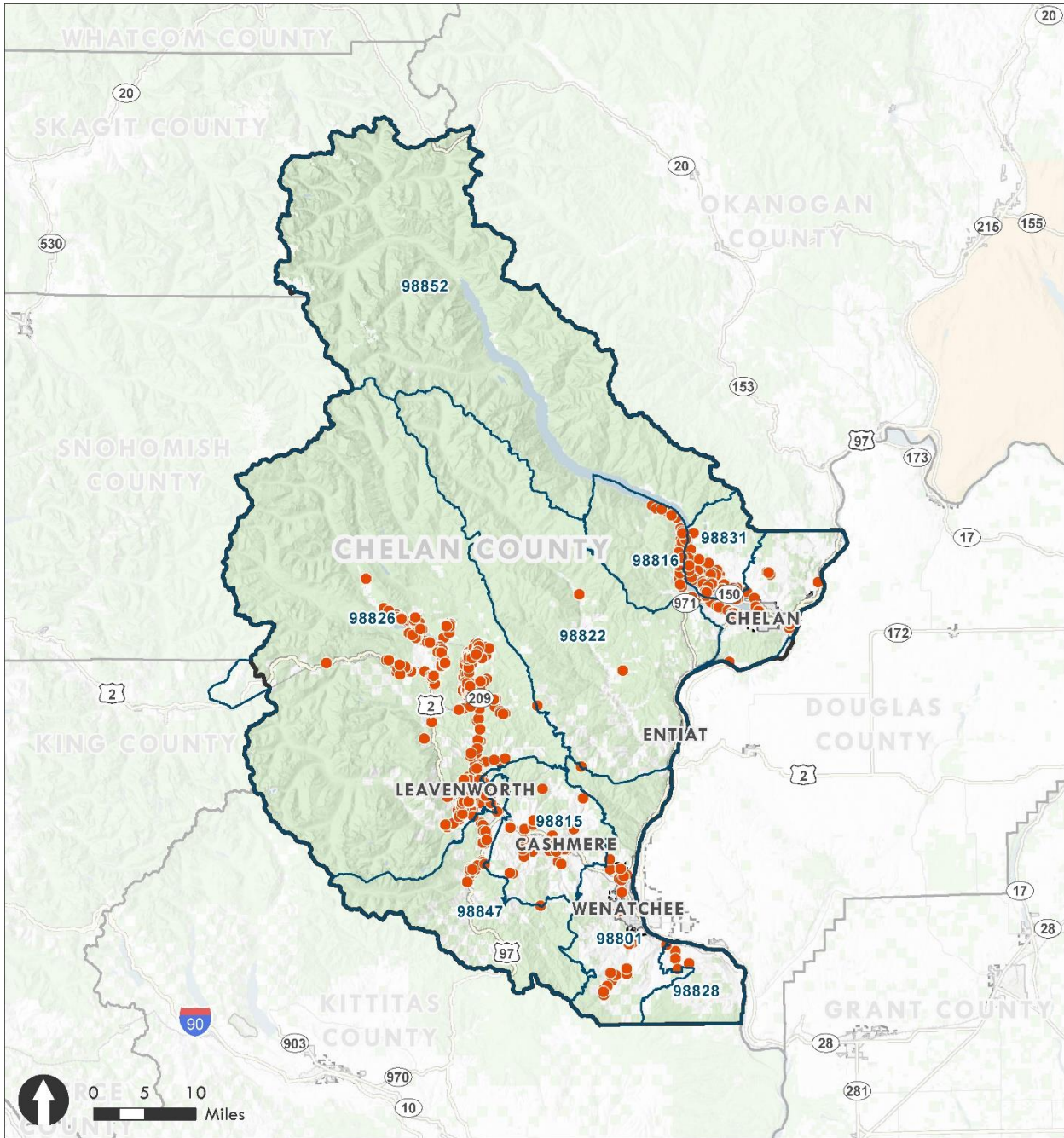
(C) The discovery of material misstatements or providing of false information in the short-term rental land use permit application or renewal process is grounds for immediate revocation of the permit.

(D) Such other violations of Titles 11, 14, and 16 of sufficient severity in the reasonable judgment of the Administrator,⁶ so as to provide reasonable grounds for immediate revocation of the land use permit.

(E) If three violations are verified under subsection (D) at any time during a twelve-month period, the penalty shall be revocation in addition to any required civil penalties under 16.20.030.

⁶ In Title 16, reference is made to "Administrator" whereas in Title 11 reference is made to "Director". Both have a similar meaning in Title 14 definitions.

Attachment A: Countywide Zip Code Map



LEGEND

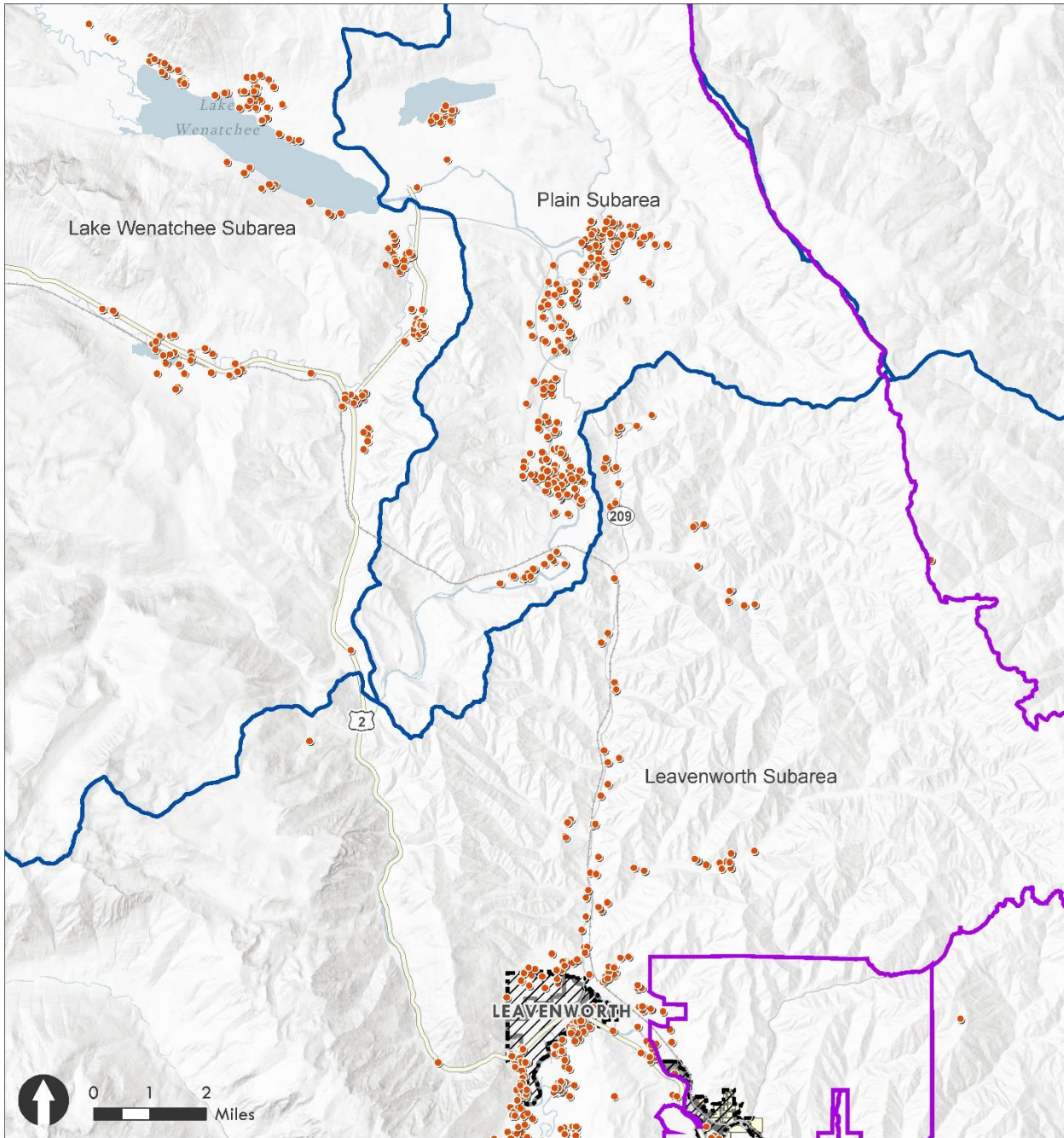
- Short-term Rentals (est. 1,200 active)
- ZIP Code Boundaries



Source: AirDNA, 2020.
 Data notes: This data tracks individual short-term rental property level from AirBNB and HomeAway. The location data on individual properties is within 500 meters of accuracy. It shows only properties that are assumed to be in unincorporated areas and are listed as an entire home/apartment.

Source: Chelan County GIS, AirDNA, BERK 2020

Attachment B: Leavenworth-Lake Wenatchee Subareas



LEGEND

-  Urban Growth Areas
-  Short-term Rental
-  STR (on tribal land)
-  Preliminary Boundaries
-  ZIP Code Areas



Source: AirDNA, 2020.
 Data notes: This data tracks individual short-term rental property level from AirBNB and HomeAway. The location data on individual properties is within 500 meters of accuracy. It shows only properties that are assumed to be in unincorporated areas and are listed as an entire home/apartment.

Source: Chelan County GIS, AirDNA, BERK 2020

Lisa Grueter

From: Jim Brown <Jim.Brown@CO.CHELAN.WA.US>
Sent: Thursday, May 21, 2020 8:36 AM
To: Lisa Grueter
Cc: CD Director; RJ Lott
Subject: FW: Short-term rental code development

Importance: High

Lisa and RJ-

FYI. Jim

Jim Brown

Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6228 Main office (509) 667-6225

Jim.Brown@co.chelan.wa.us



NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account may be a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

From: Jim Brown
Sent: Thursday, May 21, 2020 7:59 AM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Deanna Walter <Deanna.Walter@CO.CHELAN.WA.US>
Cc: Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Cathy Mulhall <Cathy.Mulhall@CO.CHELAN.WA.US>
Subject: RE: Short-term rental code development
Importance: High

Thanks Commissioners, I think this is exactly the kind of visioning they were looking for in order to focus their efforts.

Sincerely-

Jim Brown

Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6228 Main office (509) 667-6225

Jim.Brown@co.chelan.wa.us



NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account may be a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

From: Bob Bugert
Sent: Wednesday, May 20, 2020 4:03 PM
To: Jim Brown <Jim.Brown@CO.CHELAN.WA.US>; Deanna Walter <Deanna.Walter@CO.CHELAN.WA.US>
Cc: Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Cathy Mulhall <Cathy.Mulhall@CO.CHELAN.WA.US>
Subject: Short-term rental code development

Jim and Deanna,

The Board of Commissioners understands that the Planning Commission asked for a statement of intent for developing the code for short-term rentals in Chelan County. The BOCC met in session today and crafted the following statement, which hopefully will give the Planning Commission the direction it needs:

The Board of Commissioners intends to adopt code that addresses the rapid proliferation of short-term rentals in Chelan County. The BOCC wishes to protect the character of residential communities across the county, while allowing for property-owner income from short-term rentals. The BOCC recognizes that STRs are an important part of our economy. However, while many owner/operators manage their properties responsibly, many clearly do not.

Chelan County needs the tools to ensure that all STR owner/operators meet a minimum set of standards. Those standards may include, but are not limited to: parking, garbage, noise, trespassing, privacy, septic capacity, fire risk, consumer safety, signs, hot tubs, pools and spas, occupancy limits by zone and neighborhood, density by zone and neighborhood, commercial and liability insurance, and the availability of STR owner/operators to respond to a complaint within a short-time frame.

To ensure that these standards are met, the BOCC wishes to impose an annual registration fee for STRs to finance the following: fire marshal inspection, health district inspection, permit processing by Community Development Department, and code compliance cost recovery. Enforcement should be sufficient to allow for closure of short-term rentals that repeatedly violate code.

Nothing in the code will be inconsistent with RCW 64.37 or with the Manson and Peshastin Urban Growth Areas. The BOCC wishes to have this process completed by August 2020.

Please share this with the Planning Commission and extend our thanks to them for their solid work on this, and other issues that they are working on.

*Bob Bugert
Chelan County Commissioner, District 2
Office: 509-667-6215
Mobile: 509-630-4480*

Chelan County Short-Term Rentals 2020 Fact Sheet

May 18, 2020

What is a short-term rental?

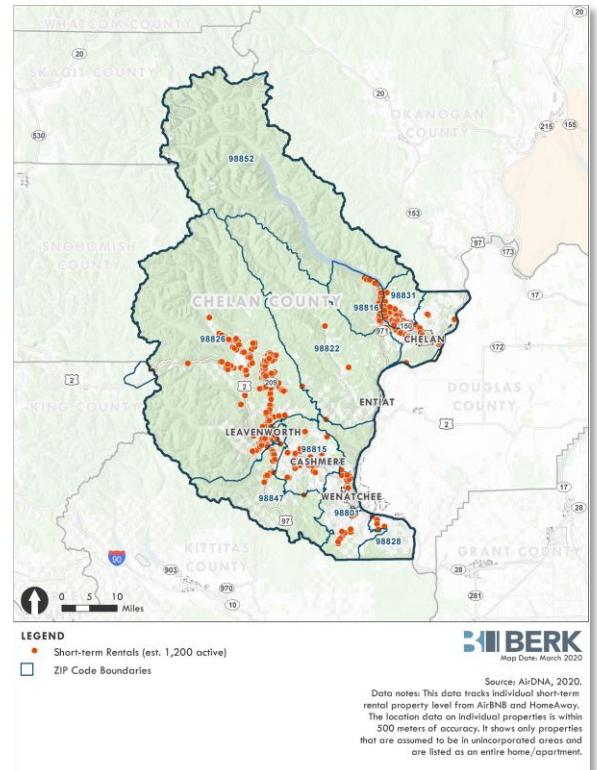
A short-term rental refers to a residential dwelling rented out on a nightly basis for less than 30 days to individual guests. It could be a whole home or just part of it.

Where are short-term rentals in unincorporated Chelan County?

Short-Term Rentals are found across the county, but particularly in the Leavenworth-Peshastin area, Lake Wenatchee, Manson and Chelan.

How fast have short-term rentals grown in the County?

The number of short-term rentals has increased rapidly in the last six years especially in Leavenworth and Manson areas.



Unincorporated Chelan County Listings December 2014-19: AirBnB & Home Away Monthly Data

Zip Code	Zip Code Place	2014	2015	2016	2017	2018	2019
98815	Cashmere		4	11	25	30	35
98816	Chelan	1	3	14	64	60	75
98822	Entiat		3	4	4	2	2
98826	Leavenworth	59	110	205	611	816	868
98828	Malaga	1	2	2	4	4	4
98831	Manson*	6	9	56	212	215	229
98847	Peshastin	4	8	16	41	47	56
98801	Wenatchee	5	6	14	25	32	39
Grand Total		76	145	322	986	1,206	1,308

Note: *Includes about 83 units in 2019 on tribal land.

Source: AirDNA, BERK 2020

What is the goal of short-term rental regulations?

The goal is to allow for property owner income while protecting the character of residential communities across the county.

What happened to the draft proposals in 2019?

In 2019 Chelan County considered draft regulations. The Planning Commission and Board of County Commissioners heard comments and felt proposals didn't meet the County's and community's needs, and denied the 2019 draft. The Board of County Commissioners desire to look at new code options in 2020. See below for an update on 2020 draft regulations and how you can participate.

What is covered in the draft regulations in 2020?

In 2020, an initial draft set of regulations includes the following features.

#	Topic	Approach in Draft Code on Short-Term Rentals
1	Establish protections for the supply and affordability of housing	Allow a small increase annually in short-term rentals, e.g. 1% countywide. In areas with a high concentration, allow existing short-term rentals compliant with rules, but restrict new ones.
2	Preserve neighborhood quality	Address nighttime and daytime occupancy, managing parking, restricting trespass, ensuring solid waste management, etc.
3	Create protections for the wellbeing of guests	Provide for property management plan, health and safety, inspections by fire and health officials at start, self-certification at annual renewal, and insurance.
4	Establish oversight and complaint procedures for wellbeing of neighbors	Provide process for code compliance integrated with County code and state laws.
5	Preserve public tax revenues and level the playing field	Require short-term rentals owners/operators to comply with local and state tax requirements.
6	Regular permitting & record keeping	Provide process for initial permit and annual renewal.
7	Establish clear definitions	Consider state definitions and adapt for local needs.

How can you provide input on Chelan County's draft regulations in 2020?

Chelan County is interested in your views on draft short-term rental regulations. In 2020, the County anticipates a review and comment process following the steps below. Check out the County's webpage for meeting information and background documents: <https://www.co.chelan.wa.us/community-development>



For questions about the process and next steps, please contact:

RJ Lott, AICP, Planning Manager Community Development Department
 316 Washington Street, Suite 301, Wenatchee, WA 98807
 (509) 667-6225 | rj.lott@co.chelan.wa.us

Sign up for newsletter updates here: <https://www.co.chelan.wa.us/community-development/forms/join-newsletter>

Draft Chelan County Short-Term Rental Code: Comments Received March 28 to May 21, 2020

Prepared by Lisa Grueter, BERK, 5/21/20

Received	Last Name	First Name	Contact	Other Associated Names	Subject Line	Summary of Comments	Potential Options and Responses
3/28/2020	Leavenworth/Plain Area Residents' Committee Barb Rossing Greg Steeber Pat Thirlby Bob Fallon George Wilson Bruce Williams Kirvil Skinnarland Mara Bohman Jerry Jennings	Multiple	kirvil@comcast.net	Leavenworth/Plain/Lake Wenatchee residents' group; attachment dated 3/27 with requested elements of code.	Short Term Vacation Rentals	Set density limit in impacted zip codes and spacing, require registration and fees, taxes paid, limit to 4 bedrooms and 10 people, adequate septic, water, etc.	Many of the issues are addressed in the draft code.
4/1/2020	Skinnarland	Kirvil	kirvil@comcast.net		more information on density	There are 4733 properties with single family residences in our 98826 zip code per data from County staff. Apply density limit, avoid new ones in heavily impacted areas, regulation by zip code, etc.	See situation assessment 3/30 for number of dwellings based on State estimates. Density is addressed in the draft code.
4/3/2020	Gebhardt	James A.	jimg@striderconstruction.com	James A. Gebhardt	VRBOs	Require licensing, payment of taxes and inspections; fees for services or responses when property owner not present; allow for some areas to be STR-free.	Comment noted. See draft code regarding permit fees and regulations. Draft also proposes to limit new STRs and not allow them in some impacted areas.
4/3/2020	Skinnarland	Kirvil	kirvil@comcast.net		questions	Density of units must be managed. There should be a 5% cap on the number of entire house rentals in relation to the total number of single family homes in the geographic unit. Is regulation by zip code the best geographic unit?	See map options in 4/10 first draft code and 5/21 code. Zip code may make implementation of permitting easier. Other options could also work.
4/3/2020	Winters	Stan	winterss1@me.com	Tricia Ortiz	Chelan CO Short Term Rental Issue Feedback	STRs are lodging and should not be in residential zones. Don't recognize illegal STRs.	Comments are noted. The 3/25/20 Recission of AI-2019-001 reflects the County interpretation. See Options in Staff Report for Planning Commission.
4/10/2020	Rossing	Barbara	brossing@lstc.edu	Provides articles.	Leavenworth City Attorney Letter: Chiwawa Pines Decision does not apply	Regulate STRs, limit occupancy, limit density. City of Leavenworth determined Chiwawa River Pines is NOT a precedent for government entities, because it is a road association, not a City or County. Sad to read of the Peshastin STR rescinding, which cited the Chiwawa River Pines case. Hope County attorney might consult with Leavenworth City Attorney. See also City Visions magazine article about Leavenworth regulations. The County, like the city, can ban or regulate STR businesses in residential zones, provided there is good Enforcement. Hoping for strong regulations.	Comments noted. Draft code proposes limits on density (capping new ones). The 3/25/20 Recission of AI-2019-001 reflects the County interpretation. See Options in Staff Report for Planning Commission.
4/11/2020	Fallon	Bob	bobfallon@gmail.com		Proposed Short Term Rental Regulations	If there are violations of the STR regulations, Action MUST be taken against the owner. Renter is hard to track down and may ignore regulations. See state regulations where county attorney provides letter to owner.	Comment noted. Included in draft code.
4/12/2020	Passage	Jim	jimpassage@msn.com		Friday Plain Meeting	Develop a permit fee that is formula based; will some of the fee cover Sherriff's office; limit financial burden. STRs already pay business taxes and property taxes. What will be received in return for additional fee/tax burden?	Comment noted. Future draft of code will include draft fee which would be designed to address costs of time for permit review and inspections. Annual renewal would be lesser fee and would include self-certification.
4/13/2020	Babcock	Mark D.	MDB@tenningen.com	Marita Properties, LLC	Short Term Rental RRR Zoning	Don't apply 1% to RRR development that is expressly recreation home development; RC zone not residential.	Comment noted. Other options that could be brought to Planning Commission include some exceptions to 1% cap for developments expressly used as second homes/recreation homes (see City of Chelan - the Lookout; see Bend, OR approach).

Draft Chelan County Short-Term Rental Code: Comments Received March 28 to May 21, 2020

Prepared by Lisa Grueter, BERK, 5/21/20

Received	Last Name	First Name	Contact	Other Associated Names	Subject Line	Summary of Comments	Potential Options and Responses
4/13/2020	Winters	Stan	winterss1@me.com	Includes articles.	Chelan CO Short Term Rental Issue Feedback	The county is suggesting that we add some definitions to our UGA code that will strengthen it in terms of what is allowed in each of our zones. We are in the process of coming up with that language. Requested guidance on timing of providing definitions (suggested by 4/22).	Comment noted. See draft code on 5/21 regarding use table; additional proposals for definitions could be developed in conjunction with County staff (e.g. Building Official, Prosecuting Attorney, others).
4/16/2020	Rome	Shannon	rome.s.3@icloud.com	Heaven Can Wait LLC	Upcoming Short Term rental regulations vote April 22	Ensure public comment opportunities (delay if not able to have public comment or meetings during COVID-19). Don't regular laws on noise/parking already apply? Don't add licensing and other restrictions.	The STR code process includes opportunities for public comment (written), and hearings will be scheduled with notice.
4/20/2020	Lynn	Sean	sean@loveleavenworth.com	Love Leavenworth LLC	2020 STR Draft Code	Do not oppose smart, thoughtful regulations and want to see a reasonable solution to some of the challenges that STR's can create in neighborhoods. Letter provided with added comments: Need more economic and labor data from neutral party; e.g. in addition to local taxes provided, there is spending at local gods and services by STR renters. Delay discussion due to COVID-19 pandemic. STRs will help economic recovery of tourism industry. Not opposed to smart, simple regulations that help neighbor communication and regulate bad actors.	Comment noted.
4/20/2020	Newell	Nathan	nnewell@gmail.com	Kendall Newell	Please forward to Berk Consulting and confirm it was sent	Propose different occupancy approach; too limiting for large homes. Will shut them down. Several examples provided of other communities and how they handle occupancy. E.g. allow an increase on a case-by-case basis. Use square feet per person. Increase occupancy when homes are further apart.	Comment noted. Draft code occupancy is similar to Chelan (city) and Okanogan County. Other options can be considered by Planning Commission or BOCC.
4/20/2020	Winters	Stan	winterss1@me.com		Chelan CO Short Term Rental Issue Feedback	Peshastin: Email discussion about STR in use table - why shown in residential zones? Regarding that the intent of all regulations in draft combined is to not allow new ones but recognize existing legal ones, there is a concern about existing ones that have been operating in violation of code. Although STRs are not mentioned (and therefore not allowed) why would any interpretation of our UGA code assume that a more intrusive use (than a Bed and Breakfast) would be allowed. My question what process led to the idea that current STRs should be grandfathered? My responsibility is only to the community of Peshastin, so if you could help me understand how someone can operate illegally then be grandfathered in, that would be helpful. It would be even more helpful to understand how we can have our UGA, which has been in existence for about 12 years, enforced, including not grandfathering any illegal STRs here.	Comments are noted. The 3/25/20 Recission of AI-2019-001 reflects the County interpretation. See Options in Staff Report for Planning Commission.
4/21/2020	Goodridge	Jennifer	j_goodridge@hotmail.com		Short term vacation rental draft code	1) No longer being notified of process - website newsletter join link did not work. Please add email to list to keep informed of code and other public comment periods. 2) Opposed to any sort of percent cap on the number of vacation rentals. Original concerns were about noise. Affordable housing is a separate issue. trying to make living; have high property taxes. 3) What will be cost of permits? Should be a flat rate for smaller ones compared to those that sleep 8 or more. 4) Has there been a public survey of concerns associated with vacation rentals? What issues are being addressed? Are there just a few complaining? Now goes beyond noise. 5) This is a bad time to have a public process since public is at home. Work to incorporate and address public comments.	Comment noted. County staff will confirm weblink is working. Cap is an idea to respond to concerns about overabundance of STRs impacting affordability and character, e.g. Leavenworth zip code area. Permit fees would be based on cost of review and inspections. See 3/30 situation assessment for review of 215 comments in 2019. New comments are being collected for 2020 review. There will be notice of public hearings and opportunities to comment. As a result of the Planning Commission and BOCC review the draft code may change.

Draft Chelan County Short-Term Rental Code: Comments Received March 28 to May 21, 2020

Prepared by Lisa Grueter, BERK, 5/21/20

Received	Last Name	First Name	Contact	Other Associated Names	Subject Line	Summary of Comments	Potential Options and Responses	
4/21/2020	Holgate	Zelda	zeldascott123@gmail.com	Natapoc Lodging	Delay workshop on STRs	Process is rushed. Don't address during COVID-19 crisis. Need all the facts including negative impact of regulation on taxable income on STRs.	The STR code process includes opportunities for public comment (written), and hearings will be scheduled with notice. See the situation assessment for a summary of 2019 comments. New comments have also been provided and summarized for 2020, including this matrix.	
4/21/2020	Unsigned Attachment						Scanned list of detailed questions on draft code. Planning Commissioner Blum may have sent it to staff ahead of 4/22 study session.	Addressed in packet to Planning Commission for 5/13 study session.
4/21/2020	Wilson	George	gwwilson@nwi.net		Omnia Lodge, Lake Wenatchee	Shared photos of existing STR advertised for large num. of guests – don't allow.	Comment noted. See 5/21 draft code regarding the potential to allow larger ones with a CUP (like Spokane).	
4/22/2020	Babcock	Mark D.	MDB@tenningen.com	Marita Properties, LLC	Short Term Rental Proposed Draft for 11.88.280	Code must address: 1. Provision for STR in proposed new developments that are self-contained and managed expressly for that purpose, and located in appropriate zoning. Developments with HOA managed conforming rules and regulations and deeded specifically for STR. 2. Recognition of zoning under the Comprehensive Plan that is "recreational" in nature versus "normal" residential zoning. 3. What legal basis is there for arbitrarily capping the number of property owners whom get to use their property in a legal manner and purpose? Especially when in one area the ratio of STR versus non-STR is over 12% and in others less than 1%. But the proposal is to cap the overall average across unincorporated Chelan County at 1%. This is picking winners and losers. Either the activity is permitted, meets health /safety criteria, and is legal in a land use zone or it is not.	See above.	
4/22/2020	Fratini	Chris	chris.fratini@gmail.com		Fwd: Leavenworth - COVID-19 emergency (Reservation cancellation)	Chelan County Commissioner shared a letter to all short term rental owners (3/26) discouraging the promotion of STRs to people outside the county during the COVID-19 pandemic and asking STR owners to make their homes available to first responders and medical personnel. Agree that this is an opportunity for our industry to show our ability to "self-regulate and to meet the greater good of the county." Example: have housed a traveling nurse from Arizona to work with Confluence Health in Wenatchee at a price that's less than 25% of regular monthly rate; covering about half our mortgage. To make home available, proactively canceled several pre-existing reservations. Every enterprise comes with its benefits and its drawbacks. Hope this small gesture will help in balancing your views on our essential industry.	Comments noted. Commenter's participation can continue with public hearing and comment opportunities.	
4/22/2020	Peshastin Community Council Lauri Malmquist, Chair Stan Winters, Vice Chair Tricia Ortiz, Secretary Cheryl Parsley, Treasurer Steve Keene, Member Leticia Vizciano, Member	Multiple	communitycouncil@peshastin.org	Lauri, lam@nwi.net, complemented letter. Tango Cash, snowman_312@hotmail.com, likes point #4, putting blame on County.	Peshastin Community Council Comments on Short Term Rentals	1) use codes in 11.22.020 and 11.22.030 are separate, and in some cases different, from those in 11.04.020, and should remain so. 2) Any short-term lodging facilities are, and have been, illegal in zones R1, R2, and R3, and the community has been fighting to maintain this for more than three years. 3) RCW 64.37 clearly defines STR units and groups them in the same category as hotels and motels. There are no legal pre-existing STRs located within the Peshastin R1, R2, or R3 zones. 4) The PCC presented a request to Chelan County Community Development in August 2019 to change use definition of Hotels/Motels to Hotels/Motels/Lodging Facilities and to delete the term Boarding/Lodging House, since it has become obsolete. Despite repeated inquiries, no response to date from the County.	Comments noted. 4/10 draft code indicated permitted subject to rules in residential zones and the rules would restrict new STRs; see 5/21 draft for additional limitations. The 3/25/20 Recission of AI-2019-001 reflects the County interpretation. See Options in Staff Report for Planning Commission for existing uses, zone-based allowances, and definitions.	

Draft Chelan County Short-Term Rental Code: Comments Received March 28 to May 21, 2020

Prepared by Lisa Grueter, BERK, 5/21/20

Received	Last Name	First Name	Contact	Other Associated Names	Subject Line	Summary of Comments	Potential Options and Responses
4/22/2020	Rome	Shannon	rome.s.3@icloud.com	Heaven Can Wait LLC	[CD Planning] STR comment	Regulations for STRs are more restrictive than for hotels. Added burden on top of foregoing income during COVID-19. Pay property taxes, and lodging and other taxes. Don't schedule votes or discussion during COVID-19.	Comment noted. Hotels/motels are subject to permits, taxes, etc. STRs are often regulated to address parity with other tourist accommodations, with added rules to protect renters and neighborhoods. See 3/30 situation assessment for best practices.
4/22/2020	Williams	Bruce	bwseattle@gmail.com	Provides a UW Law Review paper.	Terminating existing non-owner occupied short term rentals is not a "taking" if owners can use their property for long term rentals	It is possible to prohibit STRs where they exist (article provided). Set the optimal number of STRs and move towards that. Figure out a sunset provision for others. A single cap would include both non-owner occupied and owner occupied STR's. They are fundamentally different. Owner-occupied STR's should be allowed to continue in residential areas that provides that they are legal and provides appropriate regulation. I don't know if a numerical limit is needed for those. If continuing with a single cap, it should be much lower than the current number and the owner-occupied STR's should be given priority over non-occupied ones.	Comment noted. The 4/10 proposal does not distinguish owner-occupied and non owner occupied STRs. Some agencies do treat them differently and options can be explored as seen in 5/21 draft. If existing STRs would not be allowed as is, there can be options for grandfathering or amortization/sunset. The Planning Commission and BOCC will provide guidance on desired approaches.
4/23/2020	Keene	Steve	stkeene@peshastin.org	Peshastin Community Council <communitycouncil@peshastin.org>	Wenatchee World Article: Chelan county looks again vacation rental regulations	Directed to Wenatchee World and copied to county and other persons; believes article is not fully accurate regarding whether existing short-term rentals are legal, identifies concerns with short-term rental proposal, and identified a letter sent to County and consultant a couple of hours before 4/22 Planning Commission meeting with concerns of the PCC.	The Planning Commission meeting on 4/22 was an initial study session. Comments are being transmitted to Planning Commission, and further review is scheduled. See row above regarding letter dated 4/22.
4/24/2020	Bywater	Nancy	bnsf@nwi.net	Brett	Support for proposed overnight rental guidelines	I would just like to state my support for the proposed guidelines. We live in the Leavenworth zip code, in a rural area. We have been affected by many of the issues that the guidelines are trying to manage.	Comment noted.
4/24/2020	Knapp	Barbara	dknapp3140@aol.com	Dennis Knapp; The Grand River Lodge	Thank you for including in the public record	If you proceed with the maximum occupancy of 10 or less we will be unable to sustain this business. Not only will this be a terrible loss to us but all of the community members our business employs. During pandemic, seems prudent to delay any such action.	Comment noted. Draft 4/10 and 5/21 code occupancy is similar to Chelan (city) and Okanogan County. Other options can be considered by Planning Commission. The STR code process includes opportunities for public comment (written), and hearings will be scheduled with notice.
4/30/2020	Rossing	Barbara	brassing@lstc.edu		Chelan CO STR Questions-- schedule? owner-occupied? sun-setting?	1. Schedule for upcoming STR meetings and process? We strongly the schedule proposed at the Commissioners meetings earlier this year be followed. 2. How many of the STR's in 98826 zip code are owner-occupied (where the owner's permanent residence is on-site at least 185 days per year, in either the main house or ADU)? 3. Sunset mechanisms? What are possibilities for decreasing the number of STR's, that you have researched in other counties or municipalities. We strongly disagree with grandfathering all existing STR's where the density exceeds 5%, particularly large owner-absent whole-house rentals. 4. Might you send the questions that Planning Commissioner Carl Blum said he had sent? we would like a copy of those questions and any other documents or public comments that have been received in connection with the Planning commission meeting April 22.	The meeting schedule presented to the Board of County Commissioners, and the public comment from late March through early May have been made available in the Planning Commission packet. The upcoming dates for the Planning Commission meetings are being added to the Calendar with the Community Development Department website. Information about the type and location of units is part of the Planning Commission packet for each meeting.

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Monday, May 4, 2020 1:05 PM
To: Wade Gano
Cc: Lisa Grueter
Subject: RE: [Kirsten Larsen] Short term rentals

Wade,

These are some of the issues we are working through with the Planning Commission. I will put this inquiry on the list for discussion at the next PC meeting, scheduled for May 13th at 7 pm. These meetings are available via ZOOM for people to listen in, but this is just a continued workshop, so public testimony will not be taken at this point. They will schedule a public hearing after editing the draft document and take public testimony at that point.

You can get the ZOOM meeting information from our website, under the planning commission page.

Thanks,
Deanna

Deanna Walter, AICP
Interim Assistant Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6515 Main office (509) 667-6225 deanna.walterCD@co.chelan.wa.us

-----Original Message-----

From: Wade Gano <wadegano@me.com>
Sent: Monday, May 4, 2020 12:08 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: [Kirsten Larsen] Short term rentals

External Email Warning! This email originated from outside of Chelan County.

We have a cabin on Lake Wenatchee and have been impacted by some of our neighbors renting on a short term basis, ie excessive noise, parking on our property, etc. I reviewed the Draft Short-term Rental Code, but I am confused as to whether the existing short term rental properties will be subject to the operational standards and licensing requirements, I see that existing legal sort term rentals are exempt from the density requirement but I do not see if they are exempt from the other provisions of the proposed ordinance. Will current sort term rentals be required to obtain a land use permit and if so, is there a window of time in which they must apply and obtain the permit following the effective date of the ordinance?

I thank you in advance of your reply,
Sincerely,
Wade Gano

Sent from my iPad

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Thursday, May 7, 2020 9:56 AM
To: Lisa Grueter
Subject: FW: Feedback on short term rentals

More comments

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Jim Brown
Sent: Wednesday, May 6, 2020 7:23 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Fwd: Feedback on short term rentals

You are tracking these right Deanna?

Sent from my iPhone

Begin forwarded message:

From: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
Date: May 6, 2020 at 12:30:19 PM PDT
To: Shelley Brodersen <sbrodersen@mac.com>
Cc: Jim Brown <Jim.Brown@CO.CHELAN.WA.US>
Subject: RE: Feedback on short term rentals

Shelley and Eric--

Thank you for your email. We will include your comments in our deliberations and in the public record.
Best regards,

Bob Bugert
Chelan County Commissioner, District 2
Office: 509-667-6215
Mobile: 509-630-4480

-----Original Message-----

From: Shelley Brodersen <sbrodersen@mac.com>

Sent: Wednesday, May 6, 2020 11:35 AM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
Subject: Feedback on short term rentals

External Email Warning! This email originated from outside of Chelan County.

Hi Bob - we are residents at 17285 North Shore Drive in Lake Wenatchee and would like to give some feedback as to our experience with a rental property across the street. Last summer/winter we had multiple issues with renters. The rental house was built a few years ago and is quite large (I saw on VRBO it rents for \$1000 a night). The cost of the rental lends itself to be rented to large groups, I am guessing bachelor parties etc. There were at least 4-5 large rental parties over the summer/winter that violated noise regulations and we had to go out into street and ask them to be quiet. There is a hot tub on the front deck of the house facing the street, where there would be large groups of people partying and making noise past 10 pm. One group of renters walked on our property down to the lake - they were actually in our yard.

We were not sure what recourse or options were available to us for complaints. The owner was aware of these incidents, but he lives in the Seattle area so he is only notified after the fact. We appreciate the thoughtful approach the county is taking to evaluate the short term rental policy and wanted to give feedback on our recent experiences. If you have any additional questions, please let us know.

Shelley & Eric Brodersen

RECEIVED

MAY 07 2020

CHELAN COUNTY
COMMUNITY DEVELOPMENT

Karen L. Haas
12862 Shore Street
Leavenworth, WA 98826

May 6, 2020

Chelan County Planning Commission
c/o Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801

Re: Chelan County Draft Short-term Rental Code

Dear Commissioners:

We are pleased with the direction the County is heading in developing code for Short Term Rentals. The draft code released on April 10th is a good start. We encourage the Commission to proceed with adoption of the code without delay. Virtual meetings are going to be a reality we are going to have to live with for some time and are a workable solution for allowing public input along with written comments.

Here are the changes we seek to the draft code:

1. Do not grandfather existing STRs for an unlimited time. A density limit must include a mechanism to "sunset" or significantly reduce the number of STRs in over-saturated areas such as 98826, where the density already exceeds 5% of houses.
2. We support the overlay district for 98826. The cap on density should be 5% of the single family housing stock in the area.

3. If existing STRs are initially permitted for a provisional period, all must be told that after 3 years, if the density is over 5%, a lottery will be held to determine which owners will receive annual permits.
4. STRs with owners living permanently on site should be given priority in the permitting if there is excess demand (more than 5%).
5. Include children in the occupancy limit of 10 people. Children have impacts on septic systems and water use, as well as contribute to noise.
6. The one percent growth rate should not apply to any area until the number of STRs falls below 5% of the number of single family dwelling units.
7. We support the non-transferability of permits when the property is sold, and this must extend also to LLCs.
8. STRs must not be allowed in the Leavenworth or Peshastin Urban Growth Areas (UGAs).
9. Add a purpose statement that addresses the need to protect the supply of affordable housing for long term rental and/or purchase.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Haas".

Karen L. Haas

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Friday, May 8, 2020 2:25 PM
To: Lisa Grueter
Cc: RJ Lott
Subject: FW: [CD Planning]STR Proposed Ordinance

Follow Up Flag: Follow up
Due By: Tuesday, May 12, 2020 4:00 PM
Flag Status: Flagged

I printed this off for the file

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Alex White
Sent: Friday, May 8, 2020 2:20 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: FW: [CD Planning]STR Proposed Ordinance

Fyi, another short-term rental comment. Not sure if this needs to be forwarded onto the consultant or not.

Alex White

Planner I

Chelan County Community Development

T: 509.667.6586

alex.white@co.chelan.wa.us

Notice: All email sent to this address will be received by the Chelan County email system and may be subject to public disclosure under GR 31.1 and Chapter 42.56 RCW and to archiving and review.

From: Ken Longley [<mailto:kenlongley66@gmail.com>]
Sent: Friday, May 8, 2020 2:16 PM
To: CDPlanning
Subject: [CD Planning]STR Proposed Ordinance

External Email Warning! This email originated from outside of Chelan County.

I own a home at Lake Wenatchee. Approximately three years ago the large house next to me sold to a couple of doctors from Seattle. They told me that they couldn't afford the house so so they would be doing short term rentals. I tried, without success, to work with them in advance so that the traffic, noise, parking, and garbage issues could be avoided, or at least minimized. Since they were "self managing" they were not present and refused to deal with problems or to even respond to my texts, emails or voice mails.

My comments to the STR Proposed Ordinance are based on my experience with these non resident owners.

1. Like many other places around the lake, we share a driveway with other owners. In order to access my property, I have to drive across my neighbors property in accordance with a surveyed, recorded easement. This easement is directly in front of their house, but they have consistently refused to recognize my right and in fact have directed their renters to park on my access.

In the Proposed Ordinance, the applicant must indicate an appropriate level of off street parking. If my neighbors describe the parking without acknowledging my access easement, how will the county deal with this situation prior to issuance of a license? For this reason, no application for a license should be issued prior to the neighbors being able to review and confirm issues like this. When an owner applies for a license the applicant should be required to provide notice to all neighbors who will be impacted by the operation of a STR.

2. The shared driveway to our homes is not plowed in the winter and there is no off street parking available to my neighbor. Our driveway usually is impassible until @May. In situations where there is no winter off street parking, the applicant should be prohibited from renting from November 1 until May1.

3. Issues of non-compliance will inevitably arise during the term of a license that has been granted. Simply calling an off site manger to complain is not sufficient. there should be a system where transgressions can be reported and the license pulled or suspended. there should be complete transparency in this process for the neighbors and the owners.

4. The current density is unacceptable. 100% of all STR's should NOT be allowed to be grandfathered in. An acceptable density should be found given the characteristics of the neighborhood and other factors and a set number of licenses could be issued on a first come, first serve basis. The remainder could be in line for the next year's licensing round. In addition, the density should NOT immediately rise in the first five years. We need to see whether whatever density is originally agreed to is working, and whether increasing the density is necessary or desired.

Thank you for taking the time to review this important issue.

Ken

Lisa Grueter

From: Stan Winters <winterss1@me.com>
Sent: Sunday, May 10, 2020 9:04 PM
To: Lisa Grueter
Subject: Comments on STRs in Chelan County
Attachments: UW Law Review Community Consequences of Airbnb.pdf; UW article Summary PDF.pdf; Short Term Rental Housing Restrictions National Association of Realtors LEGAL.pdf

To: Lisa Grueter

Berk Consulting

Dear Lisa,

I would like to add comments pertaining to the issue of Short Term Rentals in Chelan County.

1. **What seems to be missing from the discussion about Short Term Rentals is a Vision for Chelan County.** We should consider formally adopting something like what “Our Valley, Our Future”, has done with the goal *to develop an overall vision and strategic action plan for the region, and to improve residents’ quality of life by creating a vibrant community while addressing some of our toughest challenges.* This should frame decisions about STRs.

Unfortunately, instead of making decisions based on a shared vision for our community, decisions may be made just to create a compromise, which will ensure that everyone gets something, everyone loses something and the debates and animosity will continue.

2. **Zoning in Chelan County and UGAs:** Zoning in general serves multiple important issues including providing clear directions for planning infrastructure such as roads, water system, sewers, and business services, and for keeping incompatible uses separate from each other.

It is clear that in the Chelan County Zoning and the Peshastin UGA zoning, *only uses listed in the use charts for each particular zone are allowed.* If a use is not listed in the zone chart, that use is not allowed. Neither the general Chelan County code nor the Peshastin UGA code list Short Term Rentals (or vacation rentals, or hotels, or motels, or tourist lodging) as allowed in residential zones. Therefore they are not allowed. **This makes all Short Term Rentals in residential zones in the county (except in Manson) illegal.**

3. Restricting or Banning Short Term Rentals is not a “Taking”.

Chelan County can defend successfully any challenges to STR restrictions or outright bans. The Oregon Supreme Court ruled in favor of a ban on STRs in Canon Beach. Details of this case are in the UW Law Review article that is attached. The analysis added: **“Given the effects of Airbnb on the local housing market, as well as its role in accelerating gentrification, it is likely that a court applying the Cannon Beach and Agins analysis would find for the local jurisdiction, rather than the Airbnb host.”**

4. I have attached two documents (and one summary) that are the best, and most objective and factual summaries of STR issues I have seen. If you would like to see STR issues framed in the larger context of benefits and negative impacts, please read these articles.

1. ***University of Washington Law Review article on the Effects of Short Term Rentals on Communities.*** This is a 7 page summary of a 70 page document, which I’ll also attach. If you don’t have time to read the complete document here are a few key points:

Costs to Communities

(STR) hosts gain a financial benefit while imposing costs on their neighbors and the surrounding communities. The surrounding community experiences a loss of affordable housing, increase in average rental prices, and changes in neighborhood character.

Property Rights: The Oregon Supreme Court ruled in favor of a ban on STRs in Canon Beach, OR.

In **Cope v. City of Cannon Beach**, the Supreme Court of Oregon considered whether a municipal zoning ordinance prohibited transient occupancy was a taking under the Constitution. Landowners challenged the ordinance as an impermissible taking without providing just compensation in violation of the Fifth and Fourteenth Amendments. In finding for the City of Cannon Beach, the Supreme Court of Oregon stated that the ordinance substantially advanced the legitimate governmental interest of “securing affordable housing for permanent residents and in preserving the character and integrity of residential neighborhoods” and that there was a nexus between the regulation and interest served. The court further stated that the ordinance did not deny owners an economically viable use of property. In finding for the City of Cannon Beach, the Supreme Court of Oregon stated that the ordinance substantially advanced the legitimate governmental interest of “securing affordable housing for permanent residents and in preserving the character and integrity of residential neighborhoods” and that there was a nexus between the regulation and interest served. The court further stated that the ordinance did not deny owners an economically viable use of property.

Conclusion

Policymakers must adopt approaches that conform to the following overarching principles:

Protect affordable housing stock: As hosts realize additional income and equity from underutilized resources, market pressure increases to convert long-term rentals to short term accommodations. However, doing so depletes local affordable housing stock. Given the dearth of affordable rental housing, the pressure to convert long-term rental stock to the Airbnb market stresses an already under-resourced market.

Prevent hotelization of residential neighborhoods: Preventing hotelization—fundamentally changing the nature of residential neighborhoods through proliferation of commercial accommodations—is essential to control noise and unsanitary conditions, and maintain a community’s social fabric.

2. **Community Consequences of AirBNB, University of Washington Law Review** complete article with footnotes. The article is attached, and you can also access through this link: <file:///C:/Users/swinters/Desktop/STRs/UW%20Law%20Review%20Community%20Consequences%20of%20Airbnb.pdf>

3. **SHORT-TERM RENTAL HOUSING RESTRICTIONS, White Paper prepared for the National Association of Realtors.** [file:///C:/Users/swinters/Downloads/STR%20NAR%20LEGAL%20\(1\).pdf](file:///C:/Users/swinters/Downloads/STR%20NAR%20LEGAL%20(1).pdf)

This paper, although prepared by the National Association of Realtors, comes to very similar conclusions to the University of Washington Law School paper.

Summary: While individual hosts and guests may benefit economically, the use of short-term rentals produces significant consequences for the surrounding community. Airbnb proliferation causes fewer affordable housing options, higher average asking rents, and erosion of neighborhood social capital.

Current regulations attempt to walk the line between protecting property rights and mitigating externalities created by short-term rental accommodations and borne by the local community. In doing so, *the law fails to adequately address consequences resulting from the vast increase in short-term rental accommodations.*

The clearest, cleanest solution is to use zoning to restrict Short Term Rentals to areas that are designed and meant to serve tourist needs.

The unsurmountable problem is that the uses of residential areas – neighborhoods and communities, are incompatible with non-owner occupied Short Term Rentals (AKA Mini-Hotels). Neighborhoods are by definition made up of people who share some common interest in their community. They work locally, they send their kids to schools in the community, and they look out for each other's interests. Short Term Rental users don't have any of these characteristics. They use the infrastructure of the community, they reduce the number of available homes, they reduce the number of rental available, and they don't add any "social capital" to the community. These two uses; residential and commercial, must be separated.

Without intact communities and neighborhoods what do we really have left?

Why would we, Chelan County, trade our communities and residential areas... where we raise our families and live our lives, just for the ability for a few thousand people (many of them not Chelan County residents) to make commercial investments here. Those people have plenty of other investment options that don't include degrading our communities and neighborhoods.

Please make the decision to ban non-owner occupied Short Term Rentals in our county's residential areas.

Sincerely,

Stan

Stan and Vania Winters
8200 Riverview Rd
Peshastin, WA 98847
509 293-0457

SHORT-TERM RENTAL HOUSING RESTRICTIONS

White Paper

PREPARED BY



©Copyright 2011, National Association of Realtors[®]
All rights reserved

This document has been prepared by Robinson & Cole LLP in its capacity as consultant to NAR, for informational purposes only. The information contained in this document is not intended nor should it be construed as a legal opinion as to federal or state law with respect to any issue addressed. If NAR or its members require legal advice on any issue addressed in this paper, they should consult local counsel.

SHORT-TERM RENTAL HOUSING RESTRICTIONS

TABLE OF CONTENTS

	Page
PREFACE	iv
SECTION 1: INTRODUCTION	1
1.1 Purpose and Scope of Paper.....	1
SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS.....	1
2.1 Purpose – The Municipal Perspective.....	1
2.1.1 Protection of Neighborhood Environment.....	2
2.1.2 Protection of Physical Characteristics	2
2.1.3 Revenue.....	2
2.1.4 Fairer Competition with Licensed Lodging.....	3
2.1.5 Protection of Renter Safety.....	3
2.2 Types of Short-Term Rental Restrictions	3
2.2.1 Prohibition.....	3
2.2.2 Geographically-Based Restrictions.....	3
2.2.3 Quantitative and Operational Restrictions	4
2.2.4 Registration/Licensing Requirements.....	6
2.3 Enforcement.....	6
SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS.....	7
3.1 Impacts on Rental Property Owners	7
3.1.1 Rental Income	7
3.1.2 Property Values.....	8
3.1.2.1 Existing Short-Term Rental Properties.....	8
3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties	8
3.1.3 Operational Costs.....	9
3.1.4 Nonconforming Use Status	9
3.2 Community Impacts.....	9
3.2.1 Local Real Estate Market.....	9
3.2.2 Tourism.....	9

TABLE OF CONTENTS

(continued)

	Page
3.2.3 Local Economy	11
3.2.4 Tax Revenue	11
3.2.5 Affordable Housing	11
3.2.6 Governmental Administrative Costs.....	12
3.3 Impacts on Renters.....	12
3.3.1 Rental Fees.....	12
3.3.2 Inventory of Short-Term Rental Units.....	12
3.4 Unintended Consequences of Short-Term Rental Restrictions	13
3.4.1 “Underground Market” for Short-Term Rental Units.....	13
3.4.2 Uncertainty in the Short-Term Housing Market.....	13
SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS	13
4.1 Authority to Regulate.....	13
4.2 Takings.....	14
4.3 Due Process.....	15
4.4 Equal Protection.....	16
SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS.....	18
5.1 Question the Need for Short-Term Rental Restrictions.....	18
5.1.1 Empirical Analysis.....	18
5.1.2 Stakeholder Input	19
5.1.3 Public Process	19
5.2 Suggest Alternatives to Short-Term Rental Restrictions	19
5.2.1 Enforcement of Existing Ordinances	19
5.2.1.1 Noise Limits.....	19
5.2.1.2 Public Nuisance	20
5.2.1.3 Property Maintenance Standards	21
5.2.1.4 Unruly Public Gathering Ordinance	21
5.2.1.5 Nighttime Curfew	21
5.2.1.6 Parking Restrictions	22

TABLE OF CONTENTS
(continued)

	Page
5.2.2 Adoption of Ordinances that Target Community-Wide Issues.....	22
5.3 Short-Term Rental Housing Regulation Best Practices.....	22
5.3.1 Narrowly-Tailored Regulations	22
5.3.2 “Grandfathering” Provisions.....	23
5.3.3 Quantitative and Operational Restrictions	24
5.3.4 Licensing/Registration Requirements.....	25
5.3.5 Inspection Requirements.....	26
5.3.6 Enforcement Provisions	27
GLOSSARY OF TERMS.....	30

PREFACE

This white paper on *Short-Term Rental Housing Restrictions* has been prepared by Robinson & Cole LLP in its capacity as national consultant to NAR. The paper is one in a series of white papers that NAR requests be prepared from time to time in order to focus on a particular smart growth-related issue that has arisen with sufficient frequency in communities around the country to merit a more in-depth analysis.

The analysis of short-term rental housing restrictions in this paper is provided by NAR under its Smart Growth program to help REALTORS® at the state and local level better understand the issues involved in these types of restrictions, and to tailor strategies, as appropriate, to address short-term rental housing regulatory initiatives in their communities.

Brian W. Blaesser
Robinson & Cole LLP
September 2011

SECTION 1: INTRODUCTION

1.1 PURPOSE AND SCOPE OF PAPER

This paper was prepared at the request of the National Association of REALTORS[®] (NAR). The purpose of this paper is to (1) explain the problem of short-term rental housing restrictions; (2) categorize and describe the different approaches taken by local governments to regulate short-term rental housing in their communities; (3) analyze the issues raised by these different regulatory approaches; (4) provide Realtors[®] with ways to address these issues; and (5) outline “best practices” approaches to short-term rental housing that Realtors[®] can use in discussing the issue with local government officials.

1.2 KEY TERMS

The term “short-term rental housing” typically means a dwelling unit that is rented for a period of less than thirty consecutive days. In general, short term rental housing differs from bed & breakfasts, hotels, motels, and other “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although bed & breakfasts often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator on-site.¹ Boarding houses differ from short-term rentals by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants.² Boarding houses also tend to be less transient than short-term rentals.³ Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office.⁴ In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, or resort dwelling units.

Terms that appear in **bold typeface** are defined in the Glossary found at the end of this paper.

SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS

2.1 PURPOSE – THE MUNICIPAL PERSPECTIVE

Many communities around the country, both vacation destination communities and non-vacation communities, have implemented some form of short-term rental housing regulation. Below is an overview of the most common reasons cited by communities for regulating short-term rental housing.

¹ See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

² See APA Report at 5.

³ See APA Report at 5.

⁴ See APA Report at 5.

2.1.1 Protection of Neighborhood Environment

The most commonly cited municipal purpose for regulating short-term rental housing is to protect the character of existing residential neighborhoods. Often these communities are responding to complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic, and other disruptive activities. Generally speaking, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being a good neighbor. This rationale is evident in the “resort dwellings” ordinance adopted by the City of Venice, Florida, which states:

[The] City council finds that resort dwelling rental activities in single-family neighborhoods affects the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship. The intent of these regulations is to prevent the use of single-family residences for transient purposes in order to preserve the residential character of single-family neighborhoods.⁵

2.1.2 Protection of Physical Characteristics

Some communities also cite the need to protect the physical characteristics of their residential neighborhoods. The underlying rationale is that short-term rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. At least, in theory, absentee property owners are presumed to be less diligent about the types of regular and routine maintenance tasks typically associated with home ownership, such as lawn maintenance, tree and shrub pruning, and exterior painting.

2.1.3 Revenue

For many communities, particularly those with a robust tourist industry, short-term rentals represent a potentially significant source of tax revenue. In Texas, for example, the Hotel Occupancy Tax statute broadly defines the term “hotel” to include any building that offers sleeping accommodations for consideration, including a “tourist home” or “tourist house,” and imposes a six percent tax on the price paid for such accommodations.⁶ Moreover, the Municipal Hotel Occupancy Tax statute authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.⁷ The potential revenue available to municipalities with authority to tax short-term rentals is exemplified by a 2011 study prepared by the city auditor for Austin, Texas, which estimated that the city could gain \$100,000 to \$300,000 annually by collecting taxes on short-term rental properties.⁸ Communities that desire to collect such taxes may impose registration or licensing requirements as a means of identifying properties that are being used for short-term rentals and are therefore subject to taxation.

⁵ Venice, FL Land Development Code § 86-151.

⁶ See Texas Code §§ 156.001, 156.052. Accommodations of “at least 30 consecutive days, so long as there is no interruption of payment for the period,” are exempt from the tax. *Id.* § 156.101.

⁷ See Texas Code § 351.003.

⁸ See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

2.1.4 Fairer Competition with Licensed Lodging

Short-term rental restrictions may also be viewed as a means of leveling the playing field between the short-term rental industry and competing overnight lodging uses that may be specifically regulated under state or local law, such as hotels and bed and breakfasts. In some cases, the hotel industry has lobbied for the adoption of such regulations on the grounds that short-term rentals are functionally the same as hotel units and therefore should either be taxed and regulated like hotels, or prohibited. At a June 2011 meeting of the Planning Board of Buncombe County, North Carolina, for example, several hoteliers cited unfair competition in arguing against the potential repeal of a ban on vacation rentals in the county's more restrictive residential zoning districts. One industry representative testified that hotels "spend many, many hours and many, many dollars abiding by all the regulations that [hotels] are required to abide by and that many do not apply to short-term rentals."⁹

2.1.5 Protection of Renter Safety

A less commonly cited reason for the adoption of short-term rental regulations is the protection of renter safety. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units. The City of Big Bear Lake, California, for example, has a "transient private home rentals" ordinance that is intended, in part, "to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions."¹⁰

2.2 TYPES OF SHORT-TERM RENTAL RESTRICTIONS

2.2.1 Prohibition

From the perspective of a short-term rental property owner, the most severe form of restriction is an outright ban on short-term rentals. A short-term rental prohibition may be limited to specific neighborhoods or zoning districts, or may be community-wide.

2.2.2 Geographically-Based Restrictions

Communities that choose to allow short-term rentals often use their zoning authority to regulate the use on a geographic basis. For example, Venice, Florida regulates short-term rental properties (referred to locally as "resort dwellings") only in the city's Residential Estate (RE) and Residential Single Family (RSF) zoning districts.¹¹ Similarly, Maui County, Hawaii permits transient vacation rentals only within certain business zoning districts and certain designated

⁹ "Buncombe planners wade into Asheville-area vacation rental issue again; County debates relaxing the rules," *The Asheville Citizen-Times*, June 6, 2011.

¹⁰ City of Bear Lake, CA Municipal Code § 17.03.310(A).

¹¹ See generally Venice, FL Land Development Code § 86-151.

“destination resort areas,” including the Wailea, Makena, Kaanapali, and Kapalua Resort Areas.¹²

2.2.3 Quantitative and Operational Restrictions

Other communities that allow short-term rentals may choose to implement a cap on the number of short-term rental permits that may be issued. Such an approach constitutes a compromise between short-term rental owners who argue that they have the right to rent their properties on a short-term basis, and opponents who argue that short-term rentals should be prohibited as an unlawful commercial use in a residential neighborhood. Quantitative restrictions may take the form of a fixed limit on the total number of short-term rental permits that may be issued at any given time. The City of Santa Fe, New Mexico, for example, authorizes the Land Use Director to issue “up to 350 short term rental permits” for residential properties that do not otherwise qualify for permits as an accessory dwelling unit, owner-occupied unit, or unit located within a “development containing resort facilities.”¹³ Similarly, the City of Cannon Beach, Oregon maintains a 92 permit cap on the number of transient rental permits that will be issued by the city.¹⁴ Alternatively, a community may implement a proximity restriction that prohibits a short-term rental property from being located within a certain distance of another short-term rental property. The “Residential Vacation Rentals” ordinance of San Luis Obispo County, California, for example, provides:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.¹⁵

Another type of quantitative restriction is that in the Mendocino County, California zoning ordinance, which requires the county to maintain a ratio of “thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”¹⁶

Many short-term rental regulations incorporate performance-type standards for the operation of short-term rental properties. Below are examples of these types of standards that are frequently incorporated into short-term rental regulations:

- **Maximum Occupancy Limits:** This standard limits the maximum overnight occupancy of short-term rental properties based on the number of bedrooms in the home (for example, the Isle of Palms, South Carolina limits overnight occupancy to two persons per bedroom plus an additional two persons¹⁷) and/or on the septic capacity of the property. In Sonoma County, California, for example, the maximum overnight occupancy of a vacation rental property on a conditional septic system is “equal to the design load of the septic system.”¹⁸

¹² See Maui County, HA County Code § 19.38.030(B).

¹³ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(i).

¹⁴ See City of Cannon Beach, OR Zoning Code § 17.77.020(F).

¹⁵ San Luis Obispo County, CA Code § 23.08.165(c).

¹⁶ Mendocino County, CA Code § 20.748.020(A).

¹⁷ See Isle of Palms, SC City Code § 5-4-202(1).

¹⁸ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(2).

- Rental Period Restrictions: This restriction places a limit on the number of times a property may be rented for short-term occupancy. The City of Santa Fe, New Mexico, for example, limits short-term rental units to a maximum of 17 rental periods per calendar year and permits no more than one rental within a seven consecutive day period.¹⁹
- Parking Requirements: This standard may require that the short-term rented property provide more off-street parking than comparable properties that are occupied by owners or long-term tenants. Santa Fe also specifically prohibits short-term rental occupants from parking recreational vehicles on site or on the street.²⁰
- Noise Level Limits: This standard applies specific noise level limitations to activities associated with short-term rental properties. Sonoma County’s vacation rental ordinance, for example, includes an “Hourly Noise Metric” table that imposes specific quantitative noise level limits on vacation rentals during “activity hours” (9:00 a.m. to 10:00 a.m.) and “quiet hours” (10:00 p.m. to 9:00 a.m.).²¹
- Required Postings: This standard requires owners to prominently display a copy of the operational restrictions and contact information for the owner, manager, or other representative of the rental property.²² Owners may also be required to incorporate the operational restrictions in all rental agreements.
- Emergency Access Requirements: If located behind a locked gate or within a gated community, short-term rental units may be required to provide a gate code or lockbox with keys to local police, fire, or emergency services departments.²³
- Mandatory Designated Representatives: This standard requires that the short-term renter provide a current 24-hour working phone number of the property owner, manager, or other designated representative to local officials and to property owners within a certain distance of the rental unit. Some communities also require that the designated representative be available during all rental periods within a certain distance (e.g., a one-hour drive) of the rental property.²⁴
- Trash and Recycling Facility Storage: This standard requires that trash and recycling bins be stored in a location that is not visible from public rights-of-way. Section 5.25.070 of the City of Palm Springs, California vacation rental ordinance, for example, states: “Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the collectors and between the hours of five a.m. and eight p.m. on scheduled trash collection days.”²⁵

¹⁹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²⁰ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²¹ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(6).

²² See, e.g., Venice, FL Land Development Code § 86-151(2)(b)(1).

²³ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(14).

²⁴ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(13).

²⁵ Palm Springs, CA Municipal Code § 5.25.070(g).

2.2.4 Registration/Licensing Requirements

Owners who intend to offer their property for use as a short-term rental unit may be required to register their property with the local government. Garrett County, Maryland, for example, requires owners to register their property with the Office of Licensing and Enforcement Management and to pay a one-time fee as condition precedent to receiving a “transient vacation rental unit license” from the County.²⁶ Short-term rental licenses often are valid only for a one- or two-year period, requiring property owners to renew the licenses—and to pay associated fees—on a regular basis.

Many communities require short-term rental properties to pass certain inspections prior to the issuance of a permit, license, or renewal. Tillamook County, Oregon, for example, as a condition to the issuance of a short-term rental permit, requires property owners to obtain a certification from a certified building inspector evidencing compliance with all applicable operational standards, including minimum fire extinguisher and smoke detector requirements, emergency escape and rescue standards, and structural requirements.²⁷

2.3 ENFORCEMENT

Communities typically enforce their short-term rental regulations (a) in accordance with a generally applicable enforcement provision contained in the code of ordinances or zoning ordinance, or (b) through a specific enforcement provision incorporated into the short-term rental regulations. Article 9 of the Isle of Palms, South Carolina Code of Ordinances is one example of a short-term rental ordinance that contains no specific enforcement provision, but is enforced under a generally applicable penalty provision.²⁸ Under the Isle of Palms Code of Ordinances, violation of the short-term rental ordinance is subject to the same penalties and procedures as a violation of any other provision the zoning code. Potential penalties for a violation are established under Section 5-4-7 of the Code of Ordinances, which states:

In case a structure or land is or is proposed to be used in violation of this chapter, the Zoning Administrator may, in addition to other remedies, issue and serve upon a person pursuing such activity or activities a *stop order* requiring that such person immediately cease all activities in violation of this chapter.

Any person violating any of the provisions of this chapter shall be deemed guilty of a *misdemeanor* and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. Each day that a violation continues shall constitute a separate offense.²⁹

²⁶ See Garrett County, MD Code of Ordinances § 160.03(A).

²⁷ See Tillamook County (OR) Short Term Rental Ordinances, Sections 6 (Standards) and 9.A.b (Short Term Rental Permit Application Requirements).

²⁸ See generally Isle of Palms, SC City Code §§ 5-4-201 to -206 (Short-Term Rentals) and § 5-4-7 (Violations and Penalties).

²⁹ Isle of Palms, SC City Code § 5-4-7 (Emphasis added).

By contrast, the short-term rental ordinances of Sonoma County, California and Santa Fe, New Mexico contain specifically applicable enforcement provisions. Under Section 26-88-120(g) of the Sonoma County vacation rental ordinance, individuals who register an initial complaint about a vacation rental property are directed to the contact person identified in the zoning permit or use permit issued for the property. Subsequent complaints are addressed to code enforcement officials who are responsible for conducting an investigation to determine whether there was a violation of a zoning or use permit condition. Code enforcement may accept neighbor documentation consisting of photos, sound recordings and video as proof of an alleged violation. If code enforcement verifies that a violation has occurred, then a notice of violation is issued and a penalty may be imposed in accordance with Chapter 1 of the Sonoma County Code. In addition, under Section 26-88-120(g)(1), code enforcement officers are also given the discretion to schedule a revocation hearing with the board of zoning adjustment. If a vacation rental permit is revoked, then a new zoning or use permit for a vacation rental may not be reapplied for or issued for a period of at least one year.³⁰ Santa Fe's short term rental unit ordinance includes a specific provision that authorizes the city to revoke a short term rental permit upon conviction for a third violation of the ordinance.³¹

SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS

3.1 IMPACTS ON RENTAL PROPERTY OWNERS

3.1.1 Rental Income

For some rental property owners, the adoption of short-term rental restrictions may result in the *loss* of rental income altogether. The most obvious example is an owner of property located in a zoning district where short-term rentals are no longer allowed under a local ordinance. In areas where short-term rentals are allowed, other property owners might face the loss of rental income due to their inability, for financial or other reasons, to satisfy the requirements for obtaining a permit, such as minimum off-street parking or structural requirements. As discussed in Section 5.3.6 below, some short-term rental regulations might also cause an owner to lose rental income because of suspension or revocation of a rental permit, even if the reason for suspension or revocation is beyond the owner's control (e.g., tenant behavior).

There are several ways in which a short-term rental restriction might also result in a *decrease* in rental income. An ordinance that restricts the number of times a property may be rented per year could have a significant impact on the property's income potential. Santa Fe, New Mexico, for example, limits short-term rentals to 17 rental periods per year.³² A maximum overnight occupancy provision could also negatively affect the income potential of a rental property by reducing the number of guests to whom a home may be rented. Rental restrictions can also cause a reduction in rental income where they have the effect of narrowing the field of potential tenants or discouraging vacationers from renting a home. For example, an ordinance that prohibits

³⁰ See generally Sonoma County, CA Code of Ordinances § 26-88-120(g).

³¹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(iv).

³² See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii)(B).

short-term occupants from parking a recreational vehicle on site or on the street might deter families who travel by RV from renting a home in Santa Fe.³³

3.1.2 Property Values

Short-term rental restrictions can affect property values in different ways. Generally speaking, all else being equal, if identified negative impacts of short-term rentals in a district or neighborhood are reduced or eliminated by short-term rental housing restrictions, property values may increase. On the other hand, the added limitations on the use of properties that short-term rental housing restrictions impose may cause property values in the district or neighborhood to decrease. The precise impact that short-term rental restrictions have on property values will depend on various factors, including the general character of the community (e.g., vacation destination versus non-destination community), the precise terms of the ordinance, local and national economic conditions, and local real estate market conditions.

3.1.2.1 Existing Short-Term Rental Properties

In general, the value of a home that was used as a short-term rental prior to the adoption of restrictions, but is either prohibited or restricted from future use as a short-term rental, can be expected to *decrease*. That is particularly true in vacation destination communities, where homeowners often purchase second homes as investment properties.³⁴ These potential buyers often plan to use the second home as a short-term rental property until they retire or otherwise become able to maintain the property as their full-time residence.³⁵ Such buyers would tend to be less interested in purchasing in an area where the short-term rental market is highly uncertain or is constrained by burdensome regulations.

In some circumstances, it is conceivable that a short-term rental ordinance could increase the value of those homes that were used as short-term rentals prior to the adoption of the restrictions *and* become lawfully licensed for use under the new regulations. Under the general economic principle of supply and demand, if an ordinance has the effect of reducing the *supply* of short-term rental properties and the *demand* for short-term rental properties rises or remains constant, then the value of individual properties licensed as short-term rental properties after the adoption of regulations, can be expected to rise.

3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties

The impact of short-term rental restrictions on the value of properties that were not used as short-term rentals prior to adoption of the restrictions will also vary. The value of a property that becomes licensed as a short-term rental for the first time under a new ordinance conceivably could *increase* if the quantity of short-term rental properties on the market falls as a result of the

³³ Section 14-6.2(A)(6)(a)(ii)(E) of the Santa Fe Short Term Rental Ordinance states: “Occupants shall not park recreational vehicles on site or on the street.”

³⁴ See National Association of Realtors®, *Nearly One in Seven Homebuyers Owned or Bought A Second Home During First Quarter*, July 13, 2003 (accessed at <http://www.realtor.org/publicaffairsweb.nsf/Pages/SecondHomeReport?OpenDocument>).

³⁵ See *id.*

ordinance. In residential neighborhoods where the existence of short-term rentals is considered a negative, an ordinance that prohibits future short-term rental activity in those neighborhoods could positively affect the value of homes in these locations.

3.1.3 Operational Costs

Short-term rental regulations tend to increase the cost of owning and operating a rental property in a number of ways. The regulations typically require owners to pay an up-front registration or permit fee and may also require payment of additional licensing fees on an annual or other recurring basis. Inspection requirements also add to the cost of operating a short-term rental since, in most cases, the inspections are performed at the owner's expense. Performance standards may also require an owner to undertake costly improvements in order to obtain a short-term rental permit. An owner may be required to expand an existing driveway in order to satisfy a minimum parking requirement or to upgrade electrical or sewer systems in order to qualify for a permit. In addition, a rental property owner who resides out of state may have to hire a property manager in order to satisfy a requirement that a designated representative be available at all times and within a certain proximity of the unit during any rental period.

3.1.4 Nonconforming Use Status

A property that was used as a short-term rental prior to the adoption of an ordinance that no longer allows short-term rentals may become a **nonconforming use** under state and local zoning laws. Although state and local zoning laws typically allow nonconforming uses to continue, the right to alter or expand a nonconforming use is usually limited and often requires the issuance of a special permit, or an equivalent form of zoning relief, from the local planning commission or board of appeals. In addition, a nonconforming use that is discontinued for a specific period of time (typically one or two years) may be deemed abandoned, and thereafter prohibited from resuming at a future date.

3.2 COMMUNITY IMPACTS

3.2.1 Local Real Estate Market

In vacation destination communities, many property owners depend on the income gained from short-term rentals to pay their mortgages, real estate taxes, association dues, and other expenses. If that income is taken away or severely reduced by short-term rental restrictions, the only alternative for those homeowners might be to sell their homes immediately in order to avoid foreclosure or a distressed sale. A widespread ban on short-term rentals that results in a substantial number of homes being sold or foreclosed upon may flood the market, causing property values to fall and remain depressed for a period of time.

3.2.2 Tourism

Short-term rental restrictions may negatively impact local tourism in at least two ways. First, they may affect the occupancy rates of vacation rentals by increasing the per-person cost of short-term rentals because they limit the maximum occupancy of a short-term rental unit. Short-

term rental restrictions may also cause rental property owners to increase their rental rates and minimum security deposits in order to cover the increased cost of operating a short-term rental and the risk of incurring a fine or having their rental licenses revoked or suspended. All else being equal, the higher rental rates paid by smaller groups of tenants, increase the per-person cost of short-term rentals in communities with short-term rental ordinances.

Second, tourists who become aware of the new restrictions may perceive them as being motivated by, and evidence of, an “anti-tourist” sentiment among full time residents of the community. Regulations that single out short-term rentals for different treatment may implicitly brand short-term renters as being potentially disruptive even though an individual tenant may have done nothing wrong. Provisions that allow random inspections of short-term rentals without imposing reasonable restrictions on the time or manner of those inspections may be perceived as an invasion of privacy and an unreasonable disruption of a family vacation. A perceived anti-tourist sentiment may ultimately discourage tourists from vacationing in that community.

A January 2010 report prepared by the Napa Valley Vacation Rental Alliance, argued that the availability of short-term rental properties could determine where a family or groups of friends vacationing together chooses to stay. The report states:

Throughout the world, some travelers prefer private dwellings to hotels. For instance, those traveling as a family or group of friends often want spacious accommodations and kitchens. This market segment will not substitute conventional lodging if vacation rentals are not provided, they will simply go elsewhere. Thus, by eliminating vacation rentals, Napa County would deter a substantial number of visitors who currently spend on restaurants, wine, attractions and services and who would instead spend for leisure outside our County.³⁶

The 2008 study “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County”³⁷ commissioned by the Realtors[®] Association of Maui (the “Maui TVR Study”) reached a similar conclusion. Acknowledging that “the TVR industry is concerned about . . . the potential enactment of legislation meant to marginalize [the TVR] industry, and the potential economic consequences of such policies,” the Maui TVR Study concluded:

The extent of the loss of the TVR industry due to government regulations depends to what extent TVR visitors substitute an alternative Maui County accommodation type to TVRs if they are unavailable or not sufficiently available to meet the current and expected future demand level for their accommodation type. In a global market place with alternatives to Maui destinations offering a literal potpourri of accommodation experiences, the modern, well-informed and sophisticated visitor can find the accommodations experience that best fits their tastes and preferences.

³⁶ Napa Valley Vacation Rental Alliance (NVVRA): A Coalition of Napa County Stakeholders (prepared for Napa County by Napa Valley Vacation Rental Alliance (NVVRA), Jan. 2010) (available on-line at <http://www.white.com/nvvra/media/WHY%20CODIFYING%20VACATION%20RENTALS%20NOW%20IS%20OOD%20PUBLIC%20POLICY.pdf>).

³⁷ “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County,” prepared by Dr. Thomas Loudat & Dr. Prahlad Kasturi for the Realtors[®] Association of Maui (Jan. 8, 2008) (hereinafter the “Maui TVR Study”).

Based on the increasing market share of TVRs on Maui from 2000 to 2006 relative to other accommodation types one can reasonably surmise that the modern visitor increasingly prefers a TVR or its equivalent experience. Thus, even though elimination of Maui TVRs may not result in the loss of all TVR visitors who may substitute an alternative Maui County accommodation type yet available, we would still expect a significantly negative economic impact in Maui County if TVRs are eliminated or significantly reduced.³⁸

3.2.3 Local Economy

Local economies that lean heavily on the tourist economy are more susceptible to the potential impacts of short-term rental restrictions. Even a slight impact on tourism in these communities can have a significant negative effect on the viability and success of restaurants, retail establishments, and other local businesses that provide services to tourists. The potential dollar impacts of a reduction in visitor numbers due to a short-term rental restriction is illustrated by the daily spending calculations of the Maui TVR Study, which calculated that transient vacation rental visitors spent an average of \$159.16 per day in Maui County.³⁹ Based on 2006 transient vacation rental visitor data (105,967) and a 6.85 day average length of stay, the study concluded that transient vacation rentals produced more than \$115 million in total revenue from lodging, food and beverage, entertainment, shopping, and other county businesses and services.⁴⁰

3.2.4 Tax Revenue

Short-term rental restrictions can have a positive effect on tax revenue if communities are authorized by state law to impose and collect a tax on short-term rentals. Cities, towns and villages in Texas, for example, are authorized by the Municipal Hotel Occupancy Tax statute to impose and collect a nine percent tax on the price paid for short-term rentals.⁴¹ In 2011, the City of Austin estimated that it could gain an additional \$100,000 to \$300,000 in tax revenue by taxing short-term rental properties.⁴²

At the same time, however, short-term rental restrictions that negatively affect local tourism could cause sales tax revenue to decrease if restaurant and retail sales are down due to diminished tourism.

3.2.5 Affordable Housing

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.⁴³ In some cases, allowing short-term rentals may fuel speculation in rising housing markets by allowing investors to cover the

³⁸ Maui TVR Study at 1-2.

³⁹ See Maui TVR Study at 16.

⁴⁰ See Maui TVR Study at 16-17

⁴¹ See Texas Code § 351.003.

⁴² See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

carrying costs of a house for a period of time while the property appreciates in value and then sell it for a profit.⁴⁴ Tourist communities, in particular, may be affected if the workers in low-paying service and tourism related jobs can no longer afford to live in the community or within a reasonable commuting distance.⁴⁵

3.2.6 Governmental Administrative Costs

Short-term rental restrictions create additional administrative burdens on local government, including the processing of permit, licensing and registration applications. Local building officials are likely to be faced with an increased volume of required inspections. Code enforcement personnel and the police officers may be required to assume additional enforcement duties under a short-term rental ordinance. The financial burden of administering a short-term rental ordinance may weigh heavily on vacation-destination communities, where the a high volume of short-term rental properties may require local government to hire additional staff or pay increased overtime costs to current staff in order to implement the short-term rental program.

3.3 IMPACTS ON RENTERS

3.3.1 Rental Fees

As discussed above, the adoption of short-term rental restrictions may cause rental property owners to increase rental rates as a means of recovering licensing and permit fees, inspection and other related costs. If regulations expose a property owner to the risk of incurring a fine or having the owner's rental license suspended or revoked, the owner may also increase the minimum security deposit as a means of deterring tenants from engaging in behavior that might violate the short-term rental regulations.

3.3.2 Inventory of Short-Term Rental Units

Short-term rental restrictions can also reduce the inventory of short-term rental units in a community in various ways. For example, zoning regulations may prohibit short-term rentals in single-family residential zoning districts or within certain areas or neighborhoods. An owner who successfully operated a short-term rental property without complaint prior to the adoption of licensing requirements may be barred from continuing the use if the property does not conform to the new licensing criteria. More generally, owners may simply decide they do not want to assume the increased cost and risk of continuing to use their property as a short-term rental, and withdraw their properties from the inventory of short-term rental in the community.

⁴³ APA Report at 2.

⁴⁴ *See id.*

⁴⁵ *See id.*

3.4 UNINTENDED CONSEQUENCES OF SHORT-TERM RENTAL RESTRICTIONS

3.4.1 “Underground Market” for Short-Term Rental Units

Short-term rental restrictions that impose high permit and licensing fees, onerous inspection requirements, and performance standards that are difficult or costly for owners to satisfy might have the unintended effect of creating an underground market for short-term rentals, in which owners continue to rent their properties without obtaining the required permits. Owners who depend on rental income to pay their mortgages to pay the maintenance costs of a second home may be willing to risk incurring fines and other penalties if an ordinance creates obstacles that cannot be overcome or that may make it economically infeasible to obtain a rental permit.⁴⁶

3.4.2 Uncertainty in the Short-Term Housing Market

A short-term rental regulation that authorizes the suspension or revocation of a short-term rental permit can also introduce a degree of uncertainty in the short-term rental housing market. Vacation travelers often reserve short-term housing accommodations several months in advance of a planned vacation, particularly when the stay is planned during a destination’s peak visitation period. Under those circumstances, for example, it is conceivable that a family may make a reservation and pay a deposit several months in advance of a holiday ski vacation only to discover later that the home they had reserved is no longer available because its short-term rental permit was suspended or revoked. In some cases, by the time a vacation home renter makes that discovery, it may be too late to find suitable alternative short-term housing, leaving the vacationer with a negative impression of the local community—an impression that the vacationer is likely to share with others.

SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS

4.1 AUTHORITY TO REGULATE

In general, short-term rental restrictions are typically adopted under the specific authority of a state **zoning enabling statute** or the general **police power** delegated to local governments by the state constitution, or by statute. Zoning regulations that restrict short-term rentals in residential areas have been upheld where the restrictions are found to be substantially related to land use impacts in the area.⁴⁷ Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the zoning power.⁴⁸

However, in 2011 the Florida State Legislature enacted legislation that specifically limits the authority of local governments to regulate or prohibit short-term rentals. Enacted as Chapter No.

⁴⁶ See “More destinations shut the door on vacation rentals, *USA Today*, August 6, 2010 (commenting that the ban on short-term rentals in New York City apartments, most of which are already prohibited under many condominium and co-op bylaws, “will simply go further underground”).

⁴⁷ 5 RATHKOPF’S THE LAW OF ZONING AND PLANNING § 81:11 (4th Ed 2011) (hereinafter “RATHKOPF”) (citing to *Brown v. Sandy Bd. of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998) (finding that city has authority to prohibit short-term rentals in single-family neighborhood)).

⁴⁸ RATHKOPF § 81:11 (citing *Cope v. City of Cannon Beach*, 855 P.2d 1083, 317 Or. 339 (1993) and *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (6th Dist. 1991)).

2011-119 on June 2, 2011, the Florida law (entitled “An act relating to public lodging establishments and public food service establishments”) states:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.⁴⁹

As of the date of this paper, Florida appears to be the only state to have enacted legislation limiting the authority of local governments to regulate or prohibit short-term rentals. It is conceivable, however, that the Florida law may become a model for other states. This would appear to be the most likely in those states where short-term rentals comprise a meaningful segment of the tourist lodging industry.

4.2 TAKINGS

It is well established that a land use regulation that is excessively restrictive may constitute a “taking” of property for which compensation must be paid under the state constitution and the Fifth and Fourteenth Amendments to the United States Constitution.⁵⁰ The prevailing test for determining whether a regulatory taking has occurred was established in the landmark case of *Penn Central Transportation Co. v. City of New York*,⁵¹ decided by the United States Supreme Court in 1978. The *Penn Central* test requires a balancing of the public and private interests involved in each case, weighing the following three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner’s “distinct investment-backed expectations;” and (3) the character of the governmental action (i.e., physical invasion v. economic interference).⁵²

The application of the *Penn Central* “balancing test” is illustrated in an Oregon case that concerned a takings challenge to a short-term rental ordinance. In that case⁵³ rental property owners challenged a City of Cannon Beach, Oregon ordinance that prohibited the creation of new transient occupancy uses and required existing transient occupancy uses to end by 1997. The petitioners claimed that Ordinance 92-1 constituted a taking of property without just compensation under the Fifth and Fourteenth Amendments.⁵⁴ The Supreme Court of Oregon, however, upheld Ordinance 92-1, focusing ultimately on the economic impact of the restrictions:

We next consider whether Ordinance 92-1, by prohibiting transient occupancy, denies property owners economically viable use of their properties. We conclude that it does not. On its face, Ordinance 92-1 permits rentals of dwellings for periods of 14 days or more. The ordinance also permits the owners themselves to reside in the dwellings.

⁴⁹ The enrolled version of House Bill No. 883 is available on the Florida State Legislature’s website at: <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0883er.docx&DocumentType=Bill&BillNumber=0883&Session=2011>.

⁵⁰ PATRICIA E. SALKIN, 2 AMERICAN LAW OF ZONING § 16:1 (5th ed. 2008) (hereinafter “SALKIN”).

⁵¹ *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

⁵² SALKIN § 16:9 (citing *Penn Central*, 438 U.S. at 124).

⁵³ *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

⁵⁴ *See id.* at 1084.

Although those uses may not be as profitable as are shorter-term rentals of the properties, they are economically viable uses.⁵⁵

As the court's analysis indicates, plaintiffs who challenge a short-term rental restriction as a taking of property face an uphill battle. As a practical matter, it is difficult to argue that a short-term rental prohibition denies the owner of *all* economically viable use of his land, particularly where longer-term rentals are still allowed.

4.3 DUE PROCESS

The Fourteenth Amendment to the U.S. Constitution prohibits any governmental action that deprives “any person of . . . liberty or property, without **due process** of law.” This clause imposes both substantive and procedural requirements. The substantive component of the due process clause, known as “substantive due process,” tests the governmental purposes implemented by land use regulations. To satisfy substantive due process, a regulation must advance a legitimate governmental purpose.⁵⁶ In general, a local land use ordinance will survive a substantive due process challenge if there exists a rational relationship between the terms of the ordinance and a legitimate governmental interest.⁵⁷ A local ordinance may be challenged on due process grounds either on its face, or as applied to a particular case. When a landowner makes a *facial* challenge to a zoning ordinance, “he or she argues that *any* application of the ordinance is unconstitutional.”⁵⁸ On the other hand, when a landowner makes an *as applied* challenge, he or she attacks “only the specific decision that applied the ordinance to his or her property, not the ordinance in general.”⁵⁹

In a California case,⁶⁰ the plaintiffs challenged the city of Carmel's transient rental ordinance on substantive due process grounds, arguing that the prohibition was “not rationally related to the goals sought to be achieved.”⁶¹ The California court of appeals rejected the substantive due process claim, finding that the ordinance was rationally related to the goals and policies set forth in the city's general plan, as well as the stated purpose of the R-1 district.⁶² In support of its conclusion, the court explained that short-term rentals were inconsistent with the residential character of the community:

It stands to reason that the “residential character” of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or even 29 days. Whether or not transient rentals have the other “unmitigatable, adverse impacts” cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They

⁵⁵ *Id.* at 1086-87 (internal citations omitted).

⁵⁶ See SALKIN § 15:2.

⁵⁷ See *id.*

⁵⁸ *WMX Technologies, Inc. v. Gasconade County*, 105 F.3d 1195, 1198-99 n.1 (8th Cir. 1997) (emphasis added).

⁵⁹ See SALKIN § 15:2.

⁶⁰ *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6th Dist. Cal. 1991).

⁶¹ *Id.* at 1596.

⁶² See *id.* at 1589.

do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.⁶³

Referring back to its discussion of Carmel’s stated goals, the court summarily concluded:

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal.⁶⁴

The California state court decision illustrates the difficulty of challenging a short-term rental restriction on substantive due process grounds. In general, a short-term rental restriction seems likely to survive substantive due process scrutiny if the local jurisdiction articulates a legitimate governmental interest (e.g., the protection of residential character in predominantly single-family neighborhoods), and can produce some findings connecting short-term rental activity to the types of neighborhood and community impacts described in Carmel’s transient rental ordinance.

4.4 EQUAL PROTECTION

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which states the basic principle that all persons similarly situated should be treated alike.⁶⁵ The general rule is that a state or local law is presumed to be valid and will be sustained if the classification drawn by the law is rationally related to a legitimate state interest.⁶⁶ If a local or state law does not involve a suspect classification (e.g., one that treats persons differently on the basis of race, alienage, or national origin) or a fundamental right (e.g., the right to vote, the right to interstate travel), then an equal protection challenge is analyzed under the rational basis test. The rational basis test is a very deferential test, under which an ordinance generally will be upheld if there is any “reasonably conceivable state of facts that could provide a rational basis for the classification.”⁶⁷ Moreover, the rational basis test does not require a legislative body to articulate its reasons for enacting an ordinance, because “[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”⁶⁸ This means that a court may find a rational basis for a law, even if it is one that was not articulated by the legislative body.

A short-term rental ordinance may be vulnerable to an equal protection challenge on the ground that it treats similar properties differently based on whether a property is occupied by short-term tenants or longer term tenants. For example, take an ordinance that generally does not impose a

⁶³ *Id.* at 1591.

⁶⁴ *Id.* at 1596.

⁶⁵ See generally *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

⁶⁶ See generally *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

⁶⁷ *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, (1980).

⁶⁸ *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096 (1993).

maximum occupancy limit on single family homes in a city's residential zoning districts, but does impose such a limit on homes that are used for short-term rentals. On its face, this ordinance treats similar properties (i.e., single family homes in the same zoning district) differently, based on whether they are used as a short-term rental. Because no suspect classification or a fundamental right is implicated, an equal protection claim against the ordinance would be reviewed under the deferential rational basis test. For the same rational basis reasons discussed above in connection with a substantive due process challenge, the short-term rental ordinance is likely to survive judicial scrutiny.

Since 2000, as a result of the U.S. Supreme Court decision in *Village of Willowbrook v. Olech*,⁶⁹ "selective enforcement" claims in land use cases may also be brought under the Equal Protection clause. Selective enforcement claims generally assert that a municipality arbitrarily applied its land use ordinance to a conditional use permit or other land use approval, or that enforcement of the ordinance was arbitrarily selective.⁷⁰ In *Olech*, the village refused to supply water to the plaintiffs unless they granted the village an easement that it had not required of other property owners. It was alleged that the village did so to retaliate for the plaintiffs having brought an earlier, unrelated suit against the village. The question before the Supreme Court was whether an individual who does not have a suspect classification or fundamental interest claim can nevertheless establish a "class of one" equal protection violation when vindictiveness motivated the disparate treatment. The Court held:

Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."⁷¹

From a plaintiff's perspective, the difficult part of the *Olech* decision is its requirement that selective enforcement claims involve intentional treatment. Moreover, it is unclear whether the intentional treatment rule requires merely an intent to do an act or, more specifically, the intent to harm or punish an individual for the exercise of lawful rights.⁷² Since *Olech*, most cases involving "class of one" equal protection claims that assert selective enforcement have not been successful.⁷³

⁶⁹ *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073 (2000).

⁷⁰ BRIAN W. BLAESSER & ALAN C. WEINSTEIN, FEDERAL LAND USE LAW & LITIGATION § 1:20 (Thomson-Reuters/West: 2011) (hereinafter "BLAESSER & WEINSTEIN").

⁷¹ *Olech*, 528 U.S. at 564 (citations omitted).

⁷² See BLAESSER & WEINSTEIN § 1:20.

⁷³ See generally BLAESSER & WEINSTEIN § 1:20, fn. 7.

SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS

5.1 QUESTION THE NEED FOR SHORT-TERM RENTAL RESTRICTIONS

One of the first questions that should be asked when a city or town proposes to adopt a short-term rental ordinance is whether there truly exists a need for the restrictions. In some cases, the perceived need for a short-term rental ordinance may be based solely on anecdotal evidence about the alleged problems caused by short-term rental tenants rather than on documented evidence that short-term rental tenants are causing problems. If nothing more than anecdotal evidence is provided in support of a proposed ordinance, it may allow opponents to later argue that it was adopted arbitrarily without any rational basis.

5.1.1 Empirical Analysis

Where proposed short-term rental restrictions appear to be supported solely by anecdotal evidence, Realtors[®] should question whether empirical studies using data from police call logs, code enforcement activity, and prosecutorial records have actually established the alleged adverse impacts to the community, and the degree to which those impacts are attributable to short-term rental properties. Below are some examples of the types of inquiries Realtors[®] can make of local government officials:

- What number of complaints logged by the local code enforcement and police departments were generated by short-term rentals? Does the data evidence an increase in the number of complaints attributable to short-term rentals over the last five years?
- How do the complaints concerning short-term rentals relate to the number of individuals occupying the short-term rental that is the subject of the complaint? Does the city or town have factual support to justify a proposed occupancy limit for short-term rental housing and to what extent does this limitation exceed the occupancy limits applicable to other types of housing?
- Does a specific type of complaint (e.g., noise disturbance, litter or trash, parking violations, or late night parties) constitute a large percentage of the total number of complaints recorded in the last five years? If so, does a provision of the local zoning or general ordinance already regulate the offending behavior? If it is possible to address the majority of the problems by enforcing existing nuisance regulations, rather than by imposing new maximum occupancy limits on short-term rentals, it may call into question the need for the proposed ordinance.
- Does a disproportionate number of complaints arise from a small number of rental properties? If yes, then a more appropriate response might be to adopt narrowly tailored regulations. An

example of this approach would be a regulation that would apply only after one or more violations are found on a property, rather than imposing the cost and disruption of new regulations on all owners of short-term rental property.

5.1.2 Stakeholder Input

Realtors[®] should also urge that local government officials seek and consider input from individuals and organizations with a stake in the short-term rental industry as early in the process as possible. Stakeholder groups should include representatives of local homeowner associations, rental property management associations, the local Realtor[®] associations, the chamber of commerce, local tourism bureau, and other organizations involved in the short-term rental industry.

5.1.3 Public Process

Realtors[®] should actively monitor and participate in the public hearing process. Early on, Realtors[®] should request an invitation to participate in any stakeholder groups formed by the local government prior to the public hearing process. Local governments often allow interested parties to discuss their concerns with local officials responsible for drafting and advising the local legislative body on a proposed ordinance at the beginning of the process. To the extent possible, Realtors[®] should take advantage of this opportunity to meet with the local planner or other staff members who may be drafting a proposed short-term rental ordinance.

State and local open public meetings laws generally require local legislative bodies to publish notice of scheduled public hearings, typically in the local newspaper, by posted notice at city or town hall, and/or on the official website of the city or town. If a draft of the proposed short-term rental ordinance is available prior to the public hearing, Realtors[®] should request a copy and review it thoroughly in advance of the hearing.⁷⁴ Realtors[®] should be prepared to submit written comments and/or to testify at the public hearing about their concerns with the proposal.

5.2 SUGGEST ALTERNATIVES TO SHORT-TERM RENTAL RESTRICTIONS

5.2.1 Enforcement of Existing Ordinances

Communities that wish to address the potential negative impacts of short-term rentals on residential neighborhoods likely already have regulations in place that are aimed at curtailing those types of impacts on a community-wide basis. In many cases the existing ordinances already address the types of behaviors and activity that would be the focus of short-term rental performance standards or operational restrictions. Below are some examples.

5.2.1.1 Noise Limits

Absent **preemption** by federal or state law, the control of noise is generally within the police power authority of local government. Communities commonly adopt noise control ordinances

⁷⁴ The Realtor[®] association may obtain assistance in this effort through NAR's Land Use Initiative program.

for the purpose of controlling unnecessary, excessive, and annoying noise within the community. In the City of San Luis Obispo, California, for example, the Noise Control Ordinance Noise Control Ordinance (Chapter 9.12 of the San Luis Obispo Municipal Code) expressly declares any noise in violation of Chapter 9.12 to be a **public nuisance**, punishable by civil or criminal action. The term “noise disturbance” is defined to mean:

any sound which (a) endangers or injures the safety or health of human beings or animals, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates the factors set forth in Section 9.12.060 of this chapter. Compliance with the quantitative standards as listed in this chapter shall constitute elimination of a noise disturbance.⁷⁵

Additionally, specific types of noise violations that commonly arise in residential neighborhoods are regulated under Section 9.12.050, including the following:

- Noise disturbances that are “plainly audible at a distance of fifty feet from the noisemaker, unless the noise does not penetrate beyond the boundaries of the noisemaker’s own premise.”⁷⁶
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device between the hours of 10:00 PM and 7:00 AM in such a manner as to create a noise disturbance audible across a property line.⁷⁷
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device in a manner that creates a noise disturbance at any time in excess of noise levels defined in Section 9.12.060 (measured by decibel levels and duration of the disturbance).⁷⁸

5.2.1.2 Public Nuisance

In general, cities and counties have the police power to declare and abate nuisances. The Boulder, Colorado nuisance abatement ordinance (Title 10, Chapter 2.5 of the Boulder Revised Code) defines a “public nuisance” to mean:

[A]ny condition or use of any parcel on or in which two or more separate violations of the Boulder Municipal Code have occurred within a twelve-month period, or three or more separate violations have occurred within a twenty-four month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel.⁷⁹

⁷⁵ City of San Luis, California Municipal Code § 9.12.020(U).

⁷⁶ See San Luis Municipal Code § 9.12.050(A).

⁷⁷ See San Luis Municipal Code § 9.12.050(B)(1)(a).

⁷⁸ See San Luis Municipal Code § 9.12.050(B)(1)(b).

⁷⁹ “Nuisance Abatement Information Sheet,” City of Boulder, Colorado (available on-line at http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat_info.pdf).

No violations or actions are designated as “public nuisance” acts. Instead, the determination whether a violation triggers the nuisance abatement process is made by the responding law enforcement agency. For instance, in some cases, a trash violation may trigger the nuisance abatement process, while in others the problem might be best handled with a municipal court summons. Legal remedies to abate public nuisances generally include the filing of a criminal complaint, or a civil action, or an administrative abatement.

5.2.1.3 Property Maintenance Standards

A property maintenance ordinance might be adopted for the purpose of maintaining, preserving, or improving a community’s inventory of residential and non-residential buildings. To accomplish this, property maintenance ordinances typically establish standards for the exterior maintenance of affected structures, including basic structural elements such as foundations and supporting columns, exterior finish surfaces, and doors and windows. Property maintenance standards may also require property owners to maintain existing trees, shrubs and other significant vegetation, and to keep all exterior areas sanitary free of trash and refuse.

5.2.1.4 Unruly Public Gathering Ordinance

Some communities, particularly college towns, such as Berkeley, CA and Tucson, AZ, have adopted “unruly gathering” ordinances that create significant sanctions for residents and property owners who host gatherings that create a substantial disturbance, as well as for party attendees who contribute to the problem. A significant advantage that an unruly gathering ordinance would have over a general noise ordinance or short-term rental ordinance is that the individual responsible for the disturbance is also penalized, rather than the tenant and/or property owner alone. Since the penalties for violating a noise ordinance generally apply only to the residents of the property where the violation occurs, a noise ordinance is unlikely to deter party guests from violating its terms.

5.2.1.5 Nighttime Curfew

To the extent that under-aged drinking and juvenile crime are a significant contributors to excessive noise and party disturbances in short-term rental properties in residential neighborhoods, a nighttime curfew ordinance that prohibits persons under the age of 18 years from being on or about public streets and public places during specified hours of the day could be an effective deterrent. The effectiveness of nighttime curfews is evidenced by a 2002 survey published by National League of Cities, in which 97% of communities that have nighttime curfew ordinances reported that they help combat juvenile crime. It bears noting, however, that a juvenile curfew ordinance generally would not be applicable to college students and other youthful offenders over the age of eighteen. To the extent that parties hosted and attended by college-aged young people are perceived as causing the disturbances that are of greatest concern, a curfew ordinance would probably have little, if any, effect.

5.2.1.6 Parking Restrictions

Communities often address the problem of improperly parked vehicles and excessive numbers of vehicles parked in residential neighborhoods through off-street parking regulations. These regulations may include provisions that prohibit vehicle parking within front yard setback areas in residential zoning districts and that restrict vehicle parking to hard surface driveways or designated parking areas. Regulations may also prohibit parking on grass areas, sidewalks, or within a certain distance of side property lines.

5.2.2 Adoption of Ordinances that Target Community-Wide Issues

Communities that have not adopted general community-wide noise regulations or the other regulations aimed at curtailing the types of behaviors and activities that would be regulated under a short-term rental ordinance, should be encouraged to adopt such general regulations rather than to single out short-term rental properties for regulation.

5.3 SHORT-TERM RENTAL HOUSING REGULATION BEST PRACTICES

This section presents several types of “best practice” provisions that have been implemented in jurisdictions which have short-term rental restrictions and which Realtors[®] may find acceptable, depending upon local market conditions. Each section begins with a brief description of the type of best practices. This description is followed by one or more examples of the best practice technique as adopted by local jurisdictions.

5.3.1 Narrowly-Tailored Regulations

An effective short-term rental ordinance should be narrowly tailored to address the specific needs of the local community. The potential for over-regulation is a legitimate concern, particularly when a proposed ordinance is driven by the vocal complaints of one or more permanent residents about their negative experiences with nearby short-term renters. Residents often complain that short-term rentals are inherently incompatible with residential neighborhoods and demand an outright prohibition against the use. In those circumstances, the concern is that elected officials, in an effort to please their constituency, may acquiesce to those demands without carefully considering: (a) whether there truly exists a need for short-term rental restrictions; and (b) if a need exists, what regulatory approach is best-suited to addressing the particular needs of the community.

Short-term rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which short-term rentals need to be regulated. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas

would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

Best Practice Example: Clatsop County, Oregon. In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into nearly forty zoning district designations, including more than a dozen residential districts.⁸⁰ The county’s short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.⁸¹

5.3.2 “Grandfathering” Provisions

Short-term rentals that lawfully existed prior to the enactment of a short-term rental ordinance, but are not allowed under the newly adopted ordinance—either because the use is prohibited outright or because the applicant is unable to satisfy the criteria for obtaining a permit—should be allowed to continue (i.e., “grandfathered”) if the property owner is able to demonstrate that the short-term rental use pre-dated the ordinance. Zoning ordinances typically contain a general nonconformity provision that establishes the requirements for a use or structure to secure a legal nonconforming status. However, short-term rental ordinances may also contain specific grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

Best Practice Example: Kauai County, Hawaii. Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and -17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a nonconforming use certificate. To obtain a nonconforming use certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that:

[the] dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws . . . up to and including the time of application for a nonconforming use certificate.⁸²

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on submission of the following documentary evidence: records of occupancy and tax documents, including: State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment of deposits for reservations and fees for occupancy of the subject property by transient guests.⁸³

⁸⁰ See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010.

⁸¹ See Clatsop County, OR Ordinance No. 03-13.

⁸² Kauai County Code § 8-17.10(c).

⁸³ Kauai County Code § 8-17.10(e).

Best Practice Example: Monterey County, California. Monterey County’s short-term rental ordinance grandfathers short-term rental units that were in operation before the ordinance was adopted. Section 21.64.280 of the Zoning Ordinance provides:

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and Building Inspection and the administrative permit application is filed within 90 days of the effective date of this Section. . . . The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is no the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.⁸⁴

5.3.3 Quantitative and Operational Restrictions

Quantitative Restrictions. The use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of mitigating the impacts of short-term rentals can be viewed in two ways. On the one hand, such limitations on the number of short-term rentals allowed in a community are preferable to an outright prohibition on the use. On the other hand, for property owners desiring to enter the short-term rental market after the effective date of a short-term rental ordinance, a quantitative restriction may act as a barrier to entry. Quantitative restrictions therefore may constitute a reasonable compromise position in circumstances where community support is divided on a proposed short-term rental ban.

Jurisdictions considering a quantitative restriction should carefully consider which technique is best suited to further the needs and goals of the community. For example, if a community finds that the negative impacts of short-term rentals are manifested only when they exist in clusters or in close proximity to one another in a residential neighborhood, then a *proximity restriction* would be a more effective technique than a fixed cap or ratio. On the other hand for a community seeking to maintain a balance between its long-term housing needs and visitor-oriented accommodations, a maximum *ratio* of long term residential dwelling units to short-term rental permits would be more effective than a fixed cap or proximity restriction.

Best Practice Example: Mendocino County, California. Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.” To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved after the effective date of this ordinance, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”⁸⁵ While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until

⁸⁴ Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b).

⁸⁵ Mendocino County, CA Code § 20.748.020(A).

thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.⁸⁶

Best Practice Example: San Luis Obispo County, California. The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”⁸⁷ More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full time residents.”⁸⁸ Accordingly, rather than prohibiting vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.⁸⁹

Operational Restrictions. Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 5.2 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

5.3.4 Licensing/Registration Requirements

Virtually all short-term rental ordinances require owners who intend to offer their property for use as a short-term rental to obtain a license or permit prior to commencing the use. In general, licensing and registration requirements enable local governments to create and maintain a database of dwelling units being operated as short-term rentals for code enforcement and transient occupancy tax collection in jurisdictions authorized to collect such taxes. The procedures and criteria for obtaining a short-term rental license or permit should be clearly set out in the local ordinance. Short-term rental licensing and registration applications should be processed administratively and without need for a public hearing. Such licensing/registration requirements should not require a conditional use permit or a similar-type zoning permit.

⁸⁶ See Mendocino County, CA Code § 20.748.020(A)-(B)..

⁸⁷ San Luis Obispo County, CA Code § 23.08.165(a).

⁸⁸ *Id.*

⁸⁹ San Luis Obispo County, CA Code § 23.08.165(c).

Best Practice Example: City of Palm Springs, California. In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (a) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city’s Business Tax Ordinance for such activity. Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee “shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration].”⁹⁰

Best Practice Example: City of Encinitas, California. In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted “unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law.”⁹¹

5.3.5 Inspection Requirements

As noted in Section 3.1.3, many communities require short-term rental properties to pass certain inspections prior to the issuance or renewal of a short-term rental permit. However, mandatory inspection requirements arguably do not advance a community’s interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a short-term rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

Best Practice Examples: Douglas County, Nevada; City of Palm Springs, California; and Sonoma County, California. The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.

Mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”⁹² It stands to reason that a provision requiring inspection of transient private rental

⁹⁰ City of Palm Springs, CA Municipal Code § 5.25.060(b).

⁹¹ See City of Encinitas, CA Municipal Code § 9.38.040(A)(3).

⁹² City of Bear Lake, CA Municipal Code § 17.03.310(A).

homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

However, even if a mandatory inspection requirement can be justified, the scope of the inspection program should be limited to the initial permit issuance and thereafter only on a reasonable periodic basis. Provisions requiring short-term rental units to be inspected annually (typically as a condition precedent to the issuance of a permit renewal), such as Section 17.03.310(D)(2) of the Big Bear Lake ordinance, are unnecessarily burdensome on owners and the local government alike.

Best Practice Example: City of Cannon Beach, Oregon. The short-term rental ordinance adopted by the City of Cannon Beach provides an example of a more reasonable periodic inspection requirement. Under Section 17.77.040(A)(2) of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.⁹³

5.3.6 Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Tillamook County and Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.⁹⁴ By contrast, under Section 1.06.030 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

Enforcement provisions should not penalize short-term rental property owners (or their agents) for violations beyond their control. For example, if a short-term rental *tenant* violates a noise level restriction, the property owner should not be held responsible for the violation.

⁹³ See City of Cannon Beach, OR Zoning Code § 17.77.040(2)(a).

⁹⁴ See City of Palm Springs, CA Municipal Code § 5.25.090(a).

Best Practice Example: Douglas County, Nevada. Chapter 5.40 of the Douglas County Code regulates vacation home rentals in the Tahoe Township. Although the vacation home rental ordinance imposes certain operational restrictions on permitted rental units (e.g., parking and occupancy limitations and trash/refuse container rules), Section 5.40.110 states that a permit may be suspended or revoked only for a violation committed by the owner.

5.41.110 Violation and administrative penalties.

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:
 - 1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
 - 2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
 - 3. The owner has violated the provisions of this chapter; or
 - 4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code.
 - 5. Any false or misleading information supplied in the application process.

Prior to the imposition of fines or other penalties, a short-term rental ordinance should conform to the due process requirements established under state law and/or the local jurisdictions charter or code of ordinances. At a minimum, before fines or other penalties are imposed, property owners should be given notice of, and an opportunity to cure, any alleged violation, except where exigent public safety concerns exist. As demonstrated in the best practice examples below, property owners should be given the opportunity to request a public hearing and have the right to appeal a local government's decision to suspend or revoke a short-term rental permit.

Best Practice Example: City of Encinitas, California. Under Section 9.38.060 of the City of Encinitas short-term rental ordinance, penalties may be imposed and permits may be suspended only in accordance with the following provisions:

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the city clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection (A), the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more

than 45 days of receipt of request for a hearing. The City Manager or his or her designee shall preside over the hearing. The City Manager or his or her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this Chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.⁹⁵

Best Practice Example: City of Cannon Beach, Oregon. Section 17.77.050(B) of the Cannon Beach Zoning Code provides another example of the notice and public hearing process afforded to short-term rental property owners prior to the imposition of fines or the revocation of a permit.

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.⁹⁶

⁹⁵ City of Encinitas, CA Municipal Code § 9.38.060.

⁹⁶ City of Cannon Beach, OR Zoning Code § 17.77.050(B)

GLOSSARY OF TERMS

Common law: Law developed by judges through decisions of courts and similar tribunals rather than through legislation (statutes) or executive actions.

Due Process: The constitutional protections given to persons to ensure that laws are not unreasonable, arbitrary, or capricious. When such laws affect individuals' lives, liberty, and property, due process requires that they have sufficient notice and opportunity to be heard in an orderly proceeding suited to the nature of the matter at issue, whether a court of law or a zoning board of appeals. Essentially, due process means fairness.

Equal Protection: The right of all persons under like circumstance to enjoy equal protection and security in their life, their liberty, and their property and to bear no greater burdens than are imposed on others under like circumstances.

Nonconforming Use: A use that lawfully existed prior to the enactment of a zoning ordinance, and that is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated, is commonly referred to as a "nonconforming use."⁹⁷

Police Power: The power that resides in each state to establish laws to preserve public order and tranquility and to promote the public health, safety, morals, and other aspects of the general welfare.

Preemption: A doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such national, as opposed to local, character that federal laws preempt or take precedence over state laws on such matters. As such, a state may not pass a law inconsistent with the federal law. The doctrine of *state law* preemption holds that a state law displaces a local law or regulation that is in the same field and is in conflict or inconsistent with the state law.⁹⁸

Public Nuisance: At common law "public nuisance" generally consists of "an unreasonable interference with a right common to the general public, including activities injurious to the health, safety, morals or comfort of the public."⁹⁹

Zoning Enabling Statute: State legislation "authorizing local governments to engage in planning and the regulation of activity on private land."¹⁰⁰

⁹⁷ PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 12:1 (5th ed. 2010).

⁹⁸ Article VI, Section 2, of the U.S. Constitution, commonly referred to as the "Supremacy Clause," provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

⁹⁹ ZONING AND LAND USE CONTROLS § 16.02[2].

¹⁰⁰ See ZONING AND LAND USE CONTROLS, Ch. 1, Introduction and User's Guide § 1.02[2] (LexisNexis Matthew Bender) (hereinafter "ZONING AND LAND USE CONTROLS").

Washington Law Review The *Washington Law Review* is the flagship student-edited journal of the University of Washington School of Law. It is published quarterly.

Community Consequences of Airbnb, **Allyson E. Gold**

This is a summary of a much larger article. Readers are encouraged to download and read the entire document.

Intro

Debates rage about the effects of the sharing economy, which has dramatically transformed the way consumers access the marketplace. Using a smartphone, a person can book a pet sitter on Rover, order dinner delivery through Seamless, and set up a visit from their own private masseuse on Soothe—all from the backseat of their Uber. ***The benefits of such apps can be tremendous, but these gains may be accompanied by far-reaching and unintended consequences.***

The growth of Airbnb rentals within a jurisdiction is linked to the loss of long-term rental accommodations. For jurisdictions already grappling with an affordable housing crisis, an influx of Airbnb listings and the attendant consequences threatens the stability and vitality of the community.

According to Airbnb, it “uniquely leverages technology to economically empower millions of people around the world to unlock and monetize their spaces, passions and talents to become hospitality entrepreneurs.” Airbnb’s positive effects for users, and on the local economy, however, are not without their costs. **The growth of Airbnb rentals within a jurisdiction is linked to the loss of long-term rental accommodations. For jurisdictions already grappling with an affordable housing crisis, an influx of Airbnb listings and the attendant consequences threatens the stability and vitality of the community.**

Opponents of short-term rental accommodations are primarily concerned with “commercialization of residential neighborhoods.” **Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with those of permanent residents.** The reality of professional hosts with numerous listings is at odds with Airbnb proponents’ characterization of the platform as a way for average homeowners to subsidize their incomes.

I. Effects of Short Term Rentals

Airbnb started as a way for locals to earn extra money by renting spare rooms to tourists. Today Airbnb has more than four million listings—more than the top five hotel brands combined.

- A. Positive Effects for Individuals and the Community. The benefits of short-term rental platforms to guests are readily apparent. The ability to book a short-term rental rather than a hotel can be attractive to guests for a variety of reasons.
 1. Wealth Accumulation for Hosts Sharing homes on Airbnb allows hosts to realize increased capital through **two channels** of wealth accumulation. First, **new income is available** to the host via the short-term rental platform, which raises total income. Second, as the home’s potential to generate additional income rises, its total value as an asset grows, leading to **increased home equity for the host.**

... studies touting alleged economic gains ignore the fact that most spending would happen anyway, absent the Airbnb option, as travelers opt instead to stay in hotels and other accommodations. As a result, they “vastly overstate the effect” of Airbnb on the local economy.

2. Local Economic Impact. Airbnb’s own research suggests that short-term rental platforms may have a positive effect on the local economy. By providing accommodations to tourists, short-term rental platforms help draw more people, and their dollars, to an area.

3. Not all economists agree on the extent of economic gains attributable to Airbnb. **Analysis by the Economic Policy Institute (EPI) suggests that they are “much smaller than commonly advertised.” According to the EPI, studies touting alleged economic gains ignore the fact that most spending would happen anyway, absent the Airbnb option, as travelers opt instead to stay in hotels and other accommodations. As a result, they “vastly overstate the effect” of Airbnb on the local economy.**

B. Effect on the Local Housing Market

Airbnb lauds its service as a mechanism to allow underutilized resources to be put to use. However, in collecting a fee to share space in their homes, **hosts gain a financial benefit while imposing costs on their neighbors and the surrounding communities. The surrounding community experiences a loss of affordable housing, increase in average rental prices, and changes in neighborhood character.**

1. Loss of Long-Term Rental Accommodations

Homesharing diminishes the available housing stock and exacerbates the affordable housing crisis by converting long-term rental accommodations to short-term rentals.

Airbnb has removed 13,700 long-term housing units from the rental market in Montreal, Vancouver, and Toronto. The rate of Airbnb expansion—and its effect on the rental markets—outpaces the policies meant to protect cities from a loss of affordable housing. In some neighborhoods, Airbnb growth far surpasses new construction, resulting in a net loss to the available housing stock.

2. Increase in Average Asking Rents

The rise in popularity of Airbnb in a jurisdiction increases average rents in that area. Airbnb and other homesharing platforms function to “reallotat[e] their properties from the long- to the short-term rental market,” thereby increasing rental costs.

3. Changes to Neighborhood Composition

As landlords convert their units from long- to short-term rentals, striking changes appear in neighborhood character. **Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with permanent residents.** These conflicts result in decreased quality of life for long-term residents. An influx of rental units “reduces the cohesion in the neighborhood, reduces the number of people who are invested in the neighborhood, and damages businesses that serve the local population.”

a. Influx of Commercial Interests

A significant portion of the Airbnb market consists of commercial hosts—those with more than one listing. The large number of listings held by a single host suggests that commercial operators benefit from lax regulations of short-term rentals.

The increased presence of commercial hosts drives changes to neighborhood character. In fact, the twenty-five highest grossing Airbnb hosts in the United States each made more than fifteen million dollars in 2017 off hundreds of units each. That professional entities with hundreds, if not thousands, of units are profiting most greatly from the platform is **at odds with Airbnb’s characterization of itself as way for average homeowners to subsidize their income.** As one Silver Lake Neighborhood Councilmember said, “[i]t’s supposed to be a spare room—not corporate interests taking over our neighborhood and turning everything into a virtual hotel.”

“It’s supposed to be a spare room—not corporate interests taking over our neighborhood and turning everything into a virtual hotel.”

b. Decrease in Neighborhood Social Capital

“Social capital it is the glue that holds societies together and without which there can be no economic growth or human well-being.” The foundation of social capital is that “social networks have value.” The concept incorporates “not just warm and cuddly feelings, but a wide variety of quite specific benefits that flow from the trust, reciprocity, information, and cooperation associated with social networks.” As Airbnb listings change the character of the neighborhood, and as residents are displaced by the influx of tourists, social capital declines. As a Nashville resident noted, living in close proximity to an Airbnb accommodation feels uncomfortable all the time because you don’t know what to expect . . .

2. Resident Replacement: “the growth of tourism and the consequent conversion of housing into accommodation for visitors” results in collective displacement. **Studies supports the notion that Airbnb produces financial rewards for hosts at the expense of low-income communities of color;** as residents are priced out of middle-class neighborhoods. This creates a vicious cycle wherein rents increase in the new neighborhoods, pushing out long-term residents.

II. Current Regulations Governing Short Term Rental Platforms

Given their localized effects, regulations of short-term rentals typically occur at the city level. However, spurred by efforts of municipal ordinances, **many state governments have taken measures to regulate the effects of short-term rentals.** Arizona, Idaho, Indiana, Florida, Tennessee, and Wisconsin enacted legislation to prevent local jurisdictions from prohibiting or unreasonably restricting all short-term rentals.

A. Traditional Conceptualizations of Property Rights

Property rights are often understood as a “bundle of rights that may be exercised with respect to that object-principally the rights to possess the property, to use the property, to exclude others from the property, and to dispose of the property by sale or by gift.” However, while a property owner has broad rights with respect to the disposition of the property, the legal system governs “how these decisions must or may be carried out.” Contracting to let a property via a homesharing platform like Airbnb raises questions about which rights in the “bundle” apply to the agreement. **Airbnb fastidiously uses the terms “host,” “guest,” and “share” to discuss the arrangement between parties.** Instead of renting a space, a host can “share any space . . . from a shared living room to a second home and everything in-between” with guests. Despite this careful use of language, whether a short-term rental arrangement is a landlord/tenant agreement, a hotel/lodger agreement, or something in the middle informs what regulations apply to both the host and the guest.

Several regulations are imposed on hotels including antidiscrimination regulations, ADA compliance, tax collection, health and safety standards, and commercial liability insurance, among others. Currently, most jurisdictions do not hold Airbnb listings to the same battery of regulations to which hotels are subjected.

The absence of traditional commercial zoning regulations means that while hotels are confined to areas designed for commercial activity, short-term rentals are largely unrestricted.

Challenging Regulations as an Impermissible Taking

The degree to which the government may restrict a landowner’s use of her own property is a longstanding legal question that predates the era of online homesharing platforms. In **Cope v. City of Cannon Beach**, the Supreme Court of Oregon considered whether a municipal zoning ordinance prohibited transient occupancy was a taking under the Constitution. Landowners challenged the ordinance as an impermissible taking without providing just compensation in violation of the Fifth and Fourteenth Amendments.

The Court applied the Supreme Court’s analysis in Agins v. Tiburon, 193 noting that a regulation “effects a taking if the ordinance does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land.”

In finding for the City of Cannon Beach, the Supreme Court of Oregon stated that the ordinance substantially advanced the legitimate governmental interest of “securing

Given, however, the effects of Airbnb on the local housing market, as well as its role in accelerating gentrification, it is likely that a court applying the Cannon Beach and Agins analysis would find for the local jurisdiction, rather than the Airbnb host.

affordable housing for permanent residents and in preserving the character and integrity of residential neighborhoods” and that there was a nexus between the regulation and interest served. The court further stated that the ordinance did not deny owners an economically viable use of property. The court did, however, concede that rentals of dwellings for periods of fourteen days or more and owners residing in their property themselves “may not be as profitable as are shorter-term rentals . . . they are

economically viable uses.” In finding for the City of Cannon Beach, the Supreme Court of Oregon stated that the ordinance substantially advanced the legitimate governmental interest of “securing affordable housing for permanent residents and in preserving the character and integrity of residential neighborhoods” and that there was a nexus between the regulation and interest served. The court further stated that the ordinance did not deny owners an economically viable use of property.

Host Accountability Measures

a. Updated Zoning Laws and Licensing Requirements

In response to the growth of homesharing platforms, many jurisdictions have created a new type of land use in their zoning ordinances. The new zoning categories accommodate short-term rental land use, reflecting the multifaceted purposes of the properties.

b. Restrictions on Eligible Hosts, Length of Rentals, and Available Locations

i. Updated Zoning Laws and Licensing Requirements

Instead of mom and pop hosts, it is common for owners of multiple properties to make available several whole-home listings on Airbnb, functioning as commercial property owners.

To prevent a decrease of affordable housing stock, policymakers have imposed limitations on who is eligible to rent out short-term accommodations.

Airbnb was founded on the premise that hosts could earn extra money by renting out available space—a spare room or even a couch—in their homes. As the model exploded in popularity, the profile of hosts changed. Instead of mom and pop hosts, it is common for owners of multiple properties to make available several whole-home listings on Airbnb, functioning as commercial property owners.

In San Francisco, for example, only permanent residents may become short-term rental hosts.

In Los Angeles, the definition is even more restrictive. Los Angeles short-term rental hosts may only rent their primary residence, defined as where the host lives for more than six months of the year.

Amsterdam limits hosts to renting thirty nights annually.

In Santa Monica, California, renting an entire residence for less than thirty days is banned completely.

January 2018, the Nashville City Council voted 19–3 to phase out non-owner occupied short-term rentals from areas zoned for residential use.

Limiting Short-Term Rentals in Certain Areas To prevent the erosion of neighborhood character, some jurisdictions severely limit which neighborhoods may have short-term rentals. In New Orleans, short-term rentals are banned from most of the iconic French Quarter.

In Tuscaloosa, Alabama, short-term rentals are strictly limited to only three areas of the city.

Other cities limit short-term rental density based on the neighborhood’s zoned use. In January 2018, the Nashville City Council voted 19–3 to phase out non-owner occupied short-term rentals from areas zoned for residential use.

B. Monitoring and Enforcement

Regulation of short-term rentals raises questions regarding enforcement. Despite official requirements, many hosts do not comply with licensing registration regulations.

C. Policies to Address Discriminatory Practices and Concentrations of Wealth Along Racial Lines

2. Recommendations

The following recommendations speak to the core principles of short term rental policy reform, but it is also imperative that policymakers engage the community in their response. Policymakers must adopt approaches that conform to the following overarching principles:

- *Protect affordable housing stock,*
- *Prevent hotelization of residential neighborhoods,*

a. Protect Available Housing Stock

As hosts realize additional income and equity from underutilized resources, market pressure increases to convert long-term rentals to short term accommodations. However, doing so depletes local affordable housing stock. Given the dearth of affordable rental housing, the pressure to convert long-term rental stock to the Airbnb market stresses an already under-resourced market.

b. Prevent Hotelization of Residential Neighborhoods

Preventing hotelization—fundamentally changing the nature of residential neighborhoods through proliferation of commercial accommodations—is essential to control noise and unsanitary conditions, and maintain a community’s social fabric.

Local governments should contemplate limits on the number of licenses that a single individual may hold.

Finally, short-term rental accommodation policy should restrict the number of days a whole-home accommodation may be rented in a given year.

Renting a spare room or couch in one's home and a whole-home accommodation are different types of accommodations, with different effects on the local community. ***The law should treat them as such.***

Because the permanent resident is present, the social fabric of the community is maintained. In contrast, a whole home listing leads to a revolving door of short-term residents who are unfamiliar with neighborhood policies and lack the motive to invest socially in the community. **Given the disparate effects, lawmakers should cap the number of nights a whole-home accommodation may be listed in a given year**

First, lawmakers must categorize unhosted Airbnb listings as public accommodations under Title II of the 1964 Civil Rights Act.

Conclusion

Airbnbs can provide a boon to hosts and guests. By converting a previously underutilized asset into a short-term rental accommodation, hosts gain a new income stream and increase their home equity. Guests, too, benefit from Airbnb's platform, as the accommodations are typically more affordable than traditional hotels and provide an opportunity to "live like a local."

These gains, however, come at a cost. While individual hosts and guests may benefit economically, the local housing market experiences significant change in the form of fewer affordable housing options and erosion of neighborhood social capital.

At the same time, discrimination on Airbnb's platform means that the benefits and consequences are not evenly distributed, with economic gains accruing disproportionately to white users.

As Airbnbs continue to gain popularity, it is essential that legal strategies support their economic benefits while curtailing community harms.

Adopting multi-faceted and comprehensive approaches are necessary to protect affordable housing stock, prevent hotelization of residential areas, and create meaningful opportunities to benefit from participation in the short-term rental market.

COMMUNITY CONSEQUENCES OF AIRBNB

Allyson E. Gold*

Abstract: Short-term rental accommodations account for more than 20% of the United States lodging market, with annual sales now greater than those of nearly all legacy hotel brands. The rise of companies like Airbnb has created a booming market that provides affordable short-term rentals for travelers and new income for those with an extra couch, spare room, or even an unused home. However, while individual hosts and guests may benefit economically, the use of short-term rentals produces significant consequences for the surrounding community. Airbnb proliferation causes fewer affordable housing options, higher average asking rents, and erosion of neighborhood social capital. Due to discrimination among users on Airbnb’s platform, many of the benefits of short-term rental accommodations accrue to white hosts and guests, locking communities of color out of potential income and equity streams. These issues raise a question at the core of property law: which stick in the bundle is implicated by a short-term rental accommodation?

Current regulations attempt to walk the line between protecting property rights and mitigating externalities created by short-term rental accommodations and borne by the local community. In doing so, the law fails to adequately address consequences resulting from the vast increase in short-term rental accommodations. This Article assesses the benefits and costs of short-term rental accommodations and analyzes how current statutory approaches amplify or diminish these effects. After examining the legal, economic, and social interests of multiple short-term rental accommodation stakeholders, including hosts, guests, the local community, and platform operators, it argues that current policies are fragmented, inconsistently applied, and ineffective. Instead, the law must be reformed to better secure access to affordable housing stock, prevent “hotelization” of residential neighborhoods, create meaningful opportunities for diverse users to share economic gains, and eliminate pathways to discriminate on homesharing platforms like Airbnb.

INTRODUCTION.....	1579
I. EFFECTS OF SHORT-TERM RENTALS.....	1584
A. Positive Effects for Individuals and the Community.....	1585
1. Wealth Accumulation for Hosts.....	1585
2. Local Economic Impact.....	1587
B. Effects on the Local Housing Market.....	1588
1. Loss of Long-Term Rental Accommodations	1589
2. Increase in Average Asking Rents.....	1591
3. Changes to Neighborhood Composition.....	1593

* Allyson E. Gold is an Assistant Professor of Clinical Legal Instruction and Director of the Elder Law Clinic at the University of Alabama School of Law. Many thanks to the participants of the NYU Clinical Writers Workshop and colleagues in the University of Alabama Faculty Workshop for their engagement and helpful comments, and to Richard Delgado, Jean Stefancic, Fred Vars, Emily A. Benfer, and Courtney Cross for their insightful feedback. I am especially grateful to Emily Parsons, John Curry, Leeza Soulina, and Madeleine Vidger for their fantastic editorial work.

	a.	Influx of Commercial Interests	1594
	b.	Decrease in neighborhood social capital	1596
II.		RACIAL IMPLICATIONS OF SHORT-TERM RENTAL PLATFORMS	1597
	A.	Airbnb and Discrimination	1597
	1.	Discrimination Against Guests	1598
	2.	Discrimination against hosts	1599
	B.	Airbnb and Gentrification	1600
	1.	Airbnb as a Gentrification Tool	1601
	2.	Resident Displacement	1602
	C.	Concentration of Wealth Along Racial Lines	1603
III.		CURRENT REGULATIONS GOVERNING SHORT-TERM RENTAL ACCOMMODATIONS	1604
	A.	Traditional Conceptualizations of Property Rights ..	1606
	1.	Residential Leasehold Interest	1607
	2.	Innkeepers and Lodgers	1608
	3.	Challenging Regulations as an Impermissible Taking	1609
	4.	Is Mrs. Murphy Hosting?	1610
	B.	Host Accountability Measures	1611
	1.	Updated Zoning Laws and Licensing Requirements	1611
	2.	Taxation on Short-term Rental Properties	1614
	C.	Restrictions on Eligible Hosts, Length of Rentals, and Available Locations	1618
	1.	Limitations on Eligible Hosts and Properties	1618
	2.	Annual Limits	1620
	3.	Limiting Short-Term Rentals in Certain Areas ..	1620
	D.	Monitoring and Enforcement	1623
	1.	Liability for failure to comply	1623
	2.	Information sharing	1626
	E.	Policies to Address Discriminatory Practices and Concentrations of Wealth Along Racial Lines	1628
	1.	Policies to Reduce Discrimination on Online Short-Term Rental Platforms	1628
	2.	Collaboration to Increase Short-Term Rental Optimization Among Minorities	1629
IV.		RECOMMENDATIONS	1630
	A.	Protect Affordable Housing Stock	1631
	B.	Prevent Hotelization of Residential Neighborhoods	1633
	C.	Create Opportunities for Diversity of Wealth Accumulation	1633
	D.	Eliminate Opportunities to Discriminate on Homesharing Platforms	1635
		CONCLUSION	1636

INTRODUCTION

Airbnb is a “lifeline” for Suzan Albritton.¹ After Ms. Albritton’s husband passed away unexpectedly, she was no longer able to afford the home they had shared for over a decade.² Were it not for the additional income she earned by listing her property on Airbnb, she would have been forced from her home and out of her community. For every Suzan Albritton, however, there is a Christian Rhodes. Mr. Rhodes, a resident of New Orleans’s Treme neighborhood, watched as his neighborhood’s population changed from families and other longtime residents to Airbnb guests.³ The balloons were the final straw. After a weekend bachelorette party adorned a nearby home with anatomically shaped balloons, Mr. Rhodes knew that he and his young children could no longer live in the neighborhood⁴; he quickly sold his home.⁵

Debates rage about the effects of the sharing economy, which has dramatically transformed the way consumers access the marketplace. Using a smartphone, a person can book a pet sitter on Rover,⁶ order dinner delivery through Seamless,⁷ and set up a visit from their own private masseuse on Soothe⁸—all from the backseat of their Uber.⁹ As Suzan Albritton and the Rhodes family illustrate, the benefits of such apps can be tremendous, but these gains may be accompanied by far-reaching and unintended consequences.

Airbnb’s tremendous success brings this issue to the forefront. Founded in 2008, Airbnb is a short-term rental platform that allows hosts to share

1. Letter from Suzan Albritton, Airbnb Host, to L.A. City Councilmembers (Aug. 21, 2015), available at http://clkrep.lacity.org/onlinedocs/2014/14-1635-s2_misc_1_8-21-15.pdf [<https://perma.cc/ZJA4-NQYB>].

2. *Id.*

3. Emily Peck & Charles Maldonado, *How Airbnb Is Pushing Locals Out of New Orleans’ Coolest Neighborhoods*, HUFFINGTON POST (Oct. 30, 2017, 5:45 AM), https://www.huffingtonpost.com/entry/airbnb-new-orleans-housing_us_59f33054e4b03cd20b811699 [<https://perma.cc/5JDW-UKWD>].

4. *Id.*

5. *Id.*

6. See ROVER, www.rover.com [<https://perma.cc/Y8ET-AJC2>] (“Book trusted sitters and dog walkers who’ll treat your pets like family.”).

7. See SEAMLESS, www.seamless.com (last visited Nov. 11, 2019) (“Seamless is simply the easiest way to order food for delivery or takeout.”).

8. See SOOTHE, www.soothe.com [<https://perma.cc/G2G7-EHHM>] (“Soothe helps you book a five-start massage to your home, hotel, office, or event in as little as an hour.”).

9. See generally UBER, www.uber.com [<https://perma.cc/4KPP-ZFCP>].

their interest in a property with prospective guests.¹⁰ More than ten years later, Airbnb has a private valuation of \$31 billion and “is the second-biggest ‘start-up’ . . . in the country, after Uber.”¹¹ There are over four million Airbnb listings worldwide,¹² “in more than 100,000 cities and 191 countries and regions.”¹³ According to Airbnb, it “uniquely leverages technology to economically empower millions of people around the world to unlock and monetize their spaces, passions and talents to become hospitality entrepreneurs.”¹⁴

Supporters of Airbnb laud it as a way for hosts and communities to generate new revenue and achieve economic stability. For hosts, wealth accumulation is accomplished through two distinct channels. First, in listing an accommodation on Airbnb, a new income stream is available to the host.¹⁵ Second, as the property’s potential to generate additional income increases, the underlying value of the property increases, thereby raising total home equity.¹⁶ Airbnb also claims to have a positive effect on the surrounding economy.¹⁷ A study released by the company on the economic effect of Airbnb on New York City claims that “[i]n one year, Airbnb generated \$632 million in economic activity in the city, which included \$105 million in direct spending in the outer boroughs.”¹⁸ For guests, Airbnb presents an opportunity to enjoy accommodations at more affordable prices than traditional hotels.¹⁹ Moreover, the availability of

10. See AIRBNB, [www.airbnb.com](https://perma.cc/4CTZ-CKLA) [https://perma.cc/4CTZ-CKLA].

11. Derek Thompson, *Airbnb and the Unintended Consequences of ‘Disruption,’* ATLANTIC (Feb 17, 2018), https://www.theatlantic.com/business/archive/2018/02/airbnb-hotels-disruption/553556/?utm_source=atfb [https://perma.cc/M7VL-YK8F].

12. Avery Hartmans, *Airbnb Now Has More Listings Worldwide than the Top Five Hotel Brands Combined*, BUS. INSIDER (Aug. 20, 2017, 1:00 PM), <https://www.businessinsider.com/airbnb-total-worldwide-listings-2017-8> [https://perma.cc/LFD7-RGAM].

13. *About Us*, AIRBNB, [www.airbnb.com/about/about-us](https://perma.cc/WF8C-9G27) [https://perma.cc/WF8C-9G27].

14. *Id.*

15. See *How Much Are People Making in the Sharing Economy?*, PRICEONOMICS (June 15, 2017), <https://priceonomics.com/how-much-are-people-making-from-the-sharing/> [https://perma.cc/DRH6-WSX2].

16. Kyle Barron, Edward Kung & David Proserpio, *The Sharing Economy and Housing Affordability: Evidence from Airbnb* 4 (Mar. 29, 2018) (unpublished manuscript), <https://marketing.wharton.upenn.edu/wp-content/uploads/2019/08/09.05.2019-Proserpio-Davide-Paper.pdf> [https://perma.cc/7CAC-LQK2].

17. *The Economic Impacts of Home Sharing in Cities Around the World*, AIRBNB, [www.airbnb.com/economic-impact](https://perma.cc/J8CW-4TXQ) [https://perma.cc/J8CW-4TXQ] [hereinafter *The Economic Impacts of Home Sharing in Cities Around the World*].

18. *Airbnb Economic Impact*, AIRBNB, <https://blog.airbnb.com/economic-impact-airbnb/> [https://perma.cc/2VE9-PSFA] [hereinafter *Airbnb Economic Impact*].

19. Niall McCarthy, *Is Airbnb Really Cheaper Than a Hotel Room in the World’s Major Cities?*, FORBES (Jan. 23, 2018), <https://www.forbes.com/sites/niallmccarthy/2018/01/23/is-airbnb-really->

reviews and information about the host creates a personal connection, and allows for more informed decision-making about where to stay.

Airbnb's positive effects for users, and on the local economy, however, are not without their costs. The growth of Airbnb rentals within a jurisdiction is linked to the loss of long-term rental accommodations. As the New York State Attorney General noted, "private short-term rentals [have] displaced long-term housing in thousands of apartments."²⁰ This effect is replicated in other housing markets. In many parts of Montreal, Airbnb has converted 3% of the total housing stock to short-term rentals.²¹ Moreover, by "reallocating long-term rentals to the short-term market," Airbnb functions to increase average asking rents.²² In New York City, "Airbnb is responsible for nearly 10 percent of citywide rental increase between 2009 and 2016."²³ For jurisdictions already grappling with an affordable housing crisis, an influx of Airbnb listings and the attendant consequences threatens the stability and vitality of the community.

Opponents of short-term rental accommodations are primarily concerned with "commercialization of residential neighborhoods."²⁴

cheaper-than-a-hotel-room-in-the-worlds-major-cities-infographic/#69a805f78acb
[<https://perma.cc/MB3S-NQFN>].

20. N.Y. STATE OFFICE OF THE ATT'Y GEN., AIRBNB IN THE CITY 3 (2014), <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf> [<https://perma.cc/JHX5-NF5V>].

21. See WACHSMUTH ET AL., URBAN POLITICS & GOVERNANCE RESEARCH GRP., SCH. OF URBAN PLANNING, MCGILL UNIV., SHORT-TERM CITIES: AIRBNB'S IMPACT ON CANADIAN HOUSING MARKETS 23 (2017) [hereinafter WACHSMUTH ET AL., SHORT-TERM CITIES], <https://upgo.lab.mcgill.ca/publication/short-term-cities/short-term-cities.pdf> [<https://perma.cc/G8PQ-7PW4>].

22. Kyle Barron, Edward Kung & David Proserpio, *Research: When Airbnb Listings in a City Increase, So Do Rent Prices*, HARV. BUS. REV. 10, 28 (Apr. 17, 2019), https://ci.carmel.ca.us/sites/main/files/file-attachments/harvard_business_article_and_study.pdf [<https://perma.cc/737Q-HURC>] ("[B]y decreasing the cost of listing in the short-term market, the home-sharing platform has the effect of raising rental rates. The intuition is fairly straight-forward: the home-sharing platform induces some landlords to switch from the long-term market to the short-term market, reducing supply in the long-term market and raising rental rates.").

23. *Comptroller Stringer Report: NYC Renters Paid and Additional \$616 Million in 2016 Due to Airbnb*, OFFICE OF N.Y.C. COMPTROLLER (May 3, 2018), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-report-nyc-renters-paid-an-additional-616-million-in-2016-due-to-airbnb/> [<https://perma.cc/3WRF-6ZW7>]. For a discussion of the effect of Airbnb on New York City rent, see WACHSMUTH ET AL., THE HIGH COST OF SHORT-TERM RENTALS IN NEW YORK CITY 35–38 (2018) [hereinafter WACHSMUTH ET AL., HIGH COST OF SHORT TERM RENTALS], <https://mcgill.ca/newsroom/files/newsroom/channels/attach/airbnb-report.pdf> [<https://perma.cc/9323-UCU3>].

24. CITY OF NEW ORLEANS PLANNING COMM'N, SHORT TERM RENTAL STUDY 30–31 (Jan. 19, 2016), <https://www.nola.gov/city-planning/major-studies-and-projects/2015-short-term-rental-study/final-short-term-rental-study/> [<https://perma.cc/X8HB-4QY8>] ("There is especially a concern over investors purchasing homes and renting them out only as a short term rental. They say that these uses are 'mini-hotels' because no one ever lives there and should be prohibited in residential districts, like other commercial uses.").

Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with those of permanent residents.²⁵ As short-term rental listings increase in an area, locals experience problems such as “unfamiliar cars blocking driveways, late night parties on formerly quiet streets, and concerns about child safety in an environment with fewer familiar eyes on the street.”²⁶ These effects are exacerbated when Airbnbs are operated by commercial property owners, rather than mom and pop hosts. In certain jurisdictions, the share of the Airbnb market held by hosts with more than one listing is over 40%.²⁷ The reality of professional hosts with numerous listings is at odds with Airbnb proponents’ characterization of the platform as a way for average homeowners to subsidize their incomes.

These issues are compounded by rampant discrimination on the platform. Minority guests are less likely to be accepted than their white counterparts.²⁸ Further, discrimination against hosts manifests in lower listing prices relative to comparable accommodations by white hosts.²⁹ Taken together, discrimination against guests and hosts functions to bar minorities from experiencing the same degree of benefits from Airbnb;

25. See generally Apostolos Filippas & John J. Horton, *The Tragedy of Your Upstairs Neighbors: When Is the Home-Sharing Externality Internalized?* (Apr. 5, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443343 [<https://perma.cc/3TUV-5AP5>].

26. ROY SAMAAN, L.A. ALLIANCE FOR A NEW ECON., AIRBNB, RISING RENT, AND THE HOUSING CRISIS IN LOS ANGELES (2015) [hereinafter SAMAAN, AIRBNB], <https://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf> [<https://perma.cc/LVK3-V7UU>].

27. Jake Wegmann & Junfeng Jiao, *Taming Airbnb: Toward Guiding Principles for Local Regulation of Urban Vacation Rentals Based on Empirical Results from Five US Cities*, 69 LAND USE POL’Y 494, 498 (2017) (noting that of the remaining cities, Austin’s share was 30%, Chicago’s share was 38%, San Francisco’s share was 34%, and Washington, DC’s share was 39%).

28. Benjamin Edelman et al., *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, 9 AM. ECON. J.: APPLIED ECON. 1, 2 (2017), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/app.20160213> [<https://perma.cc/G6Q4-LYDL>] (“To test for discrimination, we conduct a field experiment in which we inquire about the availability of roughly 6,400 listings on Airbnb across five cities. Specifically, we create guest accounts that differ by name but are otherwise identical. . . . [W]e select two sets of names—one distinctively African American and the other distinctively white. We find widespread discrimination against guests with distinctively African American names.”); see also Amy B. Wang, *‘One Word Says It All. Asian’: Airbnb Host Banned After Allegedly Cancelling Guest Because of Her Race*, L.A. TIMES (Apr. 7, 2017, 7:40 PM), <https://www.latimes.com/business/technology/la-fi-airbnb-discrimination-20170407-story.html> [<https://perma.cc/CYT5-4542>].

29. Benjamin Edelman & Michael Luca, *Digital Discrimination: The Case of Airbnb.com* 4.2 (Harvard Bus. Sch., Working Paper No. 14-054, 2014), https://www.hbs.edu/faculty/Publication%20Files/Airbnb_92dd6086-6e46-4eaf-9cea-60fe5ba3c596.pdf [<https://perma.cc/A7PE-3XRE>] (“The raw data show that non-black and black hosts receive strikingly different rents.”); Venoo Kakar et al., *The Visible Host: Does Race Guide Airbnb Rental Rates in San Francisco?*, 40 J. HOUSING ECON. 25 (2017); Hanying Mo, *Racial Discrimination in the Online Consumer Marketplace A Study on Airbnb IV* (May 16, 2016) (unpublished manuscript), https://www.stat.berkeley.edu/~aldous/157/Old_Projects/Hanying_Mo.pdf [<https://perma.cc/62RL-HJFT>].

minority guests do not benefit from saving money on short-term accommodations, and minority hosts are locked out of opportunities to increase wealth. This means that the benefits of Airbnb use flow disproportionately to white users, concentrating wealth along racial lines. Compounding these effects, as Airbnb proliferation erodes affordable housing, and even accelerates gentrification, minorities disproportionately experience the harms of Airbnb without the attendant benefits.

Central to the discussion of community consequences is critical analysis of how the regulatory landscape amplifies the effects of Airbnb on individuals and the surrounding community.³⁰ Laws governing Airbnb implicate traditional notions of real property ownership, which conceptualizes property as a “bundle of rights.”³¹ Through this lens, policymakers have attempted to balance the rights of individual property owners with those of the community. Resulting policy regimes fall into four categories: (1) host accountability measures, such as zoning laws, licensing requirements, and tax structures; (2) restrictions on eligible hosts, length of rentals, and permissible locations; (3) responsibility and enforcement, including who bears the onus of compliance and who is liable for failure to comply; and (4) policies to address discrimination and diffuse the concentration of wealth along racial lines. Because they are fragmented and incomplete, current approaches fail to successfully prevent negative community effects of Airbnb.

This Article provides the first comprehensive analysis of the short-term rental accommodation regulatory landscape, providing recommendations to amplify the benefits of Airbnb while mitigating the harms.

The Article proceeds in four Parts. Part I examines the effects of short-term rental accommodations, including positive economic contributions, both at the individual and community level, as well as negative externalities, including the effect on monthly rent, the supply of rental housing, and neighborhood social capital. In doing so, Part II will assess how Airbnb accelerates gentrification and aggregates wealth along racial lines. Part III analyzes current regulations in example jurisdictions both in

30. See Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87, 161 (2016) (“A promising aspect of the contemporary law of the platform is that many of the regulatory questions of Web 3.0, including zoning, consumer protection, residential and transportation safety, worker rights, and occupational licensing, are traditionally resolved at the state and local levels.”).

31. *Moore v. Regents of Univ. of Cal.*, 793 P.2d 479, 510 (Cal. 1990) (Most, J., dissenting) (internal quotation marks omitted); Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 711 (1986) (“The right to exclude others has often been cited as the most important characteristic of private property. This right, it is said, makes private property fruitful by enabling owners to capture the full value of their individual investments, thus encouraging everyone to put time and labor into the development of resources.”).

the United States as well as abroad. Finally, Part IV proposes a regulatory framework to allow for the benefits of the short-term rental market while mitigating attendant consequences.

I. EFFECTS OF SHORT-TERM RENTALS

The popularity of homesharing platforms has exploded in recent years. These platforms allow hosts to list available property online for guests to rent, almost always on a short-term basis, in exchange for a fee. While there are several sites, including VRBO,³² HomeAway,³³ and HouseTrip,³⁴ Airbnb is by far the largest.³⁵ Founded in 2008 by two art school graduates, Airbnb started as a way for locals to earn extra money by renting spare rooms to tourists.³⁶ Today Airbnb has more than four million listings³⁷—more than the top five hotel brands combined.³⁸

In addition to appealing to tourists, Airbnb now also markets itself to business travelers. By partnering with Concur, an expense management company, Airbnb formally entered the corporate arena.³⁹ In 2017, “the number of business travelers expensing Airbnb accommodations increase[ed] by 33%.”⁴⁰ According to Concur data, “more than 250,000 companies in over 230 countries and territories use Airbnb for work.”⁴¹

32. VRBO, <https://www.vrbo.com/> [<https://perma.cc/N6XJ-U77N>].

33. HOMEAWAY, <https://www.homeaway.com/> [<https://perma.cc/A8P3-HHFT>].

34. HOUSETRIP, <https://www.housetrip.com/> [<https://perma.cc/GK2W-46YZ>].

35. Given its dominance of the short-term rental marketplace, throughout this Article “Airbnb” will be used as a stand-in for all short-term rental accommodations.

36. Jessica Pressler, “*The Dumbest Person in Your Building is Passing Out Keys to Your Front Door!*” *The War Over Airbnb Gets Personal*, N.Y. MAG. (Sept. 23, 2014), <http://nymag.com/news/features/airbnb-in-new-york-debate-2014-9/> [<https://perma.cc/T63S-X8CZ>].

37. Avery Hartmans, *Airbnb Now Has More Listings Worldwide Than the Top Five Hotel Brands Combined*, BUS. INSIDER (Aug. 20, 2017), <https://www.businessinsider.com/airbnb-total-worldwide-listings-2017-8> [<https://perma.cc/LFD7-RGAM>]; see also Juliet Schor, *Debating the Sharing Economy*, GREAT TRANSITION INITIATIVE (Oct. 2014), <https://www.greattransition.org/publication/debating-the-sharing-economy> [<https://perma.cc/T4B8-NZ53>] (“The debut of the sharing economy was marked by plenty of language about doing good, building social connections, saving the environment, and providing economic benefits to ordinary people. It was a feel-good story in which technological and economic innovation ushered in a better economic model. Especially in the aftermath of the financial crash, this positive narrative was hard to resist.”).

38. Hartmans, *supra* note 37.

39. *Id.*

40. SAP Concur Team, *Airbnb and Concur Expand Partnership to Provide Airbnb Listings within Concur Travel*, SAP CONCUR (July 13, 2017), <https://www.concur.com/newsroom/article/airbnb-and-concur-expand-partnership-to-provide-airbnb-listings-within> [<https://perma.cc/7V5G-7DAG>].

41. *Id.*

Airbnb does not charge a fee for hosts to list their homes on the platform. Instead, it “makes money by charging hosts and guests a service fee that is a percentage based on the cost of the rental.”⁴² Airbnb prices are often significantly lower than that of nearby hotels, making it an attractive option for visitors who want more space at affordable prices. Using the platform, individual guests and hosts may realize economic gains while neighborhoods undergo significant changes to the local housing market.

A. Positive Effects for Individuals and the Community

The benefits of short-term rental platforms to guests are readily apparent. The ability to book a short-term rental rather than a hotel can be attractive to guests for a variety of reasons. These include greater square footage at a lower price, access to amenities not often found in hotels such as kitchens, washers, and dryers, the opportunity to create personal connections with locals in a new city, and the ability to “live like a local.” In addition, short-term rentals may confer economic benefits to individual hosts as well as the surrounding community.

1. Wealth Accumulation for Hosts

Sharing homes on Airbnb allows hosts to realize increased capital through two channels of wealth accumulation. First, new income is available to the host via the short-term rental platform, which raises total income. Second, as the home’s potential to generate additional income rises, its total value as an asset grows, leading to increased home equity for the host.

Airbnb provides an opportunity for hosts to convert an underutilized asset—the home—into an income stream. The profitability of an individual short-term rental can vary widely depending on its location as well as the expenses unique to that property. For example, two identical listings generating the same income will have different net profits depending on their underlying costs such as rent/mortgage, utilities, etc. However, hosts can expect to earn 81% of total rent, on average, “by listing one room of a two-bedroom home on Airbnb.”⁴³ In Miami, San

42. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1069 (N.D. Cal. 2016).

43. Nick Wallace, *Where Do Airbnb Hosts Make the Most Money?*, SMART ASSET (Feb. 20, 2018), <https://smartasset.com/mortgage/where-do-airbnb-hosts-make-the-most-money> [<https://perma.cc/6V2W-4ZLU>] (“First, we calculated expected revenue of private-room Airbnb rentals in each city . . . Then, we calculated expected net profits (after average rent, utilities, and internet) for full-home rentals in each city.”).

Diego, Chicago, and Philadelphia, utilizing one room in a two-bedroom home as a short-term rental may generate over 90% of the total rent.⁴⁴ According to analysis by Priceonomics, Airbnb hosts earn more than other sharing economy users, by far.⁴⁵ While the amount an Airbnb host can earn will vary widely depending on the type, quality, and location of the accommodation, hosts “mak[e] an average of \$924 off their platform each month.”⁴⁶

The profitability of sharing properties on sites like Airbnb has created a cottage industry to help hosts maximize their revenue. Beyond Pricing, for example, offers “automated dynamic pricing” using “real-time market data to ensure our price recommendations maximize revenue and occupancy for our hosts.”⁴⁷ Airbnb even has a tool on its site to help hosts appropriately price their homes.⁴⁸

For some hosts, additional revenue generated by Airbnb rent has been critical. As one host noted in a letter to the Los Angeles City Council, “in a very short period of time, using only my existing resources [the home], I was able to pull myself out of a financial crisis, generate steady and solid monthly income, provide a warm and welcoming local experience to visitors willing to spend lots of vacation dollars in L[os] A[ngeles], and provide a steady stream of cash to the LA City Finance coffers.”⁴⁹

Evidence suggests that Airbnb also has a positive effect on local home value. By creating an additional revenue stream, the market value of the asset increases. One study found that “the number of Airbnb listings in [a] zip code . . . is positively associated with house prices.”⁵⁰ Specifically,

44. *Id.*

45. *How Much Are People Making in the Sharing Economy?*, *supra* note 15; see also Stacey Leasca, *Here’s How Much the Average Airbnb Host Earns in a Month*, TRAVEL & LEISURE (June 16, 2017), <https://www.travelandleisure.com/travel-tips/how-much-airbnb-hosts-make> [<https://perma.cc/B8AR-KXPB>].

46. *How Much Are People Making in the Sharing Economy?*, *supra* note 15 (“Of course, on all of these platforms, there is a wide range of earners. Several Airbnb hosts in our records, for instance, made over \$10,000 per month, while others made less than \$200.”).

47. BEYOND PRICING, www.beyondpricing.com [<https://perma.cc/34DJ-J6UY>]. Several other sites offer this service as well. See KEYBEE, www.keybeehosting.com [<https://perma.cc/H49X-FBDN>]; WHEELHOUSE, www.usewheelhouse.com [<https://perma.cc/XW2A-26UT>]; AIRDNA, www.airdna.co [<https://perma.cc/9CJV-ABDC>].

48. *Earn Money as an Airbnb Host*, AIRBNB, www.airbnb.com/host/homes [<https://perma.cc/QGJ4-YZZZ>].

49. Letter from Stephanie Woods, Airbnb Host, to Mitch O’Farrell, L.A. City Councilmember (July 17, 2015), http://clkrep.lacity.org/onlinedocs/2014/14-1635-S2_pc_7-17-15.pdf [<https://perma.cc/D77V-GJNX>].

50. Barron et al., *supra* note 16, at 4. The increase in home value is related to the area’s media owner-occupancy rate; areas with a high concentration of owner-occupied units experience more modest gains in house prices. *Id.* at 26. In zip codes “with a 56% owner-occupancy rate (the 25th

researchers found that, at the median owner-occupancy rate zip code, a “1% increase in Airbnb listings is associated with a . . . 0.026% increase in house prices.”⁵¹ Other research has found that the effect may be several times greater.⁵²

2. *Local Economic Impact*

Airbnb’s own research suggests that short-term rental platforms may have a positive effect on the local economy. By providing accommodations to tourists, short-term rental platforms help draw more people, and their dollars, to an area. Moreover, because Airbnb allows guests to “live like a local,” many tourists may bring their spending to areas of the cities not served by traditional hotel accommodations. Airbnb has also released data on its economic impact in local communities around the world.⁵³ As may be expected when a company conducts its own impact analysis, the data is overwhelmingly positive. For example, the company claims that “in one year, Airbnb generated \$632 million in economic activity in [New York City], which included \$105 million in direct spending in the outer boroughs.”⁵⁴ On the other side of the world, in Sydney, Australia, Airbnb claims its “guests and hosts supported AUD \$214 million in economic activity.”⁵⁵

While limited, available empirical research completed by third parties suggests that Airbnb may have a positive effect on the local economy. For example, analysis on the economic impact of Airbnb on New Orleans found that short-term rental accommodations benefited the local economy along three dimensions: “(1) the ‘direct effect’ of spending on rent, food, and beverages, transportation, and the like, (2) the ‘indirect effect,’ where sectors form the supply chain of these industries increase their purchase

percentile),” a 1% increase in Airbnb listings leads to a 0.037% increase in house prices. *Id.* In contrast, “in zip codes with an 82% owner-occupancy rate (the 75th percentile),” a 1% increase in Airbnb listings correlates with an increase of only 0.019% in home prices. *Id.*

51. *Id.* at 1, 4. The authors note, however, “[o]f course, these estimates should not be interpreted as causal, and may instead be picking up spurious correlations. For example, cities that are growing in population likely have rising rents, house prices, and numbers of Airbnb listings at the same time.” *Id.*

52. Stephen Sheppard & Andrew Udell, *Do Airbnb Properties Affect House Prices?* 42 (Oct. 30, 2018) (unpublished manuscript), <https://web.williams.edu/Economics/wp/SheppardUdellAirbnbAffectHousePrices.pdf> [<https://perma.cc/BQB8-WHSQ>] (“Our analysis indicates that subjecting a property to the treatment of having Airbnb properties available nearby when it is sold increases prices by 3.5% (for properties that are far from the center and whose ‘treatment’ consists of only a few Airbnb properties) to more than 65% for properties that are near the center and/or are ‘treated’ by having a larger number of local Airbnb properties.”).

53. *The Economic Impacts of Home Sharing in Cities Around the World*, *supra* note 17.

54. *Airbnb Economic Impact*, *supra* note 18.

55. *Id.*

to fill this demand, and (3) the ‘induced effect,’ where local incomes are spent and re-spent locally.”⁵⁶ Across the three dimensions, it is estimated that Airbnb contributed nearly \$134 million dollars in total increased income⁵⁷ and \$185 million dollars in total value added to the regional economy in 2015.⁵⁸

However, not all economists agree on the extent of economic gains attributable to Airbnb. Analysis by the Economic Policy Institute (EPI) suggests that they are “much smaller than commonly advertised.”⁵⁹ According to the EPI, studies touting alleged economic gains ignore the fact that most spending would happen anyway, absent the Airbnb option, as travelers opt instead to stay in hotels and other accommodations.⁶⁰ As a result, they “vastly overstate the effect” of Airbnb on the local economy.⁶¹

B. Effects on the Local Housing Market

Airbnb lauds its service as a mechanism to allow underutilized resources to be put to use. However, in collecting a fee to share space in their homes, hosts gain a financial benefit while imposing costs on their neighbors and the surrounding communities. Homesharing affects the properties, neighborhoods, and even cities in which those homes are situated. While Airbnb touts an increase in property values and higher tax revenues from tourist activities, it is not without costs to locals. The surrounding community experiences a loss of affordable housing, increase in average rental prices, and changes in neighborhood character.

56. MEHMET F. DICLE & JOHN LEVENDIS, *THE ECONOMIC IMPACT OF AIRBNB ON NEW ORLEANS* 2 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2856770 [<https://perma.cc/VSS8-GQ7Q>]. This research examines the economic impact of Airbnb on New Orleans for calendar year 2015. *Id.* at 9 (“When income is spent it becomes income for other people, many of them locals. The locals, in turn, spend a portion of their money locally, proving additional income for more locals. Similarly, when a business makes a product, it must purchase materials from another business and so forth. The process is one of a circular flow of income. Income leaks from the system whenever it is spent outside of the region. The task of the economist is to estimate how spending in one sector of the economy spills over into other interconnected sectors.”).

57. *Id.* at 12.

58. *Id.* at 13.

59. Josh Bivens, *The Economic Costs and Benefits of Airbnb*, *ECON. POL’Y INST.* 2 (Jan. 30, 2019), <https://www.epi.org/files/pdf/157766.pdf> [<https://perma.cc/6VPF-48FD>] (finding that research on the positive economic benefits of Airbnb on the local economy are largely overstated because Airbnb is commonly a pure substitution for other forms of accommodation). “Two surveys indicate that *only* 2 to 4 percent of those using Airbnb say that they would not have taken the trip were Airbnb rentals unavailable.” *Id.* (emphasis added).

60. *Id.*

61. *Id.*

1. Loss of Long-Term Rental Accommodations

Homesharing diminishes the available housing stock and exacerbates the affordable housing crisis⁶² by converting long-term rental accommodations to short-term rentals. The number of units listed on Airbnb increased significantly in recent years, surpassing new construction and reducing available housing stock.⁶³

Research on the conversion of long-term accommodations to short-term listings supports this finding. A New York State Office of the Attorney General report analyzed Airbnb bookings in New York City between January 1, 2010 and June 2, 2014.⁶⁴ The report found that in 2013, over 4,600 Airbnb units were booked as short-term rentals for three months or more and, of these, close to 2,000 were booked as short-term rentals for six months or more.⁶⁵ As a result, “private short-term rentals displaced long-term housing in thousands of apartments.”⁶⁶ Some estimates place the total number of New York City long-term rentals lost to Airbnb at 13,500 units.⁶⁷ In 2017, “12,200 entire-home listings were frequently rented (rented for 60 days or more, and available for 120 days or more), while 5,600 entire-home listings were very frequently rented (rented 120 days or more, and available 240 days or more).”⁶⁸

The rate of displacement will increase as Airbnb continues to expand. There were 67,1000 Airbnb listings in New York City that were rented at least one time between September 2016 and August 2017.⁶⁹ This represents a 4.5% increase from September 2015 to August 2016 when 64,200 units were rented, and an increase of 37% from September 2014

62. See generally James A. Allen, *Disrupting Affordable Housing: Regulating Airbnb and Other Short-Term Rental Hosting in New York City*, 26 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 151 (2017).

63. WACHSMUTH ET AL., SHORT-TERM CITIES, *supra* note 21, at 35, 38 (“[N]eighbourhoods with the most Airbnb activity are seeing their available long-term rental housing significantly constrained by short-term rentals.”).

64. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 2. The report confined itself to bookings of an entire home/house and a private room, where the host may or may not be present. The study purposefully did not include shared rooms, where a host is present during a stay. *Id.*

65. *Id.* at 3; see also Karen Horn & Mark Merante, *Is Home Sharing Driving Up Rents? Evidence from Airbnb in Boston*, 38 J. HOUSING ECON. 14, 15 (2017) (finding that “a one standard deviation increase in Airbnb density is correlated with a 5.9% decrease in the number of rental units offered for rent. At the mean, weekly number of units offered for rent per census tract . . . this represents a reduction of 4.5 units.”).

66. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 3.

67. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 25.

68. *Id.*

69. *Id.* at 9.

to August 2015, when there only 48,800 units.⁷⁰ Researchers examined twenty zip codes across the City in the boroughs of Manhattan, Brooklyn, and Queens, finding that “listings on Airbnb comprise at least 10% of total rental units.”⁷¹ The rapid growth of Airbnb was particularly evident in the East Village, Williamsburg, the West Village, and the Lower East Side, where Airbnb listings comprised a remarkable 20% of the rental market.⁷²

Analysts have reached similar conclusions in other housing markets. Airbnb has removed 13,700 long-term housing units from the rental market in Montreal, Vancouver, and Toronto; for example, in Montreal alone, Airbnb has converted 2% or 3% of the total housing stock to short-term rentals.⁷³ In addition to whole-home listings, those three cities have a combined 5,400 listings of private rooms in owner-occupied properties.⁷⁴ Although a host still occupies the unit in this type of accommodation, it results in a loss to the long-term rental market; renting a spare room eliminates a space that may otherwise be occupied by a long-term roommate.⁷⁵

The rate of Airbnb expansion—and its effect on the rental markets—outpaces the policies meant to protect cities from a loss of affordable housing. In some neighborhoods, Airbnb growth far surpasses new construction, resulting in a net loss to the available housing stock.⁷⁶ In fact, in many areas of Toronto and Vancouver, “more than twice as many homes have been removed from these neighborhoods by short-term rentals as have been added by new construction.”⁷⁷ In Los Angeles, where

70. *Id.*

71. N.Y. CMTYS. FOR CHANGE, AIRBNB IN NYC HOUSING REPORT 3 (2015), <http://www.sharebetter.org/wp-content/uploads/2015/07/AirbnbNYCHousingReport1.pdf> [<https://perma.cc/HL3H-MC9J>].

72. *Id.* at 3.

73. WACHSMUTH ET AL., SHORT-TERM CITIES, *supra* note 21, at 2–3 (displaying figure representing the number of entire home rentals as more than sixty days a year in Montreal, Vancouver, and Toronto).

74. *Id.* at 24.

75. *Id.*

76. *Id.* at 38 (“[I]n well-established central-city neighbourhoods with less construction, such as the Plateau-Mont Royal in Montreal, High Park in Toronto, and Kitsilano in Vancouver, Airbnb growth is completely outpacing new constructions and actually reducing net available housing stock. In several Toronto and Vancouver neighbourhoods, Airbnb listing growth is greater than 200% of housing completions. More than twice as many homes may have been removed from these neighbourhoods by short-term rentals as have been added by new construction. In Montreal, where growth of Airbnb listings has been slower, no neighbourhoods cross this 200% threshold, but full-time, entire home Airbnb listing growth is still outpacing completions in several areas. These areas are likely to be experiencing displacement of long-term residents, upward pressure on rents, and a reduction in the ability of new residents to move into these neighborhoods.”).

77. *Id.*

an estimated eleven units are lost to long-term renters each day, the number of new housing units “barely keeps up with the housing removed from the market by short-term rental companies.”⁷⁸

The potential for increased rental income incentivizes landlords to convert long-term affordable housing to short-term rentals, often resorting to extreme measures to remove existing tenants. As Gale Brewer, Manhattan Borough President noted during a City Council meeting on the effect of Airbnb on New York City housing stock:

[T]he greatest problem is the threat to tenants by owners who hope to vacate as many units as possible, or even entire buildings, to then be used as transient, illegal hotels Over the years, I, my staff, and my fellow Manhattan elected officials have all encountered cases where landlords harassed tenants or refused to renew leases, all in an attempt to clear out units for more lucrative use as illegal hotel rooms. We have even seen cases where a landlord’s use of an apartment as an illegal hotel room functioned as a harassment tactic aimed at neighboring tenants.⁷⁹

2. *Increase in Average Asking Rents*

The rise in popularity of Airbnb in a jurisdiction increases average rents in that area. In a study of 100 cities across the United States, increased homesharing activity caused higher rents for local residents—this effect is even greater when more hosts enter the homesharing market.⁸⁰ In particular, Airbnb and other homesharing platforms function to “reallot[e] their properties from the long- to the short-term rental market,” thereby increasing rental costs.⁸¹ The increase in rent extends to neighborhoods located both near to and far from the city center; rent increases correlated with Airbnb listings reach even zip codes farthest from downtown.⁸² While few studies have examined the connection

78. ROY SAMAAN, L.A. ALL. FOR THE NEW ECON., SHORT-TERM RENTALS AND L.A.’S LOST HOUSING 3 (2015) [hereinafter SAMAAN, SHORT-TERM RENTALS], http://www.laane.org/wp-content/uploads/2015/08/Short-Term_RentalsLAs-Lost_Housing.pdf [https://perma.cc/G6DH-Y6AL].

79. Rebecca Fishbein, *Airbnb & City Council Go to War*, GOTHAMIST (Jan. 21, 2015, 9:53 AM), http://gothamist.com/2015/01/21/airbnb_nyc_city_council.php [https://perma.cc/53GL-8629].

80. Barron et al., *supra* note 16, at 12–13 (noting that if negative externalities, such as noise, waste, and decreased parking, etc., create poor neighborhood conditions, it could drive down rent in some instances). However, “there could also be positive externalities that have the opposite effects.” *Id.*

81. *Id.* at 31. In studying the effect of Airbnb on home prices, the researchers found that homesharing increases equity for homeowners by increasing home prices and that this increase is greater than the increase in rental prices. *See generally id.*

82. *Id.* at 57.

between Airbnb and rental prices, those that have identified a positive relationship between the prevalence of Airbnb and average asking rent.

These results are echoed in localities around the world. A 2017 study of the effect of Airbnb rentals on the Boston housing market found evidence that an increase in Airbnb density raises average rents for locals.⁸³ In census tracts with the greatest number of Airbnb listings relative to the total number of housing units, this increase is as much as 3.1%.⁸⁴ The rent increases are even greater for certain types of housing accommodations. Larger units command higher rents. Airbnb increased asking rents by 17% for each additional bedroom and 11% for each additional bathroom.⁸⁵ These increases can add thousands of dollars to annual housing costs for Boston tenants. In Australia, researchers found that “the number of whole dwellings frequently available on Airbnb is more than three times the vacancy rate in [the Waverly neighborhood of Sidney]. This suggests that Airbnb rentals have a sizeable impact on the availability of permanent rental housing [in the locality] with consequent pressure on rents.”⁸⁶

Similarly, high Airbnb density correlates with increased rents in Los Angeles.⁸⁷ According to Lovely, an apartment listing service, Los Angeles rents increased by 10.4% between the first quarter of 2013 and the third quarter of 2014.⁸⁸ While rental prices are certainly a function of a variety of factors, it is telling that “Airbnb density coincides with neighborhoods that have rents well above the citywide average.”⁸⁹ In fact, Airbnb-dense neighborhoods boast an average rent that is 20% higher than the Los Angeles city average.⁹⁰

Several studies have found that Airbnb has had a similar effect on New York City’s rental housing market. McGill University researchers found

83. Horn & Merante, *supra* note 65, at 1, 20 (“[A] one standard deviation increase in Airbnb listings . . . in a [given] census tract . . . [raises] asking rents by 0.4%. For those census tracts in the highest decile of Airbnb listings relative to total housing units, this is an increase in asking rents of 3.1%, which equates at the citywide mean monthly asking rent [of \$2972] to an increase of as much as \$93 in mean monthly asking rent.”).

84. *Id.*

85. *Id.* at 21. The researchers do note, however, that “[w]here our approach may suffer from omitted variables bias is if other neighborhood characteristics are changing at the same time that Airbnb listings are changing, and thus our Airbnb density coefficient could be identifying these other neighborhood level changes rather than the causal impact of Airbnb on asking rents.” *Id.*

86. Nicole Gurran & Peter Phibbs, *When Tourists Move In: How Should Urban Planners Respond to Airbnb?*, 83 J. AM. PLAN. ASS’N 80, 88 (2017).

87. SAMAN, AIRBNB, *supra* note 26, at 17–18.

88. *Id.* at 18.

89. *Id.* at 20.

90. *Id.*

that “Airbnb increased the median long-term rent in New York City by 1.4%” between September 2014 and August 2017.⁹¹ On average, a 1.4% increase meant an additional \$380 a year in rent for New York City tenants.⁹² However, in certain neighborhoods, the increase was much higher, with several greater than \$500 a year and an estimated increase of \$780 a year in zip code 10036 (located in Clinton, NYC).⁹³ These conclusions echoed a 2018 report by the New York City Comptroller, which found that “Airbnb [is] responsible for nearly 10 percent of citywide rental increase between 2009 and 2016.”⁹⁴

3. *Changes to Neighborhood Composition*

As landlords convert their units from long- to short-term rentals, striking changes appear in neighborhood character. Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with permanent residents.⁹⁵ As noted in a 2016 study on short-term rentals conducted by the City of New Orleans Planning Commission, the “overarching concern of the opponents with short-term rentals is the commercialization of residential neighborhoods.”⁹⁶

These conflicts result in decreased quality of life for long-term

91. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 2.

92. *Id.*

93. *Id.* at 37.

94. *Comptroller Stringer Report*, *supra* note 23; see also Letter from Bailey Duquette, P.C., to the Office of the N.Y.C. Comptroller, Gen. Counsel’s Office (May 7, 2018) (written on behalf of AirDNA) (on file with author); Abigail Long, *Data Provider AirDNA Sends Cease and Desist Letter to NYC Comptroller*, AIRDNA (May 9, 2018), <http://blog.airdna.co/data-provider-airdna-sends-cease-desist-letter-nyc-comptroller/> [<https://perma.cc/BB63-JMM6>]. AirDNA, “an advocate for short-term rentals,” which owned the data used to generate the report data were used to generate the report, sent a cease and desist letter to Comptroller Stringer alleging the report misrepresented the data and violated the AirDNA terms of service. *Id.* The Comptroller’s office stood by its report noting that it “took an empirical, data-driven approach to assessing this Airbnb effect and shared with the public.” “It’s no surprise that AirDNA would attack a credible report when their own bottom line depends on Airbnb’s success.” Luis Ferré-Sadurní, *Report on Airbnb in New York Made ‘Crucial Errors,’ Data Provider Says*, N.Y. TIMES (May 4, 2018), <https://www.nytimes.com/2018/05/04/nyregion/airbnb-new-york-report-errors.html> [<https://perma.cc/2854-7EFL>].

95. Filippas & Horton, *supra* note 25, at 1 (“If Airbnb hosts bring in loud or disreputable guest but, critically, still collect payment, then it would seem to create a classic case of un-internalized externalities that existing illegal hotel laws are intended to prevent: the host gets the money and her neighbors get the noise.”).

96. CITY OF NEW ORLEANS PLANNING COMM’N, *supra* note 24, at 30, 31 (“There is especially a concern over investors purchasing homes and renting them out only as a short-term rental. They say that these uses are ‘mini-hotels’ because no one ever lives there and should be prohibited in residential districts, like other commercial uses.”).

residents.⁹⁷ As Airbnb listings increase, there is an increase in negative externalities felt by locals. Residents in Bath, England, for example, reported that short-term rentals increase noise levels, unsanitary conditions, and illegal disposal of garbage.⁹⁸ In the popular Silver Lake neighborhood of Los Angeles, the Neighborhood Council has received complaints from residents that include “unfamiliar cars blocking driveways, late night parties on formerly quiet streets, and concerns about child safety in an environment with fewer eyes on the street.”⁹⁹

New Orleans’s Short Term Rental Administration contemplates the effect of rentals on the surrounding neighborhood. In New Orleans, “short-term rentals shall not adversely affect the residential character of the neighborhood nor shall the use generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person’s enjoyment of his or her residence.”¹⁰⁰ Despite this, residents reported being affected by the influx of short-term rentals. At a 2018 City Planning Commission hearing on how Airbnb is affecting quality of life,¹⁰¹ residents of those neighborhoods most highly saturated with Airbnb rentals “described loud, disruptive tourists and said the influx of short-term rentals is hollowing out their neighborhood.”¹⁰² An influx of rental units “reduces the cohesion in the neighborhood, reduces the number of people who are invested in the neighborhood, and damages businesses that serve the local population.”¹⁰³

a. *Influx of Commercial Interests*

A significant portion of the Airbnb market consists of commercial hosts—those with more than one listing. A review of five cities (Austin,

97. See Wegmann & Jiao, *supra* note 27, at 495.

98. Yohannes Lowe & Richa Kapoor, *Councillors Call for New Rules to Stop Rise of ‘Party Homes’ Spreading Around Bath*, TELEGRAPH (Aug. 16, 2019, 4:38 PM), <https://www.telegraph.co.uk/news/2019/08/16/councillors-call-new-rules-stop-rise-party-homes-spreading-around/> [https://perma.cc/DRJ8-VZN8].

99. SAMAAN, AIRBNB, *supra* note 26, at 21.

100. *Short Term Rental Zoning Restrictions*, CITY NEW ORLEANS, <https://www.nola.gov/short-term-rentals/str-zoning-restrictions/> [https://perma.cc/4C26-S7KH].

101. Charles Maldonado, *New Orleans Residents Sound Off on How Airbnb is Affecting Their Lives*, LENS (Apr. 24, 2018), <https://thelensnola.org/2018/04/24/live-coverage-new-orleans-residents-sound-off-on-how-airbnb-is-affecting-them/> [https://perma.cc/2M9Q-KJME].

102. *Id.* (quoting resident Margaret Walker, “I live in the Marigny. It’s all short-term rentals now. I’d like to have my neighbors back.”); see also Peck & Maldonado, *supra* note 3 (“Before Airbnb, you had neighbors you could depend on. They looked out for you. If you went out of town, they’d get your mail, your paper . . . you just had more of a neighborly neighborhood.”).

103. CITY OF NEW ORLEANS PLANNING COMM’N, *supra* note 24, at 31.

Boston, Chicago, San Francisco, and Washington, DC)¹⁰⁴ confirms that the share of the Airbnb market held by hosts with more than one listing is substantial, with 30% in Austin to a full 44% in Boston.¹⁰⁵ While the average number of listings for hosts with more than one listing ranges from 3.0 (Austin, Chicago, and San Francisco)¹⁰⁶ to 3.6 (Boston),¹⁰⁷ the large number of listings held by a single host suggests that commercial operators benefit from lax regulations of short-term rentals. In Austin, for example, a single host operates 140 Airbnb listings.¹⁰⁸

The increased presence of commercial hosts drives changes to neighborhood character. A study of New Orleans neighborhoods by Jane Place Neighborhood Sustainability Initiative¹⁰⁹ found that the majority of Airbnb listings are controlled by a small number of hosts.¹¹⁰ Specifically, of the properties evaluated, 18% of hosts “controlled nearly half of all permitted [short-term rentals]” in New Orleans.¹¹¹ In fact, the twenty-five highest grossing Airbnb hosts in the United states each made more than fifteen million dollars in 2017 off hundreds of units each.¹¹² The most

104. Wegmann & Jiao, *supra* note 27, at 496 (“The data analyzed in this paper was obtained from ‘scrapes’ of Airbnb’s website conducted by New York-based photojournalist and data analyst Murray Cox. . . . Data for each of the five cities was collected in the late spring or early summer of 2015.”).

105. *Id.* at 498 (discussing how of the remaining cities, Chicago’s share was 38%, San Francisco’s share was 34%, and Washington, D.C.’s share was 39%).

106. The analysis looked at available data in 2015, before San Francisco’s new laws regulating short-term rentals were enacted.

107. Wegmann & Jiao, *supra* note 27, at 498 tbl.1 (demonstrating that the average listing per host with more than one listing in Washington, D.C. was 3.5).

108. *Id.* at 497; see also Kristóf Gyódi, *An Empirical Analysis on the Sharing Economy: The Case of Airbnb in Warsaw* (Inst. of Econ. Research Working Papers, No. 33, 2017), http://www.badania-gospodarcze.pl/images/Working_Papers/2017_No_33.pdf [<https://perma.cc/QE9B-6FA6>] (“The share of [Airbnb listings in Warsaw, Poland] offered by hosts owning 1 listing is only 47%. Therefore, 53% of the listings are multi-listings, which may mean a strong presence of various real-estate investors and professional agencies that use the Airbnb platform to provide professional services . . . more than a quarter of all accommodations offered via Airbnb belongs to hosts with more than five listings.”).

109. JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, SHORT-TERM RENTALS, LONG-TERM IMPACT: THE CORROSION OF HOUSING ACCESS AND AFFORDABILITY IN NEW ORLEANS 2 (2018), https://storage.googleapis.com/wzukusers/user27881231/documents/5b06c0e681950W9RSePR/STR%20Long-Term%20Impacts%20JPNSI_4-6-18.pdf [<https://perma.cc/Q3Z3-HYFX>] (“Jane Place Neighborhood Sustainability Initiative is a ten-year old Community Land Trust (CLT) and housing rights organization committed to creating sustainable, democratic, and economically-just neighborhoods and communities in New Orleans.”).

110. *Id.* at 14.

111. *Id.* at 4.

112. Patrick Sisson, *Airbnb Business: As Professionals Find Success on the Platform, Is there Still Room for Shares?*, CURBED (Mar. 11, 2018), <https://www.curbed.com/2018/2/21/17032100/airbnb-business-profit-hotel-property-management> [<https://perma.cc/ZB6V-MZNY>].

profitable account earned over forty-four million dollars from listing over one thousands rooms.¹¹³

That professional entities with hundreds, if not thousands, of units are profiting most greatly from the platform is at odds with Airbnb's characterization of itself as way for average homeowners to subsidize their income. Sebastian de Kleer, the founder of Globe Homes and Condos—once identified as one of the largest commercial Airbnb operators in Los Angeles—told the *Los Angeles Times*, “[i]t doesn’t match their PR story to have professionals on their platform.”¹¹⁴ As one Silver Lake Neighborhood Councilmember said, “[i]t’s supposed to be a spare room—not corporate interests taking over our neighborhood and turning everything into a virtual hotel.”¹¹⁵

b. Decrease in Neighborhood Social Capital

“Social capital it is the glue that holds societies together and without which there can be no economic growth or human well-being.”¹¹⁶ The foundation of social capital is that “social networks have value.”¹¹⁷ The concept incorporates “not just warm and cuddly feelings, but a wide variety of quite specific benefits that flow from the trust, reciprocity, information, and cooperation associated with social networks.”¹¹⁸

As Airbnb listings change the character of the neighborhood, and as residents are displaced by the influx of tourists, social capital declines. One elderly tenant in a rent-stabilized apartment in New York remarked that “only seven permanent tenants remain in her building, with her landlord ignoring requests for necessary repairs in favor of gut renovations on apartments functioning as illegal hotels. ‘My friends are

113. *Id.*

114. SAMAAN, SHORT-TERM RENTALS, *supra* note 78, at 2 (“The percentage of on-site hosts has also declined sharply between October 2014 and July 2015. Airbnb regularly implies that the majority of its listings are shared spaces. In October, this claim was consistent with the data (52 percent of hosts were on-site), though misleading (they generated just 11 percent of Los Angeles revenue). That is no longer true. As of July 2015 just 36 percent of listing agents were on-site, and only 16 percent of Airbnb revenue derives from these listings.”).

115. Emily Alpert Reyes, *Los Angeles Gives Hosts, Neighbors Mixed Signals on Short-Term Rentals*, L.A. TIMES (Feb. 7, 2015, 10:00 AM), <https://www.latimes.com/local/california/la-me-adv-illegal-rentals-20150208-story.html> [<https://perma.cc/VVF6-RALZ>].

116. CHRISTIAAN GROOTAERT & THEIRRY VAN BASTELAER, THE WORLD BANK, UNDERSTANDING AND MEASURING SOCIAL CAPITAL: A SYNTHESIS OF FINDINGS AND RECOMMENDATIONS FROM THE SOCIAL CAPITAL INITIATIVE 2 (2001).

117. *Social Capital Primer*, ROBERT D. PUTNAM, <http://robertdputnam.com/bowling-alone/social-capital-primer/> [<https://perma.cc/DA5Y-GY7B>].

118. *Id.*

being replaced by strangers and tourists,' she said."¹¹⁹ As a Nashville resident noted, living in close proximity to an Airbnb accommodation feels uncomfortable all the time because you don't know what to expect . . . If you can imagine the house that was next door to you [growing up], where you probably literally borrowed flour and sugar. What if that wasn't there and that was a hotel? Would you have wanted to grow up next to that?¹²⁰

II. RACIAL IMPLICATIONS OF SHORT-TERM RENTAL PLATFORMS

Short-term rentals affect minority users along multiple dimensions. First, Airbnb users experience discrimination along racial lines. Second, growth in Airbnb listings correlates with gentrification in historically minority-occupied neighborhoods. Third, Airbnb concentrates wealth along racial lines.

A. *Airbnb and Discrimination*

The early years of internet commerce generally relied on anonymity.¹²¹ The true identities of both buyers and sellers were obscured throughout the transaction.¹²² The lack of personal information—gender, race, age, etc.—removed many opportunities for discriminatory practices.¹²³ The growth of the sharing economy has pushed these interactions in the other direction.¹²⁴ Whereas, before identities were protected, the sharing economy now thrives on personal connections.¹²⁵ This helps to diminish the perceived risk associated with transacting with an individual rather

119. Rebecca Fishbein, *Airbnb & City Council Go to War*, GOTHAMIST (Jan. 21, 2015), <https://gothamist.com/news/airbnb-city-council-go-to-war> [<https://perma.cc/53GL-8629>].

120. Victor Luckerson, *Not in My Neighbor's Backyard*, RINGER (Nov. 21, 2017), <https://www.theringer.com/features/2017/11/21/16678002/airbnb-nashville> [<https://perma.cc/6GLN-BYJM>].

121. See generally Fiona Scott Morton, Florian Zettelmeyer & Jorge Silva-Risso, *Consumer Information and Price Discrimination: Does the Internet Affect the Pricing of New Cars to Women and Minorities?* (Nat'l Bureau of Econ. Research, Working Paper No. 8668, 2001), available at <https://www.nber.org/papers/w8668> [<https://perma.cc/2DA2-SLSF>].

122. See generally *id.*

123. See, e.g., *id.* (examining differences in pricing in offline versus online car sales and finding that, when demographic information is withheld from the seller, as is the case in online car sales, minority buyers paid the same price for cars as white buyers).

124. See Eyal Ert et al., *Trust and Reputation in the Sharing Economy: The Role of Personal Photos in Airbnb*, 55 TOURISM MGMT. 62 (2016).

125. *Id.* at 63.

than a business.¹²⁶ Hosts and guests on Airbnb are encouraged to provide their names, photographs, and interesting biographical information. However, the use of personal information provides opportunity for discrimination.

1. *Discrimination Against Guests*

Guests of color experience discrimination using Airbnb in a way that is not possible when making a short-term reservation on an online hotel booking platform. Unlike hotel platforms, where the proprietor does not have the ability to reject a booking when a room is available, Airbnb guests have the ability to decide whether to accept a potential reservation. While federal law prohibits discrimination on the basis of race, sex, color, religion, or national origin,¹²⁷ in practice, no one monitors short-term rental platforms for compliance. This allows hosts, who have wide discretion in accepting guests, to engage in discriminatory practices.

Indeed, there are several high-profile instances of guests of color experiencing discrimination. In 2017, an Asian-American guest was informed by her host that the reservation was cancelled.¹²⁸ The host terminated the reservation by text, stating “I wouldn’t rent to u if u were the last person on earth [sic]. One word says it all. Asian . . . It’s why we have [T]rump.”¹²⁹ Discrimination among Airbnb hosts has become so prevalent that it sparked the social media campaign #AirbnbWhileBlack.¹³⁰

These individual experiences are corroborated by a Harvard Business School study that found “applications from guests with distinctively African-American names are 16 percent less likely to be accepted relative to identical guests with distinctly white names.”¹³¹ The results were consistent across a variety of factors including sex of the host, whether the property was shared or un-hosted, the experience level of the host,

126. Kakar et al., *supra* note 29, at 28.

127. *See, e.g.*, 42 U.S.C. § 3604 (2012).

128. Amy B. Wang, *Airbnb Host Who Stranded Guest Because of Race Ordered to Take Class in Asian American Studies*, WASH. POST (July 14, 2017), <https://www.washingtonpost.com/news/business/wp/2017/07/14/airbnb-host-who-stranded-guest-because-of-race-ordered-to-take-class-in-asian-american-studies/> [<https://perma.cc/64G9-GZ37>].

129. *Id.*

130. *See generally* Shankar Vedantam, *#AirbnbWhileBlack: How Hidden Bias Shapes the Sharing Economy*, NPR (Apr. 26, 2016), <https://www.npr.org/2016/04/26/475623339/-airbnbwhileblack-how-hidden-bias-shapes-the-sharing-economy> [<https://perma.cc/AEM3-8LVP>].

131. Edelman et al., *supra* note 28, at 1–2 (“To test for discrimination, we conduct[ed] a field experiment in which we inquire[d] about the availability of roughly 6,400 listings on Airbnb across five cities. Specifically, we create[d] guest accounts that differ by name but [were] otherwise identical . . . one distinctively African American and the other distinctively white.”).

diversity of the neighborhood, and price of the listing.¹³²

The frequency of discrimination against would-be guests of color prompted action by the Congressional Black Caucus (CBC). In a letter to the Airbnb's CEO, the CBC made plain its "concerns regarding the recent reports of the exclusion of many African Americans and other minorities from booking rooms on your site due to their race."¹³³ The CBC's letter asked Airbnb four questions: (1) "[w]hy is it seemingly so easy to discriminate against someone via [the] platform?"; (2) whether Airbnb has data related to discrimination on its platform; (3) "what is Airbnb doing at present to address this glaring issue of discrimination?"; and (4) whether Airbnb would "consider implementing some of the common sense measures to avoid discrimination" such as reducing the prominence of user names and photos, increasing Instant Book, and regularly notifying users of Airbnb's anti-discrimination policy.¹³⁴

2. *Discrimination against hosts*

Like guests, minority hosts experience discrimination on short-term rental platforms. For such hosts, this manifests in a lower listing price relative to comparable accommodations marketed by white hosts.¹³⁵ In New York City, "[t]he raw data show that non-black and black hosts receive strikingly different rents: roughly \$144 versus \$107 per night, on average," even when controlling for "the main characteristics of the listing itself."¹³⁶ Follow-up research on discrimination against Asian American hosts in New York City¹³⁷ and San Francisco¹³⁸ reached similar

132. *Id.* at 7.

133. Letter from G.K. Butterfield, Chairman, Cong. Black Caucus, and Emanuel Cleaver, II, Member, Congress, to Brian Chesky, CEO, Airbnb, Inc. (June 16, 2016), <https://cleaver.house.gov/sites/cleaver.house.gov/files/16.06.2016%20Airbnb%20Letter.pdf> [<https://perma.cc/A9N7-5VSM>].

134. *Id.*

135. Edelman & Luca, *supra* note 29, at 4.2; *see also* Kakar et al., *supra* note 29, at 36; Mo, *supra* note 29, at section VI.

136. Edelman & Luca, *supra* note 29, at 4.2 ("Of course, many factors influence the rents received by hosts—and race is likely correlated with some of these factors. One might be concerned that apparent racial differences actually result from unobserved differences between listings. While we cannot completely eliminate this concern, we mitigate the issue by controlling for all of the information that a guest sees when examining Airbnb search results and listing details.").

137. John Gilheany et al., *The Model Minority? Not on Airbnb.com: A Hedonic Pricing Model to Quantify Racial Bias Against Asian Americans*, TECH SCI. (Sept. 1, 2015), <https://techscience.org/a/2015090104/> [<https://perma.cc/H4NV-BMCU>] (finding that "on average Asian hosts earn . . . 20% less than White hosts for similar rentals").

138. Kakar et al., *supra* note 29, at 36–38 ("Neither the controls for neighborhood racial composition and median income nor the control for occupancy level[] have any meaningful impact

conclusions.

There are several suggested explanations for the pricing differential. Minority hosts may “price lower to increase the pool in interested guests . . . and maintain their target occupancy.”¹³⁹ This may also “signal a response to an anticipation of racial discrimination in the online marketplace.”¹⁴⁰ Alternatively, “minority hosts could value a larger pool of potential guests as a way to be more selective” in choosing guests.¹⁴¹ “White hosts may be pricing high in order to create a self-selection pool of renters that better meet the profile of guests they wish to have and engage with socially.”¹⁴² These pricing differentials have a tremendous impact on the ability of minority hosts to realize Airbnb’s economic benefits, such as additional home value and an increase in home value.

B. *Airbnb and Gentrification*

In light of the relationship between Airbnb and reduction in long-term affordable rental housing from the market, there are questions about whether Airbnb contributes to gentrification. British sociologist Ruth Glass coined the term “gentrification” in 1964 to describe the displacement of the “working class” from the center city by new middle-class residents.¹⁴³ Today, however, scholars understand that gentrification is no longer confined to “the inner city or First World metropolises.”¹⁴⁴ Nor is it limited merely to residential changes, but rather includes multiple

on the estimated differences [O]n average, Asian and Hispanic Airbnb hosts charge 8–10% lower prices relative to White hosts on equivalent rental properties, after controlling for all renter-available information on rental unit characteristics, as well as additional information on neighborhood property values, area demographics, and occupancy rates This translates to revenue gap of about \$4,100 annually.”).

139. *Id.* at 36.

140. *Id.*

141. *Id.*

142. *Id.*

143. Ruth Glass, *Introduction: Aspects of Change*, in LONDON: ASPECTS OF CHANGE, at xviii-xix (1964) (“One by one, many of the working class quarters of London have been invaded by the middle classes—upper and lower. Shabby, modest mews and cottages—two rooms up and two down—have been taken over, when their leases have expired, and have become elegant, expensive residences. Larger Victorian houses, downgraded in an earlier or recent period—which were used as lodging houses or were otherwise in multiple occupation—have been upgraded once again. Nowadays, many of these houses are being subdivided in costly flats or ‘houselets’ (in terms of the new real estate snob jargon). The current social status and value of such dwellings are frequently in inverse relation to their size and in any case enormously inflated by comparison with previous levels in their neighborhoods. Once this process of ‘gentrification’ starts in a district it goes on rapidly until all or most of the original working class occupiers are displaced and the social character of the district is changed.”).

144. LORETTA LEES, TOM SLATER & ELVIN WYLY, GENTRIFICATION, at xvii (2008).

facets. Gentrification is a “highly dynamic process . . . not amendable to overly restrictive definitions; rather than risk construing our understanding of this developing process by imposing a definitional order, we should strive to consider the broad range of processes that contribute to this restructuring, and to understand the links between seemingly separate processes.”¹⁴⁵

1. *Airbnb as a Gentrification Tool*

There is a strong correlation between short-term rentals and gentrification. A study of New York City Airbnb listings found that in many parts of the city, “hosts of frequently rented entire-home Airbnb listings earn 200% or more [than] the median long-term neighborhood rent, and these areas are 72% non-white.”¹⁴⁶ This creates strong economic incentives for converting long-term rental accommodations to short-term rentals in communities of color.

Studies suggest that Airbnb disproportionately benefits white hosts even in predominantly Black neighborhoods. A 2017 study by Inside Airbnb examined the effect of Airbnb on predominantly Black neighborhoods in New York City.¹⁴⁷ According to the study, “across all 72 predominantly Black New York City neighborhoods, Airbnb hosts are 5 times more likely to be white. In those neighborhoods, the Airbnb host population is 74% white, while the white resident population is only 13.9%.”¹⁴⁸

Despite the controversy, the conclusions reached by the Inside Airbnb data are supported by other research. A New York State Office of the Attorney General report found that “gentrified or rapidly gentrifying neighborhoods primarily in Manhattan account[] for the vast majority of revenue from private short-term rentals in New York City.”¹⁴⁹ Similarly a

145. Neil Smith & Peter Williams, *Alternatives to Orthodoxy: Invitation to a Debate*, in GENTRIFICATION OF THE CITY 3 (Neil Smith & Peter Williams eds., 1986).

146. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 34.

147. Murray Cox, *The Face of Airbnb, New York City: Airbnb as a Racial Gentrification Tool*, INSIDE AIRBNB (Mar. 1, 2017), <http://insideairbnb.com/face-of-airbnb-nyc/> [<https://perma.cc/8F9D-P7YG>].

148. *Id.* Airbnb initially published criticism of the report but has since taken it off their website. In response, Murray Cox responded in detail to each of Airbnb’s criticisms. Murray Cox, *A Year Later: Airbnb as a Racial Gentrification Tool*, INSIDE AIRBNB (Jan. 30, 2018), <http://insideairbnb.com/face-of-airbnb-nyc/a-year-later-airbnb-as-racial-gentrification-tool.html> [<https://perma.cc/5ZMG-RF4F>]. Mr. Cox specifically addresses critiques that the research is not peer reviewed, uses racial coding rather than self-identification, uses computer software to racially identify hosts, engages in racial profiling, lacks a control group, and fails to address disparities between neighborhoods analyzed. *Id.*

149. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 3 (“[T]he Lower East Side/Chinatown, Chelsea/Hell’s Kitchen, and Greenwich Village/SoHo—accounted for approximately \$187 million in revenue to hosts, or more than 40 percent of private stay revenue to

study of the effect of short-term rentals on New Orleans noted that while neighborhood impacts vary, what happens in one neighborhood affects other neighborhoods—middle-income residents priced out of a rapidly gentrifying neighborhood might end up moving to a lower-cost neighborhood, which could cause the displacement of low-income residents from their once affordable community as costs rise with the demand for housing by a higher-income group.¹⁵⁰

Since 2012, New Orleans rents have increased by twenty to twenty-five percent.¹⁵¹ Despite increased rental rates, landlords realize greater economic gain from short-term rentals to tourists than renting to long-term residents, especially in gentrifying neighborhoods.¹⁵²

2. Resident Displacement

A recent study of holiday rentals in Barcelona similarly examined the “conversion of housing into tourist accommodation” by platforms like Airbnb.¹⁵³ The Barcelona study found that, because “long-term residents represent a barrier to capital accumulation,” short-term rentals cause and accelerate three distinct types of displacement: direct displacement (“involuntary out-migration from a place”), exclusionary displacement (“difficulties in finding affordable accommodation in gentrifying areas”), and displacement pressures (“changes at the neighborhood scale such as loss of social networks, stores, or public facilities that are central to everyday life”).¹⁵⁴ Taken together, “the growth of tourism and the consequent conversion of housing into accommodation for visitors”

hosts during the Review Period. By contrast, all the reservations in three boroughs (Queens, Staten Island, and the Bronx) brought hosts revenue of \$12 million—less than three percent of the New York City total.”).

150. JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, *supra* note 109, at 7.

151. *Id.*

152. *Id.* at 22.

153. Augustin Cocola Gant, *Holiday Rentals: The New Gentrification Battlefront*, 21 SOC. RESEARCH ONLINE 1, 3 (2016).

154. *Id.* at 1, 2. In defining the three types of displacement, Gant relies on Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 J. URB. & CONTEMP. L. 195 (1985); Kathe Newman & Elvin Wyly, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URB. STUD. 23 (2006); Geoffrey DeVerteuil, *Evidence of Gentrification-Induced Displacement Among Social Services in London and Los Angeles*, 48 URB. STUD. 1563 (2011); Tom Slater, *Missing Marcuse: On Gentrification and Displacement*, 13 CITY 292 (2009); and Mark Davidson & Loretta Lees, *New-Build Gentrification: Its Histories, Trajectories, and Critical Geographies*, 16 POPULATION, SPACE & PLACE 335 (2010). See Gant, *supra* note 153, at 1, 2.

results in collective displacement.¹⁵⁵

The Barcelona study does not expressly analyze the effects of displacement along racial lines. However, taken with the New York and New Orleans studies, it supports the notion that Airbnb produces financial rewards for hosts at the expense of low-income communities of color; as residents are priced out of middle-class neighborhoods, residents relocate to down-market neighborhoods. This creates a vicious cycle wherein rents increase in the new neighborhoods, pushing out long-term residents. Even more troubling, gentrification correlates with “shorter life expectancy; higher cancer rates; more birth defects; greater infant mortality; and higher incidence of asthma, diabetes, and cardiovascular disease.”¹⁵⁶ Given the incentive for hosts to convert long-term accommodations into short-term rentals, and data from U.S. cities that suggests high profitability of listing units in gentrifying neighborhoods, it is likely that areas occupied by residents of color may experience significant changes without realizing the monetary benefits. Without policy intervention, these effects will accelerate and intensify.

C. Concentration of Wealth Along Racial Lines

Discrimination on short-term rental platforms, combined with gentrification, functions to displace low-income and minority residents while simultaneously concentrating wealth among white property owners.¹⁵⁷ In predominantly black New York City neighborhoods, white Airbnb hosts were found to have earned more than three times as much as black hosts in the same neighborhoods; white hosts earned \$159.7 million while black hosts earned only \$48.3 million.¹⁵⁸

Given that short-term rentals accelerate gentrification and the persistent

155. Gant, *supra* note 153, at 7 (“Collective displacement needs to be seen as the final consequences of a process in which all forms of displacement come together.”).

156. *Health Effects of Gentrification*, CTRS. FOR DISEASE CONTROL & PREVENTION (2009), www.cdc.gov/healthyplaces/healthtopics/gentrification.htm [<https://perma.cc/VQQ4-BSVX>]; see generally Sungwoo Lim et al., *Impact of Residential Displacement on Healthcare Access and Mental Health Among Original Residents of Gentrifying Neighborhoods in New York City*, 12 PLOS ONE 1 (2017) (finding, in a study of residential displacement in New York City, that compared with residents who stayed in gentrifying neighborhoods, displaced residents who moved to non-gentrifying, poor neighborhoods had significantly higher rates of emergency department visits, hospitalizations, and mental health-related visits for about five years after displacement).

157. Cox, *supra* note 147. As Cox’s report found in New York City, “Black neighborhoods with the most Airbnb use are racially gentrifying, and the (often illegal) economic benefits of Airbnb accrue disproportionately to new, white residents and white speculators; while the majority of Black residents in those communities suffer the most from the loss of housing, tenant harassment and the disruption of their communities.” *Id.*

158. *Id.*

discrimination on the platform, unchecked Airbnb activity risks eroding minority neighborhoods while locking people of color out of beneficial services and opportunities to accumulate wealth. There is a “powerful economic incentive for landlords to displace tenants and convert apartments to Airbnb de facto hotels in communities of color.”¹⁵⁹ And yet, due in part to discrimination and lower average asking rents, minority hosts do not have the same opportunities to reap financial rewards from listing their units. As such, wealth is accruing to the white community at the expense of minority residents. To put it another way, minority Airbnb hosts experience negative externalities associated with short-term rentals without the same degree of positive effects as their Caucasian counterparts.

III. CURRENT REGULATIONS GOVERNING SHORT-TERM RENTAL ACCOMMODATIONS

Given their localized effects, regulations of short-term rentals typically occur at the city level. However, spurred by efforts of municipal ordinances, many state governments have taken measures to regulate the effects of short-term rentals. Arizona,¹⁶⁰ Idaho,¹⁶¹ Indiana,¹⁶² Florida,¹⁶³ Tennessee,¹⁶⁴ and Wisconsin¹⁶⁵ enacted legislation to prevent local jurisdictions from prohibiting or unreasonably restricting all short-term

159. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 3 (“[T]he fastest-growing neighborhoods for Airbnb (particularly Harlem and Bedford Stuyvesant) are disproportionately African American.”).

160. Howard Fischer, *Despite Local Objections, New Year’s Laws Include Airbnb Expansion*, ARIZ. DAILY SUN (Dec. 31, 2016), https://azdailysun.com/news/local/despite-local-objections-new-year-s-laws-include-airbnb-expansion/article_52d485d5-79cd-567f-943c-bff142e9493c.html [<https://perma.cc/5PAC-BCFB>].

161. David Staats, *Airbnb Cheers as Idaho Bill to Limit Local Regulation of its Hosts’ Homes Becomes Law*, IDAHO STATESMAN (Apr. 13, 2017, 8:54 AM), <https://www.idahostatesman.com/news/business/article143778169.html> (last visited Nov. 11, 2019).

162. H.B. 1035, Ind. Gen. Assemb., Reg. Sess. (Ind. 2018).

163. S.B. 356, 2014 Leg., 116th Reg. Sess. (Fla. 2014). Florida’s 2014 law does, however, grandfather in any local prohibitions enacted prior to June 1, 2011. “A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.” *Id.*

164. TENN. CODE ANN. § 13-7-603 (2018).

165. WIS. STAT. § 66.0615 (2019).

rentals.¹⁶⁶ Other states have considered similar legislation.¹⁶⁷ Such legislation is typically predicated on two concerns: (1) protecting the rights of property owners; and (2) creating additional revenue. As the Wisconsin Court of Appeals noted when considering whether the use of a property as a short-term rental constitutes commercial activity, “public policy favors the free and unrestricted use of property.”¹⁶⁸ Further, many states view short-term rental regulations as an opportunity to spur economic gains through increased tourist dollars. As then-Senator Greg Steube, author of a Florida bill noted, “[v]acation rentals play a significant, unique, and critical role in Florida’s tourism industry, and that role is different from that of public lodging establishments”¹⁶⁹ Many state short-term rentals laws also include provisions for licensing fees and/or taxes to be paid to the state by hosts, thereby providing another source of income for the government.¹⁷⁰

In contrast to these states, others have enacted legislation to curb the proliferation of short-term rental properties. New York’s Multiple Dwelling Law prohibits renting certain properties for periods of fewer than thirty days when the permanent resident is absent.¹⁷¹ Whether to restrict Airbnb or prevent localities from taking any such actions, policies enacted at the state level override steps taken by local jurisdictions to address the externalities associated with Airbnb as well as implicate preemption law. They also raise questions about the appropriateness of a state legislature micro-managing housing issues felt most keenly at the neighborhood level.

166. In Nebraska, the governor vetoed an omnibus bill that would have, among other things prohibited total bans on short-term rentals. However, in vetoing the omnibus legislation, Governor Ricketts noted specific provisions that he supported, including those “that would provide clarity regarding the taxation and regulation of online hosting platforms, such as the Airbnb property rental marketplace, [which] are valuable and needed additions to Nebraska law.” Letter from Pete Ricketts, Governor, Neb., to President, Speaker, and Members of the Legislature (Apr. 23, 2018), <https://governor.nebraska.gov/sites/governor.nebraska.gov/files/doc/press/LB%20873%20%282018%29.pdf> [<https://perma.cc/LV28-VC4R>].

167. For example, if enacted, Georgia’s recently introduced H.B. 523 will “prohibit local governments from regulating the use of certain real estate as short-term rental property.” H.B. 523, 116th Cong. (Ga. 2019–2020).

168. *Forsee v. Neuschwander*, 900 N.W.2d 100, 104 (Wis. Ct. App. 2017) (citing *Crowley v. Knapp*, 94 N.W.2d 421, 434 (Wis. Sup. Ct. 1980)).

169. Steven Lemongello, *Florida Bill Would Prevent Local Restrictions on Vacation Rentals*, ORLANDO SENTINEL (Jan. 2, 2018), <https://www.orlandosentinel.com/politics/os-vacation-rental-bill-20180102-story.html> [<https://perma.cc/8PPP-2MB8>].

170. Savanna Gilmore, *More States Taking Action on Short-Term Rentals*, 26 NAT’L CONF. ST. LEGIS. LEGISBRIEF (Sept. 10, 2018), <http://www.ncsl.org/research/fiscal-policy/more-states-taking-action-on-short-term-rentals.aspx> [<https://perma.cc/BC29-3CAD>]; see also *infra* section III.B.

171. N.Y. MULTIPLE DWELLING L. art. 1, § 4.8 (2010).

When states and localities enact laws governing short-term rentals, it raises questions about whether short-term rental accommodations should be understood within the realm of landlord and tenant law or as licensing agreements. Most jurisdictions impose hybrid regulations. As stakeholders grapple with the effects of Airbnb on their communities, they struggle to reap the benefits that accrue to individual hosts and guests without incurring negative social costs. As such, policymakers have adopted a variety of policies, including host accountability measures, restrictions on eligible hosts, rental duration, and available locations, monitoring and enforcement, and policies to address discrimination and the concentration of wealth along racial lines.

A. *Traditional Conceptualizations of Property Rights*

Property rights are often understood as a “bundle of rights that may be exercised with respect to that object—principally the rights to possess the property, to use the property, to exclude others from the property, and to dispose of the property by sale or by gift.”¹⁷² However, while a property owner has broad rights with respect to the disposition of the property, the legal system governs “how these decisions must or may be carried out.”¹⁷³ Contracting to let a property via a homesharing platform like Airbnb raises questions about which rights in the “bundle” apply to the agreement.

Are a host and guest more akin to a landlord and tenant or a hotel and lodger? For its part, Airbnb is careful to use language that falls somewhere in between. Airbnb fastidiously uses the terms “host,” “guest,” and “share” to discuss the arrangement between parties. Instead of renting a space, a host can “share any space . . . from a shared living room to a second home and everything in-between” with guests.¹⁷⁴ Despite this careful use of language, whether a short-term rental arrangement is a landlord/tenant agreement, a hotel/lodger agreement, or something in the middle informs what regulations apply to both the host and the guest.

172. Moore v. Regents of Univ. of Cal., 793 P.2d 479, 509 (Cal. Sup. Ct. 1990) (Mosk, J. dissenting) (internal quotations omitted); Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 711 (1986) (“The right to exclude others has often been cited as the most important characteristic of private property. This right, it is said, makes private property fruitful by enabling owners to capture the full value of their individual investments, thus encouraging everyone to put time and labor into the development of resources.”).

173. Lawrence M. Freidman, *The Law of the Living, the Law of the Dead: Property, Succession, and Society*, WIS. L. REV. 340, 341 (1966).

174. AIRBNB, https://www.airbnb.com/host/homes?from_nav=1 (last visited Dec. 11, 2019).

1. Residential Leasehold Interest

The relationship between host and guest may be viewed as a residential leasehold interest. Traditionally, a leasehold estate is a transfer of interest in a property from the landlord to the tenant, thereby giving the tenant “exclusive right to possession of the premises . . . [while the landlord] retained a future interest.”¹⁷⁵ Historically, this relationship was governed by real property law. However, in the 1960s, courts began to apply contract law to landlord-tenant relationships.¹⁷⁶ Contemporary law “view[s] the lease as a hybrid, governed by *both* property law and contract law.”¹⁷⁷ As a result, tenants enjoy a wide variety of rights including, habitability of the premises, and due process during eviction, among others.

In jurisdictions that view Airbnb relationships akin to those of landlords and tenants, hosts are held to the same standards as landlords. Several websites educate hosts on how to evict an Airbnb guest who refuses to leave. In Palm Springs, California, an Airbnb guest was treated as a renter under California law because he leased the unit for more than thirty days.¹⁷⁸ As a result, the Airbnb host, viewed as a landlord under California law, was forced to initiate eviction proceedings to remove the guest from her home.¹⁷⁹

Following this and similar incidents, Airbnb updated its website to provide information to hosts on “things [the host] should consider before hosting long-term guests.”¹⁸⁰ Airbnb cautions that

in most states and localities in the United States, guests who stay in a home or apartment for one month or longer . . . may establish rights as a tenant. Generally, this means that the local tenancy laws could protect them, and you may not be able to remove them from your property without proceeding through required eviction

175. SPRANKLING & COLLETTA, *PROPERTY: A CONTEMPORARY APPROACH* 437 (2012).

176. *Id.* (noting that this change “reflected a practical reality: landlords and tenants usually think of the lease as a contract, not as an instrument conveying an estate in land”).

177. *Id.*

178. Debra Cassens Weiss, *Airbnb Guest Won't Leave, Forcing Condo Owner to Begin Eviction Proceedings*, A.B.A. J. (July 23, 2014), http://www.abajournal.com/news/article/airbnb_guest_wont_leave_forcing_condo_owner_to_begin_eviction_proceedings [https://perma.cc/GPQ5-JHHA].

179. *Id.*

180. *What Are Some Things I Should Consider Before Hosting Long-Term Guests?*, AIRBNB, <https://www.airbnb.com/help/article/805/what-are-some-things-i-should-consider-before-hosting-long-term-guests> [https://perma.cc/58LL-8KWL].

processes in court.¹⁸¹

Landlord-tenant law also implicates renters who choose to sublease their properties on Airbnb. It is not uncommon for renters themselves to sublease their homes to garner additional income. In such instances, the tenant-host may be subject to the same rights and responsibilities as other landlords. This activity may be prohibited by the lease between the tenant-host and her landlord, the owner of the property. New York City addressed the issue of whether an Airbnb guest is a subtenant or a roommate under local ordinances.¹⁸² In finding that the tenant-host violated her lease agreement by renting out a room in her rent-stabilized apartment for 338 nights on a homesharing platform at 72% more than her monthly rent, the Court stated that transient Airbnb guests are not legal roommates.¹⁸³ Instead, Airbnb guests are properly classified as subtenants and, as such, rent was subject to the 10% subletting limit under New York City's Rent Stabilization Code.¹⁸⁴

2. *Innkeepers and Lodgers*

Whereas a lease transfers the exclusive use of property from one person to another (for example, an innkeeper and lodger operate pursuant to a license) “a personal privilege to use the land of another for some specific purpose.”¹⁸⁵ A hotel and guest relationship is correctly understood under this framework. Several regulations are imposed on hotels including anti-discrimination regulations, ADA compliance, tax collection, health and safety standards, and commercial liability insurance, among others.

Currently, most jurisdictions do not hold Airbnb listings to the same battery of regulations to which hotels are subjected. Of course, the absence of these regulations is part of what allows Airbnb to price accommodations at rates below those of hotels. A two-bedroom Airbnb may cost the same or even less than a standard hotel room in many jurisdictions. Hotel, motel, and bed-and-breakfast industry opponents note that the lack of hotel taxes combined with the unlicensed nature of short-term rentals is effectively a 13% discount on price.¹⁸⁶ Further, the absence of traditional commercial zoning regulations means that while hotels are confined to areas designed for commercial activity, short-term

181. *Id.*

182. *Goldstein v. Lipetz*, 150 A.D.3d 562 (N.Y. App. Div. 2017).

183. *Id.* at 566.

184. *Id.* at 575.

185. SPRANKLING & COLLETTA, *supra* note 175, at 449.

186. CITY OF NEW ORLEANS PLANNING COMM'N, *supra* note 24, at 31.

rentals are largely unrestricted.¹⁸⁷

3. *Challenging Regulations as an Impermissible Taking*

The degree to which the government may restrict a landowner's use of her own property is a longstanding legal question that predates the era of online homesharing platforms. In *Cope v. City of Cannon Beach*,¹⁸⁸ the Supreme Court of Oregon considered whether a municipal zoning ordinance prohibited transient occupancy was a taking under the Constitution.¹⁸⁹ At the time,¹⁹⁰ under Ordinance 92-1, the City of Cannon Beach prohibited transient occupancy (defined as a rental for fewer than fourteen days), prohibited the creation of new transient occupancy uses, and required existing transient occupancy uses to be phased out by 1997.¹⁹¹ Landowners challenged the ordinance as an impermissible taking without providing just compensation in violation of the Fifth and Fourteenth Amendments.¹⁹²

The Court applied the Supreme Court's analysis in *Agins v. Tiburon*,¹⁹³ noting that a regulation "effects a taking if the ordinance does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land."¹⁹⁴ In finding for the City of Cannon Beach, the Supreme Court of Oregon stated that the ordinance substantially advanced the legitimate governmental interest of "securing affordable housing for permanent residents and in preserving the character

187. *Id.*

188. 855 P.2d 1083 (Or. Sup. Ct. 1993).

189. *Id.* at 1085.

190. On November 5, 2004, the Cannon Beach City Council adopted Ordinance 04-09A, which established new regulations when renting a dwelling for thirty days or less. Under the new law, individuals can apply for a 14-day short-term rental permit, which authorizes the permitted party "to rent a dwelling to one tenancy group in a 14-day period." CITY OF CANNON BEACH, OBTAINING A FIVE YEAR UNLIMITED SHORT-TERM RENTAL PERMIT 4 (2017), https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/9711/five-year_handout.pdf [<https://perma.cc/5VC8-97B7>].

191. *Cope*, 855 P.2d at 1084.

192. *Id.* at 1083–84. Ordinance 92-1 included a hardship provision that "provides an exemption for property owners 'who can substantiate that an investment made exclusively in the nonconforming use of a dwelling for transient occupancy can not be adequately amortized' within the five-year period between adoption of the ordinance and the required termination date." *Id.* at 1084.

193. 477 U.S. 255 (1980).

194. *Agins v. Tiburon*, 477 U.S. 255, 260–61 (1980) ("The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest. Although no precise rule determines when property has been taken, the question necessarily requires a weighing of private and public interests." (internal citations omitted)).

and integrity of residential neighborhoods” and that there was a nexus between the regulation and interest served.¹⁹⁵

The court further stated that the ordinance did not deny owners an economically viable use of property.¹⁹⁶ The court did, however, concede that rentals of dwellings for periods of fourteen days or more and owners residing in their property themselves “may not be as profitable as are shorter-term rentals . . . they are economically viable uses.”¹⁹⁷ Contemporary ordinances banning or curtailing Airbnb use have yet to be challenged as a taking. Given, however, the effects of Airbnb on the local housing market, as well as its role in accelerating gentrification, it is likely that a court applying the *Cannon Beach* and *Agins* analysis would find for the local jurisdiction, rather than the Airbnb host.

4. *Is Mrs. Murphy Hosting?*

Short-term rental agreements entered into via platforms like Airbnb raise issues of race and permissible discrimination. The Fair Housing Act (FHA)¹⁹⁸ prohibits discrimination on the basis of race, color, religion, sex, familial status, or national origin when renting housing.¹⁹⁹ However, under the “Mrs. Murphy exemption,”²⁰⁰ dwellings intended to be occupied by four or fewer families are exempt if the owner lives in one of the units.²⁰¹ While this exemption effectively allows landlords of owner-occupied dwellings to discriminate when *selecting* tenants, it does not allow them to do so in *advertising* available units.²⁰² If viewed as a lease agreement, the Mrs. Murphy exemption would allow most on-site hosts, or those individuals hosting owner-occupied housing, to discriminate against guests seeking accommodations on short-term rental platforms.

In contrast, Title II of the Civil Rights Act entitles all persons “to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public

195. *Cope*, 855 P.2d at 1086.

196. *Id.* at 1087.

197. *Id.*

198. 42 U.S.C. § 3601 (2012).

199. *Id.* § 3604(a) (rendering it unlawful “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”).

200. For a discussion of the history, legacy, and effect of the Mrs. Murphy exemption, see generally James D. Walsh, *Reaching Mrs. Murphy: A Call for the Repeal of the Mrs. Murphy Exemption to the Fair Housing Act*, 34 HARV. C.R.-C.L. L. REV. 605 (1999).

201. 42 U.S.C. § 3603(b)(2).

202. Walsh, *supra* note 200, at 606 n.5.

accommodation.”²⁰³ Public accommodations include “any inn, hotel, motel, or other establishment which provides lodging to transient guests.”²⁰⁴

Scholars Nancy Leong and Aaron Belzer argue that platforms like Airbnb should be viewed as public accommodations and therefore subject to Title II of the Civil Rights Act. As Leong and Belzer note, “if the traditional economy business that a [platform economy business] is replacing is a public accommodation, then it makes sense to categorize the two in the same way. To act differently would move an increasingly large number of businesses outside the scope of our civil rights enforcement mechanisms.”²⁰⁵ This issue is particularly salient in light of discriminatory practices among Airbnb users and concentrations of wealth along racial lines effected by short-term rental accommodations.

B. *Host Accountability Measures*

1. *Updated Zoning Laws and Licensing Requirements*

In response to the growth of homesharing platforms, many jurisdictions have created a new type of land use in their zoning ordinances. The new zoning categories accommodate short-term rental land use, reflecting the multifaceted purposes of the properties. When coupled with corresponding licensing requirements, the creation of a short-term rental land use category creates a new revenue stream for the jurisdiction.

Pursuant to its Shared City Initiative,²⁰⁶ the City of Portland partnered with Airbnb to create a regulatory framework to levy and collect taxes, as well as a new category of housing in its planning code—the Accessory Short-Term Rental (ASTR).²⁰⁷ This new category intends “to allow for a

203. 42 U.S.C. § 2000(a).

204. *Id.* § 2000(b)(1). However, a public accommodation does not include “an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.” *Id.*

205. Nancy Leong & Aaron Belzer, *The New Public Accommodations: Race and Discrimination in the Platform Economy*, 105 GEO. L.J. 1271, 1301 (2017) (noting that “[l]ike the public accommodations traditionally covered by Title II of the Civil Rights Act, [platform economy businesses] are held out as open to the public, so ensuring that such entities do not engage in race discrimination comports with the purpose of that legislation Finally, analogous precedent from the disability arena favors a conclusion that [platform economy businesses] are public accommodations”).

206. Brian Chesky, *Shared City*, MEDIUM (Mar. 26, 2014), <https://medium.com/@bchesky/shared-city-db9746750a3a> [<https://perma.cc/V3PH-FH7M>].

207. NAT’L LEAGUE OF CITIES, PORTLAND HOMESHARING REGULATIONS <https://www.nlc.org/portland-homesharing-regulations> [<https://perma.cc/QE5X-C8D5>]; *Accessory Short-Term Rental Permits*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/bds/65603> [<https://perma.cc/ED9M-5XYT>]. The Shared City initiative also includes a program through which

more efficient use of residential structures, without detracting from neighborhood character, and ensuring that the primary use remains residential” while at the same time “provid[ing] an alternative form of lodging for visitors who prefer a residential setting.”²⁰⁸

Under Portland’s ordinance, “an accessory short-term rental is where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 consecutive days.”²⁰⁹ There are two types of ASTRs. The Type A ASTR applies to single family homes “where the resident rents no more than 2 bedrooms to 5 overnight guests.”²¹⁰ To operate this type of ASTR, a host must secure a short-term rental permit, which “includes a safety inspection as part of the permit approval and neighborhood notification.”²¹¹ Under a Type A ASTR, the “resident must occupy the dwelling unit for at least 270 days during each calendar year, and . . . the bedrooms . . . must be within the dwelling unit the resident occupies.”²¹²

In contrast, the Type B ASTR is one where the resident rents between 3 and 5 bedrooms to overnight guests.²¹³ The City assumes that “most Type B Accessory Short-Term Rentals will be operated in 1 & 2 Dwelling Structures” and “applies if [the] dwelling unit is in a structure with 1 or 2 dwelling units” even if it is part of a multi-dwelling development.²¹⁴ As with a Type A ASTR, the operator of a Type B ASTR must acquire a permit and “occupy the dwelling unit for at least 270 days” each calendar year, and the “bedrooms rented to guests must be within the dwelling unit that the resident occupies.”²¹⁵

Similarly, New Orleans created new categories of property to regulate the effects of Airbnb. Its Short-Term Rental (STR) Administration is “responsible for licensing of short-term rental facilities and enforcement

hosts can donate a portion of their Airbnb earnings to a local cause. Chesky, *supra* note 206. These donations are matched by Airbnb as a percentage of the company’s fees. *Id.*

208. PORTLAND, OR., PLANNING CODE § 33.207.010 (2017).

209. *Id.* § 33.207.020(A).

210. *Accessory Short-Term Rental Permits*, *supra* note 207.

211. *Id.*

212. PORTLAND, OR., PLANNING CODE § 33.207.040(A)(1).

213. PORTLAND, OR., PLANNING CODE § 33.207.050. *See also Accessory Short-Term Rental Permits*, *supra* note 207 (“Proposals that include rental of 6 or more guestrooms at one time are not considered Accessory Short-Term Rentals. Additional Commercial Building Code and Zoning Code regulations apply.”).

214. *Type B Accessory Short Term Rentals (3–5 Bedrooms)*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/bds/66821> [<https://perma.cc/SB23-U397>]. *See generally* PLANNING CODE § 33.207.050.

215. PORTLAND, OR., PLANNING CODE § 33.207.050(A)(1).

of the standards regulating their operation.”²¹⁶ The City distinguishes between three types of Short-Term Rentals: (1) commercial; (2) temporary; and (3) accessory.²¹⁷ Reportedly, most applicants are receiving temporary short-term rental licenses, with more than half of applications resulting in a successful license.²¹⁸

In a New Orleans commercial short-term rental, neither an owner nor tenant can occupy the property.²¹⁹ The license duration is year-long and the cost of a license is \$500 per unit.²²⁰ A temporary rental is also unoccupied by the owner or tenant.²²¹ A property owner, or tenant with a letter of permission from the owner, can apply for a license to operate the rental for no more than ninety days.²²² The cost of a temporary short-term rental license is \$150 per unit or only \$50 per unit if the applicant is an owner with a Homestead Exemption.²²³ The final zoning category, the accessory short-term rental, is limited to three bedrooms, with occupancy capped at six guests.²²⁴ One bedroom in the dwelling is reserved for the owner, who must be present during any short-term rental occupancy.²²⁵ The applicant must be a property owner with a Homestead Exemption. The license duration is year-round and costs \$200.²²⁶ “This provision applies to half of a duplex . . . if the owner lives in one of the units. Airbnb opponents consider this a major loophole, saying it encourages owner-landlords to convert their second unit to a short-term rental.”²²⁷ Portland and New Orleans typify the attempts of local jurisdictions to grapple with homesharing by creating new categories of property and corresponding licensing requirements. Other jurisdictions, like Massachusetts, take this

216. *Short-Term Rental Administration*, CITY OF NEW ORLEANS, <https://www.nola.gov/short-term-rentals/> [https://perma.cc/H6JP-A2VG].

217. NEW ORLEANS, LA., CITY ORDINANCE § 27-209 (2016).

218. *Examining Short-Term Rentals in New Orleans*, CITY OF NEW ORLEANS, <https://data.nola.gov/stories/s/6kd7-6nca> [https://perma.cc/ZM3C-S4HT].

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.* (The license duration is “90-days continuous or must apply for additional license if separate time during the year”). See also NEW ORLEANS, LA., CITY ORDINANCE § 26-614 (2019).

223. NEW ORLEANS, LA., CITY ORDINANCE § 26-617.

224. NEW ORLEANS, LA., CITY ORDINANCE § 27-209, art. 21.6.II.2 (2016); see also *Short Term Rental Zoning Restrictions*, *supra* note 100.

225. NEW ORLEANS, LA., CITY ORDINANCE § 27-209, art. 21.6.II.2; see also *Short Term Rental Zoning Restrictions*, *supra* note 100.

226. *STR License Fees*, CITY OF NEW ORLEANS, <https://www.nola.gov/short-term-rentals/str-licensing-requirements/str-license-fees/> [https://perma.cc/9DJN-FV8W].

227. Peck & Maldonado, *supra* note 3.

a step further by mandating that Airbnb hosts carry insurance.²²⁸

A new zoning classification, for example, does not answer the question of whether an Airbnb guest is akin to a tenant or a lodger. This is important for many reasons, including what happens when a guest overstays. Whereas a tenant who violates their lease is entitled to due process through an eviction proceeding, an innkeeper can quickly eject a lodger.

Moreover, while a host must meet certain requirements before the city will issue a license, the host and property are not subject to the same regulations as a hotel. Commercial properties are subject to safety and health standards and, unlike private rental properties, are inspected regularly to ensure compliance. While private homes must adhere to the local building code, nearly all jurisdictions in the United States lack proactive inspection ordinances that would require homes to be inspected before a non-owner may contract to stay at the property.²²⁹

The creation of a new zoning category and licensing requirements, on their own, fail to address concerns about discrimination and racialized aggregation of wealth on short-term rental platforms. As currently implemented in most jurisdictions, there are no quotas for the number licenses that may be distributed in a given area. This may exacerbate gentrification and affordable housing loss in certain neighborhoods. Unless this approach is combined with other policies, changes to neighborhood composition and racial impacts will go unchallenged.

2. *Taxation on Short-Term Rental Properties*

Cities and localities that have legitimized short-term rental programs often levy a tax in addition to licensing and registration fees, thereby creating a new revenue stream for the jurisdiction. These taxes predominantly fall into two categories: occupancy taxes and value added taxes.

Occupancy taxes, also known as lodging tax, room tax, sales tax, tourist tax, or hotel tax, are a tax on the rental of rooms for a given period of time.²³⁰ While these taxes are often paid by the guest, the responsibility to

228. MASS. GEN. LAWS, ch. 175, § 4F (2019); *see also* Matt Stout, *Baker Signs Long-Awaited Airbnb Bill, Opening New Era for Industry*, BOS. GLOBE (Dec. 28, 2018), <https://www.bostonglobe.com/metro/2018/12/28/baker-signs-long-awaited-airbnb-bill-opening-new-era-for-industry/gycoryp9D15nLPYxYk5cTN/story.html> [<https://perma.cc/QYP5-DDQA>].

229. Emily Benfer & Allyson Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. S1, S27–S28 (2017), <https://harvardlpr.com/wpcontent/uploads/sites/20/2013/11/BenferGold.pdf> [<https://perma.cc/PKW7-NXXY>].

230. Kerra J. Melvin, *Technology, Travel Companies & Taxation: Should Expedia Be Required to Collect and Remit State Occupancy Taxes on Profits from Facilitation Hotel Room Rentals?*, 8 WASH.

remit taxes to the government falls on the host. For example, in San Francisco, Airbnb hosts are subject to the Transient Occupancy Tax (TOT). TOT is a 14% tax levied on short-term rental agreements, defined as renting a unit “for periods of less than 30 consecutive nights.”²³¹ Under the law, hosts must file monthly tax assessment statements, remit monthly TOT payments to the city, hold an approved TOT Certificate of Authority²³² issued by the city’s office of the treasurer and tax collector, and hold all valid licenses and permits from the San Francisco departments of police, fire, public health, and building inspection.²³³ However, to incentivize exclusivity agreements, hosts who only list their properties on Airbnb “are not required to submit TOT filings or obtain a separate Certificate of Authority.”²³⁴ Taxes were part of contentious legislation proposed to regulate Airbnb in San Francisco. Before legalizing short-term rentals, advocates demanded that city counsel require Airbnb to pay nearly twenty-five million in back taxes to the city.²³⁵ The final version of the bill, however, did not include that provision.

Unlike hotels, which collect and remit their own taxes, Airbnb has taken on that role for hosts in many jurisdictions. Airbnb has agreements with tax authorities in several jurisdictions to “collect and remit local taxes on behalf of hosts.”²³⁶ In Portland, for example, under the Shared City Initiative, Airbnb agreed to act as a limited Transient Lodging Tax Code collection and remittance agent of hosts who book on Airbnb’s platform.²³⁷ Providing this service eliminates administrative difficulties

J. L. TECH. & ARTS 43, 46 (2012) (noting that occupancy taxes are generally levied “for the purpose of promoting convention and tourist activity”).

231. *Transient Occupancy Tax (TOT)*, CITY & CTY. S.F. TREASURER & TAX COLLECTOR, <https://sftreasurer.org/tot> [<https://perma.cc/K334-KZ2Z>].

232. *See id.* A Certificate of Authority allows the host to collect the Transient Occupancy Tax. *Id.*

233. *Become a Certified Host*, S.F. OFFICE SHORT-TERM RENTALS, <https://shorttermrentals.sfgov.org/hosting/become-certified> [<https://perma.cc/SHNB-MEEB>].

234. *San Francisco, CA*, AIRBNB, <https://www.airbnb.com/help/article/871/san-francisco-ca> [<https://perma.cc/76CA-QPQF>].

235. SAMAAN, AIRBNB, *supra* note 26, at 32; *see* Steven T. Jones, *SF Supervisors Vote to Legalize and Regulate Airbnb’s Short-term Rentals*, S.F. BAY GUARDIAN (Oct. 7, 2014), <http://sfbgarchive.48hills.org/sfbgarchive/2014/10/07/sf-supervisors-vote-legalize-and-regulate-airbnbs-short-term-rentals/> [<https://perma.cc/3G4Y-PU23>].

236. In doing so, Airbnb will calculate occupancy taxes and collect them from guests at the time the reservation is made. Afterward, Airbnb will remit the taxes to the local tax authority on behalf of the host. *In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?*, AIRBNB, <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available> [<https://perma.cc/F5EY-JVEK>].

237. TRANSIENT LODGING TAX AGREEMENT BETWEEN AIRBNB, INC., AND THE CITY OF PORTLAND REVENUE BUREAU (July 1, 2014), <https://www.documentcloud.org/documents/1223398->

that may otherwise disincentivize hosts from participating in the short-term rental market, which allows the platform to expand its market share. In Portland, it is the only website operator permitted to collect and remit taxes to the city, further incentivizing hosts to list on Airbnb's platform and not with any competitors. Airbnb currently provides this service in forty-four states²³⁸ and thirteen countries.²³⁹

In many countries outside the United States, Airbnb rental agreements are subject to a value added tax (VAT). VAT is a consumption tax levied on goods and services.²⁴⁰ Over 160 countries levy a VAT, "including every economically advanced nation except the United States."²⁴¹ The VAT "is deducted from [the host's] payout and is based on the total host service fee for a reservation."²⁴² Airbnb automatically includes VAT on reservations made in many countries in Asia, Europe, the Middle East,

lodging-tax-agreementbetween-airbnb-and-the.html#document/p3/a167055 [https://perma.cc/F4TC-UJLL]; Chesky, *supra* note 206. Airbnb promoted the partnership as a mechanism to streamline certain administrative processes, such as collection and remittance of taxes. However, the regulations effectuating the program do not directly speak to these issues. *Frequently Asked Questions*, CITY PORTLAND (Mar. 8, 2019), <https://www.portlandoregon.gov/revenue/article/415034#AgreementbetweenAirbnbandCoP> [https://perma.cc/SE6X-3L5Y]. Instead, Airbnb contracted to take on this responsibility in an agreement with the City of Portland Revenue Bureau. *See Occupancy Tax Collection and Remittance by Airbnb in Oregon*, AIRBNB, <https://www.airbnb.com/help/article/2324/occupancy-tax-collection-and-remittance-by-airbnb-in-oregon> [https://perma.cc/5NC7-MS94].

238. These states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. *In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 236.

239. In addition to the United States, these countries are: Bermuda, Brazil, British Virgin Islands, Canada, France, Germany, India, Italy, Mexico, Netherlands, Portugal, and Switzerland. *Id.*

240. A detailed discussion of taxes is beyond the scope of this article. However, "[w]hat distinguishes a VAT from the retail sales taxes common throughout the U.S. states is that the VAT is levied on each transaction in the production chain, rather than being collected only at the retail stage, with business being able to obtain full credit or an immediate deduction for VAT paid on inputs (including capital goods) offset against the VAT collected on outputs." Kathryn James, *Exploring the Origins and Global Rise of VAT*, in *THE VAT READER: WHAT A FEDERAL CONSUMPTION TAX WOULD MEAN FOR AMERICA* 17–18 (Christopher Bergin et al. eds., 2011).

241. *What is a VAT?*, URB.-BROOKINGS TAX POL'Y CTR. (2016), <https://www.taxpolicycenter.org/briefing-book/what-vat> [https://perma.cc/BA3J-39UE].

242. *What is VAT and How Does it Apply to Me?*, AIRBNB (Feb. 20, 2019), <https://www.airbnb.com/help/article/436/what-is-vat-and-how-does-it-apply-to-me> [https://perma.cc/B24K-QDZH] ("In Japan, Japanese Consumption Tax, or JCT, is applicable instead of VAT. In Australia and New Zealand, Goods and Services Tax, or GST, is applicable instead of VAT.").

and the South Pacific.²⁴³

Other jurisdictions levy taxes unique to Airbnb specifically to offset harms to the local housing market. In New Orleans, in addition to a hotel/motel sales tax²⁴⁴ and a hotel occupancy privilege tax,²⁴⁵ hosts are subject to an assessment of one dollar for every night of occupancy.²⁴⁶ This additional dollar benefits the city's neighborhood housing improvement fund.²⁴⁷ Established in 1991 "to improve neighborhood housing and combat blight," the New Orleans City Council voted in 2015 to "dedicate[] the fund to actual home improvements and affordable housing efforts."²⁴⁸ Between April 2017 and February 2018, Airbnb claims to have contributed nearly \$550,000 to the Fund.²⁴⁹ As of August 2018, Airbnb competitor HomeAway has proposed increasing the contribution from \$1 per listing to 2%, and applying the fee "to all lodging accommodations — including hotels and bed and breakfasts."²⁵⁰ These taxes and assessments are important in light of the effect of short-term rentals on affordable long-term housing stock.

Occupancy taxes serve to legitimize Airbnbs while also creating additional revenue for the local government. For example, Massachusetts officials estimate that the state's tax on Airbnb may raise at least \$25 million annually.²⁵¹ State and local governments must allocate levied taxes for programs and activities that will address negative externalities correlated with Airbnb. If the money is earmarked specifically for

243. *Id.* ("Airbnb charges VAT on its service fees for customers from Albania, Belarus, Iceland, Norway, Russia, Saudi Arabia, Serbia, South Africa, Switzerland, Taiwan, the Bahamas, the European Union and the United Arab Emirates. In Japan, JCT applies to the hosts and the guests. In Australia and New Zealand, GST applies to the hosts and the guests Airbnb is also required to collect VAT on its service fees from all users who contract with Airbnb China.").

244. NEW ORLEANS, LA., CITY ORDINANCE § 27-218 (2016).

245. *Id.*

246. NEW ORLEANS, LA., CITY ORDINANCE § 70-415.1 (2019).

247. *Id.*

248. Michael Anderson, *Housing Trust Fund: One Answer to Gentrification in New Orleans*, HOUS. TR. FUND PROJECT (2015), <https://housingtrustfundproject.org/one-answer-to-gentrification-in-new-orleans/> [<https://perma.cc/93KT-SUCU>] ("The Greater New Orleans Housing Alliance released an in-depth affordable housing report as part of the HousingNOLA Planning Process. 'The preliminary report details the lack of affordable housing that will continue to grow if not addressed. While median income has dropped in our city, the average fair market rent has risen nearly 50% in recent years. The report includes other issues that have caused affordable housing to decrease significantly since the storm, but the final plan due out in November will also provide solutions that the [Neighborhood Housing Improvement Fund] funding will now also help to address.'").

249. Kevin Litten, *HomeAway Floats New Policy for New Orleans Short-Term Rentals*, TIMES-PICTAYUNE (Aug. 3, 2018, 12:22 AM), https://www.nola.com/news/politics/article_%2082bb6236-d8da-5fab-8c78-ac6de58f9efc.html [<https://perma.cc/5DQ9-HQTP>].

250. *Id.*

251. Stout, *supra* note 228.

affordable housing and anti-displacement measures, such as building new or preserving existing affordable housing, rent stabilization programs, and other measures, then taxation may offset some of the harms associated with the proliferation of short-term rentals.

However, if the money is instead funneled into a general fund, then taxation will serve as another mechanism to concentrate resources in certain communities. For example, if a city levies taxes on short-term rental accommodations and uses the money to invest in schools and public works—both laudable projects—without also taking steps to preserve affordable housing, then those benefits will accrue to individuals and families who can afford to remain in the community as home values and rents increase.

C. Restrictions on Eligible Hosts, Length of Rentals, and Available Locations

To prevent a decrease of affordable housing stock, policymakers have imposed limitations on who is eligible to rent out short-term accommodations. They have also restricted which units can be listed on sharing platforms, as well as limited the number of nights units can be occupied exclusively by guests.

1. Limitations on Eligible Hosts and Properties

Airbnb was founded on the premise that hosts could earn extra money by renting out available space—a spare room or even a couch—in their homes. As the model exploded in popularity, the profile of hosts changed. Instead of mom and pop hosts, it is common for owners of multiple properties to make available several whole-home listings on Airbnb, functioning as commercial property owners. As discussed in detail above, this practice decreases available long-term housing and contributes to an increase in rental prices. To combat these effects, some jurisdictions have restricted who may serve as an Airbnb host, particularly when listing unshared units.

In San Francisco, for example, only permanent residents may become short-term rental hosts.²⁵² Under the city's ordinance no. 218-14, a permanent resident is a “person who occupies a Residential Unit for at least 60 consecutive days with intent to establish that unit as his or her

252. *Short-Term Residential Rental Starter Kit*, S.F. BUS. PORTAL (June 27, 2017), <https://businessportal.sfgov.org/start/starter-kits/short-term-rental> [https://perma.cc/92JX-WU6N]; see also S.F., CAL., ADMIN. CODE § 214-8(41A.4) (2019).

primary residence.”²⁵³ Owners of multi-family dwellings may only list the unit in which they reside.²⁵⁴

In Los Angeles, the definition is even more restrictive. Los Angeles short-term rental hosts may only rent their primary residence, defined as where the host lives for more than six months of the year.²⁵⁵ Further, no host “may apply for or obtain more than one Home-Sharing registration or otherwise operate more than one” home share at a time in Los Angeles.²⁵⁶ By limiting Airbnb hosts to permanent residents listing their residential units, San Francisco and Los Angeles aim to prevent landlords from evicting tenants to operate illegal hotels.

Another approach is to place limitations on short-term rentals based on characteristics related to the underlying properties themselves, rather than the host. In Los Angeles, “a Primary Residence that is subject to affordable housing covenants, and/or . . . [rent stabilization], and/or [is] income-restricted under City, state, or federal law, is not eligible for Home-Sharing.”²⁵⁷ Under a 2018 West Hollywood, California ordinance, homesharing is prohibited in the following types of properties: (1) “any residential dwelling unit where the property owner and homeowners’ association has not given their express, written approval to do so;” (2) “any rental unit;” (3) “any inclusionary housing or other income-restricted housing unit;” and (4) “any location not approved for residential use.”²⁵⁸

Limitations on eligible hosts and properties attempt to avoid commercialization of the short-term rental market. However, while limiting hosts to permanent residents may succeed in defending against out-of-town-speculators with no ties to the community, prohibiting renters from serving as Airbnb hosts raises concerns about concentrations of wealth. As Airbnb noted, “the [West Hollywood] Council’s decision to block renters — who make up nearly 80% of the community — eliminates a viable source of income for those who would benefit the most. Home sharing should not be a privilege reserved for the fortunate few who own

253. S.F., CAL., ADMIN. CODE § 218-14(41.A.4) (“A Permanent Resident may be an owner or a lessee.”).

254. *Short-Term Residential Rental Starter Kit*, *supra* note 252.

255. L.A., CAL., MUNICIPAL CODE § 12.22(A)(32)(b)(9) (2019).

256. *Id.* § 6(32)(c)(2)(ii)(d).

257. *Id.* § 6(32)(c)(2)(ii)(b).

258. WEST HOLLYWOOD, CAL., MUNICIPAL CODE § 5.66.020 (2019). The ordinance also prohibits homesharing in properties that have been vacated pursuant to the Ellis Act, a California state law that allows landlords to exit the rental housing market. *See* CAL. CODE § 7060–7060.7 (2019).

homes in West Hollywood.”²⁵⁹

2. *Annual Limits*

Many jurisdictions place a firm limit on the number of days that a primary residence may be rented in a calendar year. Following cities like Paris and London, which limit rentals to 120 and 90 days respectively, Amsterdam limits hosts to renting thirty nights annually.²⁶⁰

While several cities limit the number of unhosted rentals, regulations are typically relaxed when the home is shared with the permanent resident. In San Francisco, unhosted rentals are limited to ninety days each year.²⁶¹ However, when a host is “home overnight at the same time as [the] guests, there is no limit on the number of rentals per year.”²⁶² In Santa Monica, California, renting an entire residence for less than thirty days is banned completely.²⁶³ However, Santa Monica hosts may rent a couch or extra room if they will be present in the home.²⁶⁴ Likewise, the New York State “Multiple Dwelling Law” prohibits renting an entire home in a dwelling occupied by three or more families living independently from each other for less than thirty days, but permits rentals of less than thirty days when the host is present.²⁶⁵

3. *Limiting Short-Term Rentals in Certain Areas*

To prevent the erosion of neighborhood character, some jurisdictions severely limit which neighborhoods may have short-term rentals. In New Orleans, short-term rentals are banned from most of the iconic French Quarter.²⁶⁶ In Tuscaloosa, Alabama, short-term rentals are strictly limited

259. *WeHo City Council Gives Final Approval to Short-Term Apartment Rental Ban*, WEHOVILLE (Mar. 6, 2018), <https://www.wehoville.com/2018/03/06/weho-city-council-gives-final-approval-ban-short-term-apartment-rentals/> [https://perma.cc/A7UA-WNTD].

260. Mallory Locklear, *Amsterdam Will Limit Airbnb Rentals to 30 Days Per Year*, ENGADGET (Jan. 10, 2018), <https://www.engadget.com/2018/01/10/amsterdam-airbnb-rental-30-day-limit/> [https://perma.cc/JZA2-7QS8].

261. *Short-Term Residential Rental Starter Kit*, *supra* note 252.

262. *Id.*

263. Hailey Branson-Potts, *Santa Monica Convicts its First Airbnb Host Under Tough Home-Sharing Laws*, L.A. TIMES (July 13, 2016, 3:28 PM), <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-airbnb-conviction-20160713-snap-story.html> [https://perma.cc/P4AL-EF9N].

264. This is also true in West Hollywood, California, under § 5.66.050 of the West Hollywood Municipal Code. *Id.*

265. N.Y. MULTIPLE DWELLING LAW § 4(7)–(8) (2019).

266. *Short Term Rental Zoning Restrictions*, *supra* note 100; Jeff Adelson, *Stricter Limits Will Hit New Orleans Short-Term Rentals After Council Vote; Here’s What To Know*, NOLA.COM (Aug. 8, 2019, 2:17 PM), https://www.nola.com/news/article_c390da62-ba00-11e9-b876-237e289ed3ef.html

to only three areas of the city.²⁶⁷ Moreover, city officials are currently contemplating legislation that would limit short-term rentals “[w]ithin property part of a locally designated historic district . . . [s]hort-term rentals will be limited to no more than one per block face.”²⁶⁸

Similarly, officials in Barcelona passed a bill to restrict the location of tourist accommodations.²⁶⁹ The law divides the city into four distinct zones. The first zone, located in the city center, does not allow for the expansion of tourist lodging establishments.²⁷⁰ This means no new hotels may be constructed. And if one closes, it will not be replaced.²⁷¹ To control the number of Airbnb listings in these areas, the city is withholding licenses from new applicants.²⁷²

Other cities limit short-term rental density based on the neighborhood’s zoned use. In January 2018, the Nashville City Council voted 19–3 to phase out non-owner occupied short-term rentals from areas zoned for residential use.²⁷³ Under the ordinance, no non-owner occupied short-term rental property may be located within 1,320 feet from the property line of another such property in the single-family and one and two-family zoning districts.²⁷⁴ In Nashville’s “Urban Zoning Overlay” district, “no more than three percent (3%) of the single-family or two-family residential units within each census tract” may be used as non-owner occupied short-term rental properties.²⁷⁵ In properties outside the Urban Zoning Overlay district, that number drops to one percent.²⁷⁶ While this ordinance was eventually preempted by the “Short-Term Rental Act,” enacted by the

[<https://perma.cc/9R3C-2DJS>].

267. *Short-Term Rentals*, TUSCALOOSA 311, www.tuscaloosa.com/str [<https://perma.cc/RP5P-LVXQ>].

268. CITY OF TUSCALOOSA ADMIN. & POL’Y COMM., SHORT-TERM RENTAL AMENDMENTS – 1/10/19 AS RECOMMENDED BY THE ADMIN AND POLICY COMMITTEE (Jan. 10, 2019), (on file with author).

269. AJUNTAMENT DE BARCELONA, EL PEUTA, LA PRIMERA REGULACIO DE CIUTAT PER A TOTS ELS ALLOTJAMENTS TURISTICS 4 (2016), <http://ajuntament.barcelona.cat/premsa/wp-content/uploads/2017/01/170128-DOSSIER-ADEF-PEUAT.pdf> [<https://perma.cc/YT22-DWBH>].

270. *Id.*

271. *Id.*

272. *Id.*

273. NASHVILLE, TENN., SUBSTITUTE ORDINANCE BL 2017-937, https://www.nashville.gov/mc/pdfs/misc_legislation/bl2017_937_sub.pdf [<https://perma.cc/NRL7-BGW2>]; Metro. Gov’t of Nashville & Davidson Cty., Tenn., Roll Call Vote Substitute Bill BL2017-937, (Jan. 2, 2018), https://www.nashville.gov/mc/pdfs/roll_call_votes/bl2017_937_sub.pdf [<https://perma.cc/7U9W-UJ87>].

274. *Id.* § 6(1)(d).

275. *Id.* § 6(1)(c).

276. *Id.*

Tennessee General Assembly,²⁷⁷ it illustrates an attempt by a local government to mitigate the negative effects of Airbnbs on permanent, long-term residents.

Limitations on the total number of permissible short-term rental accommodations within a given area may temper some of the negative externalities associated with the practice. A cap on the number of accommodations would slow down the rate of rent increase, as there would be fewer properties eligible to be converted from long term rentals to short-term accommodations. In turn, this would slow gentrification, thereby displacing fewer people and reducing the amount of commercially owned rentals in residential areas. This may result in fewer disruptions to the social fabric of individual neighborhoods in communities; a hard limit on the number of short-term rental accommodations in a given area would help prevent a situation in which a few legacy residents are surrounded by strangers in town only for a short period of time.

While a limitation may be effective to avoid rapid increases in rent and gentrification, this approach, as currently implemented, rewards early adopters. It also favors tech-savvy individuals and even commercial operators who have more familiarity and comfort with navigating an online platform and city administrative system. Those who became aware of the potential benefits of short-term rental listings after the first wave may be locked out of the market.

Rewarding early adopters has racial implications. Many groups have voiced concerns about under-utilization of short-term rental platforms by individuals and communities of color. Some advocacy groups, such as the National Association for the Advancement of Colored People (NAACP), encourage the use of short-term rental platforms by individuals of color as a way to increase their income and wealth.²⁷⁸ Under a “race to the city

277. Under the Tennessee Short-Term Rental Unit Act, local Tennessee jurisdictions may not “[p]rohibit the use of property as a short-term rental unit” or restrict or otherwise “regulate a short-term rental unit based on . . . the unit’s classification, use, or occupancy.” S.B. 1086, 110th Gen. Assemb. (Tenn. 2018). The law further states that a local jurisdiction may only “[e]nact, maintain, or enforce a local law that regulates property used as a short-term rental unit if the local governing body demonstrates by clear and convincing evidence that the primary purpose of the local law is the least restrictive means to protect the public’s health and safety.” *Id.* The Short-Term Rental Unit Act specifically protects jurisdictions’ ability to apply local land use laws such as zoning, noise, property maintenance, and nuisance to short-term rental properties. *Id.* This carve-out suggests that the “clear and convincing evidence” necessary to overcome the “least restrictive means” will require something more. *Id.*

278. NAACP, *Airbnb Partner to Promote Travel, Offer New Economic Opportunities to Communities of Color*, NAACP (July 26, 2017), <https://www.naacp.org/latest/naacp-airbnb-partner-promote-travel-offer-new-economic-opportunities-communities-color/> [https://perma.cc/MTZ3-P98P].

administrator” system, communities that have been slow to warm to short-term rentals may lose their opportunity to benefit. Therefore, to avoid entrenching benefits to certain individuals, these regulations should allow late adopters to participate in the market.

D. Monitoring and Enforcement

Regulation of short-term rentals raises questions regarding enforcement. Despite official requirements, many hosts do not comply with licensing registration regulations. Even though Airbnb listings in Quebec in 2016 exceeded 19,000, Tourisme Quebec only “issued 967 permits for rental hosts out of 2,244 applications in the year since the law took effect on April 15, 2016.”²⁷⁹

Quebec is hardly unique in this regard. In Portland, the Revenue Bureau “estimates that 93 percent of all hosts have *not* obtained the necessary permits, had their units inspected for building and safety compliance, or notified their neighbors of their intent to operate a short-term rental.”²⁸⁰ In San Francisco only 130 of over more than 5,000 hosts made appointments with city officials to obtain required permits as of February 15, 2015.²⁸¹ By March 2016, compliance in San Francisco had only improved to 1,647 registered out of the more than 7,000 listed.²⁸² There is some variation in penalties for lack of compliance. Most jurisdictions impose monetary penalties. In some, like Hong Kong, failure to procure a license may lead to two years of imprisonment.²⁸³

1. Liability for failure to comply

In response to lack of compliance, some jurisdictions enacted penalties against online platforms that list unlicensed short-term rentals. In June 2016, San Francisco’s Board of Supervisors voted 10–0 to “provide for civil, administrative, and criminal penalties against Hosting Platforms for

279. Canadian Press, *Most Airbnb Hosts Not Registered in Quebec, 1 Year After Law Took Effect*, CBC (May 28, 2017, 12:52 PM), <https://www.cbc.ca/news/canada/montreal/quebec-airbnb-law-not-effective-2017-1.4135041> [<https://perma.cc/5XAS-YBEZ>].

280. See SAMAAN, AIRBNB, *supra* note 26, at 31 (emphasis added).

281. *Id.* at 32 (reflecting data available as of February 15, 2015).

282. Stephen R. Miller & Jamila Jefferson Jones, *Airbnb and the Battle Between Internet Exceptionalism and Local Control of Land Use*, 31 PROB. & PROP. 36, 37 (2017).

283. Hotel and Guesthouse Accommodation Ordinance, (2001) Cap. 349, pt. II § 5(1) (H.K.) (“Any person who on any occasion operates, keeps, manages, or otherwise has control of a hotel or a guesthouse in respect of which neither of the conditions indicated in subsection (2) has been satisfied commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years and to a fine of \$20,000 for each day during which the offence continues.”).

violations of the Residential Unit Conversion Ordinance.”²⁸⁴ The ordinance requires platforms to “verify that a Residential Unit is on the City Registry prior to listing.”²⁸⁵ Failure to comply could result in fines of up to \$1,000 each day.²⁸⁶ In August 2016, San Francisco made it a “misdemeanor to collect a fee for providing booking services for the rental of an unregistered unit.”²⁸⁷

Airbnb fought back. The company²⁸⁸ filed suit against San Francisco, challenging the ordinance as: (1) preempted by the Communications Decency Act (CDA),²⁸⁹ (2) an impermissible content-based speech restriction under the First Amendment; and (3) an imposition of a criminal strict liability.²⁹⁰ The Northern District of California denied Airbnb’s request for a preliminary injunction and the parties ultimately settled.

The agreement allows San Francisco to more effectively enforce short-term rental requirements. City Attorney Dennis Herrera stated that, under the terms of the settlement, “[t]he two largest (vacation rental services) will only include legal listings, and the city has the tools for quick, effective enforcement.”²⁹¹ The agreement requires homesharing platforms to collect data on hosts who let their homes for less than a month. The information will be provided to city officials who will, in turn, use it to “vet and register hosts.”²⁹² If the city notifies a homesharing platform of a non-compliant registration, the company must cancel any pending reservations and deactivate the listing.²⁹³ The settlement does not eliminate the city’s ability to fine companies like Airbnb up to \$1,000 per violation if they do not remove illegal listings.²⁹⁴

284. San Francisco Bd. of Supervisors, 111 Meeting Minutes 423, 439 (June 7, 2016), <https://sfgov.legistar.com/View.ashx?M=M&ID=498884&GUID=FA40CC05-BAAF-437E-A230-98C929849424> [<https://perma.cc/4U2F-LMV4>] (one member of the board abstained from the vote).

285. *Id.*

286. Alice Truong, *San Francisco Just Dealt Another Major Blow to Airbnb*, QUARTZ (June 7, 2016), <https://qz.com/701857/san-francisco-just-dealt-another-major-blow-to-airbnb/> [<https://perma.cc/E7BE-ZFTU>].

287. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1071 (N.D. Cal. 2016).

288. Airbnb was joined by HomeAway in the suit. *See id.*

289. 47 U.S.C. § 230 (2012).

290. *Airbnb, Inc.*, 217 F. Supp. 3d at 1067.

291. Carolyn Said, *Airbnb, HomeAway Settle SF Suit, Agree to Register All Local Hosts*, S.F. CHRON. (May 1, 2017, 7:17 PM), <https://www.sfchronicle.com/business/article/Airbnb-settles-SF-suit-agrees-to-register-all-11112109.php> [<https://perma.cc/6FEJ-3SFS>].

292. Katie Benner, *Airbnb Settles Lawsuit With Its Hometown, San Francisco*, N.Y. TIMES (May 1, 2017), <https://www.nytimes.com/2017/05/01/technology/airbnb-san-francisco-settle-registration-lawsuit.html> [<https://perma.cc/63GR-2AU3>].

293. *Id.*

294. *Id.*

The effects of the settlement have been striking. The *San Francisco Chronicle* hired Host Compliance²⁹⁵ to collect and analyze data on the number of listings in San Francisco before and after the deadline for hosts to register with the City.²⁹⁶ Ulrik Bizner, the company's CEO and founder, told the *Chronicle* that "[t]he regulations had a massive impact on the number of rentals in city, with an overall 55 percent reduction."²⁹⁷ Many of these properties transitioned to the long-term rental market.²⁹⁸

Airbnb also reached settlement agreements with New York State and New York City following the passage of the Multiple Dwelling Law (MDL). Under the MDL, it is "unlawful to advertise occupancy or use of dwelling units in . . . a multiple dwelling that is occupied for permanent residence purposes."²⁹⁹ Fines under the MDL can reach \$7,500 per violation.³⁰⁰ After challenging the legality of the penalties, Airbnb reached separate agreements with New York State and New York City.³⁰¹ Under the terms of the settlement, New York City agreed to enforce the MDL only against hosts and not fine the company.³⁰² Other local governments have backed away from similar penalties under the threat of litigation. As stated by Anaheim, California spokesperson Mike Lyster, "[a]fter considering federal communications law, we won't be enforcing parts of Anaheim's short-term rental rules covering online hosting sites . . . Instead, the city will continue to identify and take action against unpermitted short-term rentals operating in Anaheim."³⁰³

295. According to its website, Host Compliance is "the world's #1 provider of short-term rental compliance monitoring and enforcement solutions for local governments." HOST COMPLIANCE, www.hostcompliance.com [<https://perma.cc/CB4K-87T7>].

296. Carolyn Said, *A Leaner Vacation Rental Market*, S.F. CHRONICLE (Feb. 16, 2018), <https://www.sfchronicle.com/business/article/SF-short-term-rentals-transformed-as-Airbnb-12617798.php> [<https://perma.cc/U7VJ-HVAX>].

297. *Id.*

298. *Id.*

299. N.Y.C. ADMIN. CODE § 27-287.1(1) (2019); N.Y. MULTIPLE DWELLING LAW § 121(1) (2019).

300. N.Y.C. ADMIN. § 27-287.1(2); N.Y. MULTIPLE DWELLING LAW § 121(2).

301. Airbnb filed suit to challenge the MDL, alleging it was preempted by the CDA, violated hosts' rights under the First Amendment, violated the Due Process Clause, and violated the New York State Constitution's home rule clause. Complaint at 1-3, *Airbnb, Inc. v. Schneiderman*, 989 N.Y.S.2d 786 (S.D.N.Y. Oct. 21, 2016) (No. 16-CV-08239).

302. *See generally* Miller & Jones, *supra* note 282, at 38 (discussing how Airbnb ultimately settled the case with New York State in November 2016, and with New York City in December 2016); *see also* Katie Benner, *Airbnb Ends Fight with New York City Over Fines*, N.Y. TIMES (Dec. 3, 2016), <https://www.nytimes.com/2016/12/03/technology/airbnb-ends-fight-with-new-york-city-over-fines.html> [<https://perma.cc/6UM9-7K3Z>].

303. Lily Leung, *Anaheim Won't Fine Websites Like Airbnb for Illegal Short-Term Rental Listings*, ORANGE CTY. REG. (Aug. 23, 2016, 12:00 PM), <https://www.oregister.com/2016/08/23/anaheim->

In some jurisdictions, Airbnb has taken on the role of enforcement agent to ensure compliance with local regulations. In Vancouver, pursuant to an agreement reached between the city and Airbnb, Airbnb will not allow hosts to register on the platform if they do not provide a city business license number.³⁰⁴ This agreement places the onus of enforcement on Airbnb, rather than the city. Airbnb has a similar enforcement agreement with Portugal, with plans to develop another in Andalusia, Spain.³⁰⁵

2. *Information sharing*

In an effort to eliminate illegal listings, several jurisdictions are forcing Airbnb to share user data. In August 2018, New York City Mayor Bill DeBlasio signed a bill requiring online short-term rental platforms to provide information about bookings to the Mayor's Office of Special Enforcement.³⁰⁶ Under the law, companies like Airbnb must provide the City with: (1) the address of the short-term rental; (2) the name and address of the rental host; (3) whether the short-term rental is for the entire unit or part of it; and (4) the number of days the unit is rented, among other information.³⁰⁷ Failure to comply with the law may result in monetary fines.³⁰⁸

Other jurisdictions have been forced to take more aggressive measures. In 2014, the Malibu, California city council voted to authorize city officials to issue subpoenas to gather information on the scope of short-term rentals in the area.³⁰⁹ The subpoenas enabled city officials to obtain

wont-fine-websites-like-airbnb-for-illegal-short-term-rental-listings/ [https://perma.cc/A26Y-83W9].

304. Frances Bula, *Airbnb Agrees to Help Vancouver Enforce New Short-Term Rental Rules*, GLOBE & MAIL (Apr. 11, 2018), <https://www.theglobeandmail.com/canada/british-columbia/article-airbnb-agrees-to-help-vancouver-enforce-new-short-term-rental-rules/> [https://perma.cc/34ZY-WN3Y].

305. *Id.*

306. *See* N.Y.C. ADMIN. CODE § 26-2101-5 (2019).

307. In addition, the law also requires platforms to provide information related to fees and the URL of the listing. *Id.*

308. *Id.*

309. Matt Stevens & Martha Groves, *Malibu to Crack Down on Short-Term Rentals via Airbnb, Other Websites*, L.A. TIMES (May 27, 2014, 8:09 PM), <https://www.latimes.com/local/la-me-malibu-renting-20140528-story.html> [https://perma.cc/U3Q4-6TJ9] (“The City Council voted this month to authorize officials to issue subpoenas to more than 60 websites that advertise short-term leases. Malibu wants to learn how many short-term rentals are being offered and to make sure the city is getting what could be hundreds of thousands of dollars in uncollected hotel taxes.”).

information from more than sixty online homesharing platforms.³¹⁰ Similarly, Chicago’s short-term rental ordinance includes a section that speaks to data collection and reporting requirements.³¹¹ Under the ordinance, every licensee must submit to the department, *every two months*, a report that includes information on: (1) the total number of short-term residential rentals listed on the platform; (2) the total number of nights that each short-term residential rental listed on the platform was rented during the reporting period; (3) the amount of rent paid by guests; (4) the total amount of tax paid to the city in connection to the rental; (5) a cumulative tally to date of the number of nights that each short-term residential rental listed on the platform is booked; and (6) a notation indicating each short-term residential rental listed on the platform that the department has determined is ineligible under city code.³¹² Airbnb has taken steps to challenge measures designed to compel data sharing. In response to the 2018 New York City law, Airbnb filed suit, alleging “an extraordinary act of government overreach” in violation of the First and Fourth Amendments.³¹³ For now, the court agrees with Airbnb. The U.S. District Court for the Southern District of New York granted a preliminary injunction to stop New York’s law from taking effect; “[t]he City has not cited any decision suggesting that the governmental appropriation of private business records on such a scale, unsupported by individualized suspicion or any tailored justification, qualifies as a reasonable search and seizure.”³¹⁴ While an analysis of the First and Fourth Amendments is beyond the scope of this Article, such data collection is consistent with the underlying purpose of host licensing practices. Shielding information about hosts openly violating the law by not registering with the local government withholds “critical data [the City] needs to preserve [its] housing stock, keep visitors safe, and ensure residents feel secure in their homes and neighborhoods.”³¹⁵

310. *Id.*

311. CHI. MUN. CODE § 4-13-240 (2019).

312. *Id.*

313. Shirin Ghaffary, *Airbnb is Suing New York City So It Won’t Have to Share User Data About Its Hosts*, VOX (Aug. 24, 2018, 4:16 PM), <https://www.vox.com/2018/8/24/17779208/airbnb-suing-new-york-city-user-data-hosts-privacy-brian-chesky> [<https://perma.cc/7J38-2WQW>].

314. *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 492 (S.D.N.Y. 2019).

315. Ghaffary, *supra* note 313.

E. Policies to Address Discriminatory Practices and Concentrations of Wealth Along Racial Lines

1. Policies to Reduce Discrimination on Online Short-Term Rental Platforms

Airbnb is aware of discrimination against guests and hosts on its platform. CEO and Co-founder Brian Chesky called discrimination “the greatest challenge we face as a company.”³¹⁶ To address the issue, Airbnb requires all users to accept the Airbnb Community Commitment.³¹⁷ By doing so, the user agrees to “treat everyone in the Airbnb community . . . with respect, and without judgment or bias.”³¹⁸

Additionally, the site encourages hosts to allow instant booking. A discretionary choice for hosts, “Instant Book listings don’t require approval from the host before they can be booked. Instead, guests can just choose their travel dates, book, and discuss check-in plans with the host.”³¹⁹ To entice hosts to allow Instant Book, Airbnb promotes the practice as a way for hosts to reach Superhost status.³²⁰ Demarcated with a badge on the host’s profile, the Superhost designation communicates superior accommodations and service, which may translate into increased bookings.³²¹

Instant Book eliminates some of the hallmarks of the sharing economy like personal interaction between hosts and guests, and building relationships between strangers. Instead, Instant Book allows Airbnb to function much more like an online hotel reservation process, where there is no opportunity for a hotel manager to accept or reject a lodger. Instant Book decreases opportunities for discrimination against guests but has firm limitations. First, Instant Book is not mandatory. Hosts may choose whether to use the feature. Hosts that forgo Instant Book are free to discriminate against guests. Second, because guests retain access to

316. *Diversity at Airbnb*, AIRBNB, www.airbnb.com/diversity/ [https://perma.cc/KB27-TPWM].

317. *General Questions About the Airbnb Community Commitment*, AIRBNB, <https://www.airbnb.com/help/article/1523/general-questions-about-the-airbnb-community-commitment> [https://perma.cc/JXT7-VAEJ].

318. The full Community Commitment states, “I agree to treat everyone in the Airbnb community—regardless of their race, religion, national origin, ethnicity, disability, sex, gender identity, sexual orientation, or age—with respect, and without judgment or bias.” *Id.*

319. *What is Instant Book?*, AIRBNB, <https://www.airbnb.com/help/article/523/what-is-instant-book> [https://perma.cc/XP5T-CGPA].

320. *Id.*

321. *What Is a Superhost?*, AIRBNB, <https://www.airbnb.com/help/article/828/what-is-a-superhost> [https://perma.cc/NA7N-VTHD].

personal information about prospective hosts, including photo, name, and any other information the host chooses to include in his profile, there remains potential for discrimination against hosts of color.

2. *Collaboration to Increase Short-Term Rental Optimization Among Minorities*

In 2017 Airbnb partnered with the NAACP to expand Airbnb to minority communities and recruit minority hosts.³²² Under the agreement, Airbnb and the NAACP partnered to “conduct targeted outreach to communities of color to help more people use their homes to earn extra income.”³²³ Notably, the partnership included a revenue-sharing agreement under which “Airbnb will share 20 percent of the earnings it receives as a result of these new community outreach initiatives with the NAACP.”³²⁴ The earnings of Airbnb hosts are unaffected by the revenue sharing.³²⁵

In Miami, the Florida NAACP is targeting minority residents in the neighborhoods of Miami Gardens and Little Haiti.³²⁶ Through its partnership with Airbnb, the Florida NAACP will

educate local black entrepreneurs on the opportunities that come with increased tourism traffic. For some, that could be the additional income from hosting guests; for others it could be setting up the ancillary business that cater to tourists—like restaurants and retail—or that cater to hosts—like cleaning, plumbing, and painting services.³²⁷

Neither Airbnb nor the NAACP have yet released outcome data about

322. Tracy Jan, *Faced with Complaints of Discrimination, Airbnb Partners with NAACP to Recruit Black Hosts*, WASH. POST (July 26, 2017, 8:34 AM), <https://www.washingtonpost.com/news/wonk/wp/2017/07/26/faced-with-complaints-of-discrimination-airbnb-partners-with-naacp-to-recruit-black-hosts/> [https://perma.cc/C9JD-DPR3].

323. NAACP, *Airbnb Partner to Promote Travel, Offer New Economic Opportunities to Communities of Color*, *supra* note 278.

324. In addition to revenue sharing, the agreement outlines the following commitments: community outreach and education, a diverse employee base, and supplier diversity. *Id.*

325. *Id.*

326. Chabeli Herrera, *To Fight Discrimination, Airbnb Wants More Black Miami Residents to Rent Their Homes*, MIAMI HERALD (May 15, 2018, 5:39 PM), <https://www.miamiherald.com/news/business/article211165439.html> (last visited Oct. 18, 2019).

327. *Id.* The partnership has since expanded to Los Angeles, Atlanta, and Seattle. See Ernie Suggs, *Short-Term Home Rental Site Partners with NAACP to Attract Black Hosts in Atlanta*, ATLANTA J.-CONST. (Apr. 14, 2019), <https://www.ajc.com/news/airbnb-partners-with-naacp-attract-black-hosts/jL7IVydk49fn6pdx2Q6kIP/> [https://perma.cc/NT2X-V4L5]; Keerthi Vedantam, *Airbnb, NAACP Partner to Get More People of Color to Become Homesharing Hosts in Seattle*, SEATTLE TIMES (June 5, 2019, 6:51 PM), <https://www.seattletimes.com/business/airbnb-naacp-partner-to-get-more-people-of-color-become-airbnb-hosts/> [https://perma.cc/BF8W-HHBQ].

their partnership. If successful, this partnership may be a model to accrue economic gains realized through the short-term rental market to communities of color.

IV. RECOMMENDATIONS

As discussed, current short-term rental accommodation law fails to adequately mitigate harms associated with the proliferation of Airbnbs. Policymakers must implement a multi-faceted regulatory strategy that allows users to reap the benefits of short-term rentals while minimizing undesirable community consequences. However, these strategies will not be as effective without registering and licensing all Airbnb units. Licensing and registration will help jurisdictions to monitor the growth of the short-term rental and its continued effects throughout the community. Hosts should not be able to list an accommodation on Airbnb without first registering with the local government and obtaining a license number. This number should be listed on the online Airbnb listing to signal to potential guests that the host has taken necessary steps to comply with local law. Hosts that falsify licenses should be penalized and banned from the platform. Longitudinal empirical analyses will ensure that regulations are having the intended effects in the community.

The following recommendations speak to the core principles of short-term rental policy reform, but it is also imperative that policymakers engage the community in their response.³²⁸ Particular laws may vary from jurisdiction to jurisdiction, reflecting the residents' needs in those communities. For example, a beach community in the Outer Banks of North Carolina that has a culture and economy predicated on tourists may adopt more generous laws regarding the length of time that a short-term rental may be listed, compared to a city with a large population of low-income tenants and an acute affordable housing problem. While engaging the community will produce laws that vary by, but meet the acute needs of, local jurisdictions, policymakers must adopt approaches that conform to the following overarching principles: protect affordable housing stock, prevent hotelization of residential neighborhoods, create avenues for diversity of wealth accumulation, and eliminate opportunities to discriminate on homesharing platforms.

328. Benfer & Gold, *supra* note 229, at S48 (discussing the need for participatory approaches to resolve issues affecting the community at large).

A. *Protect Affordable Housing Stock*

As hosts realize additional income and equity from underutilized resources, market pressure increases to convert long-term rentals to short-term accommodations.³²⁹ However, doing so depletes local affordable housing stock. Given the dearth of affordable rental housing,³³⁰ the pressure to convert long-term rental stock to the Airbnb market stresses an already under-resourced market.

Airbnb is aware of its ability to contribute to affordable housing. In September 2019, the company “announced a new community impact investing program that will invest \$25 million in projects supporting affordable homeownership, small businesses, and the construction and preservation of affordable housing.”³³¹ The program currently operates in the San Francisco Bay Area and Los Angeles County.³³² While an important step, it will take more to preserve and create affordable housing in affected communities across the country.

To combat further erosion of affordable housing stock, local governments should collect a fee from Airbnb hosts that goes directly into an affordable housing fund.³³³ This fee may be collected at the time of licensing and registration, or could be levied as an annual tax on Airbnb hosts. This money would then be used to preserve and create additional affordable housing within the jurisdiction. To be effective, it is imperative

329. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 3.

330. INGRID GOULD ELLEN & BRIAN KARFUNKEL, N.Y.U. FURMAN CTR./CAPITOL ONE NATIONAL AFFORDABLE RENTAL HOUS. LANDSCAPE, RENTING IN AMERICA’S LARGEST METROPOLITAN AREAS 6 (2016), https://furmancenter.org/files/NYU_Furman_Center_Capital_One_National_Affordable_Rental_Housing_Landscape_2016_9JUNE2016.pdf [<https://perma.cc/M7RS-EQDT>] (“While the rental stock [between 2006 and 2014] grew, the population grew faster than the stock in [the 11 largest metropolitan areas in the U. S.] and in metro areas nationwide. As changes in demand exceeded changes in supply, vacancy rates decreased, the average number of people living in a rental unit increased, and, in most areas, rents rose.”).

331. Maleesa Smith, *Airbnb Invests \$25 Million in Bay Area Affordable Housing*, HOUSINGWIRE (Sept. 20, 2019, 5:08 PM), <https://www.housingwire.com/articles/50201-airbnb-invests-25-million-in-bay-area-affordable-housing/> [<https://perma.cc/KT7E-6HTN>] (noting that of the program, Airbnb Co-Founder and CEO Brian Chesky stated, “I want Airbnb to be a 21st Century Company that serves all our stakeholders, including the communities our hosts and guests call home”).

332. *Id.*

333. Jurisdictions are already considering such measures to offset community effects of other sharing economy companies. In light of the fact that Uber and Lyft accounted for two-thirds of a 62% increase in San Francisco traffic over six years, the city is considering proposals to tax ride-sharing net fares as well as congestion pricing. Rachel Swan, *Uber, Lyft Account for Two-thirds of Traffic Increase in SF Over Six Years, Study Shows*, S.F. CHRONICLE (May 8, 2019, 7:19 PM), <https://www.sfchronicle.com/bayarea/article/Uber-Lyft-account-for-of-traffic-increase-in-13830608.php> [<https://perma.cc/FT32-QMS4>]. For discussion of New Orleans’s Neighborhood Housing Improvement Fund, see *supra* section III.B.2.

that the amount of the affordable housing set-aside is based on empirical data to ensure that the funds can meaningfully offset the effects of short-term rentals.

Policymakers could also consider enacting a marginal affordable housing tax rate on additional Airbnb properties. For example, the affordable housing tax on a host's first property may be lower than on the second and third. A successive increase in taxes would not prevent hosts from reaping economic benefits, but would proportionately correspond with the increasing need to preserve and create affordable housing that results from additional short-term rental accommodations. An affordable housing fund will have the added benefit of slowing gentrification.³³⁴ This, in turn, will promote economic and racial diversity.³³⁵

Additionally, policymakers must take steps to protect the rights of existing long-term tenants. Laws must prohibit Airbnb hosts from listing units under any type of rent control or rent stabilization. Programs like these “regulate[] the amount of rent the landlord may charge for an apartment.”³³⁶ A prohibition on rent control units prevents would-be hosts from profiting from regulations intended to promote affordable housing.

Further, rental housing law must protect tenants from abuse of just cause eviction laws.³³⁷ In some jurisdictions, such as San Francisco and Washington, DC, a landlord may not evict a tenant without cause, such as failure to pay rent or a lease violation.³³⁸ However, there are often exceptions for landlords who plan to occupy the unit. To prevent abuse, landlords found to have listed the vacated unit as a short-term rental accommodation within twelve months of a personal use eviction should be subject to fines and banned from listing on Airbnb for a certain period of time.

334. See Vicki Been, *What More Do We Need to Know About How to Prevent and Mitigate Displacement of Low- and Moderate-Income Households from Gentrifying Neighborhoods?*, in *A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY* 377–78 (Christopher Herbert et al. eds., 2018) (writing about revenue generation as a way to slow gentrification).

335. *Id.*

336. *Directory of NYC Housing Programs: Rent Regulation*, N.Y.U. FURMAN CTR., <http://furmancenter.org/coredata/directory/entry/rent-regulation> [https://perma.cc/7758-8554].

337. Aimee Inglis, *Just Cause Evictions and Rent Control*, in *PROTECT TENANTS, PREVENT HOMELESSNESS* 22 (Nat'l Law Ctr. on Homelessness & Poverty ed., 2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf> [https://perma.cc/P2TF-BR3X] (“Just cause eviction laws require landlords to give a reason for evicting tenants. Just cause eviction laws have been shown to motivate landlords to increase and improve maintenance of rental housing and to stabilize rental markets.”).

338. Marie Claire Tran-Leung, *Limiting Use of Criminal Records*, in *PROTECT TENANTS, PREVENT HOMELESSNESS*, *supra* note 337, at 35.

B. Prevent Hotelization of Residential Neighborhoods

Preventing hotelization—fundamentally changing the nature of residential neighborhoods through proliferation of commercial accommodations—is essential to control noise and unsanitary conditions, and maintain a community’s social fabric. This can be accomplished by a variety of measures. First, laws should limit the number of short-term rentals in a given neighborhood or block. Such a measure would prevent whole areas from converting Airbnbs, effectively stranding long-term residents in a tourist district.

Second, local governments should contemplate limits on the number of licenses that a single individual may hold. Some jurisdictions may enact a policy that limits hosts to only listing their own home, while others may allow for multiple listings, depending on the needs and desires of the local community. In light of the needs and desires of the local community, the number may vary from jurisdiction to jurisdiction. However, by including a limit, lawmakers prevent commercial property owners from operating unofficial hotels.

Finally, short-term rental accommodation policy should restrict the number of days a whole-home accommodation may be rented in a given year. Renting a spare room or couch in one’s home and a whole-home accommodation are different types of accommodations, with different effects on the local community. The law should treat them as such. In a hosted accommodation, the long-term resident is present at the home.³³⁹ This decreases the likelihood of negative externalities on the surrounding community, such as improper trash disposal. Further, because the permanent resident is present, the social fabric of the community is maintained. In contrast, a whole home listing leads to a revolving door of short-term residents who are unfamiliar with neighborhood policies and lack the motive to invest socially in the community.³⁴⁰ Given the disparate effects, lawmakers should cap the number of nights a whole-home accommodation may be listed in a given year.

C. Create Opportunities for Diversity of Wealth Accumulation

While policymakers must take steps to limit Airbnb density and prevent the hotelization of residential neighborhoods, regulations must create meaningful opportunities for a multiplicity of hosts to realize economic benefits of short-term rental accommodations. First, licensing and registration should not be limited to those with an ownership interest in a

339. *Supra* section II.A.4.

340. *Supra* section II.A.4.

property. While an individual lease agreement may prohibit subletting a home, the municipality should not take it upon itself to prevent renters from participating in the short-term rental market. This limitation unnecessarily precludes individuals who typically have fewer assets than homeowners and are arguably more in need of additional income to achieve economic stability from a lucrative market.

Allowing renters to participate in the Airbnb market will also limit the tendency of short-term rental economic benefits to accrue disproportionately to wealthy white users. “Across racial groups, more than 80 percent of wealth in one’s primary residence [i]s held by white households.”³⁴¹ Moreover, the majority (60%) of housing wealth is held by the top twenty percent of households.³⁴² Given the concentration of Airbnb eligible properties among affluent white hosts, it is critical that policies allow hosts with diverse racial and economic backgrounds to participate in the market.

Second, efforts to limit the number of Airbnb licenses issued in a particular jurisdiction or neighborhood should not entrench Airbnb rights, and consequent benefits, to early adopters and those with the technological literacy and experience to be first to the registration office. In jurisdictions that limit the number of Airbnbs in a given area, short-term rental licenses are typically awarded on a first come, first serve basis. This distribution pattern rewards those with the knowledge and ability to quickly enter the short-term rental market; those with fewer resources and/or technological prowess may be late to market. Instead, licenses should be distributed by lottery and should only be valid for a set period of time, such as two years. After this time, the license should expire, and all interested parties would have the opportunity to apply via the lottery. The city of Cannon Beach, Oregon operates an example lottery.³⁴³ In Cannon Beach, parties may apply for a five-year short-term rental permit.³⁴⁴ Such permits are awarded by random selection and, after the expiry of the initial period, applicants may not be considered for a new permit in the next cycle.³⁴⁵ Lottery systems, like that implemented by Cannon Beach, address valid density concerns while providing

341. Bivens, *supra* note 59, at 7 (“African American households held just 6.5 percent of wealth in primary residences, Hispanic households held 6.0 percent . . .”).

342. *Id.* at 6–7.

343. *Obtaining a Five Year Unlimited Short-term Rental Permit*, CITY OF CANNON BEACH (2017), https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/9711/five-year_handout.pdf [<https://perma.cc/LZ5T-NACC>].

344. *Id.* at 3.

345. *Id.* at 6.

opportunities for a diversity of hosts.

D. Eliminate Opportunities to Discriminate on Homesharing Platforms

As the Congressional Black Caucus noted in its letter to Airbnb CEO Brian Chesky, it is “seemingly so easy to discriminate against someone via Airbnb’s internet platform.”³⁴⁶ Eliminating discrimination on the platform will require lawmakers and Airbnb to enact a variety of measures. First, lawmakers must categorize unhosted Airbnb listings as public accommodations under Title II of the 1964 Civil Rights Act.³⁴⁷ Doing so will provide minority guests with powerful recourse if their requests to book available listings are denied. Local government should regularly investigate compliance using testers. This practice involves “the use of individuals who, without any bona fide intent to rent . . . pose as prospective [guests] for the purpose of gathering information.”³⁴⁸

Airbnb must also take steps to eliminate discrimination on its platform. When making a booking for a whole home rental, Airbnb should consider limiting or withholding personal information about guests and hosts, such as name and photo, until after the reservation is confirmed. Hosts and guests would still have an opportunity to access reviews, but would not be able to base their booking decisions on perceptions of race.³⁴⁹

Airbnb started this process in October 2018 when it announced that it was changing its policy regarding guest profile photos.³⁵⁰ Under the

346. Letter from the Congr. Black Caucus to Brian Chesky, *supra* note 133.

347. Like owner occupied tenancy, hosted Airbnbs fall under Title II’s Mrs. Murphy exemption. Scholar Norrinda Brown Hayat argues that rather than exposing a “‘soft spot’ in our discrimination laws where Title II may be eluded . . . Title II is applicable to the sharing economy presently and . . . the Mrs. Murphy exception is inapplicable to a large number of hosts.” Norrinda Brown Hayat, *Accommodating Bias in the Sharing Economy*, 83 BROOK. L. REV. 613, 615–16 (2018) (providing a comprehensive overview of Title II and literature on the Mrs. Murphy exception).

348. *Fair Housing Testing Program*, U.S. DEP’T JUST., <https://www.justice.gov/crt/fair-housing-testing-program-1> [<https://perma.cc/ARJ5-WE2G>].

349. Empirical research suggests that, even with retaining demographic information, the inclusion of reviews can reduce discrimination on the platform. “We find that in the absence of a review, an accommodation request made by a guest with an African American–sounding name is 19 percentage points less likely to be accepted by Airbnb hosts. However, a positive review can significantly reduce the observed racial discrimination based on a name’s perceived racial origin.” Ruomeng Cui, Jun Li & Dennis J. Zhang, *Reducing Discrimination with Reviews in the Sharing Economy: Evidence from Field Experiments on Airbnb*, MGMT. SCI. 17 (2019), available at <https://pubsonline.informs.org/doi/pdf/10.1287/mnsc.2018.3273> (last visited Nov. 11, 2019).

350. *Update on Profile Photos*, AIRBNB (Oct. 22, 2018), <https://www.press.airbnb.com/update-on-profile-photos/> [<https://perma.cc/8R9Y-Z5GV>].

updated policy, guests will not be required to provide a photo.³⁵¹ For guests that choose to upload a photo, Airbnb will not release the image to a prospective host until after the booking is accepted.³⁵² If a host cancels the reservation after receiving the photo, Airbnb states that guests will have “an easy way” to contact the company with discrimination concerns, though it does not elaborate on the process.³⁵³ This is an important step from Airbnb to eliminate discrimination on its platform. However, by only applying to guests, it does not address discrimination experienced by hosts. Further, as studies exposed, users can use other personal information, like a name, to discriminate against guests.

Withholding all identifying information while providing access to reviews would better decrease discrimination against both guests and hosts. For hosts, this would provide a mechanism to obtain parity in asking rates, thereby allowing hosts of color to enjoy the same economic benefits from Airbnb as their white counterparts. For guests, withholding information would prevent racism from affecting their opportunity to use and enjoy available accommodations.

Additionally, Airbnb should require hosts to provide a reason when rejecting a booking. The benefit of this is twofold: (1) it would force hosts to pause and think about whether they have a legitimate reason to reject a booking request; and (2) it would alert Airbnb to patterns of discriminatory behavior. Finally, in cases presenting a credible claim of discrimination, Airbnb should place a hold on the user’s account, not allowing any new reservations until an investigator looks into the claim and resolves it.

CONCLUSION

Airbnbs can provide a boon to hosts and guests. By converting a previously underutilized asset into a short-term rental accommodation, hosts gain a new income stream and increase their home equity. Guests, too, benefit from Airbnb’s platform, as the accommodations are typically more affordable than traditional hotels and provide an opportunity to “live like a local.” These gains, however, come at a cost. While individual hosts and guests may benefit economically, the local housing market experiences significant change in the form of fewer affordable housing options and erosion of neighborhood social capital. At the same time, discrimination on Airbnb’s platform means that the benefits and consequences are not evenly distributed, with economic gains accruing

351. *Id.*

352. *Id.*

353. *Id.*

disproportionately to white users. As Airbnbs continue to gain popularity, it is essential that legal strategies support their economic benefits while curtailing community harms. Adopting multi-faceted and comprehensive approaches are necessary to protect affordable housing stock, prevent hotelization of residential areas, and create meaningful opportunities to benefit from participation in the short-term rental market.

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Monday, May 11, 2020 8:28 AM
To: Lisa Grueter
Subject: FW: [CD Planning]RE: Chelan County Draft Short-term Rental Code

Deanna Walter, AICP

Interim Assistant Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6515 Main office (509) 667-6225
deanna.walterCD@co.chelan.wa.us



From: Alex White
Sent: Friday, May 8, 2020 3:39 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: FW: [CD Planning]RE: Chelan County Draft Short-term Rental Code

Fyi, another STR comment for you.

Alex White
Planner I
Chelan County Community Development
T: 509.667.6586
alex.white@co.chelan.wa.us

Notice: All email sent to this address will be received by the Chelan County email system and may be subject to public disclosure under GR 31.1 and Chapter 42.56 RCW and to archiving and review.

From: Alan Hunt [mailto:a_f_hunt@hotmail.com]
Sent: Friday, May 8, 2020 3:23 PM
To: CDPlanning
Subject: [CD Planning]RE: Chelan County Draft Short-term Rental Code

External Email Warning! This email originated from outside of Chelan County.

Dear Planning Commissioners,

I encourage you to continue with adoption of the draft code for Short Term Rentals without further delay.

Here are my recommendations for changes needed to fully address the problems caused by STRs in the unincorporated areas of Chelan County.

1. Existing STR's are clearly illegal under the current zoning code. While you may want to issue them a temporary permit for 2 years, the long term goal must be to reduce the density in the heavily impacted areas of the county, e.g., 98826 zip code. A lottery should be used to determine which STR's are given permits.
2. The cap on density in Manson and the 98826 overlay should be 5% of the single family housing stock in the area.
3. Children should be included in the occupancy limit of 10 people.

Thank you for the opportunity to comment.

Sincerely,

Alan Hunt

510 Dempsey Road

Leavenworth, WA 98826

Alan

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, May 12, 2020 9:25 AM
To: RJ Lott; Lisa Grueter
Subject: FW: Nightly Rental Regulation

Deanna Walter, AICP
Interim Assistant Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6515 Main office (509) 667-6225 deanna.walterCD@co.chelan.wa.us

-----Original Message-----

From: Candace <candace@37cellars.com>
Sent: Monday, May 11, 2020 11:28 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Nightly Rental Regulation

External Email Warning! This email originated from outside of Chelan County.

In response to your request for feedback on your suggested regulations for nightly rental properties, I offer the following.

My first choice is to have the current codes, which prohibit any type of short term rentals, actually enforced. If someone knowingly (either by ignorance or intentional action) went into a business that was illegal, I don't feel they deserve any consideration whatsoever for their foolish investment into that enterprise. Especially since that illegal business is totally infringing on their neighbors' enjoyment of their own legal use of their property. Allowing an illegal rental into an established residential neighborhood, where it severely negatively impacts the homeowners' lives is unacceptable. From depleting the water table of potable water in our individual wells and contaminating those same wells by overburdening septic systems designed for a single family home being used by 10 to 50 rental guests, to massively increased wild fire danger by the raucous behavior of people who have no vested interest in the property. In many instances, these rentals are on non-public roads in neighborhoods with single road ingress and egress. If some uninvested renter flicks a lit cigarette off the porch because he's used to doing it on the wet Westside of the mountains, there's a fair chance he will start a wildfire which will cross the road between our houses, burn my home and my animals to the ground, and block the only way of escape for every home above him. Our road is nearly 3 miles long up a steep hill. That is a lot of trapped people due to someone wanting to make a buck operating a nightly rental at the expense of their neighbors.

IF you MUST allow nightly rentals, at least make the following adjustments to your proposal: 1) Include children in the allowed number of persons in the house. (Note: Keep in mind that very often one small family will actually rent the house, then invite dozens of additional people over to enjoy the pool and our view for the day and into the night. 2) Require the renters to sign an agreement to adhere to all the rules set out by your commission, with fines for non-compliance. 3) Do not allow current illegal operations to be "grandfathered in". They have been breaking the law and making money illegally, they don't deserve preferential treatment. 4) Make a maximum decibel level measurement and if there are extenuating circumstances, such as topography, which impact those readings, allow for individual

adjustments. 5) Most importantly, make it completely iron clad in the enforcement of these regulations, with heavy fines and consequences for their non-compliance. I have been told directly by Chelan County Sheriffs Department Deputies that they have, in no uncertain terms, been instructed by Sheriff Brian Burnett to NOT enforce any rules pertaining to nightly rental activity. How embarrassing for our County. Thank you for allowing me the opportunity to voice my concerns. Sincerely,

Candace Egnor
P.O. Box 520
Leavenworth, Washington 98826

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, May 12, 2020 9:24 AM
To: RJ Lott; Lisa Grueter
Subject: FW: Information on Short Term Rentals
Attachments: STR NAR LEGAL.pdf; UW LAW REVIEW EFFECTS OF STRs.pdf

Deanna Walter, AICP

Interim Assistant Director
Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Bob Bugert
Sent: Monday, May 11, 2020 5:15 PM
To: Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Jim Brown <Jim.Brown@CO.CHELAN.WA.US>; CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: FW: Information on Short Term Rentals

Request by a constituent to share these reviews.
Thanks

Bob Bugert
Chelan County Commissioner, District 2
Office: 509-667-6215
Mobile: 509-630-4480

From: Bob Fallon <bobfallon@gmail.com>
Sent: Monday, May 11, 2020 1:20 PM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
Subject: Information on Short Term Rentals

External Email Warning! This email originated from outside of Chelan County.

Bob

I am a member of RUN (Residents United for Neighbors) who have a great interest, as you know, in the county's STR code development. Our thoughts have been influenced by two papers that we have found and I've attached . They are long, detailed analyses of the economic, social and legal issues surrounding STRs. We realize that you are incredibly busy and do not want to add to your burdens. But we would feel remiss if we did not share these very insightful documents with you. We hope you might find some time over the next few weeks to avail yourself of their insights.

Feel free to share these with anyone you feel might find them useful.

Thanks for all the work you're doing.

Stay safe.

--

Bob Fallon
PO Box 939
12275 Village View Drive
Leavenworth, WA 98826
bobfallon@gmail.com
509-548-4684 H
509-881-8504 C

SHORT-TERM RENTAL HOUSING RESTRICTIONS

White Paper

PREPARED BY



©Copyright 2011, National Association of Realtors[®]
All rights reserved

This document has been prepared by Robinson & Cole LLP in its capacity as consultant to NAR, for informational purposes only. The information contained in this document is not intended nor should it be construed as a legal opinion as to federal or state law with respect to any issue addressed. If NAR or its members require legal advice on any issue addressed in this paper, they should consult local counsel.

SHORT-TERM RENTAL HOUSING RESTRICTIONS

TABLE OF CONTENTS

	Page
PREFACE	iv
SECTION 1: INTRODUCTION	1
1.1 Purpose and Scope of Paper.....	1
SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS.....	1
2.1 Purpose – The Municipal Perspective.....	1
2.1.1 Protection of Neighborhood Environment.....	2
2.1.2 Protection of Physical Characteristics	2
2.1.3 Revenue.....	2
2.1.4 Fairer Competition with Licensed Lodging.....	3
2.1.5 Protection of Renter Safety.....	3
2.2 Types of Short-Term Rental Restrictions	3
2.2.1 Prohibition.....	3
2.2.2 Geographically-Based Restrictions.....	3
2.2.3 Quantitative and Operational Restrictions	4
2.2.4 Registration/Licensing Requirements.....	6
2.3 Enforcement.....	6
SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS.....	7
3.1 Impacts on Rental Property Owners	7
3.1.1 Rental Income	7
3.1.2 Property Values.....	8
3.1.2.1 Existing Short-Term Rental Properties.....	8
3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties	8
3.1.3 Operational Costs.....	9
3.1.4 Nonconforming Use Status.....	9
3.2 Community Impacts.....	9
3.2.1 Local Real Estate Market.....	9
3.2.2 Tourism.....	9

TABLE OF CONTENTS

(continued)

	Page
3.2.3 Local Economy	11
3.2.4 Tax Revenue	11
3.2.5 Affordable Housing	11
3.2.6 Governmental Administrative Costs.....	12
3.3 Impacts on Renters.....	12
3.3.1 Rental Fees.....	12
3.3.2 Inventory of Short-Term Rental Units.....	12
3.4 Unintended Consequences of Short-Term Rental Restrictions	13
3.4.1 “Underground Market” for Short-Term Rental Units.....	13
3.4.2 Uncertainty in the Short-Term Housing Market.....	13
SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS	13
4.1 Authority to Regulate.....	13
4.2 Takings.....	14
4.3 Due Process.....	15
4.4 Equal Protection.....	16
SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS.....	18
5.1 Question the Need for Short-Term Rental Restrictions.....	18
5.1.1 Empirical Analysis.....	18
5.1.2 Stakeholder Input	19
5.1.3 Public Process	19
5.2 Suggest Alternatives to Short-Term Rental Restrictions	19
5.2.1 Enforcement of Existing Ordinances	19
5.2.1.1 Noise Limits.....	19
5.2.1.2 Public Nuisance	20
5.2.1.3 Property Maintenance Standards	21
5.2.1.4 Unruly Public Gathering Ordinance	21
5.2.1.5 Nighttime Curfew	21
5.2.1.6 Parking Restrictions	22

TABLE OF CONTENTS
(continued)

	Page
5.2.2 Adoption of Ordinances that Target Community-Wide Issues.....	22
5.3 Short-Term Rental Housing Regulation Best Practices.....	22
5.3.1 Narrowly-Tailored Regulations	22
5.3.2 “Grandfathering” Provisions.....	23
5.3.3 Quantitative and Operational Restrictions	24
5.3.4 Licensing/Registration Requirements.....	25
5.3.5 Inspection Requirements.....	26
5.3.6 Enforcement Provisions	27
GLOSSARY OF TERMS.....	30

PREFACE

This white paper on *Short-Term Rental Housing Restrictions* has been prepared by Robinson & Cole LLP in its capacity as national consultant to NAR. The paper is one in a series of white papers that NAR requests be prepared from time to time in order to focus on a particular smart growth-related issue that has arisen with sufficient frequency in communities around the country to merit a more in-depth analysis.

The analysis of short-term rental housing restrictions in this paper is provided by NAR under its Smart Growth program to help REALTORS[®] at the state and local level better understand the issues involved in these types of restrictions, and to tailor strategies, as appropriate, to address short-term rental housing regulatory initiatives in their communities.

Brian W. Blaesser
Robinson & Cole LLP
September 2011

SECTION 1: INTRODUCTION

1.1 PURPOSE AND SCOPE OF PAPER

This paper was prepared at the request of the National Association of REALTORS® (NAR). The purpose of this paper is to (1) explain the problem of short-term rental housing restrictions; (2) categorize and describe the different approaches taken by local governments to regulate short-term rental housing in their communities; (3) analyze the issues raised by these different regulatory approaches; (4) provide Realtors® with ways to address these issues; and (5) outline “best practices” approaches to short-term rental housing that Realtors® can use in discussing the issue with local government officials.

1.2 KEY TERMS

The term “short-term rental housing” typically means a dwelling unit that is rented for a period of less than thirty consecutive days. In general, short term rental housing differs from bed & breakfasts, hotels, motels, and other “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although bed & breakfasts often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator on-site.¹ Boarding houses differ from short-term rentals by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants.² Boarding houses also tend to be less transient than short-term rentals.³ Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office.⁴ In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, or resort dwelling units.

Terms that appear in **bold typeface** are defined in the Glossary found at the end of this paper.

SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS

2.1 PURPOSE – THE MUNICIPAL PERSPECTIVE

Many communities around the country, both vacation destination communities and non-vacation communities, have implemented some form of short-term rental housing regulation. Below is an overview of the most common reasons cited by communities for regulating short-term rental housing.

¹ See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

² See APA Report at 5.

³ See APA Report at 5.

⁴ See APA Report at 5.

2.1.1 Protection of Neighborhood Environment

The most commonly cited municipal purpose for regulating short-term rental housing is to protect the character of existing residential neighborhoods. Often these communities are responding to complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic, and other disruptive activities. Generally speaking, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being a good neighbor. This rationale is evident in the “resort dwellings” ordinance adopted by the City of Venice, Florida, which states:

[The] City council finds that resort dwelling rental activities in single-family neighborhoods affects the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship. The intent of these regulations is to prevent the use of single-family residences for transient purposes in order to preserve the residential character of single-family neighborhoods.⁵

2.1.2 Protection of Physical Characteristics

Some communities also cite the need to protect the physical characteristics of their residential neighborhoods. The underlying rationale is that short-term rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. At least, in theory, absentee property owners are presumed to be less diligent about the types of regular and routine maintenance tasks typically associated with home ownership, such as lawn maintenance, tree and shrub pruning, and exterior painting.

2.1.3 Revenue

For many communities, particularly those with a robust tourist industry, short-term rentals represent a potentially significant source of tax revenue. In Texas, for example, the Hotel Occupancy Tax statute broadly defines the term “hotel” to include any building that offers sleeping accommodations for consideration, including a “tourist home” or “tourist house,” and imposes a six percent tax on the price paid for such accommodations.⁶ Moreover, the Municipal Hotel Occupancy Tax statute authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.⁷ The potential revenue available to municipalities with authority to tax short-term rentals is exemplified by a 2011 study prepared by the city auditor for Austin, Texas, which estimated that the city could gain \$100,000 to \$300,000 annually by collecting taxes on short-term rental properties.⁸ Communities that desire to collect such taxes may impose registration or licensing requirements as a means of identifying properties that are being used for short-term rentals and are therefore subject to taxation.

⁵ Venice, FL Land Development Code § 86-151.

⁶ See Texas Code §§ 156.001, 156.052. Accommodations of “at least 30 consecutive days, so long as there is no interruption of payment for the period,” are exempt from the tax. *Id.* § 156.101.

⁷ See Texas Code § 351.003.

⁸ See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

2.1.4 Fairer Competition with Licensed Lodging

Short-term rental restrictions may also be viewed as a means of leveling the playing field between the short-term rental industry and competing overnight lodging uses that may be specifically regulated under state or local law, such as hotels and bed and breakfasts. In some cases, the hotel industry has lobbied for the adoption of such regulations on the grounds that short-term rentals are functionally the same as hotel units and therefore should either be taxed and regulated like hotels, or prohibited. At a June 2011 meeting of the Planning Board of Buncombe County, North Carolina, for example, several hoteliers cited unfair competition in arguing against the potential repeal of a ban on vacation rentals in the county's more restrictive residential zoning districts. One industry representative testified that hotels "spend many, many hours and many, many dollars abiding by all the regulations that [hotels] are required to abide by and that many do not apply to short-term rentals."⁹

2.1.5 Protection of Renter Safety

A less commonly cited reason for the adoption of short-term rental regulations is the protection of renter safety. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units. The City of Big Bear Lake, California, for example, has a "transient private home rentals" ordinance that is intended, in part, "to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions."¹⁰

2.2 TYPES OF SHORT-TERM RENTAL RESTRICTIONS

2.2.1 Prohibition

From the perspective of a short-term rental property owner, the most severe form of restriction is an outright ban on short-term rentals. A short-term rental prohibition may be limited to specific neighborhoods or zoning districts, or may be community-wide.

2.2.2 Geographically-Based Restrictions

Communities that choose to allow short-term rentals often use their zoning authority to regulate the use on a geographic basis. For example, Venice, Florida regulates short-term rental properties (referred to locally as "resort dwellings") only in the city's Residential Estate (RE) and Residential Single Family (RSF) zoning districts.¹¹ Similarly, Maui County, Hawaii permits transient vacation rentals only within certain business zoning districts and certain designated

⁹ "Buncombe planners wade into Asheville-area vacation rental issue again; County debates relaxing the rules," *The Asheville Citizen-Times*, June 6, 2011.

¹⁰ City of Bear Lake, CA Municipal Code § 17.03.310(A).

¹¹ See generally Venice, FL Land Development Code § 86-151.

“destination resort areas,” including the Wailea, Makena, Kaanapali, and Kapalua Resort Areas.¹²

2.2.3 Quantitative and Operational Restrictions

Other communities that allow short-term rentals may choose to implement a cap on the number of short-term rental permits that may be issued. Such an approach constitutes a compromise between short-term rental owners who argue that they have the right to rent their properties on a short-term basis, and opponents who argue that short-term rentals should be prohibited as an unlawful commercial use in a residential neighborhood. Quantitative restrictions may take the form of a fixed limit on the total number of short-term rental permits that may be issued at any given time. The City of Santa Fe, New Mexico, for example, authorizes the Land Use Director to issue “up to 350 short term rental permits” for residential properties that do not otherwise qualify for permits as an accessory dwelling unit, owner-occupied unit, or unit located within a “development containing resort facilities.”¹³ Similarly, the City of Cannon Beach, Oregon maintains a 92 permit cap on the number of transient rental permits that will be issued by the city.¹⁴ Alternatively, a community may implement a proximity restriction that prohibits a short-term rental property from being located within a certain distance of another short-term rental property. The “Residential Vacation Rentals” ordinance of San Luis Obispo County, California, for example, provides:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.¹⁵

Another type of quantitative restriction is that in the Mendocino County, California zoning ordinance, which requires the county to maintain a ratio of “thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”¹⁶

Many short-term rental regulations incorporate performance-type standards for the operation of short-term rental properties. Below are examples of these types of standards that are frequently incorporated into short-term rental regulations:

- **Maximum Occupancy Limits:** This standard limits the maximum overnight occupancy of short-term rental properties based on the number of bedrooms in the home (for example, the Isle of Palms, South Carolina limits overnight occupancy to two persons per bedroom plus an additional two persons¹⁷) and/or on the septic capacity of the property. In Sonoma County, California, for example, the maximum overnight occupancy of a vacation rental property on a conditional septic system is “equal to the design load of the septic system.”¹⁸

¹² See Maui County, HA County Code § 19.38.030(B).

¹³ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(i).

¹⁴ See City of Cannon Beach, OR Zoning Code § 17.77.020(F).

¹⁵ San Luis Obispo County, CA Code § 23.08.165(c).

¹⁶ Mendocino County, CA Code § 20.748.020(A).

¹⁷ See Isle of Palms, SC City Code § 5-4-202(1).

¹⁸ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(2).

- Rental Period Restrictions: This restriction places a limit on the number of times a property may be rented for short-term occupancy. The City of Santa Fe, New Mexico, for example, limits short-term rental units to a maximum of 17 rental periods per calendar year and permits no more than one rental within a seven consecutive day period.¹⁹
- Parking Requirements: This standard may require that the short-term rented property provide more off-street parking than comparable properties that are occupied by owners or long-term tenants. Santa Fe also specifically prohibits short-term rental occupants from parking recreational vehicles on site or on the street.²⁰
- Noise Level Limits: This standard applies specific noise level limitations to activities associated with short-term rental properties. Sonoma County’s vacation rental ordinance, for example, includes an “Hourly Noise Metric” table that imposes specific quantitative noise level limits on vacation rentals during “activity hours” (9:00 a.m. to 10:00 a.m.) and “quiet hours” (10:00 p.m. to 9:00 a.m.).²¹
- Required Postings: This standard requires owners to prominently display a copy of the operational restrictions and contact information for the owner, manager, or other representative of the rental property.²² Owners may also be required to incorporate the operational restrictions in all rental agreements.
- Emergency Access Requirements: If located behind a locked gate or within a gated community, short-term rental units may be required to provide a gate code or lockbox with keys to local police, fire, or emergency services departments.²³
- Mandatory Designated Representatives: This standard requires that the short-term renter provide a current 24-hour working phone number of the property owner, manager, or other designated representative to local officials and to property owners within a certain distance of the rental unit. Some communities also require that the designated representative be available during all rental periods within a certain distance (e.g., a one-hour drive) of the rental property.²⁴
- Trash and Recycling Facility Storage: This standard requires that trash and recycling bins be stored in a location that is not visible from public rights-of-way. Section 5.25.070 of the City of Palm Springs, California vacation rental ordinance, for example, states: “Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the collectors and between the hours of five a.m. and eight p.m. on scheduled trash collection days.”²⁵

¹⁹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²⁰ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²¹ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(6).

²² See, e.g., Venice, FL Land Development Code § 86-151(2)(b)(1).

²³ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(14).

²⁴ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(13).

²⁵ Palm Springs, CA Municipal Code § 5.25.070(g).

2.2.4 Registration/Licensing Requirements

Owners who intend to offer their property for use as a short-term rental unit may be required to register their property with the local government. Garrett County, Maryland, for example, requires owners to register their property with the Office of Licensing and Enforcement Management and to pay a one-time fee as condition precedent to receiving a “transient vacation rental unit license” from the County.²⁶ Short-term rental licenses often are valid only for a one- or two-year period, requiring property owners to renew the licenses—and to pay associated fees—on a regular basis.

Many communities require short-term rental properties to pass certain inspections prior to the issuance of a permit, license, or renewal. Tillamook County, Oregon, for example, as a condition to the issuance of a short-term rental permit, requires property owners to obtain a certification from a certified building inspector evidencing compliance with all applicable operational standards, including minimum fire extinguisher and smoke detector requirements, emergency escape and rescue standards, and structural requirements.²⁷

2.3 ENFORCEMENT

Communities typically enforce their short-term rental regulations (a) in accordance with a generally applicable enforcement provision contained in the code of ordinances or zoning ordinance, or (b) through a specific enforcement provision incorporated into the short-term rental regulations. Article 9 of the Isle of Palms, South Carolina Code of Ordinances is one example of a short-term rental ordinance that contains no specific enforcement provision, but is enforced under a generally applicable penalty provision.²⁸ Under the Isle of Palms Code of Ordinances, violation of the short-term rental ordinance is subject to the same penalties and procedures as a violation of any other provision the zoning code. Potential penalties for a violation are established under Section 5-4-7 of the Code of Ordinances, which states:

In case a structure or land is or is proposed to be used in violation of this chapter, the Zoning Administrator may, in addition to other remedies, issue and serve upon a person pursuing such activity or activities a *stop order* requiring that such person immediately cease all activities in violation of this chapter.

Any person violating any of the provisions of this chapter shall be deemed guilty of a *misdemeanor* and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. Each day that a violation continues shall constitute a separate offense.²⁹

²⁶ See Garrett County, MD Code of Ordinances § 160.03(A).

²⁷ See Tillamook County (OR) Short Term Rental Ordinances, Sections 6 (Standards) and 9.A.b (Short Term Rental Permit Application Requirements).

²⁸ See generally Isle of Palms, SC City Code §§ 5-4-201 to -206 (Short-Term Rentals) and § 5-4-7 (Violations and Penalties).

²⁹ Isle of Palms, SC City Code § 5-4-7 (Emphasis added).

By contrast, the short-term rental ordinances of Sonoma County, California and Santa Fe, New Mexico contain specifically applicable enforcement provisions. Under Section 26-88-120(g) of the Sonoma County vacation rental ordinance, individuals who register an initial complaint about a vacation rental property are directed to the contact person identified in the zoning permit or use permit issued for the property. Subsequent complaints are addressed to code enforcement officials who are responsible for conducting an investigation to determine whether there was a violation of a zoning or use permit condition. Code enforcement may accept neighbor documentation consisting of photos, sound recordings and video as proof of an alleged violation. If code enforcement verifies that a violation has occurred, then a notice of violation is issued and a penalty may be imposed in accordance with Chapter 1 of the Sonoma County Code. In addition, under Section 26-88-120(g)(1), code enforcement officers are also given the discretion to schedule a revocation hearing with the board of zoning adjustment. If a vacation rental permit is revoked, then a new zoning or use permit for a vacation rental may not be reapplied for or issued for a period of at least one year.³⁰ Santa Fe's short term rental unit ordinance includes a specific provision that authorizes the city to revoke a short term rental permit upon conviction for a third violation of the ordinance.³¹

SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS

3.1 IMPACTS ON RENTAL PROPERTY OWNERS

3.1.1 Rental Income

For some rental property owners, the adoption of short-term rental restrictions may result in the *loss* of rental income altogether. The most obvious example is an owner of property located in a zoning district where short-term rentals are no longer allowed under a local ordinance. In areas where short-term rentals are allowed, other property owners might face the loss of rental income due to their inability, for financial or other reasons, to satisfy the requirements for obtaining a permit, such as minimum off-street parking or structural requirements. As discussed in Section 5.3.6 below, some short-term rental regulations might also cause an owner to lose rental income because of suspension or revocation of a rental permit, even if the reason for suspension or revocation is beyond the owner's control (e.g., tenant behavior).

There are several ways in which a short-term rental restriction might also result in a *decrease* in rental income. An ordinance that restricts the number of times a property may be rented per year could have a significant impact on the property's income potential. Santa Fe, New Mexico, for example, limits short-term rentals to 17 rental periods per year.³² A maximum overnight occupancy provision could also negatively affect the income potential of a rental property by reducing the number of guests to whom a home may be rented. Rental restrictions can also cause a reduction in rental income where they have the effect of narrowing the field of potential tenants or discouraging vacationers from renting a home. For example, an ordinance that prohibits

³⁰ See generally Sonoma County, CA Code of Ordinances § 26-88-120(g).

³¹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(iv).

³² See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii)(B).

short-term occupants from parking a recreational vehicle on site or on the street might deter families who travel by RV from renting a home in Santa Fe.³³

3.1.2 Property Values

Short-term rental restrictions can affect property values in different ways. Generally speaking, all else being equal, if identified negative impacts of short-term rentals in a district or neighborhood are reduced or eliminated by short-term rental housing restrictions, property values may increase. On the other hand, the added limitations on the use of properties that short-term rental housing restrictions impose may cause property values in the district or neighborhood to decrease. The precise impact that short-term rental restrictions have on property values will depend on various factors, including the general character of the community (e.g., vacation destination versus non-destination community), the precise terms of the ordinance, local and national economic conditions, and local real estate market conditions.

3.1.2.1 Existing Short-Term Rental Properties

In general, the value of a home that was used as a short-term rental prior to the adoption of restrictions, but is either prohibited or restricted from future use as a short-term rental, can be expected to *decrease*. That is particularly true in vacation destination communities, where homeowners often purchase second homes as investment properties.³⁴ These potential buyers often plan to use the second home as a short-term rental property until they retire or otherwise become able to maintain the property as their full-time residence.³⁵ Such buyers would tend to be less interested in purchasing in an area where the short-term rental market is highly uncertain or is constrained by burdensome regulations.

In some circumstances, it is conceivable that a short-term rental ordinance could increase the value of those homes that were used as short-term rentals prior to the adoption of the restrictions *and* become lawfully licensed for use under the new regulations. Under the general economic principle of supply and demand, if an ordinance has the effect of reducing the *supply* of short-term rental properties and the *demand* for short-term rental properties rises or remains constant, then the value of individual properties licensed as short-term rental properties after the adoption of regulations, can be expected to rise.

3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties

The impact of short-term rental restrictions on the value of properties that were not used as short-term rentals prior to adoption of the restrictions will also vary. The value of a property that becomes licensed as a short-term rental for the first time under a new ordinance conceivably could *increase* if the quantity of short-term rental properties on the market falls as a result of the

³³ Section 14-6.2(A)(6)(a)(ii)(E) of the Santa Fe Short Term Rental Ordinance states: “Occupants shall not park recreational vehicles on site or on the street.”

³⁴ See National Association of Realtors®, *Nearly One in Seven Homebuyers Owned or Bought A Second Home During First Quarter*, July 13, 2003 (accessed at <http://www.realtor.org/publicaffairsweb.nsf/Pages/SecondHomeReport?OpenDocument>).

³⁵ See *id.*

ordinance. In residential neighborhoods where the existence of short-term rentals is considered a negative, an ordinance that prohibits future short-term rental activity in those neighborhoods could positively affect the value of homes in these locations.

3.1.3 Operational Costs

Short-term rental regulations tend to increase the cost of owning and operating a rental property in a number of ways. The regulations typically require owners to pay an up-front registration or permit fee and may also require payment of additional licensing fees on an annual or other recurring basis. Inspection requirements also add to the cost of operating a short-term rental since, in most cases, the inspections are performed at the owner's expense. Performance standards may also require an owner to undertake costly improvements in order to obtain a short-term rental permit. An owner may be required to expand an existing driveway in order to satisfy a minimum parking requirement or to upgrade electrical or sewer systems in order to qualify for a permit. In addition, a rental property owner who resides out of state may have to hire a property manager in order to satisfy a requirement that a designated representative be available at all times and within a certain proximity of the unit during any rental period.

3.1.4 Nonconforming Use Status

A property that was used as a short-term rental prior to the adoption of an ordinance that no longer allows short-term rentals may become a **nonconforming use** under state and local zoning laws. Although state and local zoning laws typically allow nonconforming uses to continue, the right to alter or expand a nonconforming use is usually limited and often requires the issuance of a special permit, or an equivalent form of zoning relief, from the local planning commission or board of appeals. In addition, a nonconforming use that is discontinued for a specific period of time (typically one or two years) may be deemed abandoned, and thereafter prohibited from resuming at a future date.

3.2 COMMUNITY IMPACTS

3.2.1 Local Real Estate Market

In vacation destination communities, many property owners depend on the income gained from short-term rentals to pay their mortgages, real estate taxes, association dues, and other expenses. If that income is taken away or severely reduced by short-term rental restrictions, the only alternative for those homeowners might be to sell their homes immediately in order to avoid foreclosure or a distressed sale. A widespread ban on short-term rentals that results in a substantial number of homes being sold or foreclosed upon may flood the market, causing property values to fall and remain depressed for a period of time.

3.2.2 Tourism

Short-term rental restrictions may negatively impact local tourism in at least two ways. First, they may affect the occupancy rates of vacation rentals by increasing the per-person cost of short-term rentals because they limit the maximum occupancy of a short-term rental unit. Short-

term rental restrictions may also cause rental property owners to increase their rental rates and minimum security deposits in order to cover the increased cost of operating a short-term rental and the risk of incurring a fine or having their rental licenses revoked or suspended. All else being equal, the higher rental rates paid by smaller groups of tenants, increase the per-person cost of short-term rentals in communities with short-term rental ordinances.

Second, tourists who become aware of the new restrictions may perceive them as being motivated by, and evidence of, an “anti-tourist” sentiment among full time residents of the community. Regulations that single out short-term rentals for different treatment may implicitly brand short-term renters as being potentially disruptive even though an individual tenant may have done nothing wrong. Provisions that allow random inspections of short-term rentals without imposing reasonable restrictions on the time or manner of those inspections may be perceived as an invasion of privacy and an unreasonable disruption of a family vacation. A perceived anti-tourist sentiment may ultimately discourage tourists from vacationing in that community.

A January 2010 report prepared by the Napa Valley Vacation Rental Alliance, argued that the availability of short-term rental properties could determine where a family or groups of friends vacationing together chooses to stay. The report states:

Throughout the world, some travelers prefer private dwellings to hotels. For instance, those traveling as a family or group of friends often want spacious accommodations and kitchens. This market segment will not substitute conventional lodging if vacation rentals are not provided, they will simply go elsewhere. Thus, by eliminating vacation rentals, Napa County would deter a substantial number of visitors who currently spend on restaurants, wine, attractions and services and who would instead spend for leisure outside our County.³⁶

The 2008 study “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County”³⁷ commissioned by the Realtors[®] Association of Maui (the “Maui TVR Study”) reached a similar conclusion. Acknowledging that “the TVR industry is concerned about . . . the potential enactment of legislation meant to marginalize [the TVR] industry, and the potential economic consequences of such policies,” the Maui TVR Study concluded:

The extent of the loss of the TVR industry due to government regulations depends to what extent TVR visitors substitute an alternative Maui County accommodation type to TVRs if they are unavailable or not sufficiently available to meet the current and expected future demand level for their accommodation type. In a global market place with alternatives to Maui destinations offering a literal potpourri of accommodation experiences, the modern, well-informed and sophisticated visitor can find the accommodations experience that best fits their tastes and preferences.

³⁶ Napa Valley Vacation Rental Alliance (NVVRA): A Coalition of Napa County Stakeholders (prepared for Napa County by Napa Valley Vacation Rental Alliance (NVVRA), Jan. 2010) (available on-line at <http://www.white.com/nvvra/media/WHY%20CODIFYING%20VACATION%20RENTALS%20NOW%20IS%20OOD%20PUBLIC%20POLICY.pdf>).

³⁷ “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County,” prepared by Dr. Thomas Loudat & Dr. Prahlad Kasturi for the Realtors[®] Association of Maui (Jan. 8, 2008) (hereinafter the “Maui TVR Study”).

Based on the increasing market share of TVRs on Maui from 2000 to 2006 relative to other accommodation types one can reasonably surmise that the modern visitor increasingly prefers a TVR or its equivalent experience. Thus, even though elimination of Maui TVRs may not result in the loss of all TVR visitors who may substitute an alternative Maui County accommodation type yet available, we would still expect a significantly negative economic impact in Maui County if TVRs are eliminated or significantly reduced.³⁸

3.2.3 Local Economy

Local economies that lean heavily on the tourist economy are more susceptible to the potential impacts of short-term rental restrictions. Even a slight impact on tourism in these communities can have a significant negative effect on the viability and success of restaurants, retail establishments, and other local businesses that provide services to tourists. The potential dollar impacts of a reduction in visitor numbers due to a short-term rental restriction is illustrated by the daily spending calculations of the Maui TVR Study, which calculated that transient vacation rental visitors spent an average of \$159.16 per day in Maui County.³⁹ Based on 2006 transient vacation rental visitor data (105,967) and a 6.85 day average length of stay, the study concluded that transient vacation rentals produced more than \$115 million in total revenue from lodging, food and beverage, entertainment, shopping, and other county businesses and services.⁴⁰

3.2.4 Tax Revenue

Short-term rental restrictions can have a positive effect on tax revenue if communities are authorized by state law to impose and collect a tax on short-term rentals. Cities, towns and villages in Texas, for example, are authorized by the Municipal Hotel Occupancy Tax statute to impose and collect a nine percent tax on the price paid for short-term rentals.⁴¹ In 2011, the City of Austin estimated that it could gain an additional \$100,000 to \$300,000 in tax revenue by taxing short-term rental properties.⁴²

At the same time, however, short-term rental restrictions that negatively affect local tourism could cause sales tax revenue to decrease if restaurant and retail sales are down due to diminished tourism.

3.2.5 Affordable Housing

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.⁴³ In some cases, allowing short-term rentals may fuel speculation in rising housing markets by allowing investors to cover the

³⁸ Maui TVR Study at 1-2.

³⁹ See Maui TVR Study at 16.

⁴⁰ See Maui TVR Study at 16-17

⁴¹ See Texas Code § 351.003.

⁴² See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

carrying costs of a house for a period of time while the property appreciates in value and then sell it for a profit.⁴⁴ Tourist communities, in particular, may be affected if the workers in low-paying service and tourism related jobs can no longer afford to live in the community or within a reasonable commuting distance.⁴⁵

3.2.6 Governmental Administrative Costs

Short-term rental restrictions create additional administrative burdens on local government, including the processing of permit, licensing and registration applications. Local building officials are likely to be faced with an increased volume of required inspections. Code enforcement personnel and the police officers may be required to assume additional enforcement duties under a short-term rental ordinance. The financial burden of administering a short-term rental ordinance may weigh heavily on vacation-destination communities, where the a high volume of short-term rental properties may require local government to hire additional staff or pay increased overtime costs to current staff in order to implement the short-term rental program.

3.3 IMPACTS ON RENTERS

3.3.1 Rental Fees

As discussed above, the adoption of short-term rental restrictions may cause rental property owners to increase rental rates as a means of recovering licensing and permit fees, inspection and other related costs. If regulations expose a property owner to the risk of incurring a fine or having the owner's rental license suspended or revoked, the owner may also increase the minimum security deposit as a means of deterring tenants from engaging in behavior that might violate the short-term rental regulations.

3.3.2 Inventory of Short-Term Rental Units

Short-term rental restrictions can also reduce the inventory of short-term rental units in a community in various ways. For example, zoning regulations may prohibit short-term rentals in single-family residential zoning districts or within certain areas or neighborhoods. An owner who successfully operated a short-term rental property without complaint prior to the adoption of licensing requirements may be barred from continuing the use if the property does not conform to the new licensing criteria. More generally, owners may simply decide they do not want to assume the increased cost and risk of continuing to use their property as a short-term rental, and withdraw their properties from the inventory of short-term rental in the community.

⁴³ APA Report at 2.

⁴⁴ *See id.*

⁴⁵ *See id.*

3.4 UNINTENDED CONSEQUENCES OF SHORT-TERM RENTAL RESTRICTIONS

3.4.1 “Underground Market” for Short-Term Rental Units

Short-term rental restrictions that impose high permit and licensing fees, onerous inspection requirements, and performance standards that are difficult or costly for owners to satisfy might have the unintended effect of creating an underground market for short-term rentals, in which owners continue to rent their properties without obtaining the required permits. Owners who depend on rental income to pay their mortgages to pay the maintenance costs of a second home may be willing to risk incurring fines and other penalties if an ordinance creates obstacles that cannot be overcome or that may make it economically infeasible to obtain a rental permit.⁴⁶

3.4.2 Uncertainty in the Short-Term Housing Market

A short-term rental regulation that authorizes the suspension or revocation of a short-term rental permit can also introduce a degree of uncertainty in the short-term rental housing market. Vacation travelers often reserve short-term housing accommodations several months in advance of a planned vacation, particularly when the stay is planned during a destination’s peak visitation period. Under those circumstances, for example, it is conceivable that a family may make a reservation and pay a deposit several months in advance of a holiday ski vacation only to discover later that the home they had reserved is no longer available because its short-term rental permit was suspended or revoked. In some cases, by the time a vacation home renter makes that discovery, it may be too late to find suitable alternative short-term housing, leaving the vacationer with a negative impression of the local community—an impression that the vacationer is likely to share with others.

SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS

4.1 AUTHORITY TO REGULATE

In general, short-term rental restrictions are typically adopted under the specific authority of a state **zoning enabling statute** or the general **police power** delegated to local governments by the state constitution, or by statute. Zoning regulations that restrict short-term rentals in residential areas have been upheld where the restrictions are found to be substantially related to land use impacts in the area.⁴⁷ Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the zoning power.⁴⁸

However, in 2011 the Florida State Legislature enacted legislation that specifically limits the authority of local governments to regulate or prohibit short-term rentals. Enacted as Chapter No.

⁴⁶ See “More destinations shut the door on vacation rentals, *USA Today*, August 6, 2010 (commenting that the ban on short-term rentals in New York City apartments, most of which are already prohibited under many condominium and co-op bylaws, “will simply go further underground”).

⁴⁷ 5 RATHKOPF’S THE LAW OF ZONING AND PLANNING § 81:11 (4th Ed 2011) (hereinafter “RATHKOPF”) (citing to *Brown v. Sandy Bd. of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998) (finding that city has authority to prohibit short-term rentals in single-family neighborhood)).

⁴⁸ RATHKOPF § 81:11 (citing *Cope v. City of Cannon Beach*, 855 P.2d 1083, 317 Or. 339 (1993) and *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (6th Dist. 1991)).

2011-119 on June 2, 2011, the Florida law (entitled “An act relating to public lodging establishments and public food service establishments”) states:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.⁴⁹

As of the date of this paper, Florida appears to be the only state to have enacted legislation limiting the authority of local governments to regulate or prohibit short-term rentals. It is conceivable, however, that the Florida law may become a model for other states. This would appear to be the most likely in those states where short-term rentals comprise a meaningful segment of the tourist lodging industry.

4.2 TAKINGS

It is well established that a land use regulation that is excessively restrictive may constitute a “taking” of property for which compensation must be paid under the state constitution and the Fifth and Fourteenth Amendments to the United States Constitution.⁵⁰ The prevailing test for determining whether a regulatory taking has occurred was established in the landmark case of *Penn Central Transportation Co. v. City of New York*,⁵¹ decided by the United States Supreme Court in 1978. The *Penn Central* test requires a balancing of the public and private interests involved in each case, weighing the following three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner’s “distinct investment-backed expectations;” and (3) the character of the governmental action (i.e., physical invasion v. economic interference).⁵²

The application of the *Penn Central* “balancing test” is illustrated in an Oregon case that concerned a takings challenge to a short-term rental ordinance. In that case⁵³ rental property owners challenged a City of Cannon Beach, Oregon ordinance that prohibited the creation of new transient occupancy uses and required existing transient occupancy uses to end by 1997. The petitioners claimed that Ordinance 92-1 constituted a taking of property without just compensation under the Fifth and Fourteenth Amendments.⁵⁴ The Supreme Court of Oregon, however, upheld Ordinance 92-1, focusing ultimately on the economic impact of the restrictions:

We next consider whether Ordinance 92-1, by prohibiting transient occupancy, denies property owners economically viable use of their properties. We conclude that it does not. On its face, Ordinance 92-1 permits rentals of dwellings for periods of 14 days or more. The ordinance also permits the owners themselves to reside in the dwellings.

⁴⁹ The enrolled version of House Bill No. 883 is available on the Florida State Legislature’s website at: <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0883er.docx&DocumentType=Bill&BillNumber=0883&Session=2011>.

⁵⁰ PATRICIA E. SALKIN, 2 AMERICAN LAW OF ZONING § 16:1 (5th ed. 2008) (hereinafter “SALKIN”).

⁵¹ *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

⁵² SALKIN § 16:9 (citing *Penn Central*, 438 U.S. at 124).

⁵³ *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

⁵⁴ *See id.* at 1084.

Although those uses may not be as profitable as are shorter-term rentals of the properties, they are economically viable uses.⁵⁵

As the court's analysis indicates, plaintiffs who challenge a short-term rental restriction as a taking of property face an uphill battle. As a practical matter, it is difficult to argue that a short-term rental prohibition denies the owner of *all* economically viable use of his land, particularly where longer-term rentals are still allowed.

4.3 DUE PROCESS

The Fourteenth Amendment to the U.S. Constitution prohibits any governmental action that deprives “any person of . . . liberty or property, without **due process** of law.” This clause imposes both substantive and procedural requirements. The substantive component of the due process clause, known as “substantive due process,” tests the governmental purposes implemented by land use regulations. To satisfy substantive due process, a regulation must advance a legitimate governmental purpose.⁵⁶ In general, a local land use ordinance will survive a substantive due process challenge if there exists a rational relationship between the terms of the ordinance and a legitimate governmental interest.⁵⁷ A local ordinance may be challenged on due process grounds either on its face, or as applied to a particular case. When a landowner makes a *facial* challenge to a zoning ordinance, “he or she argues that *any* application of the ordinance is unconstitutional.”⁵⁸ On the other hand, when a landowner makes an *as applied* challenge, he or she attacks “only the specific decision that applied the ordinance to his or her property, not the ordinance in general.”⁵⁹

In a California case,⁶⁰ the plaintiffs challenged the city of Carmel's transient rental ordinance on substantive due process grounds, arguing that the prohibition was “not rationally related to the goals sought to be achieved.”⁶¹ The California court of appeals rejected the substantive due process claim, finding that the ordinance was rationally related to the goals and policies set forth in the city's general plan, as well as the stated purpose of the R-1 district.⁶² In support of its conclusion, the court explained that short-term rentals were inconsistent with the residential character of the community:

It stands to reason that the “residential character” of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or even 29 days. Whether or not transient rentals have the other “unmitigatable, adverse impacts” cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They

⁵⁵ *Id.* at 1086-87 (internal citations omitted).

⁵⁶ See SALKIN § 15:2.

⁵⁷ See *id.*

⁵⁸ *WMX Technologies, Inc. v. Gasconade County*, 105 F.3d 1195, 1198-99 n.1 (8th Cir. 1997) (emphasis added).

⁵⁹ See SALKIN § 15:2.

⁶⁰ *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6th Dist. Cal. 1991).

⁶¹ *Id.* at 1596.

⁶² See *id.* at 1589.

do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.⁶³

Referring back to its discussion of Carmel’s stated goals, the court summarily concluded:

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal.⁶⁴

The California state court decision illustrates the difficulty of challenging a short-term rental restriction on substantive due process grounds. In general, a short-term rental restriction seems likely to survive substantive due process scrutiny if the local jurisdiction articulates a legitimate governmental interest (e.g., the protection of residential character in predominantly single-family neighborhoods), and can produce some findings connecting short-term rental activity to the types of neighborhood and community impacts described in Carmel’s transient rental ordinance.

4.4 EQUAL PROTECTION

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which states the basic principle that all persons similarly situated should be treated alike.⁶⁵ The general rule is that a state or local law is presumed to be valid and will be sustained if the classification drawn by the law is rationally related to a legitimate state interest.⁶⁶ If a local or state law does not involve a suspect classification (e.g., one that treats persons differently on the basis of race, alienage, or national origin) or a fundamental right (e.g., the right to vote, the right to interstate travel), then an equal protection challenge is analyzed under the rational basis test. The rational basis test is a very deferential test, under which an ordinance generally will be upheld if there is any “reasonably conceivable state of facts that could provide a rational basis for the classification.”⁶⁷ Moreover, the rational basis test does not require a legislative body to articulate its reasons for enacting an ordinance, because “[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”⁶⁸ This means that a court may find a rational basis for a law, even if it is one that was not articulated by the legislative body.

A short-term rental ordinance may be vulnerable to an equal protection challenge on the ground that it treats similar properties differently based on whether a property is occupied by short-term tenants or longer term tenants. For example, take an ordinance that generally does not impose a

⁶³ *Id.* at 1591.

⁶⁴ *Id.* at 1596.

⁶⁵ See generally *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

⁶⁶ See generally *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

⁶⁷ *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, (1980).

⁶⁸ *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096 (1993).

maximum occupancy limit on single family homes in a city's residential zoning districts, but does impose such a limit on homes that are used for short-term rentals. On its face, this ordinance treats similar properties (i.e., single family homes in the same zoning district) differently, based on whether they are used as a short-term rental. Because no suspect classification or a fundamental right is implicated, an equal protection claim against the ordinance would be reviewed under the deferential rational basis test. For the same rational basis reasons discussed above in connection with a substantive due process challenge, the short-term rental ordinance is likely to survive judicial scrutiny.

Since 2000, as a result of the U.S. Supreme Court decision in *Village of Willowbrook v. Olech*,⁶⁹ "selective enforcement" claims in land use cases may also be brought under the Equal Protection clause. Selective enforcement claims generally assert that a municipality arbitrarily applied its land use ordinance to a conditional use permit or other land use approval, or that enforcement of the ordinance was arbitrarily selective.⁷⁰ In *Olech*, the village refused to supply water to the plaintiffs unless they granted the village an easement that it had not required of other property owners. It was alleged that the village did so to retaliate for the plaintiffs having brought an earlier, unrelated suit against the village. The question before the Supreme Court was whether an individual who does not have a suspect classification or fundamental interest claim can nevertheless establish a "class of one" equal protection violation when vindictiveness motivated the disparate treatment. The Court held:

Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."⁷¹

From a plaintiff's perspective, the difficult part of the *Olech* decision is its requirement that selective enforcement claims involve intentional treatment. Moreover, it is unclear whether the intentional treatment rule requires merely an intent to do an act or, more specifically, the intent to harm or punish an individual for the exercise of lawful rights.⁷² Since *Olech*, most cases involving "class of one" equal protection claims that assert selective enforcement have not been successful.⁷³

⁶⁹ *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073 (2000).

⁷⁰ BRIAN W. BLAESSER & ALAN C. WEINSTEIN, FEDERAL LAND USE LAW & LITIGATION § 1:20 (Thomson-Reuters/West: 2011) (hereinafter "BLAESSER & WEINSTEIN").

⁷¹ *Olech*, 528 U.S. at 564 (citations omitted).

⁷² See BLAESSER & WEINSTEIN § 1:20.

⁷³ See generally BLAESSER & WEINSTEIN § 1:20, fn. 7.

SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS

5.1 QUESTION THE NEED FOR SHORT-TERM RENTAL RESTRICTIONS

One of the first questions that should be asked when a city or town proposes to adopt a short-term rental ordinance is whether there truly exists a need for the restrictions. In some cases, the perceived need for a short-term rental ordinance may be based solely on anecdotal evidence about the alleged problems caused by short-term rental tenants rather than on documented evidence that short-term rental tenants are causing problems. If nothing more than anecdotal evidence is provided in support of a proposed ordinance, it may allow opponents to later argue that it was adopted arbitrarily without any rational basis.

5.1.1 Empirical Analysis

Where proposed short-term rental restrictions appear to be supported solely by anecdotal evidence, Realtors[®] should question whether empirical studies using data from police call logs, code enforcement activity, and prosecutorial records have actually established the alleged adverse impacts to the community, and the degree to which those impacts are attributable to short-term rental properties. Below are some examples of the types of inquiries Realtors[®] can make of local government officials:

- What number of complaints logged by the local code enforcement and police departments were generated by short-term rentals? Does the data evidence an increase in the number of complaints attributable to short-term rentals over the last five years?
- How do the complaints concerning short-term rentals relate to the number of individuals occupying the short-term rental that is the subject of the complaint? Does the city or town have factual support to justify a proposed occupancy limit for short-term rental housing and to what extent does this limitation exceed the occupancy limits applicable to other types of housing?
- Does a specific type of complaint (e.g., noise disturbance, litter or trash, parking violations, or late night parties) constitute a large percentage of the total number of complaints recorded in the last five years? If so, does a provision of the local zoning or general ordinance already regulate the offending behavior? If it is possible to address the majority of the problems by enforcing existing nuisance regulations, rather than by imposing new maximum occupancy limits on short-term rentals, it may call into question the need for the proposed ordinance.
- Does a disproportionate number of complaints arise from a small number of rental properties? If yes, then a more appropriate response might be to adopt narrowly tailored regulations. An

example of this approach would be a regulation that would apply only after one or more violations are found on a property, rather than imposing the cost and disruption of new regulations on all owners of short-term rental property.

5.1.2 Stakeholder Input

Realtors[®] should also urge that local government officials seek and consider input from individuals and organizations with a stake in the short-term rental industry as early in the process as possible. Stakeholder groups should include representatives of local homeowner associations, rental property management associations, the local Realtor[®] associations, the chamber of commerce, local tourism bureau, and other organizations involved in the short-term rental industry.

5.1.3 Public Process

Realtors[®] should actively monitor and participate in the public hearing process. Early on, Realtors[®] should request an invitation to participate in any stakeholder groups formed by the local government prior to the public hearing process. Local governments often allow interested parties to discuss their concerns with local officials responsible for drafting and advising the local legislative body on a proposed ordinance at the beginning of the process. To the extent possible, Realtors[®] should take advantage of this opportunity to meet with the local planner or other staff members who may be drafting a proposed short-term rental ordinance.

State and local open public meetings laws generally require local legislative bodies to publish notice of scheduled public hearings, typically in the local newspaper, by posted notice at city or town hall, and/or on the official website of the city or town. If a draft of the proposed short-term rental ordinance is available prior to the public hearing, Realtors[®] should request a copy and review it thoroughly in advance of the hearing.⁷⁴ Realtors[®] should be prepared to submit written comments and/or to testify at the public hearing about their concerns with the proposal.

5.2 SUGGEST ALTERNATIVES TO SHORT-TERM RENTAL RESTRICTIONS

5.2.1 Enforcement of Existing Ordinances

Communities that wish to address the potential negative impacts of short-term rentals on residential neighborhoods likely already have regulations in place that are aimed at curtailing those types of impacts on a community-wide basis. In many cases the existing ordinances already address the types of behaviors and activity that would be the focus of short-term rental performance standards or operational restrictions. Below are some examples.

5.2.1.1 Noise Limits

Absent **preemption** by federal or state law, the control of noise is generally within the police power authority of local government. Communities commonly adopt noise control ordinances

⁷⁴ The Realtor[®] association may obtain assistance in this effort through NAR's Land Use Initiative program.

for the purpose of controlling unnecessary, excessive, and annoying noise within the community. In the City of San Luis Obispo, California, for example, the Noise Control Ordinance Noise Control Ordinance (Chapter 9.12 of the San Luis Obispo Municipal Code) expressly declares any noise in violation of Chapter 9.12 to be a **public nuisance**, punishable by civil or criminal action. The term “noise disturbance” is defined to mean:

any sound which (a) endangers or injures the safety or health of human beings or animals, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates the factors set forth in Section 9.12.060 of this chapter. Compliance with the quantitative standards as listed in this chapter shall constitute elimination of a noise disturbance.⁷⁵

Additionally, specific types of noise violations that commonly arise in residential neighborhoods are regulated under Section 9.12.050, including the following:

- Noise disturbances that are “plainly audible at a distance of fifty feet from the noisemaker, unless the noise does not penetrate beyond the boundaries of the noisemaker’s own premise.”⁷⁶
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device between the hours of 10:00 PM and 7:00 AM in such a manner as to create a noise disturbance audible across a property line.⁷⁷
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device in a manner that creates a noise disturbance at any time in excess of noise levels defined in Section 9.12.060 (measured by decibel levels and duration of the disturbance).⁷⁸

5.2.1.2 Public Nuisance

In general, cities and counties have the police power to declare and abate nuisances. The Boulder, Colorado nuisance abatement ordinance (Title 10, Chapter 2.5 of the Boulder Revised Code) defines a “public nuisance” to mean:

[A]ny condition or use of any parcel on or in which two or more separate violations of the Boulder Municipal Code have occurred within a twelve-month period, or three or more separate violations have occurred within a twenty-four month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel.⁷⁹

⁷⁵ City of San Luis, California Municipal Code § 9.12.020(U).

⁷⁶ See San Luis Municipal Code § 9.12.050(A).

⁷⁷ See San Luis Municipal Code § 9.12.050(B)(1)(a).

⁷⁸ See San Luis Municipal Code § 9.12.050(B)(1)(b).

⁷⁹ “Nuisance Abatement Information Sheet,” City of Boulder, Colorado (available on-line at http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat_info.pdf).

No violations or actions are designated as “public nuisance” acts. Instead, the determination whether a violation triggers the nuisance abatement process is made by the responding law enforcement agency. For instance, in some cases, a trash violation may trigger the nuisance abatement process, while in others the problem might be best handled with a municipal court summons. Legal remedies to abate public nuisances generally include the filing of a criminal complaint, or a civil action, or an administrative abatement.

5.2.1.3 Property Maintenance Standards

A property maintenance ordinance might be adopted for the purpose of maintaining, preserving, or improving a community’s inventory of residential and non-residential buildings. To accomplish this, property maintenance ordinances typically establish standards for the exterior maintenance of affected structures, including basic structural elements such as foundations and supporting columns, exterior finish surfaces, and doors and windows. Property maintenance standards may also require property owners to maintain existing trees, shrubs and other significant vegetation, and to keep all exterior areas sanitary free of trash and refuse.

5.2.1.4 Unruly Public Gathering Ordinance

Some communities, particularly college towns, such as Berkeley, CA and Tucson, AZ, have adopted “unruly gathering” ordinances that create significant sanctions for residents and property owners who host gatherings that create a substantial disturbance, as well as for party attendees who contribute to the problem. A significant advantage that an unruly gathering ordinance would have over a general noise ordinance or short-term rental ordinance is that the individual responsible for the disturbance is also penalized, rather than the tenant and/or property owner alone. Since the penalties for violating a noise ordinance generally apply only to the residents of the property where the violation occurs, a noise ordinance is unlikely to deter party guests from violating its terms.

5.2.1.5 Nighttime Curfew

To the extent that under-aged drinking and juvenile crime are a significant contributors to excessive noise and party disturbances in short-term rental properties in residential neighborhoods, a nighttime curfew ordinance that prohibits persons under the age of 18 years from being on or about public streets and public places during specified hours of the day could be an effective deterrent. The effectiveness of nighttime curfews is evidenced by a 2002 survey published by National League of Cities, in which 97% of communities that have nighttime curfew ordinances reported that they help combat juvenile crime. It bears noting, however, that a juvenile curfew ordinance generally would not be applicable to college students and other youthful offenders over the age of eighteen. To the extent that parties hosted and attended by college-aged young people are perceived as causing the disturbances that are of greatest concern, a curfew ordinance would probably have little, if any, effect.

5.2.1.6 Parking Restrictions

Communities often address the problem of improperly parked vehicles and excessive numbers of vehicles parked in residential neighborhoods through off-street parking regulations. These regulations may include provisions that prohibit vehicle parking within front yard setback areas in residential zoning districts and that restrict vehicle parking to hard surface driveways or designated parking areas. Regulations may also prohibit parking on grass areas, sidewalks, or within a certain distance of side property lines.

5.2.2 Adoption of Ordinances that Target Community-Wide Issues

Communities that have not adopted general community-wide noise regulations or the other regulations aimed at curtailing the types of behaviors and activities that would be regulated under a short-term rental ordinance, should be encouraged to adopt such general regulations rather than to single out short-term rental properties for regulation.

5.3 SHORT-TERM RENTAL HOUSING REGULATION BEST PRACTICES

This section presents several types of “best practice” provisions that have been implemented in jurisdictions which have short-term rental restrictions and which Realtors[®] may find acceptable, depending upon local market conditions. Each section begins with a brief description of the type of best practices. This description is followed by one or more examples of the best practice technique as adopted by local jurisdictions.

5.3.1 Narrowly-Tailored Regulations

An effective short-term rental ordinance should be narrowly tailored to address the specific needs of the local community. The potential for over-regulation is a legitimate concern, particularly when a proposed ordinance is driven by the vocal complaints of one or more permanent residents about their negative experiences with nearby short-term renters. Residents often complain that short-term rentals are inherently incompatible with residential neighborhoods and demand an outright prohibition against the use. In those circumstances, the concern is that elected officials, in an effort to please their constituency, may acquiesce to those demands without carefully considering: (a) whether there truly exists a need for short-term rental restrictions; and (b) if a need exists, what regulatory approach is best-suited to addressing the particular needs of the community.

Short-term rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which short-term rentals need to be regulated. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas

would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

Best Practice Example: Clatsop County, Oregon. In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into nearly forty zoning district designations, including more than a dozen residential districts.⁸⁰ The county’s short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.⁸¹

5.3.2 “Grandfathering” Provisions

Short-term rentals that lawfully existed prior to the enactment of a short-term rental ordinance, but are not allowed under the newly adopted ordinance—either because the use is prohibited outright or because the applicant is unable to satisfy the criteria for obtaining a permit—should be allowed to continue (i.e., “grandfathered”) if the property owner is able to demonstrate that the short-term rental use pre-dated the ordinance. Zoning ordinances typically contain a general nonconformity provision that establishes the requirements for a use or structure to secure a legal nonconforming status. However, short-term rental ordinances may also contain specific grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

Best Practice Example: Kauai County, Hawaii. Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and -17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a nonconforming use certificate. To obtain a nonconforming use certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that:

[the] dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws . . . up to and including the time of application for a nonconforming use certificate.⁸²

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on submission of the following documentary evidence: records of occupancy and tax documents, including: State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment of deposits for reservations and fees for occupancy of the subject property by transient guests.⁸³

⁸⁰ See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010.

⁸¹ See Clatsop County, OR Ordinance No. 03-13.

⁸² Kauai County Code § 8-17.10(c).

⁸³ Kauai County Code § 8-17.10(e).

Best Practice Example: Monterey County, California. Monterey County’s short-term rental ordinance grandfathers short-term rental units that were in operation before the ordinance was adopted. Section 21.64.280 of the Zoning Ordinance provides:

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and Building Inspection and the administrative permit application is filed within 90 days of the effective date of this Section. . . . The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is no the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.⁸⁴

5.3.3 Quantitative and Operational Restrictions

Quantitative Restrictions. The use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of mitigating the impacts of short-term rentals can be viewed in two ways. On the one hand, such limitations on the number of short-term rentals allowed in a community are preferable to an outright prohibition on the use. On the other hand, for property owners desiring to enter the short-term rental market after the effective date of a short-term rental ordinance, a quantitative restriction may act as a barrier to entry. Quantitative restrictions therefore may constitute a reasonable compromise position in circumstances where community support is divided on a proposed short-term rental ban.

Jurisdictions considering a quantitative restriction should carefully consider which technique is best suited to further the needs and goals of the community. For example, if a community finds that the negative impacts of short-term rentals are manifested only when they exist in clusters or in close proximity to one another in a residential neighborhood, then a *proximity restriction* would be a more effective technique than a fixed cap or ratio. On the other hand for a community seeking to maintain a balance between its long-term housing needs and visitor-oriented accommodations, a maximum *ratio* of long term residential dwelling units to short-term rental permits would be more effective than a fixed cap or proximity restriction.

Best Practice Example: Mendocino County, California. Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.” To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved after the effective date of this ordinance, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”⁸⁵ While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until

⁸⁴ Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b).

⁸⁵ Mendocino County, CA Code § 20.748.020(A).

thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.⁸⁶

Best Practice Example: San Luis Obispo County, California. The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”⁸⁷ More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full time residents.”⁸⁸ Accordingly, rather than prohibiting vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.⁸⁹

Operational Restrictions. Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 5.2 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

5.3.4 Licensing/Registration Requirements

Virtually all short-term rental ordinances require owners who intend to offer their property for use as a short-term rental to obtain a license or permit prior to commencing the use. In general, licensing and registration requirements enable local governments to create and maintain a database of dwelling units being operated as short-term rentals for code enforcement and transient occupancy tax collection in jurisdictions authorized to collect such taxes. The procedures and criteria for obtaining a short-term rental license or permit should be clearly set out in the local ordinance. Short-term rental licensing and registration applications should be processed administratively and without need for a public hearing. Such licensing/registration requirements should not require a conditional use permit or a similar-type zoning permit.

⁸⁶ See Mendocino County, CA Code § 20.748.020(A)-(B)..

⁸⁷ San Luis Obispo County, CA Code § 23.08.165(a).

⁸⁸ *Id.*

⁸⁹ San Luis Obispo County, CA Code § 23.08.165(c).

Best Practice Example: City of Palm Springs, California. In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (a) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city’s Business Tax Ordinance for such activity. Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee “shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration].”⁹⁰

Best Practice Example: City of Encinitas, California. In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted “unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law.”⁹¹

5.3.5 Inspection Requirements

As noted in Section 3.1.3, many communities require short-term rental properties to pass certain inspections prior to the issuance or renewal of a short-term rental permit. However, mandatory inspection requirements arguably do not advance a community’s interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a short-term rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

Best Practice Examples: Douglas County, Nevada; City of Palm Springs, California; and Sonoma County, California. The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.

Mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”⁹² It stands to reason that a provision requiring inspection of transient private rental

⁹⁰ City of Palm Springs, CA Municipal Code § 5.25.060(b).

⁹¹ See City of Encinitas, CA Municipal Code § 9.38.040(A)(3).

⁹² City of Bear Lake, CA Municipal Code § 17.03.310(A).

homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

However, even if a mandatory inspection requirement can be justified, the scope of the inspection program should be limited to the initial permit issuance and thereafter only on a reasonable periodic basis. Provisions requiring short-term rental units to be inspected annually (typically as a condition precedent to the issuance of a permit renewal), such as Section 17.03.310(D)(2) of the Big Bear Lake ordinance, are unnecessarily burdensome on owners and the local government alike.

Best Practice Example: City of Cannon Beach, Oregon. The short-term rental ordinance adopted by the City of Cannon Beach provides an example of a more reasonable periodic inspection requirement. Under Section 17.77.040(A)(2) of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.⁹³

5.3.6 Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Tillamook County and Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.⁹⁴ By contrast, under Section 1.06.030 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

Enforcement provisions should not penalize short-term rental property owners (or their agents) for violations beyond their control. For example, if a short-term rental *tenant* violates a noise level restriction, the property owner should not be held responsible for the violation.

⁹³ See City of Cannon Beach, OR Zoning Code § 17.77.040(2)(a).

⁹⁴ See City of Palm Springs, CA Municipal Code § 5.25.090(a).

Best Practice Example: Douglas County, Nevada. Chapter 5.40 of the Douglas County Code regulates vacation home rentals in the Tahoe Township. Although the vacation home rental ordinance imposes certain operational restrictions on permitted rental units (e.g., parking and occupancy limitations and trash/refuse container rules), Section 5.40.110 states that a permit may be suspended or revoked only for a violation committed by the owner.

5.41.110 Violation and administrative penalties.

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:
 - 1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
 - 2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
 - 3. The owner has violated the provisions of this chapter; or
 - 4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code.
 - 5. Any false or misleading information supplied in the application process.

Prior to the imposition of fines or other penalties, a short-term rental ordinance should conform to the due process requirements established under state law and/or the local jurisdictions charter or code of ordinances. At a minimum, before fines or other penalties are imposed, property owners should be given notice of, and an opportunity to cure, any alleged violation, except where exigent public safety concerns exist. As demonstrated in the best practice examples below, property owners should be given the opportunity to request a public hearing and have the right to appeal a local government's decision to suspend or revoke a short-term rental permit.

Best Practice Example: City of Encinitas, California. Under Section 9.38.060 of the City of Encinitas short-term rental ordinance, penalties may be imposed and permits may be suspended only in accordance with the following provisions:

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the city clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection (A), the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more

than 45 days of receipt of request for a hearing. The City Manager or his or her designee shall preside over the hearing. The City Manager or his or her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this Chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.⁹⁵

Best Practice Example: City of Cannon Beach, Oregon. Section 17.77.050(B) of the Cannon Beach Zoning Code provides another example of the notice and public hearing process afforded to short-term rental property owners prior to the imposition of fines or the revocation of a permit.

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.⁹⁶

⁹⁵ City of Encinitas, CA Municipal Code § 9.38.060.

⁹⁶ City of Cannon Beach, OR Zoning Code § 17.77.050(B)

GLOSSARY OF TERMS

Common law: Law developed by judges through decisions of courts and similar tribunals rather than through legislation (statutes) or executive actions.

Due Process: The constitutional protections given to persons to ensure that laws are not unreasonable, arbitrary, or capricious. When such laws affect individuals' lives, liberty, and property, due process requires that they have sufficient notice and opportunity to be heard in an orderly proceeding suited to the nature of the matter at issue, whether a court of law or a zoning board of appeals. Essentially, due process means fairness.

Equal Protection: The right of all persons under like circumstance to enjoy equal protection and security in their life, their liberty, and their property and to bear no greater burdens than are imposed on others under like circumstances.

Nonconforming Use: A use that lawfully existed prior to the enactment of a zoning ordinance, and that is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated, is commonly referred to as a "nonconforming use."⁹⁷

Police Power: The power that resides in each state to establish laws to preserve public order and tranquility and to promote the public health, safety, morals, and other aspects of the general welfare.

Preemption: A doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such national, as opposed to local, character that federal laws preempt or take precedence over state laws on such matters. As such, a state may not pass a law inconsistent with the federal law. The doctrine of *state law* preemption holds that a state law displaces a local law or regulation that is in the same field and is in conflict or inconsistent with the state law.⁹⁸

Public Nuisance: At common law "public nuisance" generally consists of "an unreasonable interference with a right common to the general public, including activities injurious to the health, safety, morals or comfort of the public."⁹⁹

Zoning Enabling Statute: State legislation "authorizing local governments to engage in planning and the regulation of activity on private land."¹⁰⁰

⁹⁷ PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 12:1 (5th ed. 2010).

⁹⁸ Article VI, Section 2, of the U.S. Constitution, commonly referred to as the "Supremacy Clause," provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

⁹⁹ ZONING AND LAND USE CONTROLS § 16.02[2].

¹⁰⁰ See ZONING AND LAND USE CONTROLS, Ch. 1, Introduction and User's Guide § 1.02[2] (LexisNexis Matthew Bender) (hereinafter "ZONING AND LAND USE CONTROLS").

COMMUNITY CONSEQUENCES OF AIRBNB

Allyson E. Gold*

Abstract: Short-term rental accommodations account for more than 20% of the United States lodging market, with annual sales now greater than those of nearly all legacy hotel brands. The rise of companies like Airbnb has created a booming market that provides affordable short-term rentals for travelers and new income for those with an extra couch, spare room, or even an unused home. However, while individual hosts and guests may benefit economically, the use of short-term rentals produces significant consequences for the surrounding community. Airbnb proliferation causes fewer affordable housing options, higher average asking rents, and erosion of neighborhood social capital. Due to discrimination among users on Airbnb’s platform, many of the benefits of short-term rental accommodations accrue to white hosts and guests, locking communities of color out of potential income and equity streams. These issues raise a question at the core of property law: which stick in the bundle is implicated by a short-term rental accommodation?

Current regulations attempt to walk the line between protecting property rights and mitigating externalities created by short-term rental accommodations and borne by the local community. In doing so, the law fails to adequately address consequences resulting from the vast increase in short-term rental accommodations. This Article assesses the benefits and costs of short-term rental accommodations and analyzes how current statutory approaches amplify or diminish these effects. After examining the legal, economic, and social interests of multiple short-term rental accommodation stakeholders, including hosts, guests, the local community, and platform operators, it argues that current policies are fragmented, inconsistently applied, and ineffective. Instead, the law must be reformed to better secure access to affordable housing stock, prevent “hotelization” of residential neighborhoods, create meaningful opportunities for diverse users to share economic gains, and eliminate pathways to discriminate on homesharing platforms like Airbnb.

INTRODUCTION.....	1579
I. EFFECTS OF SHORT-TERM RENTALS.....	1584
A. Positive Effects for Individuals and the Community.....	1585
1. Wealth Accumulation for Hosts.....	1585
2. Local Economic Impact.....	1587
B. Effects on the Local Housing Market.....	1588
1. Loss of Long-Term Rental Accommodations	1589
2. Increase in Average Asking Rents.....	1591
3. Changes to Neighborhood Composition.....	1593

* Allyson E. Gold is an Assistant Professor of Clinical Legal Instruction and Director of the Elder Law Clinic at the University of Alabama School of Law. Many thanks to the participants of the NYU Clinical Writers Workshop and colleagues in the University of Alabama Faculty Workshop for their engagement and helpful comments, and to Richard Delgado, Jean Stefancic, Fred Vars, Emily A. Benfer, and Courtney Cross for their insightful feedback. I am especially grateful to Emily Parsons, John Curry, Leeza Soulina, and Madeleine Vidger for their fantastic editorial work.

	a.	Influx of Commercial Interests	1594
	b.	Decrease in neighborhood social capital	1596
II.		RACIAL IMPLICATIONS OF SHORT-TERM RENTAL PLATFORMS	1597
	A.	Airbnb and Discrimination	1597
	1.	Discrimination Against Guests	1598
	2.	Discrimination against hosts	1599
	B.	Airbnb and Gentrification	1600
	1.	Airbnb as a Gentrification Tool	1601
	2.	Resident Displacement	1602
	C.	Concentration of Wealth Along Racial Lines	1603
III.		CURRENT REGULATIONS GOVERNING SHORT-TERM RENTAL ACCOMMODATIONS	1604
	A.	Traditional Conceptualizations of Property Rights ..	1606
	1.	Residential Leasehold Interest	1607
	2.	Innkeepers and Lodgers	1608
	3.	Challenging Regulations as an Impermissible Taking	1609
	4.	Is Mrs. Murphy Hosting?	1610
	B.	Host Accountability Measures	1611
	1.	Updated Zoning Laws and Licensing Requirements	1611
	2.	Taxation on Short-term Rental Properties	1614
	C.	Restrictions on Eligible Hosts, Length of Rentals, and Available Locations	1618
	1.	Limitations on Eligible Hosts and Properties	1618
	2.	Annual Limits	1620
	3.	Limiting Short-Term Rentals in Certain Areas ..	1620
	D.	Monitoring and Enforcement	1623
	1.	Liability for failure to comply	1623
	2.	Information sharing	1626
	E.	Policies to Address Discriminatory Practices and Concentrations of Wealth Along Racial Lines	1628
	1.	Policies to Reduce Discrimination on Online Short-Term Rental Platforms	1628
	2.	Collaboration to Increase Short-Term Rental Optimization Among Minorities	1629
IV.		RECOMMENDATIONS	1630
	A.	Protect Affordable Housing Stock	1631
	B.	Prevent Hotelization of Residential Neighborhoods	1633
	C.	Create Opportunities for Diversity of Wealth Accumulation	1633
	D.	Eliminate Opportunities to Discriminate on Homesharing Platforms	1635
		CONCLUSION	1636

INTRODUCTION

Airbnb is a “lifeline” for Suzan Albritton.¹ After Ms. Albritton’s husband passed away unexpectedly, she was no longer able to afford the home they had shared for over a decade.² Were it not for the additional income she earned by listing her property on Airbnb, she would have been forced from her home and out of her community. For every Suzan Albritton, however, there is a Christian Rhodes. Mr. Rhodes, a resident of New Orleans’s Treme neighborhood, watched as his neighborhood’s population changed from families and other longtime residents to Airbnb guests.³ The balloons were the final straw. After a weekend bachelorette party adorned a nearby home with anatomically shaped balloons, Mr. Rhodes knew that he and his young children could no longer live in the neighborhood⁴; he quickly sold his home.⁵

Debates rage about the effects of the sharing economy, which has dramatically transformed the way consumers access the marketplace. Using a smartphone, a person can book a pet sitter on Rover,⁶ order dinner delivery through Seamless,⁷ and set up a visit from their own private masseuse on Soothe⁸—all from the backseat of their Uber.⁹ As Suzan Albritton and the Rhodes family illustrate, the benefits of such apps can be tremendous, but these gains may be accompanied by far-reaching and unintended consequences.

Airbnb’s tremendous success brings this issue to the forefront. Founded in 2008, Airbnb is a short-term rental platform that allows hosts to share

1. Letter from Suzan Albritton, Airbnb Host, to L.A. City Councilmembers (Aug. 21, 2015), available at http://clkrep.lacity.org/onlinedocs/2014/14-1635-s2_misc_1_8-21-15.pdf [<https://perma.cc/ZJA4-NQYB>].

2. *Id.*

3. Emily Peck & Charles Maldonado, *How Airbnb Is Pushing Locals Out of New Orleans’ Coolest Neighborhoods*, HUFFINGTON POST (Oct. 30, 2017, 5:45 AM), https://www.huffingtonpost.com/entry/airbnb-new-orleans-housing_us_59f33054e4b03cd20b811699 [<https://perma.cc/5JDW-UKWD>].

4. *Id.*

5. *Id.*

6. See ROVER, www.rover.com [<https://perma.cc/Y8ET-AJC2>] (“Book trusted sitters and dog walkers who’ll treat your pets like family.”).

7. See SEAMLESS, www.seamless.com (last visited Nov. 11, 2019) (“Seamless is simply the easiest way to order food for delivery or takeout.”).

8. See SOOTHE, www.soothe.com [<https://perma.cc/G2G7-EHHM>] (“Soothe helps you book a five-start massage to your home, hotel, office, or event in as little as an hour.”).

9. See generally UBER, www.uber.com [<https://perma.cc/4KPP-ZFCP>].

their interest in a property with prospective guests.¹⁰ More than ten years later, Airbnb has a private valuation of \$31 billion and “is the second-biggest ‘start-up’ . . . in the country, after Uber.”¹¹ There are over four million Airbnb listings worldwide,¹² “in more than 100,000 cities and 191 countries and regions.”¹³ According to Airbnb, it “uniquely leverages technology to economically empower millions of people around the world to unlock and monetize their spaces, passions and talents to become hospitality entrepreneurs.”¹⁴

Supporters of Airbnb laud it as a way for hosts and communities to generate new revenue and achieve economic stability. For hosts, wealth accumulation is accomplished through two distinct channels. First, in listing an accommodation on Airbnb, a new income stream is available to the host.¹⁵ Second, as the property’s potential to generate additional income increases, the underlying value of the property increases, thereby raising total home equity.¹⁶ Airbnb also claims to have a positive effect on the surrounding economy.¹⁷ A study released by the company on the economic effect of Airbnb on New York City claims that “[i]n one year, Airbnb generated \$632 million in economic activity in the city, which included \$105 million in direct spending in the outer boroughs.”¹⁸ For guests, Airbnb presents an opportunity to enjoy accommodations at more affordable prices than traditional hotels.¹⁹ Moreover, the availability of

10. See AIRBNB, [www.airbnb.com](https://perma.cc/4CTZ-CKLA) [https://perma.cc/4CTZ-CKLA].

11. Derek Thompson, *Airbnb and the Unintended Consequences of ‘Disruption,’* ATLANTIC (Feb 17, 2018), https://www.theatlantic.com/business/archive/2018/02/airbnb-hotels-disruption/553556/?utm_source=atfb [https://perma.cc/M7VL-YK8F].

12. Avery Hartmans, *Airbnb Now Has More Listings Worldwide than the Top Five Hotel Brands Combined*, BUS. INSIDER (Aug. 20, 2017, 1:00 PM), <https://www.businessinsider.com/airbnb-total-worldwide-listings-2017-8> [https://perma.cc/LFD7-RGAM].

13. *About Us*, AIRBNB, www.airbnb.com/about/about-us [https://perma.cc/WF8C-9G27].

14. *Id.*

15. See *How Much Are People Making in the Sharing Economy?*, PRICEONOMICS (June 15, 2017), <https://priceonomics.com/how-much-are-people-making-from-the-sharing/> [https://perma.cc/DRH6-WSX2].

16. Kyle Barron, Edward Kung & David Proserpio, *The Sharing Economy and Housing Affordability: Evidence from Airbnb* 4 (Mar. 29, 2018) (unpublished manuscript), <https://marketing.wharton.upenn.edu/wp-content/uploads/2019/08/09.05.2019-Proserpio-Davide-Paper.pdf> [https://perma.cc/7CAC-LQK2].

17. *The Economic Impacts of Home Sharing in Cities Around the World*, AIRBNB, www.airbnb.com/economic-impact [https://perma.cc/J8CW-4TXQ] [hereinafter *The Economic Impacts of Home Sharing in Cities Around the World*].

18. *Airbnb Economic Impact*, AIRBNB, <https://blog.airbnb.com/economic-impact-airbnb/> [https://perma.cc/2VE9-PSFA] [hereinafter *Airbnb Economic Impact*].

19. Niall McCarthy, *Is Airbnb Really Cheaper Than a Hotel Room in the World’s Major Cities?*, FORBES (Jan. 23, 2018), <https://www.forbes.com/sites/niallmccarthy/2018/01/23/is-airbnb-really->

reviews and information about the host creates a personal connection, and allows for more informed decision-making about where to stay.

Airbnb's positive effects for users, and on the local economy, however, are not without their costs. The growth of Airbnb rentals within a jurisdiction is linked to the loss of long-term rental accommodations. As the New York State Attorney General noted, "private short-term rentals [have] displaced long-term housing in thousands of apartments."²⁰ This effect is replicated in other housing markets. In many parts of Montreal, Airbnb has converted 3% of the total housing stock to short-term rentals.²¹ Moreover, by "reallocating long-term rentals to the short-term market," Airbnb functions to increase average asking rents.²² In New York City, "Airbnb is responsible for nearly 10 percent of citywide rental increase between 2009 and 2016."²³ For jurisdictions already grappling with an affordable housing crisis, an influx of Airbnb listings and the attendant consequences threatens the stability and vitality of the community.

Opponents of short-term rental accommodations are primarily concerned with "commercialization of residential neighborhoods."²⁴

cheaper-than-a-hotel-room-in-the-worlds-major-cities-infographic/#69a805f78acb
[<https://perma.cc/MB3S-NQFN>].

20. N.Y. STATE OFFICE OF THE ATT'Y GEN., AIRBNB IN THE CITY 3 (2014), <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf> [<https://perma.cc/JHX5-NF5V>].

21. See WACHSMUTH ET AL., URBAN POLITICS & GOVERNANCE RESEARCH GRP., SCH. OF URBAN PLANNING, MCGILL UNIV., SHORT-TERM CITIES: AIRBNB'S IMPACT ON CANADIAN HOUSING MARKETS 23 (2017) [hereinafter WACHSMUTH ET AL., SHORT-TERM CITIES], <https://upgo.lab.mcgill.ca/publication/short-term-cities/short-term-cities.pdf> [<https://perma.cc/G8PQ-7PW4>].

22. Kyle Barron, Edward Kung & David Proserpio, *Research: When Airbnb Listings in a City Increase, So Do Rent Prices*, HARV. BUS. REV. 10, 28 (Apr. 17, 2019), https://ci.carmel.ca.us/sites/main/files/file-attachments/harvard_business_article_and_study.pdf [<https://perma.cc/737Q-HURC>] ("[B]y decreasing the cost of listing in the short-term market, the home-sharing platform has the effect of raising rental rates. The intuition is fairly straight-forward: the home-sharing platform induces some landlords to switch from the long-term market to the short-term market, reducing supply in the long-term market and raising rental rates.").

23. *Comptroller Stringer Report: NYC Renters Paid and Additional \$616 Million in 2016 Due to Airbnb*, OFFICE OF N.Y.C. COMPTROLLER (May 3, 2018), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-report-nyc-renters-paid-an-additional-616-million-in-2016-due-to-airbnb/> [<https://perma.cc/3WRF-6ZW7>]. For a discussion of the effect of Airbnb on New York City rent, see WACHSMUTH ET AL., THE HIGH COST OF SHORT-TERM RENTALS IN NEW YORK CITY 35–38 (2018) [hereinafter WACHSMUTH ET AL., HIGH COST OF SHORT TERM RENTALS], <https://mcgill.ca/newsroom/files/newsroom/channels/attach/airbnb-report.pdf> [<https://perma.cc/9323-UCU3>].

24. CITY OF NEW ORLEANS PLANNING COMM'N, SHORT TERM RENTAL STUDY 30–31 (Jan. 19, 2016), <https://www.nola.gov/city-planning/major-studies-and-projects/2015-short-term-rental-study/final-short-term-rental-study/> [<https://perma.cc/X8HB-4QY8>] ("There is especially a concern over investors purchasing homes and renting them out only as a short term rental. They say that these uses are 'mini-hotels' because no one ever lives there and should be prohibited in residential districts, like other commercial uses.").

Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with those of permanent residents.²⁵ As short-term rental listings increase in an area, locals experience problems such as “unfamiliar cars blocking driveways, late night parties on formerly quiet streets, and concerns about child safety in an environment with fewer familiar eyes on the street.”²⁶ These effects are exacerbated when Airbnbs are operated by commercial property owners, rather than mom and pop hosts. In certain jurisdictions, the share of the Airbnb market held by hosts with more than one listing is over 40%.²⁷ The reality of professional hosts with numerous listings is at odds with Airbnb proponents’ characterization of the platform as a way for average homeowners to subsidize their incomes.

These issues are compounded by rampant discrimination on the platform. Minority guests are less likely to be accepted than their white counterparts.²⁸ Further, discrimination against hosts manifests in lower listing prices relative to comparable accommodations by white hosts.²⁹ Taken together, discrimination against guests and hosts functions to bar minorities from experiencing the same degree of benefits from Airbnb;

25. See generally Apostolos Filippas & John J. Horton, *The Tragedy of Your Upstairs Neighbors: When Is the Home-Sharing Externality Internalized?* (Apr. 5, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443343 [<https://perma.cc/3TUV-5AP5>].

26. ROY SAMAAN, L.A. ALLIANCE FOR A NEW ECON., AIRBNB, RISING RENT, AND THE HOUSING CRISIS IN LOS ANGELES (2015) [hereinafter SAMAAN, AIRBNB], <https://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf> [<https://perma.cc/LVK3-V7UU>].

27. Jake Wegmann & Junfeng Jiao, *Taming Airbnb: Toward Guiding Principles for Local Regulation of Urban Vacation Rentals Based on Empirical Results from Five US Cities*, 69 LAND USE POL’Y 494, 498 (2017) (noting that of the remaining cities, Austin’s share was 30%, Chicago’s share was 38%, San Francisco’s share was 34%, and Washington, DC’s share was 39%).

28. Benjamin Edelman et al., *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, 9 AM. ECON. J.: APPLIED ECON. 1, 2 (2017), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/app.20160213> [<https://perma.cc/G6Q4-LYDL>] (“To test for discrimination, we conduct a field experiment in which we inquire about the availability of roughly 6,400 listings on Airbnb across five cities. Specifically, we create guest accounts that differ by name but are otherwise identical. . . . [W]e select two sets of names—one distinctively African American and the other distinctively white. We find widespread discrimination against guests with distinctively African American names.”); see also Amy B. Wang, *‘One Word Says It All. Asian’: Airbnb Host Banned After Allegedly Cancelling Guest Because of Her Race*, L.A. TIMES (Apr. 7, 2017, 7:40 PM), <https://www.latimes.com/business/technology/la-fi-airbnb-discrimination-20170407-story.html> [<https://perma.cc/CYT5-4542>].

29. Benjamin Edelman & Michael Luca, *Digital Discrimination: The Case of Airbnb.com* 4.2 (Harvard Bus. Sch., Working Paper No. 14-054, 2014), https://www.hbs.edu/faculty/Publication%20Files/Airbnb_92dd6086-6e46-4eaf-9cea-60fe5ba3c596.pdf [<https://perma.cc/A7PE-3XRE>] (“The raw data show that non-black and black hosts receive strikingly different rents.”); Venoo Kakar et al., *The Visible Host: Does Race Guide Airbnb Rental Rates in San Francisco?*, 40 J. HOUSING ECON. 25 (2017); Hanying Mo, *Racial Discrimination in the Online Consumer Marketplace A Study on Airbnb IV* (May 16, 2016) (unpublished manuscript), https://www.stat.berkeley.edu/~aldous/157/Old_Projects/Hanying_Mo.pdf [<https://perma.cc/62RL-HJFT>].

minority guests do not benefit from saving money on short-term accommodations, and minority hosts are locked out of opportunities to increase wealth. This means that the benefits of Airbnb use flow disproportionately to white users, concentrating wealth along racial lines. Compounding these effects, as Airbnb proliferation erodes affordable housing, and even accelerates gentrification, minorities disproportionately experience the harms of Airbnb without the attendant benefits.

Central to the discussion of community consequences is critical analysis of how the regulatory landscape amplifies the effects of Airbnb on individuals and the surrounding community.³⁰ Laws governing Airbnb implicate traditional notions of real property ownership, which conceptualizes property as a “bundle of rights.”³¹ Through this lens, policymakers have attempted to balance the rights of individual property owners with those of the community. Resulting policy regimes fall into four categories: (1) host accountability measures, such as zoning laws, licensing requirements, and tax structures; (2) restrictions on eligible hosts, length of rentals, and permissible locations; (3) responsibility and enforcement, including who bears the onus of compliance and who is liable for failure to comply; and (4) policies to address discrimination and diffuse the concentration of wealth along racial lines. Because they are fragmented and incomplete, current approaches fail to successfully prevent negative community effects of Airbnb.

This Article provides the first comprehensive analysis of the short-term rental accommodation regulatory landscape, providing recommendations to amplify the benefits of Airbnb while mitigating the harms.

The Article proceeds in four Parts. Part I examines the effects of short-term rental accommodations, including positive economic contributions, both at the individual and community level, as well as negative externalities, including the effect on monthly rent, the supply of rental housing, and neighborhood social capital. In doing so, Part II will assess how Airbnb accelerates gentrification and aggregates wealth along racial lines. Part III analyzes current regulations in example jurisdictions both in

30. See Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87, 161 (2016) (“A promising aspect of the contemporary law of the platform is that many of the regulatory questions of Web 3.0, including zoning, consumer protection, residential and transportation safety, worker rights, and occupational licensing, are traditionally resolved at the state and local levels.”).

31. *Moore v. Regents of Univ. of Cal.*, 793 P.2d 479, 510 (Cal. 1990) (Most, J., dissenting) (internal quotation marks omitted); Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 711 (1986) (“The right to exclude others has often been cited as the most important characteristic of private property. This right, it is said, makes private property fruitful by enabling owners to capture the full value of their individual investments, thus encouraging everyone to put time and labor into the development of resources.”).

the United States as well as abroad. Finally, Part IV proposes a regulatory framework to allow for the benefits of the short-term rental market while mitigating attendant consequences.

I. EFFECTS OF SHORT-TERM RENTALS

The popularity of homesharing platforms has exploded in recent years. These platforms allow hosts to list available property online for guests to rent, almost always on a short-term basis, in exchange for a fee. While there are several sites, including VRBO,³² HomeAway,³³ and HouseTrip,³⁴ Airbnb is by far the largest.³⁵ Founded in 2008 by two art school graduates, Airbnb started as a way for locals to earn extra money by renting spare rooms to tourists.³⁶ Today Airbnb has more than four million listings³⁷—more than the top five hotel brands combined.³⁸

In addition to appealing to tourists, Airbnb now also markets itself to business travelers. By partnering with Concur, an expense management company, Airbnb formally entered the corporate arena.³⁹ In 2017, “the number of business travelers expensing Airbnb accommodations increase[ed] by 33%.”⁴⁰ According to Concur data, “more than 250,000 companies in over 230 countries and territories use Airbnb for work.”⁴¹

32. VRBO, <https://www.vrbo.com/> [<https://perma.cc/N6XJ-U77N>].

33. HOMEAWAY, <https://www.homeaway.com/> [<https://perma.cc/A8P3-HHFT>].

34. HOUSETRIP, <https://www.housetrip.com/> [<https://perma.cc/GK2W-46YZ>].

35. Given its dominance of the short-term rental marketplace, throughout this Article “Airbnb” will be used as a stand-in for all short-term rental accommodations.

36. Jessica Pressler, “*The Dumbest Person in Your Building is Passing Out Keys to Your Front Door!*” *The War Over Airbnb Gets Personal*, N.Y. MAG. (Sept. 23, 2014), <http://nymag.com/news/features/airbnb-in-new-york-debate-2014-9/> [<https://perma.cc/T63S-X8CZ>].

37. Avery Hartmans, *Airbnb Now Has More Listings Worldwide Than the Top Five Hotel Brands Combined*, BUS. INSIDER (Aug. 20, 2017), <https://www.businessinsider.com/airbnb-total-worldwide-listings-2017-8> [<https://perma.cc/LFD7-RGAM>]; see also Juliet Schor, *Debating the Sharing Economy*, GREAT TRANSITION INITIATIVE (Oct. 2014), <https://www.greattransition.org/publication/debating-the-sharing-economy> [<https://perma.cc/T4B8-NZ53>] (“The debut of the sharing economy was marked by plenty of language about doing good, building social connections, saving the environment, and providing economic benefits to ordinary people. It was a feel-good story in which technological and economic innovation ushered in a better economic model. Especially in the aftermath of the financial crash, this positive narrative was hard to resist.”).

38. Hartmans, *supra* note 37.

39. *Id.*

40. SAP Concur Team, *Airbnb and Concur Expand Partnership to Provide Airbnb Listings within Concur Travel*, SAP CONCUR (July 13, 2017), <https://www.concur.com/newsroom/article/airbnb-and-concur-expand-partnership-to-provide-airbnb-listings-within> [<https://perma.cc/7V5G-7DAG>].

41. *Id.*

Airbnb does not charge a fee for hosts to list their homes on the platform. Instead, it “makes money by charging hosts and guests a service fee that is a percentage based on the cost of the rental.”⁴² Airbnb prices are often significantly lower than that of nearby hotels, making it an attractive option for visitors who want more space at affordable prices. Using the platform, individual guests and hosts may realize economic gains while neighborhoods undergo significant changes to the local housing market.

A. Positive Effects for Individuals and the Community

The benefits of short-term rental platforms to guests are readily apparent. The ability to book a short-term rental rather than a hotel can be attractive to guests for a variety of reasons. These include greater square footage at a lower price, access to amenities not often found in hotels such as kitchens, washers, and dryers, the opportunity to create personal connections with locals in a new city, and the ability to “live like a local.” In addition, short-term rentals may confer economic benefits to individual hosts as well as the surrounding community.

1. Wealth Accumulation for Hosts

Sharing homes on Airbnb allows hosts to realize increased capital through two channels of wealth accumulation. First, new income is available to the host via the short-term rental platform, which raises total income. Second, as the home’s potential to generate additional income rises, its total value as an asset grows, leading to increased home equity for the host.

Airbnb provides an opportunity for hosts to convert an underutilized asset—the home—into an income stream. The profitability of an individual short-term rental can vary widely depending on its location as well as the expenses unique to that property. For example, two identical listings generating the same income will have different net profits depending on their underlying costs such as rent/mortgage, utilities, etc. However, hosts can expect to earn 81% of total rent, on average, “by listing one room of a two-bedroom home on Airbnb.”⁴³ In Miami, San

42. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1069 (N.D. Cal. 2016).

43. Nick Wallace, *Where Do Airbnb Hosts Make the Most Money?*, SMART ASSET (Feb. 20, 2018), <https://smartasset.com/mortgage/where-do-airbnb-hosts-make-the-most-money> [<https://perma.cc/6V2W-4ZLU>] (“First, we calculated expected revenue of private-room Airbnb rentals in each city . . . Then, we calculated expected net profits (after average rent, utilities, and internet) for full-home rentals in each city.”).

Diego, Chicago, and Philadelphia, utilizing one room in a two-bedroom home as a short-term rental may generate over 90% of the total rent.⁴⁴ According to analysis by Priceonomics, Airbnb hosts earn more than other sharing economy users, by far.⁴⁵ While the amount an Airbnb host can earn will vary widely depending on the type, quality, and location of the accommodation, hosts “mak[e] an average of \$924 off their platform each month.”⁴⁶

The profitability of sharing properties on sites like Airbnb has created a cottage industry to help hosts maximize their revenue. Beyond Pricing, for example, offers “automated dynamic pricing” using “real-time market data to ensure our price recommendations maximize revenue and occupancy for our hosts.”⁴⁷ Airbnb even has a tool on its site to help hosts appropriately price their homes.⁴⁸

For some hosts, additional revenue generated by Airbnb rent has been critical. As one host noted in a letter to the Los Angeles City Council, “in a very short period of time, using only my existing resources [the home], I was able to pull myself out of a financial crisis, generate steady and solid monthly income, provide a warm and welcoming local experience to visitors willing to spend lots of vacation dollars in L[os] A[ngeles], and provide a steady stream of cash to the LA City Finance coffers.”⁴⁹

Evidence suggests that Airbnb also has a positive effect on local home value. By creating an additional revenue stream, the market value of the asset increases. One study found that “the number of Airbnb listings in [a] zip code . . . is positively associated with house prices.”⁵⁰ Specifically,

44. *Id.*

45. *How Much Are People Making in the Sharing Economy?*, *supra* note 15; see also Stacey Leasca, *Here’s How Much the Average Airbnb Host Earns in a Month*, TRAVEL & LEISURE (June 16, 2017), <https://www.travelandleisure.com/travel-tips/how-much-airbnb-hosts-make> [<https://perma.cc/B8AR-KXPB>].

46. *How Much Are People Making in the Sharing Economy?*, *supra* note 15 (“Of course, on all of these platforms, there is a wide range of earners. Several Airbnb hosts in our records, for instance, made over \$10,000 per month, while others made less than \$200.”).

47. BEYOND PRICING, www.beyondpricing.com [<https://perma.cc/34DJ-J6UY>]. Several other sites offer this service as well. See KEYBEE, www.keybeehosting.com [<https://perma.cc/H49X-FBDN>]; WHEELHOUSE, www.usewheelhouse.com [<https://perma.cc/XW2A-26UT>]; AIRDNA, www.airdna.co [<https://perma.cc/9CJV-ABDC>].

48. *Earn Money as an Airbnb Host*, AIRBNB, www.airbnb.com/host/homes [<https://perma.cc/QGJ4-YZZZ>].

49. Letter from Stephanie Woods, Airbnb Host, to Mitch O’Farrell, L.A. City Councilmember (July 17, 2015), http://clkrep.lacity.org/onlinedocs/2014/14-1635-S2_pc_7-17-15.pdf [<https://perma.cc/D77V-GJNX>].

50. Barron et al., *supra* note 16, at 4. The increase in home value is related to the area’s media owner-occupancy rate; areas with a high concentration of owner-occupied units experience more modest gains in house prices. *Id.* at 26. In zip codes “with a 56% owner-occupancy rate (the 25th

researchers found that, at the median owner-occupancy rate zip code, a “1% increase in Airbnb listings is associated with a . . . 0.026% increase in house prices.”⁵¹ Other research has found that the effect may be several times greater.⁵²

2. *Local Economic Impact*

Airbnb’s own research suggests that short-term rental platforms may have a positive effect on the local economy. By providing accommodations to tourists, short-term rental platforms help draw more people, and their dollars, to an area. Moreover, because Airbnb allows guests to “live like a local,” many tourists may bring their spending to areas of the cities not served by traditional hotel accommodations. Airbnb has also released data on its economic impact in local communities around the world.⁵³ As may be expected when a company conducts its own impact analysis, the data is overwhelmingly positive. For example, the company claims that “in one year, Airbnb generated \$632 million in economic activity in [New York City], which included \$105 million in direct spending in the outer boroughs.”⁵⁴ On the other side of the world, in Sydney, Australia, Airbnb claims its “guests and hosts supported AUD \$214 million in economic activity.”⁵⁵

While limited, available empirical research completed by third parties suggests that Airbnb may have a positive effect on the local economy. For example, analysis on the economic impact of Airbnb on New Orleans found that short-term rental accommodations benefited the local economy along three dimensions: “(1) the ‘direct effect’ of spending on rent, food, and beverages, transportation, and the like, (2) the ‘indirect effect,’ where sectors form the supply chain of these industries increase their purchase

percentile),” a 1% increase in Airbnb listings leads to a 0.037% increase in house prices. *Id.* In contrast, “in zip codes with an 82% owner-occupancy rate (the 75th percentile),” a 1% increase in Airbnb listings correlates with an increase of only 0.019% in home prices. *Id.*

51. *Id.* at 1, 4. The authors note, however, “[o]f course, these estimates should not be interpreted as causal, and may instead be picking up spurious correlations. For example, cities that are growing in population likely have rising rents, house prices, and numbers of Airbnb listings at the same time.” *Id.*

52. Stephen Sheppard & Andrew Udell, *Do Airbnb Properties Affect House Prices?* 42 (Oct. 30, 2018) (unpublished manuscript), <https://web.williams.edu/Economics/wp/SheppardUdellAirbnbAffectHousePrices.pdf> [<https://perma.cc/BQB8-WHSQ>] (“Our analysis indicates that subjecting a property to the treatment of having Airbnb properties available nearby when it is sold increases prices by 3.5% (for properties that are far from the center and whose ‘treatment’ consists of only a few Airbnb properties) to more than 65% for properties that are near the center and/or are ‘treated’ by having a larger number of local Airbnb properties.”).

53. *The Economic Impacts of Home Sharing in Cities Around the World*, *supra* note 17.

54. *Airbnb Economic Impact*, *supra* note 18.

55. *Id.*

to fill this demand, and (3) the ‘induced effect,’ where local incomes are spent and re-spent locally.”⁵⁶ Across the three dimensions, it is estimated that Airbnb contributed nearly \$134 million dollars in total increased income⁵⁷ and \$185 million dollars in total value added to the regional economy in 2015.⁵⁸

However, not all economists agree on the extent of economic gains attributable to Airbnb. Analysis by the Economic Policy Institute (EPI) suggests that they are “much smaller than commonly advertised.”⁵⁹ According to the EPI, studies touting alleged economic gains ignore the fact that most spending would happen anyway, absent the Airbnb option, as travelers opt instead to stay in hotels and other accommodations.⁶⁰ As a result, they “vastly overstate the effect” of Airbnb on the local economy.⁶¹

B. Effects on the Local Housing Market

Airbnb lauds its service as a mechanism to allow underutilized resources to be put to use. However, in collecting a fee to share space in their homes, hosts gain a financial benefit while imposing costs on their neighbors and the surrounding communities. Homesharing affects the properties, neighborhoods, and even cities in which those homes are situated. While Airbnb touts an increase in property values and higher tax revenues from tourist activities, it is not without costs to locals. The surrounding community experiences a loss of affordable housing, increase in average rental prices, and changes in neighborhood character.

56. MEHMET F. DICLE & JOHN LEVENDIS, *THE ECONOMIC IMPACT OF AIRBNB ON NEW ORLEANS* 2 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2856770 [<https://perma.cc/VSS8-GQ7Q>]. This research examines the economic impact of Airbnb on New Orleans for calendar year 2015. *Id.* at 9 (“When income is spent it becomes income for other people, many of them locals. The locals, in turn, spend a portion of their money locally, proving additional income for more locals. Similarly, when a business makes a product, it must purchase materials from another business and so forth. The process is one of a circular flow of income. Income leaks from the system whenever it is spent outside of the region. The task of the economist is to estimate how spending in one sector of the economy spills over into other interconnected sectors.”).

57. *Id.* at 12.

58. *Id.* at 13.

59. Josh Bivens, *The Economic Costs and Benefits of Airbnb*, *ECON. POL’Y INST.* 2 (Jan. 30, 2019), <https://www.epi.org/files/pdf/157766.pdf> [<https://perma.cc/6VPF-48FD>] (finding that research on the positive economic benefits of Airbnb on the local economy are largely overstated because Airbnb is commonly a pure substitution for other forms of accommodation). “Two surveys indicate that *only* 2 to 4 percent of those using Airbnb say that they would not have taken the trip were Airbnb rentals unavailable.” *Id.* (emphasis added).

60. *Id.*

61. *Id.*

1. Loss of Long-Term Rental Accommodations

Homesharing diminishes the available housing stock and exacerbates the affordable housing crisis⁶² by converting long-term rental accommodations to short-term rentals. The number of units listed on Airbnb increased significantly in recent years, surpassing new construction and reducing available housing stock.⁶³

Research on the conversion of long-term accommodations to short-term listings supports this finding. A New York State Office of the Attorney General report analyzed Airbnb bookings in New York City between January 1, 2010 and June 2, 2014.⁶⁴ The report found that in 2013, over 4,600 Airbnb units were booked as short-term rentals for three months or more and, of these, close to 2,000 were booked as short-term rentals for six months or more.⁶⁵ As a result, “private short-term rentals displaced long-term housing in thousands of apartments.”⁶⁶ Some estimates place the total number of New York City long-term rentals lost to Airbnb at 13,500 units.⁶⁷ In 2017, “12,200 entire-home listings were frequently rented (rented for 60 days or more, and available for 120 days or more), while 5,600 entire-home listings were very frequently rented (rented 120 days or more, and available 240 days or more).”⁶⁸

The rate of displacement will increase as Airbnb continues to expand. There were 67,1000 Airbnb listings in New York City that were rented at least one time between September 2016 and August 2017.⁶⁹ This represents a 4.5% increase from September 2015 to August 2016 when 64,200 units were rented, and an increase of 37% from September 2014

62. See generally James A. Allen, *Disrupting Affordable Housing: Regulating Airbnb and Other Short-Term Rental Hosting in New York City*, 26 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 151 (2017).

63. WACHSMUTH ET AL., SHORT-TERM CITIES, *supra* note 21, at 35, 38 (“[N]eighbourhoods with the most Airbnb activity are seeing their available long-term rental housing significantly constrained by short-term rentals.”).

64. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 2. The report confined itself to bookings of an entire home/house and a private room, where the host may or may not be present. The study purposefully did not include shared rooms, where a host is present during a stay. *Id.*

65. *Id.* at 3; see also Karen Horn & Mark Merante, *Is Home Sharing Driving Up Rents? Evidence from Airbnb in Boston*, 38 J. HOUSING ECON. 14, 15 (2017) (finding that “a one standard deviation increase in Airbnb density is correlated with a 5.9% decrease in the number of rental units offered for rent. At the mean, weekly number of units offered for rent per census tract . . . this represents a reduction of 4.5 units.”).

66. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 3.

67. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 25.

68. *Id.*

69. *Id.* at 9.

to August 2015, when there only 48,800 units.⁷⁰ Researchers examined twenty zip codes across the City in the boroughs of Manhattan, Brooklyn, and Queens, finding that “listings on Airbnb comprise at least 10% of total rental units.”⁷¹ The rapid growth of Airbnb was particularly evident in the East Village, Williamsburg, the West Village, and the Lower East Side, where Airbnb listings comprised a remarkable 20% of the rental market.⁷²

Analysts have reached similar conclusions in other housing markets. Airbnb has removed 13,700 long-term housing units from the rental market in Montreal, Vancouver, and Toronto; for example, in Montreal alone, Airbnb has converted 2% or 3% of the total housing stock to short-term rentals.⁷³ In addition to whole-home listings, those three cities have a combined 5,400 listings of private rooms in owner-occupied properties.⁷⁴ Although a host still occupies the unit in this type of accommodation, it results in a loss to the long-term rental market; renting a spare room eliminates a space that may otherwise be occupied by a long-term roommate.⁷⁵

The rate of Airbnb expansion—and its effect on the rental markets—outpaces the policies meant to protect cities from a loss of affordable housing. In some neighborhoods, Airbnb growth far surpasses new construction, resulting in a net loss to the available housing stock.⁷⁶ In fact, in many areas of Toronto and Vancouver, “more than twice as many homes have been removed from these neighborhoods by short-term rentals as have been added by new construction.”⁷⁷ In Los Angeles, where

70. *Id.*

71. N.Y. CMTYS. FOR CHANGE, AIRBNB IN NYC HOUSING REPORT 3 (2015), <http://www.sharebetter.org/wp-content/uploads/2015/07/AirbnbNYCHousingReport1.pdf> [<https://perma.cc/HL3H-MC9J>].

72. *Id.* at 3.

73. WACHSMUTH ET AL., SHORT-TERM CITIES, *supra* note 21, at 2–3 (displaying figure representing the number of entire home rentals as more than sixty days a year in Montreal, Vancouver, and Toronto).

74. *Id.* at 24.

75. *Id.*

76. *Id.* at 38 (“[I]n well-established central-city neighbourhoods with less construction, such as the Plateau-Mont Royal in Montreal, High Park in Toronto, and Kitsilano in Vancouver, Airbnb growth is completely outpacing new constructions and actually reducing net available housing stock. In several Toronto and Vancouver neighbourhoods, Airbnb listing growth is greater than 200% of housing completions. More than twice as many homes may have been removed from these neighbourhoods by short-term rentals as have been added by new construction. In Montreal, where growth of Airbnb listings has been slower, no neighbourhoods cross this 200% threshold, but full-time, entire home Airbnb listing growth is still outpacing completions in several areas. These areas are likely to be experiencing displacement of long-term residents, upward pressure on rents, and a reduction in the ability of new residents to move into these neighborhoods.”).

77. *Id.*

an estimated eleven units are lost to long-term renters each day, the number of new housing units “barely keeps up with the housing removed from the market by short-term rental companies.”⁷⁸

The potential for increased rental income incentivizes landlords to convert long-term affordable housing to short-term rentals, often resorting to extreme measures to remove existing tenants. As Gale Brewer, Manhattan Borough President noted during a City Council meeting on the effect of Airbnb on New York City housing stock:

[T]he greatest problem is the threat to tenants by owners who hope to vacate as many units as possible, or even entire buildings, to then be used as transient, illegal hotels Over the years, I, my staff, and my fellow Manhattan elected officials have all encountered cases where landlords harassed tenants or refused to renew leases, all in an attempt to clear out units for more lucrative use as illegal hotel rooms. We have even seen cases where a landlord’s use of an apartment as an illegal hotel room functioned as a harassment tactic aimed at neighboring tenants.⁷⁹

2. *Increase in Average Asking Rents*

The rise in popularity of Airbnb in a jurisdiction increases average rents in that area. In a study of 100 cities across the United States, increased homesharing activity caused higher rents for local residents—this effect is even greater when more hosts enter the homesharing market.⁸⁰ In particular, Airbnb and other homesharing platforms function to “reallot[e] their properties from the long- to the short-term rental market,” thereby increasing rental costs.⁸¹ The increase in rent extends to neighborhoods located both near to and far from the city center; rent increases correlated with Airbnb listings reach even zip codes farthest from downtown.⁸² While few studies have examined the connection

78. ROY SAMAAN, L.A. ALL. FOR THE NEW ECON., SHORT-TERM RENTALS AND L.A.’S LOST HOUSING 3 (2015) [hereinafter SAMAAN, SHORT-TERM RENTALS], http://www.laane.org/wp-content/uploads/2015/08/Short-Term_RentalsLAs-Lost_Housing.pdf [https://perma.cc/G6DH-Y6AL].

79. Rebecca Fishbein, *Airbnb & City Council Go to War*, GOTHAMIST (Jan. 21, 2015, 9:53 AM), http://gothamist.com/2015/01/21/airbnb_nyc_city_council.php [https://perma.cc/53GL-8629].

80. Barron et al., *supra* note 16, at 12–13 (noting that if negative externalities, such as noise, waste, and decreased parking, etc., create poor neighborhood conditions, it could drive down rent in some instances). However, “there could also be positive externalities that have the opposite effects.” *Id.*

81. *Id.* at 31. In studying the effect of Airbnb on home prices, the researchers found that homesharing increases equity for homeowners by increasing home prices and that this increase is greater than the increase in rental prices. *See generally id.*

82. *Id.* at 57.

between Airbnb and rental prices, those that have identified a positive relationship between the prevalence of Airbnb and average asking rent.

These results are echoed in localities around the world. A 2017 study of the effect of Airbnb rentals on the Boston housing market found evidence that an increase in Airbnb density raises average rents for locals.⁸³ In census tracts with the greatest number of Airbnb listings relative to the total number of housing units, this increase is as much as 3.1%.⁸⁴ The rent increases are even greater for certain types of housing accommodations. Larger units command higher rents. Airbnb increased asking rents by 17% for each additional bedroom and 11% for each additional bathroom.⁸⁵ These increases can add thousands of dollars to annual housing costs for Boston tenants. In Australia, researchers found that “the number of whole dwellings frequently available on Airbnb is more than three times the vacancy rate in [the Waverly neighborhood of Sidney]. This suggests that Airbnb rentals have a sizeable impact on the availability of permanent rental housing [in the locality] with consequent pressure on rents.”⁸⁶

Similarly, high Airbnb density correlates with increased rents in Los Angeles.⁸⁷ According to Lovely, an apartment listing service, Los Angeles rents increased by 10.4% between the first quarter of 2013 and the third quarter of 2014.⁸⁸ While rental prices are certainly a function of a variety of factors, it is telling that “Airbnb density coincides with neighborhoods that have rents well above the citywide average.”⁸⁹ In fact, Airbnb-dense neighborhoods boast an average rent that is 20% higher than the Los Angeles city average.⁹⁰

Several studies have found that Airbnb has had a similar effect on New York City’s rental housing market. McGill University researchers found

83. Horn & Merante, *supra* note 65, at 1, 20 (“[A] one standard deviation increase in Airbnb listings . . . in a [given] census tract . . . [raises] asking rents by 0.4%. For those census tracts in the highest decile of Airbnb listings relative to total housing units, this is an increase in asking rents of 3.1%, which equates at the citywide mean monthly asking rent [of \$2972] to an increase of as much as \$93 in mean monthly asking rent.”).

84. *Id.*

85. *Id.* at 21. The researchers do note, however, that “[w]here our approach may suffer from omitted variables bias is if other neighborhood characteristics are changing at the same time that Airbnb listings are changing, and thus our Airbnb density coefficient could be identifying these other neighborhood level changes rather than the causal impact of Airbnb on asking rents.” *Id.*

86. Nicole Gurran & Peter Phibbs, *When Tourists Move In: How Should Urban Planners Respond to Airbnb?*, 83 J. AM. PLAN. ASS’N 80, 88 (2017).

87. SAMAN, AIRBNB, *supra* note 26, at 17–18.

88. *Id.* at 18.

89. *Id.* at 20.

90. *Id.*

that “Airbnb increased the median long-term rent in New York City by 1.4%” between September 2014 and August 2017.⁹¹ On average, a 1.4% increase meant an additional \$380 a year in rent for New York City tenants.⁹² However, in certain neighborhoods, the increase was much higher, with several greater than \$500 a year and an estimated increase of \$780 a year in zip code 10036 (located in Clinton, NYC).⁹³ These conclusions echoed a 2018 report by the New York City Comptroller, which found that “Airbnb [is] responsible for nearly 10 percent of citywide rental increase between 2009 and 2016.”⁹⁴

3. *Changes to Neighborhood Composition*

As landlords convert their units from long- to short-term rentals, striking changes appear in neighborhood character. Where once there were communities of mutually invested neighbors, now there are tourists with needs that may conflict with permanent residents.⁹⁵ As noted in a 2016 study on short-term rentals conducted by the City of New Orleans Planning Commission, the “overarching concern of the opponents with short-term rentals is the commercialization of residential neighborhoods.”⁹⁶

These conflicts result in decreased quality of life for long-term

91. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 2.

92. *Id.*

93. *Id.* at 37.

94. *Comptroller Stringer Report*, *supra* note 23; see also Letter from Bailey Duquette, P.C., to the Office of the N.Y.C. Comptroller, Gen. Counsel’s Office (May 7, 2018) (written on behalf of AirDNA) (on file with author); Abigail Long, *Data Provider AirDNA Sends Cease and Desist Letter to NYC Comptroller*, AIRDNA (May 9, 2018), <http://blog.airdna.co/data-provider-airdna-sends-cease-desist-letter-nyc-comptroller/> [<https://perma.cc/BB63-JMM6>]. AirDNA, “an advocate for short-term rentals,” which owned the data used to generate the report data were used to generate the report, sent a cease and desist letter to Comptroller Stringer alleging the report misrepresented the data and violated the AirDNA terms of service. *Id.* The Comptroller’s office stood by its report noting that it “took an empirical, data-driven approach to assessing this Airbnb effect and shared with the public.” “It’s no surprise that AirDNA would attack a credible report when their own bottom line depends on Airbnb’s success.” Luis Ferré-Sadurní, *Report on Airbnb in New York Made ‘Crucial Errors,’ Data Provider Says*, N.Y. TIMES (May 4, 2018), <https://www.nytimes.com/2018/05/04/nyregion/airbnb-new-york-report-errors.html> [<https://perma.cc/2854-7EFL>].

95. Filippas & Horton, *supra* note 25, at 1 (“If Airbnb hosts bring in loud or disreputable guest but, critically, still collect payment, then it would seem to create a classic case of un-internalized externalities that existing illegal hotel laws are intended to prevent: the host gets the money and her neighbors get the noise.”).

96. CITY OF NEW ORLEANS PLANNING COMM’N, *supra* note 24, at 30, 31 (“There is especially a concern over investors purchasing homes and renting them out only as a short-term rental. They say that these uses are ‘mini-hotels’ because no one ever lives there and should be prohibited in residential districts, like other commercial uses.”).

residents.⁹⁷ As Airbnb listings increase, there is an increase in negative externalities felt by locals. Residents in Bath, England, for example, reported that short-term rentals increase noise levels, unsanitary conditions, and illegal disposal of garbage.⁹⁸ In the popular Silver Lake neighborhood of Los Angeles, the Neighborhood Council has received complaints from residents that include “unfamiliar cars blocking driveways, late night parties on formerly quiet streets, and concerns about child safety in an environment with fewer eyes on the street.”⁹⁹

New Orleans’s Short Term Rental Administration contemplates the effect of rentals on the surrounding neighborhood. In New Orleans, “short-term rentals shall not adversely affect the residential character of the neighborhood nor shall the use generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person’s enjoyment of his or her residence.”¹⁰⁰ Despite this, residents reported being affected by the influx of short-term rentals. At a 2018 City Planning Commission hearing on how Airbnb is affecting quality of life,¹⁰¹ residents of those neighborhoods most highly saturated with Airbnb rentals “described loud, disruptive tourists and said the influx of short-term rentals is hollowing out their neighborhood.”¹⁰² An influx of rental units “reduces the cohesion in the neighborhood, reduces the number of people who are invested in the neighborhood, and damages businesses that serve the local population.”¹⁰³

a. Influx of Commercial Interests

A significant portion of the Airbnb market consists of commercial hosts—those with more than one listing. A review of five cities (Austin,

97. See Wegmann & Jiao, *supra* note 27, at 495.

98. Yohannes Lowe & Richa Kapoor, *Councillors Call for New Rules to Stop Rise of ‘Party Homes’ Spreading Around Bath*, TELEGRAPH (Aug. 16, 2019, 4:38 PM), <https://www.telegraph.co.uk/news/2019/08/16/councillors-call-new-rules-stop-rise-party-homes-spreading-around/> [https://perma.cc/DRJ8-VZN8].

99. SAMAAN, AIRBNB, *supra* note 26, at 21.

100. *Short Term Rental Zoning Restrictions*, CITY NEW ORLEANS, <https://www.nola.gov/short-term-rentals/str-zoning-restrictions/> [https://perma.cc/4C26-S7KH].

101. Charles Maldonado, *New Orleans Residents Sound Off on How Airbnb is Affecting Their Lives*, LENS (Apr. 24, 2018), <https://thelensnola.org/2018/04/24/live-coverage-new-orleans-residents-sound-off-on-how-airbnb-is-affecting-them/> [https://perma.cc/2M9Q-KJME].

102. *Id.* (quoting resident Margaret Walker, “I live in the Marigny. It’s all short-term rentals now. I’d like to have my neighbors back.”); see also Peck & Maldonado, *supra* note 3 (“Before Airbnb, you had neighbors you could depend on. They looked out for you. If you went out of town, they’d get your mail, your paper . . . you just had more of a neighborly neighborhood.”).

103. CITY OF NEW ORLEANS PLANNING COMM’N, *supra* note 24, at 31.

Boston, Chicago, San Francisco, and Washington, DC)¹⁰⁴ confirms that the share of the Airbnb market held by hosts with more than one listing is substantial, with 30% in Austin to a full 44% in Boston.¹⁰⁵ While the average number of listings for hosts with more than one listing ranges from 3.0 (Austin, Chicago, and San Francisco)¹⁰⁶ to 3.6 (Boston),¹⁰⁷ the large number of listings held by a single host suggests that commercial operators benefit from lax regulations of short-term rentals. In Austin, for example, a single host operates 140 Airbnb listings.¹⁰⁸

The increased presence of commercial hosts drives changes to neighborhood character. A study of New Orleans neighborhoods by Jane Place Neighborhood Sustainability Initiative¹⁰⁹ found that the majority of Airbnb listings are controlled by a small number of hosts.¹¹⁰ Specifically, of the properties evaluated, 18% of hosts “controlled nearly half of all permitted [short-term rentals]” in New Orleans.¹¹¹ In fact, the twenty-five highest grossing Airbnb hosts in the United states each made more than fifteen million dollars in 2017 off hundreds of units each.¹¹² The most

104. Wegmann & Jiao, *supra* note 27, at 496 (“The data analyzed in this paper was obtained from ‘scrapes’ of Airbnb’s website conducted by New York-based photojournalist and data analyst Murray Cox. . . . Data for each of the five cities was collected in the late spring or early summer of 2015.”).

105. *Id.* at 498 (discussing how of the remaining cities, Chicago’s share was 38%, San Francisco’s share was 34%, and Washington, D.C.’s share was 39%).

106. The analysis looked at available data in 2015, before San Francisco’s new laws regulating short-term rentals were enacted.

107. Wegmann & Jiao, *supra* note 27, at 498 tbl.1 (demonstrating that the average listing per host with more than one listing in Washington, D.C. was 3.5).

108. *Id.* at 497; *see also* Kristóf Gyódi, *An Empirical Analysis on the Sharing Economy: The Case of Airbnb in Warsaw* (Inst. of Econ. Research Working Papers, No. 33, 2017), http://www.badania-gospodarcze.pl/images/Working_Papers/2017_No_33.pdf [<https://perma.cc/QE9B-6FA6>] (“The share of [Airbnb listings in Warsaw, Poland] offered by hosts owning 1 listing is only 47%. Therefore, 53% of the listings are multi-listings, which may mean a strong presence of various real-estate investors and professional agencies that use the Airbnb platform to provide professional services . . . more than a quarter of all accommodations offered via Airbnb belongs to hosts with more than five listings.”).

109. JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, SHORT-TERM RENTALS, LONG-TERM IMPACT: THE CORROSION OF HOUSING ACCESS AND AFFORDABILITY IN NEW ORLEANS 2 (2018), https://storage.googleapis.com/wzukusers/user27881231/documents/5b06c0e681950W9RSePR/STR%20Long-Term%20Impacts%20JPNSI_4-6-18.pdf [<https://perma.cc/Q3Z3-HYFX>] (“Jane Place Neighborhood Sustainability Initiative is a ten-year old Community Land Trust (CLT) and housing rights organization committed to creating sustainable, democratic, and economically-just neighborhoods and communities in New Orleans.”).

110. *Id.* at 14.

111. *Id.* at 4.

112. Patrick Sisson, *Airbnb Business: As Professionals Find Success on the Platform, Is there Still Room for Shares?*, CURBED (Mar. 11, 2018), <https://www.curbed.com/2018/2/21/17032100/airbnb-business-profit-hotel-property-management> [<https://perma.cc/ZB6V-MZNY>].

profitable account earned over forty-four million dollars from listing over one thousands rooms.¹¹³

That professional entities with hundreds, if not thousands, of units are profiting most greatly from the platform is at odds with Airbnb's characterization of itself as way for average homeowners to subsidize their income. Sebastian de Kleer, the founder of Globe Homes and Condos—once identified as one of the largest commercial Airbnb operators in Los Angeles—told the *Los Angeles Times*, “[i]t doesn’t match their PR story to have professionals on their platform.”¹¹⁴ As one Silver Lake Neighborhood Councilmember said, “[i]t’s supposed to be a spare room—not corporate interests taking over our neighborhood and turning everything into a virtual hotel.”¹¹⁵

b. Decrease in Neighborhood Social Capital

“Social capital it is the glue that holds societies together and without which there can be no economic growth or human well-being.”¹¹⁶ The foundation of social capital is that “social networks have value.”¹¹⁷ The concept incorporates “not just warm and cuddly feelings, but a wide variety of quite specific benefits that flow from the trust, reciprocity, information, and cooperation associated with social networks.”¹¹⁸

As Airbnb listings change the character of the neighborhood, and as residents are displaced by the influx of tourists, social capital declines. One elderly tenant in a rent-stabilized apartment in New York remarked that “only seven permanent tenants remain in her building, with her landlord ignoring requests for necessary repairs in favor of gut renovations on apartments functioning as illegal hotels. ‘My friends are

113. *Id.*

114. SAMAAN, SHORT-TERM RENTALS, *supra* note 78, at 2 (“The percentage of on-site hosts has also declined sharply between October 2014 and July 2015. Airbnb regularly implies that the majority of its listings are shared spaces. In October, this claim was consistent with the data (52 percent of hosts were on-site), though misleading (they generated just 11 percent of Los Angeles revenue). That is no longer true. As of July 2015 just 36 percent of listing agents were on-site, and only 16 percent of Airbnb revenue derives from these listings.”).

115. Emily Alpert Reyes, *Los Angeles Gives Hosts, Neighbors Mixed Signals on Short-Term Rentals*, L.A. TIMES (Feb. 7, 2015, 10:00 AM), <https://www.latimes.com/local/california/la-me-adv-illegal-rentals-20150208-story.html> [<https://perma.cc/VVF6-RALZ>].

116. CHRISTIAAN GROOTAERT & THEIRRY VAN BASTELAER, THE WORLD BANK, UNDERSTANDING AND MEASURING SOCIAL CAPITAL: A SYNTHESIS OF FINDINGS AND RECOMMENDATIONS FROM THE SOCIAL CAPITAL INITIATIVE 2 (2001).

117. *Social Capital Primer*, ROBERT D. PUTNAM, <http://robertdputnam.com/bowling-alone/social-capital-primer/> [<https://perma.cc/DA5Y-GY7B>].

118. *Id.*

being replaced by strangers and tourists,' she said."¹¹⁹ As a Nashville resident noted, living in close proximity to an Airbnb accommodation feels uncomfortable all the time because you don't know what to expect . . . If you can imagine the house that was next door to you [growing up], where you probably literally borrowed flour and sugar. What if that wasn't there and that was a hotel? Would you have wanted to grow up next to that?¹²⁰

II. RACIAL IMPLICATIONS OF SHORT-TERM RENTAL PLATFORMS

Short-term rentals affect minority users along multiple dimensions. First, Airbnb users experience discrimination along racial lines. Second, growth in Airbnb listings correlates with gentrification in historically minority-occupied neighborhoods. Third, Airbnb concentrates wealth along racial lines.

A. *Airbnb and Discrimination*

The early years of internet commerce generally relied on anonymity.¹²¹ The true identities of both buyers and sellers were obscured throughout the transaction.¹²² The lack of personal information—gender, race, age, etc.—removed many opportunities for discriminatory practices.¹²³ The growth of the sharing economy has pushed these interactions in the other direction.¹²⁴ Whereas, before identities were protected, the sharing economy now thrives on personal connections.¹²⁵ This helps to diminish the perceived risk associated with transacting with an individual rather

119. Rebecca Fishbein, *Airbnb & City Council Go to War*, GOTHAMIST (Jan. 21, 2015), <https://gothamist.com/news/airbnb-city-council-go-to-war> [<https://perma.cc/53GL-8629>].

120. Victor Luckerson, *Not in My Neighbor's Backyard*, RINGER (Nov. 21, 2017), <https://www.theringer.com/features/2017/11/21/16678002/airbnb-nashville> [<https://perma.cc/6GLN-BYJM>].

121. See generally Fiona Scott Morton, Florian Zettelmeyer & Jorge Silva-Risso, *Consumer Information and Price Discrimination: Does the Internet Affect the Pricing of New Cars to Women and Minorities?* (Nat'l Bureau of Econ. Research, Working Paper No. 8668, 2001), available at <https://www.nber.org/papers/w8668> [<https://perma.cc/2DA2-SLSF>].

122. See generally *id.*

123. See, e.g., *id.* (examining differences in pricing in offline versus online car sales and finding that, when demographic information is withheld from the seller, as is the case in online car sales, minority buyers paid the same price for cars as white buyers).

124. See Eyal Ert et al., *Trust and Reputation in the Sharing Economy: The Role of Personal Photos in Airbnb*, 55 TOURISM MGMT. 62 (2016).

125. *Id.* at 63.

than a business.¹²⁶ Hosts and guests on Airbnb are encouraged to provide their names, photographs, and interesting biographical information. However, the use of personal information provides opportunity for discrimination.

1. *Discrimination Against Guests*

Guests of color experience discrimination using Airbnb in a way that is not possible when making a short-term reservation on an online hotel booking platform. Unlike hotel platforms, where the proprietor does not have the ability to reject a booking when a room is available, Airbnb guests have the ability to decide whether to accept a potential reservation. While federal law prohibits discrimination on the basis of race, sex, color, religion, or national origin,¹²⁷ in practice, no one monitors short-term rental platforms for compliance. This allows hosts, who have wide discretion in accepting guests, to engage in discriminatory practices.

Indeed, there are several high-profile instances of guests of color experiencing discrimination. In 2017, an Asian-American guest was informed by her host that the reservation was cancelled.¹²⁸ The host terminated the reservation by text, stating “I wouldn’t rent to u if u were the last person on earth [sic]. One word says it all. Asian . . . It’s why we have [T]rump.”¹²⁹ Discrimination among Airbnb hosts has become so prevalent that it sparked the social media campaign #AirbnbWhileBlack.¹³⁰

These individual experiences are corroborated by a Harvard Business School study that found “applications from guests with distinctively African-American names are 16 percent less likely to be accepted relative to identical guests with distinctly white names.”¹³¹ The results were consistent across a variety of factors including sex of the host, whether the property was shared or un-hosted, the experience level of the host,

126. Kakar et al., *supra* note 29, at 28.

127. *See, e.g.*, 42 U.S.C. § 3604 (2012).

128. Amy B. Wang, *Airbnb Host Who Stranded Guest Because of Race Ordered to Take Class in Asian American Studies*, WASH. POST (July 14, 2017), <https://www.washingtonpost.com/news/business/wp/2017/07/14/airbnb-host-who-stranded-guest-because-of-race-ordered-to-take-class-in-asian-american-studies/> [<https://perma.cc/64G9-GZ37>].

129. *Id.*

130. *See generally* Shankar Vedantam, *#AirbnbWhileBlack: How Hidden Bias Shapes the Sharing Economy*, NPR (Apr. 26, 2016), <https://www.npr.org/2016/04/26/475623339/-airbnbwhileblack-how-hidden-bias-shapes-the-sharing-economy> [<https://perma.cc/AEM3-8LVP>].

131. Edelman et al., *supra* note 28, at 1–2 (“To test for discrimination, we conduct[ed] a field experiment in which we inquire[d] about the availability of roughly 6,400 listings on Airbnb across five cities. Specifically, we create[d] guest accounts that differ by name but [were] otherwise identical . . . one distinctively African American and the other distinctively white.”).

diversity of the neighborhood, and price of the listing.¹³²

The frequency of discrimination against would-be guests of color prompted action by the Congressional Black Caucus (CBC). In a letter to the Airbnb's CEO, the CBC made plain its "concerns regarding the recent reports of the exclusion of many African Americans and other minorities from booking rooms on your site due to their race."¹³³ The CBC's letter asked Airbnb four questions: (1) "[w]hy is it seemingly so easy to discriminate against someone via [the] platform?"; (2) whether Airbnb has data related to discrimination on its platform; (3) "what is Airbnb doing at present to address this glaring issue of discrimination?"; and (4) whether Airbnb would "consider implementing some of the common sense measures to avoid discrimination" such as reducing the prominence of user names and photos, increasing Instant Book, and regularly notifying users of Airbnb's anti-discrimination policy.¹³⁴

2. *Discrimination against hosts*

Like guests, minority hosts experience discrimination on short-term rental platforms. For such hosts, this manifests in a lower listing price relative to comparable accommodations marketed by white hosts.¹³⁵ In New York City, "[t]he raw data show that non-black and black hosts receive strikingly different rents: roughly \$144 versus \$107 per night, on average," even when controlling for "the main characteristics of the listing itself."¹³⁶ Follow-up research on discrimination against Asian American hosts in New York City¹³⁷ and San Francisco¹³⁸ reached similar

132. *Id.* at 7.

133. Letter from G.K. Butterfield, Chairman, Cong. Black Caucus, and Emanuel Cleaver, II, Member, Congress, to Brian Chesky, CEO, Airbnb, Inc. (June 16, 2016), <https://cleaver.house.gov/sites/cleaver.house.gov/files/16.06.2016%20Airbnb%20Letter.pdf> [<https://perma.cc/A9N7-5VSM>].

134. *Id.*

135. Edelman & Luca, *supra* note 29, at 4.2; *see also* Kakar et al., *supra* note 29, at 36; Mo, *supra* note 29, at section VI.

136. Edelman & Luca, *supra* note 29, at 4.2 ("Of course, many factors influence the rents received by hosts—and race is likely correlated with some of these factors. One might be concerned that apparent racial differences actually result from unobserved differences between listings. While we cannot completely eliminate this concern, we mitigate the issue by controlling for all of the information that a guest sees when examining Airbnb search results and listing details.").

137. John Gilheany et al., *The Model Minority? Not on Airbnb.com: A Hedonic Pricing Model to Quantify Racial Bias Against Asian Americans*, TECH SCI. (Sept. 1, 2015), <https://techscience.org/a/2015090104/> [<https://perma.cc/H4NV-BMCU>] (finding that "on average Asian hosts earn . . . 20% less than White hosts for similar rentals").

138. Kakar et al., *supra* note 29, at 36–38 ("Neither the controls for neighborhood racial composition and median income nor the control for occupancy level[] have any meaningful impact

conclusions.

There are several suggested explanations for the pricing differential. Minority hosts may “price lower to increase the pool in interested guests . . . and maintain their target occupancy.”¹³⁹ This may also “signal a response to an anticipation of racial discrimination in the online marketplace.”¹⁴⁰ Alternatively, “minority hosts could value a larger pool of potential guests as a way to be more selective” in choosing guests.¹⁴¹ “White hosts may be pricing high in order to create a self-selection pool of renters that better meet the profile of guests they wish to have and engage with socially.”¹⁴² These pricing differentials have a tremendous impact on the ability of minority hosts to realize Airbnb’s economic benefits, such as additional home value and an increase in home value.

B. *Airbnb and Gentrification*

In light of the relationship between Airbnb and reduction in long-term affordable rental housing from the market, there are questions about whether Airbnb contributes to gentrification. British sociologist Ruth Glass coined the term “gentrification” in 1964 to describe the displacement of the “working class” from the center city by new middle-class residents.¹⁴³ Today, however, scholars understand that gentrification is no longer confined to “the inner city or First World metropolises.”¹⁴⁴ Nor is it limited merely to residential changes, but rather includes multiple

on the estimated differences [O]n average, Asian and Hispanic Airbnb hosts charge 8–10% lower prices relative to White hosts on equivalent rental properties, after controlling for all renter-available information on rental unit characteristics, as well as additional information on neighborhood property values, area demographics, and occupancy rates This translates to revenue gap of about \$4,100 annually.”).

139. *Id.* at 36.

140. *Id.*

141. *Id.*

142. *Id.*

143. Ruth Glass, *Introduction: Aspects of Change*, in LONDON: ASPECTS OF CHANGE, at xviii-xix (1964) (“One by one, many of the working class quarters of London have been invaded by the middle classes—upper and lower. Shabby, modest mews and cottages—two rooms up and two down—have been taken over, when their leases have expired, and have become elegant, expensive residences. Larger Victorian houses, downgraded in an earlier or recent period—which were used as lodging houses or were otherwise in multiple occupation—have been upgraded once again. Nowadays, many of these houses are being subdivided in costly flats or ‘houselets’ (in terms of the new real estate snob jargon). The current social status and value of such dwellings are frequently in inverse relation to their size and in any case enormously inflated by comparison with previous levels in their neighborhoods. Once this process of ‘gentrification’ starts in a district it goes on rapidly until all or most of the original working class occupiers are displaced and the social character of the district is changed.”).

144. LORETTA LEES, TOM SLATER & ELVIN WYLY, GENTRIFICATION, at xvii (2008).

facets. Gentrification is a “highly dynamic process . . . not amendable to overly restrictive definitions; rather than risk construing our understanding of this developing process by imposing a definitional order, we should strive to consider the broad range of processes that contribute to this restructuring, and to understand the links between seemingly separate processes.”¹⁴⁵

1. *Airbnb as a Gentrification Tool*

There is a strong correlation between short-term rentals and gentrification. A study of New York City Airbnb listings found that in many parts of the city, “hosts of frequently rented entire-home Airbnb listings earn 200% or more [than] the median long-term neighborhood rent, and these areas are 72% non-white.”¹⁴⁶ This creates strong economic incentives for converting long-term rental accommodations to short-term rentals in communities of color.

Studies suggest that Airbnb disproportionately benefits white hosts even in predominantly Black neighborhoods. A 2017 study by Inside Airbnb examined the effect of Airbnb on predominantly Black neighborhoods in New York City.¹⁴⁷ According to the study, “across all 72 predominantly Black New York City neighborhoods, Airbnb hosts are 5 times more likely to be white. In those neighborhoods, the Airbnb host population is 74% white, while the white resident population is only 13.9%.”¹⁴⁸

Despite the controversy, the conclusions reached by the Inside Airbnb data are supported by other research. A New York State Office of the Attorney General report found that “gentrified or rapidly gentrifying neighborhoods primarily in Manhattan account[] for the vast majority of revenue from private short-term rentals in New York City.”¹⁴⁹ Similarly a

145. Neil Smith & Peter Williams, *Alternatives to Orthodoxy: Invitation to a Debate*, in GENTRIFICATION OF THE CITY 3 (Neil Smith & Peter Williams eds., 1986).

146. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 34.

147. Murray Cox, *The Face of Airbnb, New York City: Airbnb as a Racial Gentrification Tool*, INSIDE AIRBNB (Mar. 1, 2017), <http://insideairbnb.com/face-of-airbnb-nyc/> [<https://perma.cc/8F9D-P7YG>].

148. *Id.* Airbnb initially published criticism of the report but has since taken it off their website. In response, Murray Cox responded in detail to each of Airbnb’s criticisms. Murray Cox, *A Year Later: Airbnb as a Racial Gentrification Tool*, INSIDE AIRBNB (Jan. 30, 2018), <http://insideairbnb.com/face-of-airbnb-nyc/a-year-later-airbnb-as-racial-gentrification-tool.html> [<https://perma.cc/5ZMG-RF4F>]. Mr. Cox specifically addresses critiques that the research is not peer reviewed, uses racial coding rather than self-identification, uses computer software to racially identify hosts, engages in racial profiling, lacks a control group, and fails to address disparities between neighborhoods analyzed. *Id.*

149. N.Y. STATE OFFICE OF THE ATT’Y GEN., *supra* note 20, at 3 (“[T]he Lower East Side/Chinatown, Chelsea/Hell’s Kitchen, and Greenwich Village/SoHo—accounted for approximately \$187 million in revenue to hosts, or more than 40 percent of private stay revenue to

study of the effect of short-term rentals on New Orleans noted that while neighborhood impacts vary, what happens in one neighborhood affects other neighborhoods—middle-income residents priced out of a rapidly gentrifying neighborhood might end up moving to a lower-cost neighborhood, which could cause the displacement of low-income residents from their once affordable community as costs rise with the demand for housing by a higher-income group.¹⁵⁰

Since 2012, New Orleans rents have increased by twenty to twenty-five percent.¹⁵¹ Despite increased rental rates, landlords realize greater economic gain from short-term rentals to tourists than renting to long-term residents, especially in gentrifying neighborhoods.¹⁵²

2. Resident Displacement

A recent study of holiday rentals in Barcelona similarly examined the “conversion of housing into tourist accommodation” by platforms like Airbnb.¹⁵³ The Barcelona study found that, because “long-term residents represent a barrier to capital accumulation,” short-term rentals cause and accelerate three distinct types of displacement: direct displacement (“involuntary out-migration from a place”), exclusionary displacement (“difficulties in finding affordable accommodation in gentrifying areas”), and displacement pressures (“changes at the neighborhood scale such as loss of social networks, stores, or public facilities that are central to everyday life”).¹⁵⁴ Taken together, “the growth of tourism and the consequent conversion of housing into accommodation for visitors”

hosts during the Review Period. By contrast, all the reservations in three boroughs (Queens, Staten Island, and the Bronx) brought hosts revenue of \$12 million—less than three percent of the New York City total.”).

150. JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, *supra* note 109, at 7.

151. *Id.*

152. *Id.* at 22.

153. Augustin Cocola Gant, *Holiday Rentals: The New Gentrification Battlefront*, 21 SOC. RESEARCH ONLINE 1, 3 (2016).

154. *Id.* at 1, 2. In defining the three types of displacement, Gant relies on Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 J. URB. & CONTEMP. L. 195 (1985); Kathe Newman & Elvin Wyly, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URB. STUD. 23 (2006); Geoffrey DeVerteuil, *Evidence of Gentrification-Induced Displacement Among Social Services in London and Los Angeles*, 48 URB. STUD. 1563 (2011); Tom Slater, *Missing Marcuse: On Gentrification and Displacement*, 13 CITY 292 (2009); and Mark Davidson & Loretta Lees, *New-Build Gentrification: Its Histories, Trajectories, and Critical Geographies*, 16 POPULATION, SPACE & PLACE 335 (2010). See Gant, *supra* note 153, at 1, 2.

results in collective displacement.¹⁵⁵

The Barcelona study does not expressly analyze the effects of displacement along racial lines. However, taken with the New York and New Orleans studies, it supports the notion that Airbnb produces financial rewards for hosts at the expense of low-income communities of color; as residents are priced out of middle-class neighborhoods, residents relocate to down-market neighborhoods. This creates a vicious cycle wherein rents increase in the new neighborhoods, pushing out long-term residents. Even more troubling, gentrification correlates with “shorter life expectancy; higher cancer rates; more birth defects; greater infant mortality; and higher incidence of asthma, diabetes, and cardiovascular disease.”¹⁵⁶ Given the incentive for hosts to convert long-term accommodations into short-term rentals, and data from U.S. cities that suggests high profitability of listing units in gentrifying neighborhoods, it is likely that areas occupied by residents of color may experience significant changes without realizing the monetary benefits. Without policy intervention, these effects will accelerate and intensify.

C. Concentration of Wealth Along Racial Lines

Discrimination on short-term rental platforms, combined with gentrification, functions to displace low-income and minority residents while simultaneously concentrating wealth among white property owners.¹⁵⁷ In predominantly black New York City neighborhoods, white Airbnb hosts were found to have earned more than three times as much as black hosts in the same neighborhoods; white hosts earned \$159.7 million while black hosts earned only \$48.3 million.¹⁵⁸

Given that short-term rentals accelerate gentrification and the persistent

155. Gant, *supra* note 153, at 7 (“Collective displacement needs to be seen as the final consequences of a process in which all forms of displacement come together.”).

156. *Health Effects of Gentrification*, CTRS. FOR DISEASE CONTROL & PREVENTION (2009), www.cdc.gov/healthyplaces/healthtopics/gentrification.htm [<https://perma.cc/VQQ4-BSVX>]; see generally Sungwoo Lim et al., *Impact of Residential Displacement on Healthcare Access and Mental Health Among Original Residents of Gentrifying Neighborhoods in New York City*, 12 PLOS ONE 1 (2017) (finding, in a study of residential displacement in New York City, that compared with residents who stayed in gentrifying neighborhoods, displaced residents who moved to non-gentrifying, poor neighborhoods had significantly higher rates of emergency department visits, hospitalizations, and mental health-related visits for about five years after displacement).

157. Cox, *supra* note 147. As Cox’s report found in New York City, “Black neighborhoods with the most Airbnb use are racially gentrifying, and the (often illegal) economic benefits of Airbnb accrue disproportionately to new, white residents and white speculators; while the majority of Black residents in those communities suffer the most from the loss of housing, tenant harassment and the disruption of their communities.” *Id.*

158. *Id.*

discrimination on the platform, unchecked Airbnb activity risks eroding minority neighborhoods while locking people of color out of beneficial services and opportunities to accumulate wealth. There is a “powerful economic incentive for landlords to displace tenants and convert apartments to Airbnb de facto hotels in communities of color.”¹⁵⁹ And yet, due in part to discrimination and lower average asking rents, minority hosts do not have the same opportunities to reap financial rewards from listing their units. As such, wealth is accruing to the white community at the expense of minority residents. To put it another way, minority Airbnb hosts experience negative externalities associated with short-term rentals without the same degree of positive effects as their Caucasian counterparts.

III. CURRENT REGULATIONS GOVERNING SHORT-TERM RENTAL ACCOMMODATIONS

Given their localized effects, regulations of short-term rentals typically occur at the city level. However, spurred by efforts of municipal ordinances, many state governments have taken measures to regulate the effects of short-term rentals. Arizona,¹⁶⁰ Idaho,¹⁶¹ Indiana,¹⁶² Florida,¹⁶³ Tennessee,¹⁶⁴ and Wisconsin¹⁶⁵ enacted legislation to prevent local jurisdictions from prohibiting or unreasonably restricting all short-term

159. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 3 (“[T]he fastest-growing neighborhoods for Airbnb (particularly Harlem and Bedford Stuyvesant) are disproportionately African American.”).

160. Howard Fischer, *Despite Local Objections, New Year’s Laws Include Airbnb Expansion*, ARIZ. DAILY SUN (Dec. 31, 2016), https://azdailysun.com/news/local/despite-local-objections-new-year-s-laws-include-airbnb-expansion/article_52d485d5-79cd-567f-943c-bff142e9493c.html [<https://perma.cc/5PAC-BCFB>].

161. David Staats, *Airbnb Cheers as Idaho Bill to Limit Local Regulation of its Hosts’ Homes Becomes Law*, IDAHO STATESMAN (Apr. 13, 2017, 8:54 AM), <https://www.idahostatesman.com/news/business/article143778169.html> (last visited Nov. 11, 2019).

162. H.B. 1035, Ind. Gen. Assemb., Reg. Sess. (Ind. 2018).

163. S.B. 356, 2014 Leg., 116th Reg. Sess. (Fla. 2014). Florida’s 2014 law does, however, grandfather in any local prohibitions enacted prior to June 1, 2011. “A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.” *Id.*

164. TENN. CODE ANN. § 13-7-603 (2018).

165. WIS. STAT. § 66.0615 (2019).

rentals.¹⁶⁶ Other states have considered similar legislation.¹⁶⁷ Such legislation is typically predicated on two concerns: (1) protecting the rights of property owners; and (2) creating additional revenue. As the Wisconsin Court of Appeals noted when considering whether the use of a property as a short-term rental constitutes commercial activity, “public policy favors the free and unrestricted use of property.”¹⁶⁸ Further, many states view short-term rental regulations as an opportunity to spur economic gains through increased tourist dollars. As then-Senator Greg Steube, author of a Florida bill noted, “[v]acation rentals play a significant, unique, and critical role in Florida’s tourism industry, and that role is different from that of public lodging establishments”¹⁶⁹ Many state short-term rentals laws also include provisions for licensing fees and/or taxes to be paid to the state by hosts, thereby providing another source of income for the government.¹⁷⁰

In contrast to these states, others have enacted legislation to curb the proliferation of short-term rental properties. New York’s Multiple Dwelling Law prohibits renting certain properties for periods of fewer than thirty days when the permanent resident is absent.¹⁷¹ Whether to restrict Airbnb or prevent localities from taking any such actions, policies enacted at the state level override steps taken by local jurisdictions to address the externalities associated with Airbnb as well as implicate preemption law. They also raise questions about the appropriateness of a state legislature micro-managing housing issues felt most keenly at the neighborhood level.

166. In Nebraska, the governor vetoed an omnibus bill that would have, among other things prohibited total bans on short-term rentals. However, in vetoing the omnibus legislation, Governor Ricketts noted specific provisions that he supported, including those “that would provide clarity regarding the taxation and regulation of online hosting platforms, such as the Airbnb property rental marketplace, [which] are valuable and needed additions to Nebraska law.” Letter from Pete Ricketts, Governor, Neb., to President, Speaker, and Members of the Legislature (Apr. 23, 2018), <https://governor.nebraska.gov/sites/governor.nebraska.gov/files/doc/press/LB%20873%20%282018%29.pdf> [<https://perma.cc/LV28-VC4R>].

167. For example, if enacted, Georgia’s recently introduced H.B. 523 will “prohibit local governments from regulating the use of certain real estate as short-term rental property.” H.B. 523, 116th Cong. (Ga. 2019–2020).

168. *Forsee v. Neuschwander*, 900 N.W.2d 100, 104 (Wis. Ct. App. 2017) (citing *Crowley v. Knapp*, 94 N.W.2d 421, 434 (Wis. Sup. Ct. 1980)).

169. Steven Lemongello, *Florida Bill Would Prevent Local Restrictions on Vacation Rentals*, ORLANDO SENTINEL (Jan. 2, 2018), <https://www.orlandosentinel.com/politics/os-vacation-rental-bill-20180102-story.html> [<https://perma.cc/8PPP-2MB8>].

170. Savanna Gilmore, *More States Taking Action on Short-Term Rentals*, 26 NAT’L CONF. ST. LEGIS. LEGISBRIEF (Sept. 10, 2018), <http://www.ncsl.org/research/fiscal-policy/more-states-taking-action-on-short-term-rentals.aspx> [<https://perma.cc/BC29-3CAD>]; see also *infra* section III.B.

171. N.Y. MULTIPLE DWELLING L. art. 1, § 4.8 (2010).

When states and localities enact laws governing short-term rentals, it raises questions about whether short-term rental accommodations should be understood within the realm of landlord and tenant law or as licensing agreements. Most jurisdictions impose hybrid regulations. As stakeholders grapple with the effects of Airbnb on their communities, they struggle to reap the benefits that accrue to individual hosts and guests without incurring negative social costs. As such, policymakers have adopted a variety of policies, including host accountability measures, restrictions on eligible hosts, rental duration, and available locations, monitoring and enforcement, and policies to address discrimination and the concentration of wealth along racial lines.

A. *Traditional Conceptualizations of Property Rights*

Property rights are often understood as a “bundle of rights that may be exercised with respect to that object—principally the rights to possess the property, to use the property, to exclude others from the property, and to dispose of the property by sale or by gift.”¹⁷² However, while a property owner has broad rights with respect to the disposition of the property, the legal system governs “how these decisions must or may be carried out.”¹⁷³ Contracting to let a property via a homesharing platform like Airbnb raises questions about which rights in the “bundle” apply to the agreement.

Are a host and guest more akin to a landlord and tenant or a hotel and lodger? For its part, Airbnb is careful to use language that falls somewhere in between. Airbnb fastidiously uses the terms “host,” “guest,” and “share” to discuss the arrangement between parties. Instead of renting a space, a host can “share any space . . . from a shared living room to a second home and everything in-between” with guests.¹⁷⁴ Despite this careful use of language, whether a short-term rental arrangement is a landlord/tenant agreement, a hotel/lodger agreement, or something in the middle informs what regulations apply to both the host and the guest.

172. Moore v. Regents of Univ. of Cal., 793 P.2d 479, 509 (Cal. Sup. Ct. 1990) (Mosk, J. dissenting) (internal quotations omitted); Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 711 (1986) (“The right to exclude others has often been cited as the most important characteristic of private property. This right, it is said, makes private property fruitful by enabling owners to capture the full value of their individual investments, thus encouraging everyone to put time and labor into the development of resources.”).

173. Lawrence M. Freidman, *The Law of the Living, the Law of the Dead: Property, Succession, and Society*, WIS. L. REV. 340, 341 (1966).

174. AIRBNB, https://www.airbnb.com/host/homes?from_nav=1 (last visited Dec. 11, 2019).

1. Residential Leasehold Interest

The relationship between host and guest may be viewed as a residential leasehold interest. Traditionally, a leasehold estate is a transfer of interest in a property from the landlord to the tenant, thereby giving the tenant “exclusive right to possession of the premises . . . [while the landlord] retained a future interest.”¹⁷⁵ Historically, this relationship was governed by real property law. However, in the 1960s, courts began to apply contract law to landlord-tenant relationships.¹⁷⁶ Contemporary law “view[s] the lease as a hybrid, governed by *both* property law and contract law.”¹⁷⁷ As a result, tenants enjoy a wide variety of rights including, habitability of the premises, and due process during eviction, among others.

In jurisdictions that view Airbnb relationships akin to those of landlords and tenants, hosts are held to the same standards as landlords. Several websites educate hosts on how to evict an Airbnb guest who refuses to leave. In Palm Springs, California, an Airbnb guest was treated as a renter under California law because he leased the unit for more than thirty days.¹⁷⁸ As a result, the Airbnb host, viewed as a landlord under California law, was forced to initiate eviction proceedings to remove the guest from her home.¹⁷⁹

Following this and similar incidents, Airbnb updated its website to provide information to hosts on “things [the host] should consider before hosting long-term guests.”¹⁸⁰ Airbnb cautions that

in most states and localities in the United States, guests who stay in a home or apartment for one month or longer . . . may establish rights as a tenant. Generally, this means that the local tenancy laws could protect them, and you may not be able to remove them from your property without proceeding through required eviction

175. SPRANKLING & COLLETTA, *PROPERTY: A CONTEMPORARY APPROACH* 437 (2012).

176. *Id.* (noting that this change “reflected a practical reality: landlords and tenants usually think of the lease as a contract, not as an instrument conveying an estate in land”).

177. *Id.*

178. Debra Cassens Weiss, *Airbnb Guest Won't Leave, Forcing Condo Owner to Begin Eviction Proceedings*, A.B.A. J. (July 23, 2014), http://www.abajournal.com/news/article/airbnb_guest_wont_leave_forcing_condo_owner_to_begin_eviction_proceedings [https://perma.cc/GPQ5-JHHA].

179. *Id.*

180. *What Are Some Things I Should Consider Before Hosting Long-Term Guests?*, AIRBNB, <https://www.airbnb.com/help/article/805/what-are-some-things-i-should-consider-before-hosting-long-term-guests> [https://perma.cc/58LL-8KWL].

processes in court.¹⁸¹

Landlord-tenant law also implicates renters who choose to sublease their properties on Airbnb. It is not uncommon for renters themselves to sublease their homes to garner additional income. In such instances, the tenant-host may be subject to the same rights and responsibilities as other landlords. This activity may be prohibited by the lease between the tenant-host and her landlord, the owner of the property. New York City addressed the issue of whether an Airbnb guest is a subtenant or a roommate under local ordinances.¹⁸² In finding that the tenant-host violated her lease agreement by renting out a room in her rent-stabilized apartment for 338 nights on a homesharing platform at 72% more than her monthly rent, the Court stated that transient Airbnb guests are not legal roommates.¹⁸³ Instead, Airbnb guests are properly classified as subtenants and, as such, rent was subject to the 10% subletting limit under New York City's Rent Stabilization Code.¹⁸⁴

2. *Innkeepers and Lodgers*

Whereas a lease transfers the exclusive use of property from one person to another (for example, an innkeeper and lodger operate pursuant to a license) “a personal privilege to use the land of another for some specific purpose.”¹⁸⁵ A hotel and guest relationship is correctly understood under this framework. Several regulations are imposed on hotels including anti-discrimination regulations, ADA compliance, tax collection, health and safety standards, and commercial liability insurance, among others.

Currently, most jurisdictions do not hold Airbnb listings to the same battery of regulations to which hotels are subjected. Of course, the absence of these regulations is part of what allows Airbnb to price accommodations at rates below those of hotels. A two-bedroom Airbnb may cost the same or even less than a standard hotel room in many jurisdictions. Hotel, motel, and bed-and-breakfast industry opponents note that the lack of hotel taxes combined with the unlicensed nature of short-term rentals is effectively a 13% discount on price.¹⁸⁶ Further, the absence of traditional commercial zoning regulations means that while hotels are confined to areas designed for commercial activity, short-term

181. *Id.*

182. *Goldstein v. Lipetz*, 150 A.D.3d 562 (N.Y. App. Div. 2017).

183. *Id.* at 566.

184. *Id.* at 575.

185. SPRANKLING & COLLETTA, *supra* note 175, at 449.

186. CITY OF NEW ORLEANS PLANNING COMM'N, *supra* note 24, at 31.

rentals are largely unrestricted.¹⁸⁷

3. *Challenging Regulations as an Impermissible Taking*

The degree to which the government may restrict a landowner's use of her own property is a longstanding legal question that predates the era of online homesharing platforms. In *Cope v. City of Cannon Beach*,¹⁸⁸ the Supreme Court of Oregon considered whether a municipal zoning ordinance prohibited transient occupancy was a taking under the Constitution.¹⁸⁹ At the time,¹⁹⁰ under Ordinance 92-1, the City of Cannon Beach prohibited transient occupancy (defined as a rental for fewer than fourteen days), prohibited the creation of new transient occupancy uses, and required existing transient occupancy uses to be phased out by 1997.¹⁹¹ Landowners challenged the ordinance as an impermissible taking without providing just compensation in violation of the Fifth and Fourteenth Amendments.¹⁹²

The Court applied the Supreme Court's analysis in *Agins v. Tiburon*,¹⁹³ noting that a regulation "effects a taking if the ordinance does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land."¹⁹⁴ In finding for the City of Cannon Beach, the Supreme Court of Oregon stated that the ordinance substantially advanced the legitimate governmental interest of "securing affordable housing for permanent residents and in preserving the character

187. *Id.*

188. 855 P.2d 1083 (Or. Sup. Ct. 1993).

189. *Id.* at 1085.

190. On November 5, 2004, the Cannon Beach City Council adopted Ordinance 04-09A, which established new regulations when renting a dwelling for thirty days or less. Under the new law, individuals can apply for a 14-day short-term rental permit, which authorizes the permitted party "to rent a dwelling to one tenancy group in a 14-day period." CITY OF CANNON BEACH, OBTAINING A FIVE YEAR UNLIMITED SHORT-TERM RENTAL PERMIT 4 (2017), https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/9711/five-year_handout.pdf [<https://perma.cc/5VC8-97B7>].

191. *Cope*, 855 P.2d at 1084.

192. *Id.* at 1083–84. Ordinance 92-1 included a hardship provision that "provides an exemption for property owners 'who can substantiate that an investment made exclusively in the nonconforming use of a dwelling for transient occupancy can not be adequately amortized' within the five-year period between adoption of the ordinance and the required termination date." *Id.* at 1084.

193. 477 U.S. 255 (1980).

194. *Agins v. Tiburon*, 477 U.S. 255, 260–61 (1980) ("The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest. Although no precise rule determines when property has been taken, the question necessarily requires a weighing of private and public interests." (internal citations omitted)).

and integrity of residential neighborhoods” and that there was a nexus between the regulation and interest served.¹⁹⁵

The court further stated that the ordinance did not deny owners an economically viable use of property.¹⁹⁶ The court did, however, concede that rentals of dwellings for periods of fourteen days or more and owners residing in their property themselves “may not be as profitable as are shorter-term rentals . . . they are economically viable uses.”¹⁹⁷ Contemporary ordinances banning or curtailing Airbnb use have yet to be challenged as a taking. **Given, however, the effects of Airbnb on the local housing market, as well as its role in accelerating gentrification, it is likely that a court applying the *Cannon Beach* and *Agins* analysis would find for the local jurisdiction, rather than the Airbnb host.**

4. *Is Mrs. Murphy Hosting?*

Short-term rental agreements entered into via platforms like Airbnb raise issues of race and permissible discrimination. The Fair Housing Act (FHA)¹⁹⁸ prohibits discrimination on the basis of race, color, religion, sex, familial status, or national origin when renting housing.¹⁹⁹ However, under the “Mrs. Murphy exemption,”²⁰⁰ dwellings intended to be occupied by four or fewer families are exempt if the owner lives in one of the units.²⁰¹ While this exemption effectively allows landlords of owner-occupied dwellings to discriminate when *selecting* tenants, it does not allow them to do so in *advertising* available units.²⁰² If viewed as a lease agreement, the Mrs. Murphy exemption would allow most on-site hosts, or those individuals hosting owner-occupied housing, to discriminate against guests seeking accommodations on short-term rental platforms.

In contrast, Title II of the Civil Rights Act entitles all persons “to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public

195. *Cope*, 855 P.2d at 1086.

196. *Id.* at 1087.

197. *Id.*

198. 42 U.S.C. § 3601 (2012).

199. *Id.* § 3604(a) (rendering it unlawful “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”).

200. For a discussion of the history, legacy, and effect of the Mrs. Murphy exemption, see generally James D. Walsh, *Reaching Mrs. Murphy: A Call for the Repeal of the Mrs. Murphy Exemption to the Fair Housing Act*, 34 HARV. C.R.-C.L. L. REV. 605 (1999).

201. 42 U.S.C. § 3603(b)(2).

202. Walsh, *supra* note 200, at 606 n.5.

accommodation.”²⁰³ Public accommodations include “any inn, hotel, motel, or other establishment which provides lodging to transient guests.”²⁰⁴

Scholars Nancy Leong and Aaron Belzer argue that platforms like Airbnb should be viewed as public accommodations and therefore subject to Title II of the Civil Rights Act. As Leong and Belzer note, “if the traditional economy business that a [platform economy business] is replacing is a public accommodation, then it makes sense to categorize the two in the same way. To act differently would move an increasingly large number of businesses outside the scope of our civil rights enforcement mechanisms.”²⁰⁵ This issue is particularly salient in light of discriminatory practices among Airbnb users and concentrations of wealth along racial lines effected by short-term rental accommodations.

B. *Host Accountability Measures*

1. *Updated Zoning Laws and Licensing Requirements*

In response to the growth of homesharing platforms, many jurisdictions have created a new type of land use in their zoning ordinances. The new zoning categories accommodate short-term rental land use, reflecting the multifaceted purposes of the properties. When coupled with corresponding licensing requirements, the creation of a short-term rental land use category creates a new revenue stream for the jurisdiction.

Pursuant to its Shared City Initiative,²⁰⁶ the City of Portland partnered with Airbnb to create a regulatory framework to levy and collect taxes, as well as a new category of housing in its planning code—the Accessory Short-Term Rental (ASTR).²⁰⁷ This new category intends “to allow for a

203. 42 U.S.C. § 2000(a).

204. *Id.* § 2000(b)(1). However, a public accommodation does not include “an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.” *Id.*

205. Nancy Leong & Aaron Belzer, *The New Public Accommodations: Race and Discrimination in the Platform Economy*, 105 GEO. L.J. 1271, 1301 (2017) (noting that “[l]ike the public accommodations traditionally covered by Title II of the Civil Rights Act, [platform economy businesses] are held out as open to the public, so ensuring that such entities do not engage in race discrimination comports with the purpose of that legislation Finally, analogous precedent from the disability arena favors a conclusion that [platform economy businesses] are public accommodations”).

206. Brian Chesky, *Shared City*, MEDIUM (Mar. 26, 2014), <https://medium.com/@bchesky/shared-city-db9746750a3a> [<https://perma.cc/V3PH-FH7M>].

207. NAT’L LEAGUE OF CITIES, PORTLAND HOMESHARING REGULATIONS <https://www.nlc.org/portland-homesharing-regulations> [<https://perma.cc/QE5X-C8D5>]; *Accessory Short-Term Rental Permits*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/bds/65603> [<https://perma.cc/ED9M-5XYT>]. The Shared City initiative also includes a program through which

more efficient use of residential structures, without detracting from neighborhood character, and ensuring that the primary use remains residential” while at the same time “provid[ing] an alternative form of lodging for visitors who prefer a residential setting.”²⁰⁸

Under Portland’s ordinance, “an accessory short-term rental is where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 consecutive days.”²⁰⁹ There are two types of ASTRs. The Type A ASTR applies to single family homes “where the resident rents no more than 2 bedrooms to 5 overnight guests.”²¹⁰ To operate this type of ASTR, a host must secure a short-term rental permit, which “includes a safety inspection as part of the permit approval and neighborhood notification.”²¹¹ Under a Type A ASTR, the “resident must occupy the dwelling unit for at least 270 days during each calendar year, and . . . the bedrooms . . . must be within the dwelling unit the resident occupies.”²¹²

In contrast, the Type B ASTR is one where the resident rents between 3 and 5 bedrooms to overnight guests.²¹³ The City assumes that “most Type B Accessory Short-Term Rentals will be operated in 1 & 2 Dwelling Structures” and “applies if [the] dwelling unit is in a structure with 1 or 2 dwelling units” even if it is part of a multi-dwelling development.²¹⁴ As with a Type A ASTR, the operator of a Type B ASTR must acquire a permit and “occupy the dwelling unit for at least 270 days” each calendar year, and the “bedrooms rented to guests must be within the dwelling unit that the resident occupies.”²¹⁵

Similarly, New Orleans created new categories of property to regulate the effects of Airbnb. Its Short-Term Rental (STR) Administration is “responsible for licensing of short-term rental facilities and enforcement

hosts can donate a portion of their Airbnb earnings to a local cause. Chesky, *supra* note 206. These donations are matched by Airbnb as a percentage of the company’s fees. *Id.*

208. PORTLAND, OR., PLANNING CODE § 33.207.010 (2017).

209. *Id.* § 33.207.020(A).

210. *Accessory Short-Term Rental Permits*, *supra* note 207.

211. *Id.*

212. PORTLAND, OR., PLANNING CODE § 33.207.040(A)(1).

213. PORTLAND, OR., PLANNING CODE § 33.207.050. *See also Accessory Short-Term Rental Permits*, *supra* note 207 (“Proposals that include rental of 6 or more guestrooms at one time are not considered Accessory Short-Term Rentals. Additional Commercial Building Code and Zoning Code regulations apply.”).

214. *Type B Accessory Short Term Rentals (3–5 Bedrooms)*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/bds/66821> [<https://perma.cc/SB23-U397>]. *See generally* PLANNING CODE § 33.207.050.

215. PORTLAND, OR., PLANNING CODE § 33.207.050(A)(1).

of the standards regulating their operation.”²¹⁶ The City distinguishes between three types of Short-Term Rentals: (1) commercial; (2) temporary; and (3) accessory.²¹⁷ Reportedly, most applicants are receiving temporary short-term rental licenses, with more than half of applications resulting in a successful license.²¹⁸

In a New Orleans commercial short-term rental, neither an owner nor tenant can occupy the property.²¹⁹ The license duration is year-long and the cost of a license is \$500 per unit.²²⁰ A temporary rental is also unoccupied by the owner or tenant.²²¹ A property owner, or tenant with a letter of permission from the owner, can apply for a license to operate the rental for no more than ninety days.²²² The cost of a temporary short-term rental license is \$150 per unit or only \$50 per unit if the applicant is an owner with a Homestead Exemption.²²³ The final zoning category, the accessory short-term rental, is limited to three bedrooms, with occupancy capped at six guests.²²⁴ One bedroom in the dwelling is reserved for the owner, who must be present during any short-term rental occupancy.²²⁵ The applicant must be a property owner with a Homestead Exemption. The license duration is year-round and costs \$200.²²⁶ “This provision applies to half of a duplex . . . if the owner lives in one of the units. Airbnb opponents consider this a major loophole, saying it encourages owner-landlords to convert their second unit to a short-term rental.”²²⁷ Portland and New Orleans typify the attempts of local jurisdictions to grapple with homesharing by creating new categories of property and corresponding licensing requirements. Other jurisdictions, like Massachusetts, take this

216. *Short-Term Rental Administration*, CITY OF NEW ORLEANS, <https://www.nola.gov/short-term-rentals/> [https://perma.cc/H6JP-A2VG].

217. NEW ORLEANS, LA., CITY ORDINANCE § 27-209 (2016).

218. *Examining Short-Term Rentals in New Orleans*, CITY OF NEW ORLEANS, <https://data.nola.gov/stories/s/6kd7-6nca> [https://perma.cc/ZM3C-S4HT].

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.* (The license duration is “90-days continuous or must apply for additional license if separate time during the year”). See also NEW ORLEANS, LA., CITY ORDINANCE § 26-614 (2019).

223. NEW ORLEANS, LA., CITY ORDINANCE § 26-617.

224. NEW ORLEANS, LA., CITY ORDINANCE § 27-209, art. 21.6.II.2 (2016); see also *Short Term Rental Zoning Restrictions*, *supra* note 100.

225. NEW ORLEANS, LA., CITY ORDINANCE § 27-209, art. 21.6.II.2; see also *Short Term Rental Zoning Restrictions*, *supra* note 100.

226. *STR License Fees*, CITY OF NEW ORLEANS, <https://www.nola.gov/short-term-rentals/str-licensing-requirements/str-license-fees/> [https://perma.cc/9DJN-FV8W].

227. Peck & Maldonado, *supra* note 3.

a step further by mandating that Airbnb hosts carry insurance.²²⁸

A new zoning classification, for example, does not answer the question of whether an Airbnb guest is akin to a tenant or a lodger. This is important for many reasons, including what happens when a guest overstays. Whereas a tenant who violates their lease is entitled to due process through an eviction proceeding, an innkeeper can quickly eject a lodger.

Moreover, while a host must meet certain requirements before the city will issue a license, the host and property are not subject to the same regulations as a hotel. Commercial properties are subject to safety and health standards and, unlike private rental properties, are inspected regularly to ensure compliance. While private homes must adhere to the local building code, nearly all jurisdictions in the United States lack proactive inspection ordinances that would require homes to be inspected before a non-owner may contract to stay at the property.²²⁹

The creation of a new zoning category and licensing requirements, on their own, fail to address concerns about discrimination and racialized aggregation of wealth on short-term rental platforms. As currently implemented in most jurisdictions, there are no quotas for the number licenses that may be distributed in a given area. This may exacerbate gentrification and affordable housing loss in certain neighborhoods. Unless this approach is combined with other policies, changes to neighborhood composition and racial impacts will go unchallenged.

2. *Taxation on Short-Term Rental Properties*

Cities and localities that have legitimized short-term rental programs often levy a tax in addition to licensing and registration fees, thereby creating a new revenue stream for the jurisdiction. These taxes predominantly fall into two categories: occupancy taxes and value added taxes.

Occupancy taxes, also known as lodging tax, room tax, sales tax, tourist tax, or hotel tax, are a tax on the rental of rooms for a given period of time.²³⁰ While these taxes are often paid by the guest, the responsibility to

228. MASS. GEN. LAWS, ch. 175, § 4F (2019); *see also* Matt Stout, *Baker Signs Long-Awaited Airbnb Bill, Opening New Era for Industry*, BOS. GLOBE (Dec. 28, 2018), <https://www.bostonglobe.com/metro/2018/12/28/baker-signs-long-awaited-airbnb-bill-opening-new-era-for-industry/gycoryp9D15nLPYxYk5cTN/story.html> [<https://perma.cc/QYP5-DDQA>].

229. Emily Benfer & Allyson Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. S1, S27–S28 (2017), <https://harvardlpr.com/wpcontent/uploads/sites/20/2013/11/BenferGold.pdf> [<https://perma.cc/PKW7-NXXY>].

230. Kerra J. Melvin, *Technology, Travel Companies & Taxation: Should Expedia Be Required to Collect and Remit State Occupancy Taxes on Profits from Facilitation Hotel Room Rentals?*, 8 WASH.

remit taxes to the government falls on the host. For example, in San Francisco, Airbnb hosts are subject to the Transient Occupancy Tax (TOT). TOT is a 14% tax levied on short-term rental agreements, defined as renting a unit “for periods of less than 30 consecutive nights.”²³¹ Under the law, hosts must file monthly tax assessment statements, remit monthly TOT payments to the city, hold an approved TOT Certificate of Authority²³² issued by the city’s office of the treasurer and tax collector, and hold all valid licenses and permits from the San Francisco departments of police, fire, public health, and building inspection.²³³ However, to incentivize exclusivity agreements, hosts who only list their properties on Airbnb “are not required to submit TOT filings or obtain a separate Certificate of Authority.”²³⁴ Taxes were part of contentious legislation proposed to regulate Airbnb in San Francisco. Before legalizing short-term rentals, advocates demanded that city counsel require Airbnb to pay nearly twenty-five million in back taxes to the city.²³⁵ The final version of the bill, however, did not include that provision.

Unlike hotels, which collect and remit their own taxes, Airbnb has taken on that role for hosts in many jurisdictions. Airbnb has agreements with tax authorities in several jurisdictions to “collect and remit local taxes on behalf of hosts.”²³⁶ In Portland, for example, under the Shared City Initiative, Airbnb agreed to act as a limited Transient Lodging Tax Code collection and remittance agent of hosts who book on Airbnb’s platform.²³⁷ Providing this service eliminates administrative difficulties

J. L. TECH. & ARTS 43, 46 (2012) (noting that occupancy taxes are generally levied “for the purpose of promoting convention and tourist activity”).

231. *Transient Occupancy Tax (TOT)*, CITY & CTY. S.F. TREASURER & TAX COLLECTOR, <https://sftreasurer.org/tot> [<https://perma.cc/K334-KZ2Z>].

232. *See id.* A Certificate of Authority allows the host to collect the Transient Occupancy Tax. *Id.*

233. *Become a Certified Host*, S.F. OFFICE SHORT-TERM RENTALS, <https://shorttermrentals.sfgov.org/hosting/become-certified> [<https://perma.cc/SHNB-MEEB>].

234. *San Francisco, CA*, AIRBNB, <https://www.airbnb.com/help/article/871/san-francisco-ca> [<https://perma.cc/76CA-QPQF>].

235. SAMAAN, AIRBNB, *supra* note 26, at 32; *see* Steven T. Jones, *SF Supervisors Vote to Legalize and Regulate Airbnb’s Short-term Rentals*, S.F. BAY GUARDIAN (Oct. 7, 2014), <http://sfbgarchive.48hills.org/sfbgarchive/2014/10/07/sf-supervisors-vote-legalize-and-regulate-airbnbs-short-term-rentals/> [<https://perma.cc/3G4Y-PU23>].

236. In doing so, Airbnb will calculate occupancy taxes and collect them from guests at the time the reservation is made. Afterward, Airbnb will remit the taxes to the local tax authority on behalf of the host. *In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?*, AIRBNB, <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available> [<https://perma.cc/F5EY-JVEK>].

237. TRANSIENT LODGING TAX AGREEMENT BETWEEN AIRBNB, INC., AND THE CITY OF PORTLAND REVENUE BUREAU (July 1, 2014), <https://www.documentcloud.org/documents/1223398->

that may otherwise disincentivize hosts from participating in the short-term rental market, which allows the platform to expand its market share. In Portland, it is the only website operator permitted to collect and remit taxes to the city, further incentivizing hosts to list on Airbnb's platform and not with any competitors. Airbnb currently provides this service in forty-four states²³⁸ and thirteen countries.²³⁹

In many countries outside the United States, Airbnb rental agreements are subject to a value added tax (VAT). VAT is a consumption tax levied on goods and services.²⁴⁰ Over 160 countries levy a VAT, "including every economically advanced nation except the United States."²⁴¹ The VAT "is deducted from [the host's] payout and is based on the total host service fee for a reservation."²⁴² Airbnb automatically includes VAT on reservations made in many countries in Asia, Europe, the Middle East,

lodging-tax-agreementbetween-airbnb-and-the.html#document/p3/a167055 [https://perma.cc/F4TC-UJLL]; Chesky, *supra* note 206. Airbnb promoted the partnership as a mechanism to streamline certain administrative processes, such as collection and remittance of taxes. However, the regulations effectuating the program do not directly speak to these issues. *Frequently Asked Questions*, CITY PORTLAND (Mar. 8, 2019), <https://www.portlandoregon.gov/revenue/article/415034#AgreementbetweenAirbnbandCoP> [https://perma.cc/SE6X-3L5Y]. Instead, Airbnb contracted to take on this responsibility in an agreement with the City of Portland Revenue Bureau. *See Occupancy Tax Collection and Remittance by Airbnb in Oregon*, AIRBNB, <https://www.airbnb.com/help/article/2324/occupancy-tax-collection-and-remittance-by-airbnb-in-oregon> [https://perma.cc/5NC7-MS94].

238. These states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. *In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 236.

239. In addition to the United States, these countries are: Bermuda, Brazil, British Virgin Islands, Canada, France, Germany, India, Italy, Mexico, Netherlands, Portugal, and Switzerland. *Id.*

240. A detailed discussion of taxes is beyond the scope of this article. However, "[w]hat distinguishes a VAT from the retail sales taxes common throughout the U.S. states is that the VAT is levied on each transaction in the production chain, rather than being collected only at the retail stage, with business being able to obtain full credit or an immediate deduction for VAT paid on inputs (including capital goods) offset against the VAT collected on outputs." Kathryn James, *Exploring the Origins and Global Rise of VAT*, in *THE VAT READER: WHAT A FEDERAL CONSUMPTION TAX WOULD MEAN FOR AMERICA* 17–18 (Christopher Bergin et al. eds., 2011).

241. *What is a VAT?*, URB.-BROOKINGS TAX POL'Y CTR. (2016), <https://www.taxpolicycenter.org/briefing-book/what-vat> [https://perma.cc/BA3J-39UE].

242. *What is VAT and How Does it Apply to Me?*, AIRBNB (Feb. 20, 2019), <https://www.airbnb.com/help/article/436/what-is-vat-and-how-does-it-apply-to-me> [https://perma.cc/B24K-QDZH] ("In Japan, Japanese Consumption Tax, or JCT, is applicable instead of VAT. In Australia and New Zealand, Goods and Services Tax, or GST, is applicable instead of VAT.").

and the South Pacific.²⁴³

Other jurisdictions levy taxes unique to Airbnb specifically to offset harms to the local housing market. In New Orleans, in addition to a hotel/motel sales tax²⁴⁴ and a hotel occupancy privilege tax,²⁴⁵ hosts are subject to an assessment of one dollar for every night of occupancy.²⁴⁶ This additional dollar benefits the city's neighborhood housing improvement fund.²⁴⁷ Established in 1991 "to improve neighborhood housing and combat blight," the New Orleans City Council voted in 2015 to "dedicate[] the fund to actual home improvements and affordable housing efforts."²⁴⁸ Between April 2017 and February 2018, Airbnb claims to have contributed nearly \$550,000 to the Fund.²⁴⁹ As of August 2018, Airbnb competitor HomeAway has proposed increasing the contribution from \$1 per listing to 2%, and applying the fee "to all lodging accommodations — including hotels and bed and breakfasts."²⁵⁰ These taxes and assessments are important in light of the effect of short-term rentals on affordable long-term housing stock.

Occupancy taxes serve to legitimize Airbnbs while also creating additional revenue for the local government. For example, Massachusetts officials estimate that the state's tax on Airbnb may raise at least \$25 million annually.²⁵¹ State and local governments must allocate levied taxes for programs and activities that will address negative externalities correlated with Airbnb. If the money is earmarked specifically for

243. *Id.* ("Airbnb charges VAT on its service fees for customers from Albania, Belarus, Iceland, Norway, Russia, Saudi Arabia, Serbia, South Africa, Switzerland, Taiwan, the Bahamas, the European Union and the United Arab Emirates. In Japan, JCT applies to the hosts and the guests. In Australia and New Zealand, GST applies to the hosts and the guests Airbnb is also required to collect VAT on its service fees from all users who contract with Airbnb China.").

244. NEW ORLEANS, LA., CITY ORDINANCE § 27-218 (2016).

245. *Id.*

246. NEW ORLEANS, LA., CITY ORDINANCE § 70-415.1 (2019).

247. *Id.*

248. Michael Anderson, *Housing Trust Fund: One Answer to Gentrification in New Orleans*, HOUS. TR. FUND PROJECT (2015), <https://housingtrustfundproject.org/one-answer-to-gentrification-in-new-orleans/> [<https://perma.cc/93KT-SUCU>] ("The Greater New Orleans Housing Alliance released an in-depth affordable housing report as part of the HousingNOLA Planning Process. 'The preliminary report details the lack of affordable housing that will continue to grow if not addressed. While median income has dropped in our city, the average fair market rent has risen nearly 50% in recent years. The report includes other issues that have caused affordable housing to decrease significantly since the storm, but the final plan due out in November will also provide solutions that the [Neighborhood Housing Improvement Fund] funding will now also help to address.'").

249. Kevin Litten, *HomeAway Floats New Policy for New Orleans Short-Term Rentals*, TIMES-PICTAYUNE (Aug. 3, 2018, 12:22 AM), https://www.nola.com/news/politics/article_%2082bb6236-d8da-5fab-8c78-ac6de58f9efc.html [<https://perma.cc/5DQ9-HQTP>].

250. *Id.*

251. Stout, *supra* note 228.

affordable housing and anti-displacement measures, such as building new or preserving existing affordable housing, rent stabilization programs, and other measures, then taxation may offset some of the harms associated with the proliferation of short-term rentals.

However, if the money is instead funneled into a general fund, then taxation will serve as another mechanism to concentrate resources in certain communities. For example, if a city levies taxes on short-term rental accommodations and uses the money to invest in schools and public works—both laudable projects—without also taking steps to preserve affordable housing, then those benefits will accrue to individuals and families who can afford to remain in the community as home values and rents increase.

C. Restrictions on Eligible Hosts, Length of Rentals, and Available Locations

To prevent a decrease of affordable housing stock, policymakers have imposed limitations on who is eligible to rent out short-term accommodations. They have also restricted which units can be listed on sharing platforms, as well as limited the number of nights units can be occupied exclusively by guests.

1. Limitations on Eligible Hosts and Properties

Airbnb was founded on the premise that hosts could earn extra money by renting out available space—a spare room or even a couch—in their homes. As the model exploded in popularity, the profile of hosts changed. Instead of mom and pop hosts, **it is common for owners of multiple properties to make available several whole-home listings on Airbnb, functioning as commercial property owners.** As discussed in detail above, this practice decreases available long-term housing and contributes to an increase in rental prices. To combat these effects, some jurisdictions have restricted who may serve as an Airbnb host, particularly when listing unshared units.

In San Francisco, for example, only permanent residents may become short-term rental hosts.²⁵² Under the city's ordinance no. 218-14, a permanent resident is a “person who occupies a Residential Unit for at least 60 consecutive days with intent to establish that unit as his or her

252. *Short-Term Residential Rental Starter Kit*, S.F. BUS. PORTAL (June 27, 2017), <https://businessportal.sfgov.org/start/starter-kits/short-term-rental> [<https://perma.cc/92JX-WU6N>]; see also S.F., CAL., ADMIN. CODE § 214-8(41A.4) (2019).

primary residence.”²⁵³ Owners of multi-family dwellings may only list the unit in which they reside.²⁵⁴

In Los Angeles, the definition is even more restrictive. Los Angeles short-term rental hosts may only rent their primary residence, defined as where the host lives for more than six months of the year.²⁵⁵ Further, no host “may apply for or obtain more than one Home-Sharing registration or otherwise operate more than one” home share at a time in Los Angeles.²⁵⁶ By limiting Airbnb hosts to permanent residents listing their residential units, San Francisco and Los Angeles aim to prevent landlords from evicting tenants to operate illegal hotels.

Another approach is to place limitations on short-term rentals based on characteristics related to the underlying properties themselves, rather than the host. In Los Angeles, “a Primary Residence that is subject to affordable housing covenants, and/or . . . [rent stabilization], and/or [is] income-restricted under City, state, or federal law, is not eligible for Home-Sharing.”²⁵⁷ Under a 2018 West Hollywood, California ordinance, homesharing is prohibited in the following types of properties: (1) “any residential dwelling unit where the property owner and homeowners’ association has not given their express, written approval to do so;” (2) “any rental unit;” (3) “any inclusionary housing or other income-restricted housing unit;” and (4) “any location not approved for residential use.”²⁵⁸

Limitations on eligible hosts and properties attempt to avoid commercialization of the short-term rental market. However, while limiting hosts to permanent residents may succeed in defending against out-of-town-speculators with no ties to the community, prohibiting renters from serving as Airbnb hosts raises concerns about concentrations of wealth. As Airbnb noted, “the [West Hollywood] Council’s decision to block renters — who make up nearly 80% of the community — eliminates a viable source of income for those who would benefit the most. Home sharing should not be a privilege reserved for the fortunate few who own

253. S.F., CAL., ADMIN. CODE § 218-14(41.A.4) (“A Permanent Resident may be an owner or a lessee.”).

254. *Short-Term Residential Rental Starter Kit*, *supra* note 252.

255. L.A., CAL., MUNICIPAL CODE § 12.22(A)(32)(b)(9) (2019).

256. *Id.* § 6(32)(c)(2)(ii)(d).

257. *Id.* § 6(32)(c)(2)(ii)(b).

258. WEST HOLLYWOOD, CAL., MUNICIPAL CODE § 5.66.020 (2019). The ordinance also prohibits homesharing in properties that have been vacated pursuant to the Ellis Act, a California state law that allows landlords to exit the rental housing market. *See* CAL. CODE § 7060–7060.7 (2019).

homes in West Hollywood.”²⁵⁹

2. *Annual Limits*

Many jurisdictions place a firm limit on the number of days that a primary residence may be rented in a calendar year. Following cities like Paris and London, which limit rentals to 120 and 90 days respectively, Amsterdam limits hosts to renting thirty nights annually.²⁶⁰

While several cities limit the number of unhosted rentals, regulations are typically relaxed when the home is shared with the permanent resident. In San Francisco, unhosted rentals are limited to ninety days each year.²⁶¹ However, when a host is “home overnight at the same time as [the] guests, there is no limit on the number of rentals per year.”²⁶² In Santa Monica, California, renting an entire residence for less than thirty days is banned completely.²⁶³ However, Santa Monica hosts may rent a couch or extra room if they will be present in the home.²⁶⁴ Likewise, the New York State “Multiple Dwelling Law” prohibits renting an entire home in a dwelling occupied by three or more families living independently from each other for less than thirty days, but permits rentals of less than thirty days when the host is present.²⁶⁵

3. *Limiting Short-Term Rentals in Certain Areas*

To prevent the erosion of neighborhood character, some jurisdictions severely limit which neighborhoods may have short-term rentals. In New Orleans, short-term rentals are banned from most of the iconic French Quarter.²⁶⁶ In Tuscaloosa, Alabama, short-term rentals are strictly limited

259. *WeHo City Council Gives Final Approval to Short-Term Apartment Rental Ban*, WEHOVILLE (Mar. 6, 2018), <https://www.wehoville.com/2018/03/06/weho-city-council-gives-final-approval-ban-short-term-apartment-rentals/> [https://perma.cc/A7UA-WNTD].

260. Mallory Locklear, *Amsterdam Will Limit Airbnb Rentals to 30 Days Per Year*, ENGADGET (Jan. 10, 2018), <https://www.engadget.com/2018/01/10/amsterdam-airbnb-rental-30-day-limit/> [https://perma.cc/JZA2-7QS8].

261. *Short-Term Residential Rental Starter Kit*, *supra* note 252.

262. *Id.*

263. Hailey Branson-Potts, *Santa Monica Convicts its First Airbnb Host Under Tough Home-Sharing Laws*, L.A. TIMES (July 13, 2016, 3:28 PM), <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-airbnb-conviction-20160713-snap-story.html> [https://perma.cc/P4AL-EF9N].

264. This is also true in West Hollywood, California, under § 5.66.050 of the West Hollywood Municipal Code. *Id.*

265. N.Y. MULTIPLE DWELLING LAW § 4(7)–(8) (2019).

266. *Short Term Rental Zoning Restrictions*, *supra* note 100; Jeff Adelson, *Stricter Limits Will Hit New Orleans Short-Term Rentals After Council Vote; Here's What To Know*, NOLA.COM (Aug. 8, 2019, 2:17 PM), https://www.nola.com/news/article_c390da62-ba00-11e9-b876-237e289ed3ef.html

to only three areas of the city.²⁶⁷ Moreover, city officials are currently contemplating legislation that would limit short-term rentals “[w]ithin property part of a locally designated historic district . . . [s]hort-term rentals will be limited to no more than one per block face.”²⁶⁸

Similarly, officials in Barcelona passed a bill to restrict the location of tourist accommodations.²⁶⁹ The law divides the city into four distinct zones. The first zone, located in the city center, does not allow for the expansion of tourist lodging establishments.²⁷⁰ This means no new hotels may be constructed. And if one closes, it will not be replaced.²⁷¹ To control the number of Airbnb listings in these areas, the city is withholding licenses from new applicants.²⁷²

Other cities limit short-term rental density based on the neighborhood’s zoned use. In January 2018, the Nashville City Council voted 19–3 to phase out non-owner occupied short-term rentals from areas zoned for residential use.²⁷³ Under the ordinance, no non-owner occupied short-term rental property may be located within 1,320 feet from the property line of another such property in the single-family and one and two-family zoning districts.²⁷⁴ In Nashville’s “Urban Zoning Overlay” district, “no more than three percent (3%) of the single-family or two-family residential units within each census tract” may be used as non-owner occupied short-term rental properties.²⁷⁵ In properties outside the Urban Zoning Overlay district, that number drops to one percent.²⁷⁶ While this ordinance was eventually preempted by the “Short-Term Rental Act,” enacted by the

[<https://perma.cc/9R3C-2DJS>].

267. *Short-Term Rentals*, TUSCALOOSA 311, www.tuscaloosa.com/str [<https://perma.cc/RP5P-LVXQ>].

268. CITY OF TUSCALOOSA ADMIN. & POL’Y COMM., SHORT-TERM RENTAL AMENDMENTS – 1/10/19 AS RECOMMENDED BY THE ADMIN AND POLICY COMMITTEE (Jan. 10, 2019), (on file with author).

269. AJUNTAMENT DE BARCELONA, EL PEUTA, LA PRIMERA REGULACIO DE CIUTAT PER A TOTS ELS ALLOTJAMENTS TURISTICS 4 (2016), <http://ajuntament.barcelona.cat/premsa/wp-content/uploads/2017/01/170128-DOSSIER-ADEF-PEUAT.pdf> [<https://perma.cc/YT22-DWBH>].

270. *Id.*

271. *Id.*

272. *Id.*

273. NASHVILLE, TENN., SUBSTITUTE ORDINANCE BL 2017-937, https://www.nashville.gov/mc/pdfs/misc_legislation/bl2017_937_sub.pdf [<https://perma.cc/NRL7-BGW2>]; Metro. Gov’t of Nashville & Davidson Cty., Tenn., Roll Call Vote Substitute Bill BL2017-937, (Jan. 2, 2018), https://www.nashville.gov/mc/pdfs/roll_call_votes/bl2017_937_sub.pdf [<https://perma.cc/7U9W-UJ87>].

274. *Id.* § 6(1)(d).

275. *Id.* § 6(1)(c).

276. *Id.*

Tennessee General Assembly,²⁷⁷ it illustrates an attempt by a local government to mitigate the negative effects of Airbnbs on permanent, long-term residents.

Limitations on the total number of permissible short-term rental accommodations within a given area may temper some of the negative externalities associated with the practice. **A cap on the number of accommodations would slow down the rate of rent increase, as there would be fewer properties eligible to be converted from long term rentals to short-term accommodations.** In turn, this would slow gentrification, thereby displacing fewer people and reducing the amount of commercially owned rentals in residential areas. This may result in fewer disruptions to the social fabric of individual neighborhoods in communities; a hard limit on the number of short-term rental accommodations in a given area would help prevent a situation in which a few legacy residents are surrounded by strangers in town only for a short period of time.

While a limitation may be effective to avoid rapid increases in rent and gentrification, this approach, **as currently implemented, rewards early adopters.** It also favors tech-savvy individuals and even commercial operators who have more familiarity and comfort with navigating an online platform and city administrative system. Those who became aware of the potential benefits of short-term rental listings after the first wave may be locked out of the market.

Rewarding early adopters has racial implications. Many groups have voiced concerns about under-utilization of short-term rental platforms by individuals and communities of color. Some advocacy groups, such as the National Association for the Advancement of Colored People (NAACP), encourage the use of short-term rental platforms by individuals of color as a way to increase their income and wealth.²⁷⁸ Under a “race to the city

277. Under the Tennessee Short-Term Rental Unit Act, local Tennessee jurisdictions may not “[p]rohibit the use of property as a short-term rental unit” or restrict or otherwise “regulate a short-term rental unit based on . . . the unit’s classification, use, or occupancy.” S.B. 1086, 110th Gen. Assemb. (Tenn. 2018). The law further states that a local jurisdiction may only “[e]nact, maintain, or enforce a local law that regulates property used as a short-term rental unit if the local governing body demonstrates by clear and convincing evidence that the primary purpose of the local law is the least restrictive means to protect the public’s health and safety.” *Id.* The Short-Term Rental Unit Act specifically protects jurisdictions’ ability to apply local land use laws such as zoning, noise, property maintenance, and nuisance to short-term rental properties. *Id.* This carve-out suggests that the “clear and convincing evidence” necessary to overcome the “least restrictive means” will require something more. *Id.*

278. NAACP, *Airbnb Partner to Promote Travel, Offer New Economic Opportunities to Communities of Color*, NAACP (July 26, 2017), <https://www.naacp.org/latest/naacp-airbnb-partner-promote-travel-offer-new-economic-opportunities-communities-color/> [https://perma.cc/MTZ3-P98P].

administrator” system, communities that have been slow to warm to short-term rentals may lose their opportunity to benefit. **Therefore, to avoid entrenching benefits to certain individuals, these regulations should allow late adopters to participate in the market.**

D. *Monitoring and Enforcement*

Regulation of short-term rentals raises questions regarding enforcement. Despite official requirements, many hosts do not comply with licensing registration regulations. Even though Airbnb listings in Quebec in 2016 exceeded 19,000, Tourisme Quebec only “issued 967 permits for rental hosts out of 2,244 applications in the year since the law took effect on April 15, 2016.”²⁷⁹

Quebec is hardly unique in this regard. In Portland, the Revenue Bureau “estimates that 93 percent of all hosts have *not* obtained the necessary permits, had their units inspected for building and safety compliance, or notified their neighbors of their intent to operate a short-term rental.”²⁸⁰ In San Francisco only 130 of over more than 5,000 hosts made appointments with city officials to obtain required permits as of February 15, 2015.²⁸¹ By March 2016, compliance in San Francisco had only improved to 1,647 registered out of the more than 7,000 listed.²⁸² There is some variation in penalties for lack of compliance. Most jurisdictions impose monetary penalties. In some, like Hong Kong, failure to procure a license may lead to two years of imprisonment.²⁸³

1. *Liability for failure to comply*

In response to lack of compliance, some jurisdictions enacted penalties against online platforms that list unlicensed short-term rentals. In June 2016, San Francisco’s Board of Supervisors voted 10–0 to “provide for civil, administrative, and criminal penalties against Hosting Platforms for

279. Canadian Press, *Most Airbnb Hosts Not Registered in Quebec, 1 Year After Law Took Effect*, CBC (May 28, 2017, 12:52 PM), <https://www.cbc.ca/news/canada/montreal/quebec-airbnb-law-not-effective-2017-1.4135041> [<https://perma.cc/5XAS-YBEZ>].

280. See SAMAAN, AIRBNB, *supra* note 26, at 31 (emphasis added).

281. *Id.* at 32 (reflecting data available as of February 15, 2015).

282. Stephen R. Miller & Jamila Jefferson Jones, *Airbnb and the Battle Between Internet Exceptionalism and Local Control of Land Use*, 31 PROB. & PROP. 36, 37 (2017).

283. Hotel and Guesthouse Accommodation Ordinance, (2001) Cap. 349, pt. II § 5(1) (H.K.) (“Any person who on any occasion operates, keeps, manages, or otherwise has control of a hotel or a guesthouse in respect of which neither of the conditions indicated in subsection (2) has been satisfied commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years and to a fine of \$20,000 for each day during which the offence continues.”).

violations of the Residential Unit Conversion Ordinance.”²⁸⁴ The ordinance requires platforms to “verify that a Residential Unit is on the City Registry prior to listing.”²⁸⁵ Failure to comply could result in fines of up to \$1,000 each day.²⁸⁶ In August 2016, San Francisco made it a “misdemeanor to collect a fee for providing booking services for the rental of an unregistered unit.”²⁸⁷

Airbnb fought back. The company²⁸⁸ filed suit against San Francisco, challenging the ordinance as: (1) preempted by the Communications Decency Act (CDA),²⁸⁹ (2) an impermissible content-based speech restriction under the First Amendment; and (3) an imposition of a criminal strict liability.²⁹⁰ The Northern District of California denied Airbnb’s request for a preliminary injunction and the parties ultimately settled.

The agreement allows San Francisco to more effectively enforce short-term rental requirements. City Attorney Dennis Herrera stated that, under the terms of the settlement, “[t]he two largest (vacation rental services) will only include legal listings, and the city has the tools for quick, effective enforcement.”²⁹¹ The agreement requires homesharing platforms to collect data on hosts who let their homes for less than a month. The information will be provided to city officials who will, in turn, use it to “vet and register hosts.”²⁹² If the city notifies a homesharing platform of a non-compliant registration, the company must cancel any pending reservations and deactivate the listing.²⁹³ The settlement does not eliminate the city’s ability to fine companies like Airbnb up to \$1,000 per violation if they do not remove illegal listings.²⁹⁴

284. San Francisco Bd. of Supervisors, 111 Meeting Minutes 423, 439 (June 7, 2016), <https://sfgov.legistar.com/View.ashx?M=M&ID=498884&GUID=FA40CC05-BAAF-437E-A230-98C929849424> [<https://perma.cc/4U2F-LMV4>] (one member of the board abstained from the vote).

285. *Id.*

286. Alice Truong, *San Francisco Just Dealt Another Major Blow to Airbnb*, QUARTZ (June 7, 2016), <https://qz.com/701857/san-francisco-just-dealt-another-major-blow-to-airbnb/> [<https://perma.cc/E7BE-ZFTU>].

287. *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066, 1071 (N.D. Cal. 2016).

288. Airbnb was joined by HomeAway in the suit. *See id.*

289. 47 U.S.C. § 230 (2012).

290. *Airbnb, Inc.*, 217 F. Supp. 3d at 1067.

291. Carolyn Said, *Airbnb, HomeAway Settle SF Suit, Agree to Register All Local Hosts*, S.F. CHRON. (May 1, 2017, 7:17 PM), <https://www.sfchronicle.com/business/article/Airbnb-settles-SF-suit-agrees-to-register-all-11112109.php> [<https://perma.cc/6FEJ-3SFS>].

292. Katie Benner, *Airbnb Settles Lawsuit With Its Hometown, San Francisco*, N.Y. TIMES (May 1, 2017), <https://www.nytimes.com/2017/05/01/technology/airbnb-san-francisco-settle-registration-lawsuit.html> [<https://perma.cc/63GR-2AU3>].

293. *Id.*

294. *Id.*

The effects of the settlement have been striking. The *San Francisco Chronicle* hired Host Compliance²⁹⁵ to collect and analyze data on the number of listings in San Francisco before and after the deadline for hosts to register with the City.²⁹⁶ Ulrik Bizner, the company's CEO and founder, told the *Chronicle* that "[t]he regulations had a massive impact on the number of rentals in city, with an overall 55 percent reduction."²⁹⁷ Many of these properties transitioned to the long-term rental market.²⁹⁸

Airbnb also reached settlement agreements with New York State and New York City following the passage of the Multiple Dwelling Law (MDL). Under the MDL, it is "unlawful to advertise occupancy or use of dwelling units in . . . a multiple dwelling that is occupied for permanent residence purposes."²⁹⁹ Fines under the MDL can reach \$7,500 per violation.³⁰⁰ After challenging the legality of the penalties, Airbnb reached separate agreements with New York State and New York City.³⁰¹ Under the terms of the settlement, New York City agreed to enforce the MDL only against hosts and not fine the company.³⁰² Other local governments have backed away from similar penalties under the threat of litigation. As stated by Anaheim, California spokesperson Mike Lyster, "[a]fter considering federal communications law, we won't be enforcing parts of Anaheim's short-term rental rules covering online hosting sites . . . Instead, the city will continue to identify and take action against unpermitted short-term rentals operating in Anaheim."³⁰³

295. According to its website, Host Compliance is "the world's #1 provider of short-term rental compliance monitoring and enforcement solutions for local governments." HOST COMPLIANCE, www.hostcompliance.com [<https://perma.cc/CB4K-87T7>].

296. Carolyn Said, *A Leaner Vacation Rental Market*, S.F. CHRONICLE (Feb. 16, 2018), <https://www.sfchronicle.com/business/article/SF-short-term-rentals-transformed-as-Airbnb-12617798.php> [<https://perma.cc/U7VJ-HVAX>].

297. *Id.*

298. *Id.*

299. N.Y.C. ADMIN. CODE § 27-287.1(1) (2019); N.Y. MULTIPLE DWELLING LAW § 121(1) (2019).

300. N.Y.C. ADMIN. § 27-287.1(2); N.Y. MULTIPLE DWELLING LAW § 121(2).

301. Airbnb filed suit to challenge the MDL, alleging it was preempted by the CDA, violated hosts' rights under the First Amendment, violated the Due Process Clause, and violated the New York State Constitution's home rule clause. Complaint at 1-3, *Airbnb, Inc. v. Schneiderman*, 989 N.Y.S.2d 786 (S.D.N.Y. Oct. 21, 2016) (No. 16-CV-08239).

302. *See generally* Miller & Jones, *supra* note 282, at 38 (discussing how Airbnb ultimately settled the case with New York State in November 2016, and with New York City in December 2016); *see also* Katie Benner, *Airbnb Ends Fight with New York City Over Fines*, N.Y. TIMES (Dec. 3, 2016), <https://www.nytimes.com/2016/12/03/technology/airbnb-ends-fight-with-new-york-city-over-fines.html> [<https://perma.cc/6UM9-7K3Z>].

303. Lily Leung, *Anaheim Won't Fine Websites Like Airbnb for Illegal Short-Term Rental Listings*, ORANGE CTY. REG. (Aug. 23, 2016, 12:00 PM), <https://www.oregister.com/2016/08/23/anaheim->

In some jurisdictions, Airbnb has taken on the role of enforcement agent to ensure compliance with local regulations. In Vancouver, pursuant to an agreement reached between the city and Airbnb, Airbnb will not allow hosts to register on the platform if they do not provide a city business license number.³⁰⁴ This agreement places the onus of enforcement on Airbnb, rather than the city. Airbnb has a similar enforcement agreement with Portugal, with plans to develop another in Andalusia, Spain.³⁰⁵

2. *Information sharing*

In an effort to eliminate illegal listings, several jurisdictions are forcing Airbnb to share user data. In August 2018, New York City Mayor Bill DeBlasio signed a bill requiring online short-term rental platforms to provide information about bookings to the Mayor's Office of Special Enforcement.³⁰⁶ Under the law, companies like Airbnb must provide the City with: (1) the address of the short-term rental; (2) the name and address of the rental host; (3) whether the short-term rental is for the entire unit or part of it; and (4) the number of days the unit is rented, among other information.³⁰⁷ Failure to comply with the law may result in monetary fines.³⁰⁸

Other jurisdictions have been forced to take more aggressive measures. In 2014, the Malibu, California city council voted to authorize city officials to issue subpoenas to gather information on the scope of short-term rentals in the area.³⁰⁹ The subpoenas enabled city officials to obtain

wont-fine-websites-like-airbnb-for-illegal-short-term-rental-listings/ [https://perma.cc/A26Y-83W9].

304. Frances Bula, *Airbnb Agrees to Help Vancouver Enforce New Short-Term Rental Rules*, GLOBE & MAIL (Apr. 11, 2018), <https://www.theglobeandmail.com/canada/british-columbia/article-airbnb-agrees-to-help-vancouver-enforce-new-short-term-rental-rules/> [https://perma.cc/34ZY-WN3Y].

305. *Id.*

306. *See* N.Y.C. ADMIN. CODE § 26-2101-5 (2019).

307. In addition, the law also requires platforms to provide information related to fees and the URL of the listing. *Id.*

308. *Id.*

309. Matt Stevens & Martha Groves, *Malibu to Crack Down on Short-Term Rentals via Airbnb, Other Websites*, L.A. TIMES (May 27, 2014, 8:09 PM), <https://www.latimes.com/local/la-me-malibu-renting-20140528-story.html> [https://perma.cc/U3Q4-6TJ9] (“The City Council voted this month to authorize officials to issue subpoenas to more than 60 websites that advertise short-term leases. Malibu wants to learn how many short-term rentals are being offered and to make sure the city is getting what could be hundreds of thousands of dollars in uncollected hotel taxes.”).

information from more than sixty online homesharing platforms.³¹⁰ Similarly, Chicago’s short-term rental ordinance includes a section that speaks to data collection and reporting requirements.³¹¹ Under the ordinance, every licensee must submit to the department, *every two months*, a report that includes information on: (1) the total number of short-term residential rentals listed on the platform; (2) the total number of nights that each short-term residential rental listed on the platform was rented during the reporting period; (3) the amount of rent paid by guests; (4) the total amount of tax paid to the city in connection to the rental; (5) a cumulative tally to date of the number of nights that each short-term residential rental listed on the platform is booked; and (6) a notation indicating each short-term residential rental listed on the platform that the department has determined is ineligible under city code.³¹² Airbnb has taken steps to challenge measures designed to compel data sharing. In response to the 2018 New York City law, Airbnb filed suit, alleging “an extraordinary act of government overreach” in violation of the First and Fourth Amendments.³¹³ For now, the court agrees with Airbnb. The U.S. District Court for the Southern District of New York granted a preliminary injunction to stop New York’s law from taking effect; “[t]he City has not cited any decision suggesting that the governmental appropriation of private business records on such a scale, unsupported by individualized suspicion or any tailored justification, qualifies as a reasonable search and seizure.”³¹⁴ While an analysis of the First and Fourth Amendments is beyond the scope of this Article, such data collection is consistent with the underlying purpose of host licensing practices. Shielding information about hosts openly violating the law by not registering with the local government withholds “critical data [the City] needs to preserve [its] housing stock, keep visitors safe, and ensure residents feel secure in their homes and neighborhoods.”³¹⁵

310. *Id.*

311. CHI. MUN. CODE § 4-13-240 (2019).

312. *Id.*

313. Shirin Ghaffary, *Airbnb is Suing New York City So It Won't Have to Share User Data About Its Hosts*, VOX (Aug. 24, 2018, 4:16 PM), <https://www.vox.com/2018/8/24/17779208/airbnb-suing-new-york-city-user-data-hosts-privacy-brian-chesky> [<https://perma.cc/7J38-2WQW>].

314. *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 492 (S.D.N.Y. 2019).

315. Ghaffary, *supra* note 313.

E. Policies to Address Discriminatory Practices and Concentrations of Wealth Along Racial Lines

1. Policies to Reduce Discrimination on Online Short-Term Rental Platforms

Airbnb is aware of discrimination against guests and hosts on its platform. CEO and Co-founder Brian Chesky called discrimination “the greatest challenge we face as a company.”³¹⁶ To address the issue, Airbnb requires all users to accept the Airbnb Community Commitment.³¹⁷ By doing so, the user agrees to “treat everyone in the Airbnb community . . . with respect, and without judgment or bias.”³¹⁸

Additionally, the site encourages hosts to allow instant booking. A discretionary choice for hosts, “Instant Book listings don’t require approval from the host before they can be booked. Instead, guests can just choose their travel dates, book, and discuss check-in plans with the host.”³¹⁹ To entice hosts to allow Instant Book, Airbnb promotes the practice as a way for hosts to reach Superhost status.³²⁰ Demarcated with a badge on the host’s profile, the Superhost designation communicates superior accommodations and service, which may translate into increased bookings.³²¹

Instant Book eliminates some of the hallmarks of the sharing economy like personal interaction between hosts and guests, and building relationships between strangers. Instead, Instant Book allows Airbnb to function much more like an online hotel reservation process, where there is no opportunity for a hotel manager to accept or reject a lodger. Instant Book decreases opportunities for discrimination against guests but has firm limitations. First, Instant Book is not mandatory. Hosts may choose whether to use the feature. Hosts that forgo Instant Book are free to discriminate against guests. Second, because guests retain access to

316. *Diversity at Airbnb*, AIRBNB, www.airbnb.com/diversity/ [https://perma.cc/KB27-TPWM].

317. *General Questions About the Airbnb Community Commitment*, AIRBNB, <https://www.airbnb.com/help/article/1523/general-questions-about-the-airbnb-community-commitment> [https://perma.cc/JXT7-VAEJ].

318. The full Community Commitment states, “I agree to treat everyone in the Airbnb community—regardless of their race, religion, national origin, ethnicity, disability, sex, gender identity, sexual orientation, or age—with respect, and without judgment or bias.” *Id.*

319. *What is Instant Book?*, AIRBNB, <https://www.airbnb.com/help/article/523/what-is-instant-book> [https://perma.cc/XP5T-CGPA].

320. *Id.*

321. *What Is a Superhost?*, AIRBNB, <https://www.airbnb.com/help/article/828/what-is-a-superhost> [https://perma.cc/NA7N-VTHD].

personal information about prospective hosts, including photo, name, and any other information the host chooses to include in his profile, there remains potential for discrimination against hosts of color.

2. *Collaboration to Increase Short-Term Rental Optimization Among Minorities*

In 2017 Airbnb partnered with the NAACP to expand Airbnb to minority communities and recruit minority hosts.³²² Under the agreement, Airbnb and the NAACP partnered to “conduct targeted outreach to communities of color to help more people use their homes to earn extra income.”³²³ Notably, the partnership included a revenue-sharing agreement under which “Airbnb will share 20 percent of the earnings it receives as a result of these new community outreach initiatives with the NAACP.”³²⁴ The earnings of Airbnb hosts are unaffected by the revenue sharing.³²⁵

In Miami, the Florida NAACP is targeting minority residents in the neighborhoods of Miami Gardens and Little Haiti.³²⁶ Through its partnership with Airbnb, the Florida NAACP will

educate local black entrepreneurs on the opportunities that come with increased tourism traffic. For some, that could be the additional income from hosting guests; for others it could be setting up the ancillary business that cater to tourists—like restaurants and retail—or that cater to hosts—like cleaning, plumbing, and painting services.³²⁷

Neither Airbnb nor the NAACP have yet released outcome data about

322. Tracy Jan, *Faced with Complaints of Discrimination, Airbnb Partners with NAACP to Recruit Black Hosts*, WASH. POST (July 26, 2017, 8:34 AM), <https://www.washingtonpost.com/news/wonk/wp/2017/07/26/faced-with-complaints-of-discrimination-airbnb-partners-with-naacp-to-recruit-black-hosts/> [https://perma.cc/C9JD-DPR3].

323. NAACP, *Airbnb Partner to Promote Travel, Offer New Economic Opportunities to Communities of Color*, *supra* note 278.

324. In addition to revenue sharing, the agreement outlines the following commitments: community outreach and education, a diverse employee base, and supplier diversity. *Id.*

325. *Id.*

326. Chabeli Herrera, *To Fight Discrimination, Airbnb Wants More Black Miami Residents to Rent Their Homes*, MIAMI HERALD (May 15, 2018, 5:39 PM), <https://www.miamiherald.com/news/business/article211165439.html> (last visited Oct. 18, 2019).

327. *Id.* The partnership has since expanded to Los Angeles, Atlanta, and Seattle. See Ernie Suggs, *Short-Term Home Rental Site Partners with NAACP to Attract Black Hosts in Atlanta*, ATLANTA J.-CONST. (Apr. 14, 2019), <https://www.ajc.com/news/airbnb-partners-with-naacp-attract-black-hosts/jL7IVydk49fn6pdx2Q6kIP/> [https://perma.cc/NT2X-V4L5]; Keerthi Vedantam, *Airbnb, NAACP Partner to Get More People of Color to Become Homesharing Hosts in Seattle*, SEATTLE TIMES (June 5, 2019, 6:51 PM), <https://www.seattletimes.com/business/airbnb-naacp-partner-to-get-more-people-of-color-become-airbnb-hosts/> [https://perma.cc/BF8W-HHBQ].

their partnership. If successful, this partnership may be a model to accrue economic gains realized through the short-term rental market to communities of color.

IV. RECOMMENDATIONS

As discussed, current short-term rental accommodation law fails to adequately mitigate harms associated with the proliferation of Airbnbs. Policymakers must implement a multi-faceted regulatory strategy that allows users to reap the benefits of short-term rentals while minimizing undesirable community consequences. However, these strategies will not be as effective without registering and licensing all Airbnb units. Licensing and registration will help jurisdictions to monitor the growth of the short-term rental and its continued effects throughout the community. Hosts should not be able to list an accommodation on Airbnb without first registering with the local government and obtaining a license number. This number should be listed on the online Airbnb listing to signal to potential guests that the host has taken necessary steps to comply with local law. Hosts that falsify licenses should be penalized and banned from the platform. Longitudinal empirical analyses will ensure that regulations are having the intended effects in the community.

The following recommendations speak to the core principles of short-term rental policy reform, but it is also imperative that policymakers engage the community in their response.³²⁸ Particular laws may vary from jurisdiction to jurisdiction, reflecting the residents' needs in those communities. For example, a beach community in the Outer Banks of North Carolina that has a culture and economy predicated on tourists may adopt more generous laws regarding the length of time that a short-term rental may be listed, compared to a city with a large population of low-income tenants and an acute affordable housing problem. While engaging the community will produce laws that vary by, but meet the acute needs of, local jurisdictions, policymakers must adopt approaches that conform to the following **overarching principles: protect affordable housing stock, prevent hotelization of residential neighborhoods, create avenues for diversity of wealth accumulation, and eliminate opportunities to discriminate on homesharing platforms.**

328. Benfer & Gold, *supra* note 229, at S48 (discussing the need for participatory approaches to resolve issues affecting the community at large).

A. *Protect Affordable Housing Stock*

As hosts realize additional income and equity from underutilized resources, market pressure increases to convert long-term rentals to short-term accommodations.³²⁹ However, doing so depletes local affordable housing stock. Given the dearth of affordable rental housing,³³⁰ the pressure to convert long-term rental stock to the Airbnb market stresses an already under-resourced market.

Airbnb is aware of its ability to contribute to affordable housing. In September 2019, the company “announced a new community impact investing program that will invest \$25 million in projects supporting affordable homeownership, small businesses, and the construction and preservation of affordable housing.”³³¹ The program currently operates in the San Francisco Bay Area and Los Angeles County.³³² While an important step, it will take more to preserve and create affordable housing in affected communities across the country.

To combat further erosion of affordable housing stock, local governments should collect a fee from Airbnb hosts that goes directly into an affordable housing fund.³³³ This fee may be collected at the time of licensing and registration, or could be levied as an annual tax on Airbnb hosts. This money would then be used to preserve and create additional affordable housing within the jurisdiction. To be effective, it is imperative

329. WACHSMUTH ET AL., HIGH COST OF SHORT-TERM RENTALS, *supra* note 23, at 3.

330. INGRID GOULD ELLEN & BRIAN KARFUNKEL, N.Y.U. FURMAN CTR./CAPITOL ONE NATIONAL AFFORDABLE RENTAL HOUS. LANDSCAPE, RENTING IN AMERICA’S LARGEST METROPOLITAN AREAS 6 (2016), https://furmancenter.org/files/NYU_Furman_Center_Capital_One_National_Affordable_Rental_Housing_Landscape_2016_9JUNE2016.pdf [<https://perma.cc/M7RS-EQDT>] (“While the rental stock [between 2006 and 2014] grew, the population grew faster than the stock in [the 11 largest metropolitan areas in the U. S.] and in metro areas nationwide. As changes in demand exceeded changes in supply, vacancy rates decreased, the average number of people living in a rental unit increased, and, in most areas, rents rose.”).

331. Maleesa Smith, *Airbnb Invests \$25 Million in Bay Area Affordable Housing*, HOUSINGWIRE (Sept. 20, 2019, 5:08 PM), <https://www.housingwire.com/articles/50201-airbnb-invests-25-million-in-bay-area-affordable-housing/> [<https://perma.cc/KT7E-6HTN>] (noting that of the program, Airbnb Co-Founder and CEO Brian Chesky stated, “I want Airbnb to be a 21st Century Company that serves all our stakeholders, including the communities our hosts and guests call home”).

332. *Id.*

333. Jurisdictions are already considering such measures to offset community effects of other sharing economy companies. In light of the fact that Uber and Lyft accounted for two-thirds of a 62% increase in San Francisco traffic over six years, the city is considering proposals to tax ride-sharing net fares as well as congestion pricing. Rachel Swan, *Uber, Lyft Account for Two-thirds of Traffic Increase in SF Over Six Years, Study Shows*, S.F. CHRONICLE (May 8, 2019, 7:19 PM), <https://www.sfchronicle.com/bayarea/article/Uber-Lyft-account-for-of-traffic-increase-in-13830608.php> [<https://perma.cc/FT32-QMS4>]. For discussion of New Orleans’s Neighborhood Housing Improvement Fund, see *supra* section III.B.2.

that the amount of the affordable housing set-aside is based on empirical data to ensure that the funds can meaningfully offset the effects of short-term rentals.

Policymakers could also consider enacting a marginal affordable housing tax rate on additional Airbnb properties. For example, the affordable housing tax on a host's first property may be lower than on the second and third. A successive increase in taxes would not prevent hosts from reaping economic benefits, but would proportionately correspond with the increasing need to preserve and create affordable housing that results from additional short-term rental accommodations. An affordable housing fund will have the added benefit of slowing gentrification.³³⁴ This, in turn, will promote economic and racial diversity.³³⁵

Additionally, policymakers must take steps to protect the rights of existing long-term tenants. Laws must prohibit Airbnb hosts from listing units under any type of rent control or rent stabilization. Programs like these “regulate[] the amount of rent the landlord may charge for an apartment.”³³⁶ A prohibition on rent control units prevents would-be hosts from profiting from regulations intended to promote affordable housing.

Further, rental housing law must protect tenants from abuse of just cause eviction laws.³³⁷ In some jurisdictions, such as San Francisco and Washington, DC, a landlord may not evict a tenant without cause, such as failure to pay rent or a lease violation.³³⁸ However, there are often exceptions for landlords who plan to occupy the unit. To prevent abuse, landlords found to have listed the vacated unit as a short-term rental accommodation within twelve months of a personal use eviction should be subject to fines and banned from listing on Airbnb for a certain period of time.

334. See Vicki Been, *What More Do We Need to Know About How to Prevent and Mitigate Displacement of Low- and Moderate-Income Households from Gentrifying Neighborhoods?*, in *A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY* 377–78 (Christopher Herbert et al. eds., 2018) (writing about revenue generation as a way to slow gentrification).

335. *Id.*

336. *Directory of NYC Housing Programs: Rent Regulation*, N.Y.U. FURMAN CTR., <http://furmancenter.org/coredata/directory/entry/rent-regulation> [https://perma.cc/7758-8554].

337. Aimee Inglis, *Just Cause Evictions and Rent Control*, in *PROTECT TENANTS, PREVENT HOMELESSNESS* 22 (Nat'l Law Ctr. on Homelessness & Poverty ed., 2018), <http://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf> [https://perma.cc/P2TF-BR3X] (“Just cause eviction laws require landlords to give a reason for evicting tenants. Just cause eviction laws have been shown to motivate landlords to increase and improve maintenance of rental housing and to stabilize rental markets.”).

338. Marie Claire Tran-Leung, *Limiting Use of Criminal Records*, in *PROTECT TENANTS, PREVENT HOMELESSNESS*, *supra* note 337, at 35.

B. Prevent Hotelization of Residential Neighborhoods

Preventing hotelization—fundamentally changing the nature of residential neighborhoods through proliferation of commercial accommodations—is essential to control noise and unsanitary conditions, and maintain a community’s social fabric. This can be accomplished by a variety of measures. **First, laws should limit the number of short-term rentals in a given neighborhood or block.** Such a measure would prevent whole areas from converting Airbnbs, effectively stranding long-term residents in a tourist district.

Second, local governments should contemplate limits on the number of licenses that a single individual may hold. Some jurisdictions may enact a policy that limits hosts to only listing their own home, while others may allow for multiple listings, depending on the needs and desires of the local community. In light of the needs and desires of the local community, the number may vary from jurisdiction to jurisdiction. However, by including a limit, lawmakers prevent commercial property owners from operating unofficial hotels.

Finally, short-term rental accommodation policy should restrict the number of days a whole-home accommodation may be rented in a given year. Renting a spare room or couch in one’s home and a whole-home accommodation are different types of accommodations, with different effects on the local community. The law should treat them as such. In a hosted accommodation, the long-term resident is present at the home.³³⁹ This decreases the likelihood of negative externalities on the surrounding community, such as improper trash disposal. Further, because the permanent resident is present, the social fabric of the community is maintained. In contrast, a whole home listing leads to a revolving door of short-term residents who are unfamiliar with neighborhood policies and lack the motive to invest socially in the community.³⁴⁰ Given the disparate effects, lawmakers should cap the number of nights a whole-home accommodation may be listed in a given year.

C. Create Opportunities for Diversity of Wealth Accumulation

While policymakers must take steps to limit Airbnb density and prevent the hotelization of residential neighborhoods, regulations must create meaningful opportunities for a multiplicity of hosts to realize economic benefits of short-term rental accommodations. First, licensing and registration should not be limited to those with an ownership interest in a

339. *Supra* section II.A.4.

340. *Supra* section II.A.4.

property. While an individual lease agreement may prohibit subletting a home, the municipality should not take it upon itself to prevent renters from participating in the short-term rental market. This limitation unnecessarily precludes individuals who typically have fewer assets than homeowners and are arguably more in need of additional income to achieve economic stability from a lucrative market.

Allowing renters to participate in the Airbnb market will also limit the tendency of short-term rental economic benefits to accrue disproportionately to wealthy white users. “Across racial groups, more than 80 percent of wealth in one’s primary residence [i]s held by white households.”³⁴¹ Moreover, the majority (60%) of housing wealth is held by the top twenty percent of households.³⁴² Given the concentration of Airbnb eligible properties among affluent white hosts, it is critical that policies allow hosts with diverse racial and economic backgrounds to participate in the market.

Second, efforts to limit the number of Airbnb licenses issued in a particular jurisdiction or neighborhood should not entrench Airbnb rights, and consequent benefits, to early adopters and those with the technological literacy and experience to be first to the registration office. In jurisdictions that limit the number of Airbnbs in a given area, short-term rental licenses are typically awarded on a first come, first serve basis. This distribution pattern rewards those with the knowledge and ability to quickly enter the short-term rental market; those with fewer resources and/or technological prowess may be late to market. Instead, licenses should be distributed by lottery and should only be valid for a set period of time, such as two years. After this time, the license should expire, and all interested parties would have the opportunity to apply via the lottery. The city of Cannon Beach, Oregon operates an example lottery.³⁴³ In Cannon Beach, parties may apply for a five-year short-term rental permit.³⁴⁴ Such permits are awarded by random selection and, after the expiry of the initial period, applicants may not be considered for a new permit in the next cycle.³⁴⁵ Lottery systems, like that implemented by Cannon Beach, address valid density concerns while providing

341. Bivens, *supra* note 59, at 7 (“African American households held just 6.5 percent of wealth in primary residences, Hispanic households held 6.0 percent . . .”).

342. *Id.* at 6–7.

343. *Obtaining a Five Year Unlimited Short-term Rental Permit*, CITY OF CANNON BEACH (2017), https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/9711/five-year_handout.pdf [<https://perma.cc/LZ5T-NACC>].

344. *Id.* at 3.

345. *Id.* at 6.

opportunities for a diversity of hosts.

D. Eliminate Opportunities to Discriminate on Homesharing Platforms

As the Congressional Black Caucus noted in its letter to Airbnb CEO Brian Chesky, it is “seemingly so easy to discriminate against someone via Airbnb’s internet platform.”³⁴⁶ Eliminating discrimination on the platform will require lawmakers and Airbnb to enact a variety of measures. First, lawmakers must categorize unhosted Airbnb listings as public accommodations under Title II of the 1964 Civil Rights Act.³⁴⁷ Doing so will provide minority guests with powerful recourse if their requests to book available listings are denied. Local government should regularly investigate compliance using testers. This practice involves “the use of individuals who, without any bona fide intent to rent . . . pose as prospective [guests] for the purpose of gathering information.”³⁴⁸

Airbnb must also take steps to eliminate discrimination on its platform. When making a booking for a whole home rental, Airbnb should consider limiting or withholding personal information about guests and hosts, such as name and photo, until after the reservation is confirmed. Hosts and guests would still have an opportunity to access reviews, but would not be able to base their booking decisions on perceptions of race.³⁴⁹

Airbnb started this process in October 2018 when it announced that it was changing its policy regarding guest profile photos.³⁵⁰ Under the

346. Letter from the Congr. Black Caucus to Brian Chesky, *supra* note 133.

347. Like owner occupied tenancy, hosted Airbnbs fall under Title II’s Mrs. Murphy exemption. Scholar Norrinda Brown Hayat argues that rather than exposing a “‘soft spot’ in our discrimination laws where Title II may be eluded . . . Title II is applicable to the sharing economy presently and . . . the Mrs. Murphy exception is inapplicable to a large number of hosts.” Norrinda Brown Hayat, *Accommodating Bias in the Sharing Economy*, 83 BROOK. L. REV. 613, 615–16 (2018) (providing a comprehensive overview of Title II and literature on the Mrs. Murphy exception).

348. *Fair Housing Testing Program*, U.S. DEP’T JUST., <https://www.justice.gov/crt/fair-housing-testing-program-1> [<https://perma.cc/ARJ5-WE2G>].

349. Empirical research suggests that, even with retaining demographic information, the inclusion of reviews can reduce discrimination on the platform. “We find that in the absence of a review, an accommodation request made by a guest with an African American–sounding name is 19 percentage points less likely to be accepted by Airbnb hosts. However, a positive review can significantly reduce the observed racial discrimination based on a name’s perceived racial origin.” Ruomeng Cui, Jun Li & Dennis J. Zhang, *Reducing Discrimination with Reviews in the Sharing Economy: Evidence from Field Experiments on Airbnb*, MGMT. SCI. 17 (2019), available at <https://pubsonline.informs.org/doi/pdf/10.1287/mnsc.2018.3273> (last visited Nov. 11, 2019).

350. *Update on Profile Photos*, AIRBNB (Oct. 22, 2018), <https://www.press.airbnb.com/update-on-profile-photos/> [<https://perma.cc/8R9Y-Z5GV>].

updated policy, guests will not be required to provide a photo.³⁵¹ For guests that choose to upload a photo, Airbnb will not release the image to a prospective host until after the booking is accepted.³⁵² If a host cancels the reservation after receiving the photo, Airbnb states that guests will have “an easy way” to contact the company with discrimination concerns, though it does not elaborate on the process.³⁵³ This is an important step from Airbnb to eliminate discrimination on its platform. However, by only applying to guests, it does not address discrimination experienced by hosts. Further, as studies exposed, users can use other personal information, like a name, to discriminate against guests.

Withholding all identifying information while providing access to reviews would better decrease discrimination against both guests and hosts. For hosts, this would provide a mechanism to obtain parity in asking rates, thereby allowing hosts of color to enjoy the same economic benefits from Airbnb as their white counterparts. For guests, withholding information would prevent racism from affecting their opportunity to use and enjoy available accommodations.

Additionally, Airbnb should require hosts to provide a reason when rejecting a booking. The benefit of this is twofold: (1) it would force hosts to pause and think about whether they have a legitimate reason to reject a booking request; and (2) it would alert Airbnb to patterns of discriminatory behavior. Finally, in cases presenting a credible claim of discrimination, Airbnb should place a hold on the user’s account, not allowing any new reservations until an investigator looks into the claim and resolves it.

CONCLUSION

Airbnbs can provide a boon to hosts and guests. By converting a previously underutilized asset into a short-term rental accommodation, hosts gain a new income stream and increase their home equity. Guests, too, benefit from Airbnb’s platform, as the accommodations are typically more affordable than traditional hotels and provide an opportunity to “live like a local.” These gains, however, come at a cost. While individual hosts and guests may benefit economically, the local housing market experiences significant change in the form of fewer affordable housing options and erosion of neighborhood social capital. At the same time, discrimination on Airbnb’s platform means that the benefits and consequences are not evenly distributed, with economic gains accruing

351. *Id.*

352. *Id.*

353. *Id.*

disproportionately to white users. As Airbnbs continue to gain popularity, it is essential that legal strategies support their economic benefits while curtailing community harms. Adopting multi-faceted and comprehensive approaches are necessary to protect affordable housing stock, prevent hotelization of residential areas, and create meaningful opportunities to benefit from participation in the short-term rental market.

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, May 12, 2020 9:24 AM
To: RJ Lott; Lisa Grueter
Subject: FW: Short Term Rental regulations

Deanna Walter, AICP
Interim Assistant Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6515 Main office (509) 667-6225 deanna.walterCD@co.chelan.wa.us

-----Original Message-----

From: Chris Clark <imbikin@gmail.com>
Sent: Monday, May 11, 2020 8:04 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Short Term Rental regulations

External Email Warning! This email originated from outside of Chelan County.

Please consider drastic changes to restrict short term rentals in the county. The entire atmosphere in the Leavenworth area has changed dramatically since short term rentals exploded here just 5-6 years ago. Not only does this effect traffic and parking issues, already a problem in Leavenworth, but it effects the neighborhoods, the nonexistent availability of homes to rent for long term, and the explosion of prices for single family homes in the area. Please do not allow grandfathering of these illegal businesses in residential zones. Entire streets have turned into 100% short term rentals. This is not a neighborhood. I had friends who lived in such a neighborhood and they watched as one house after another was snapped up at exorbitant prices and finally they were the last ones left living on a street full of tourists. So they sold their home and moved away. Our taxes have gone through the roof keeping up with the prices that these business owners will pay for a home in what is supposed to be a resistible neighborhood.

Thank you,
Chris Clark
9281 Icicle Rd.
Leavenworth 98826

Sent from my iPad

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, May 12, 2020 10:31 AM
To: Tambra Zimmermann
Cc: RJ Lott; Lisa Grueter
Subject: RE: STR concern/comment submittal for consideration

Thank you for your comments. I'll make sure this is included within the file of record

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Tambra Zimmermann <Tambra.rmz@outlook.com>
Sent: Tuesday, May 12, 2020 10:25 AM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Cc: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Cathy Mulhall <Cathy.Mulhall@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>
Subject: STR concern/comment submittal for consideration

External Email Warning! This email originated from outside of Chelan County.

Good day,

I'd like to submit my attached letter of concern to be considered during the comment period for ensuing STR changes.

Thank you for your time and consideration,

Tambra Marson-Zimmermann

Tambra Marson-Zimmermann

Tambra.rmz@outlook.com

509-470-1199

May 11, 2020

Good day,

I've been a resident of Leavenworth since the mid 60's and a local businesses owner for several decades. I have seen accelerated changes over the last ten to fifteen years and understand the need to balance community and business, and the importance of the forthcoming changes.

After researching Chelan County's STR regulations we purchased an appropriate piece of property, in the fall of 2019. It is outside the Chelan County UGA at 8896 Canal Road, Leavenworth, WA 98826, which meets the current regulations for a STR.

We immediately began working with an architect/ engineer to design a STR. This spring we had the property cleared, the well is in and our excavator and builder are to start excavating this next week. The project is slated for completion mid to late winter 2020-2021.

A few weeks ago, we discovered the STR regulations would be changing this summer. Having already invested a sizeable sum of money and time, as well as started the first phase, we are concerned with how it will affect our project.

In restructuring the new STR regulations, we ask that you consider the implications for projects that have been started in accordance with the existing STR regulations and allow for a time frame of completion and use as designed.

It would poise a hardship to wait for a three-year moratorium before possibly being able to utilize our retirement investment. Sadly, the cost of the project does not allow for it to be fiscally sound to be rented long term, leaving us in a difficult situation.

Thank you for your time and consideration,

Tambra Marson-Zimmermann

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, May 12, 2020 10:41 AM
To: RJ Lott; Lisa Grueter
Subject: FW: Please Help Our Community

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: pat thirlby <patthirlby@gmail.com>
Sent: Tuesday, May 12, 2020 10:39 AM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Please Help Our Community

External Email Warning! This email originated from outside of Chelan County.

Dear Planning Commissioners,

Thank you for your dedication and time serving our Chelan County community. The critical time is upon you to make decisions that affect livelihoods, health, the environment, community culture and quality of life. These decisions also effect many people who do not live here, tourists and out of Chelan County owners of STRs.

As tax payers in the County for 30 years, my family has witnessed incredible growth and changes in the Leavenworth 98826 area. The unrestricted growth of STR's in Chelan County outside of Leavenworth and it's UGA, have crippling consequences for your neighborhood residents. Please look at the Berk information on density. Our residential community is dying. Please regulate and enforce laws to control this exploitation of Chelan County housing, environment and culture.

Imagine YOUR own home next to a lodge style vacation rental where strangers, week after week have large party atmospheres, profanity, amplified music, overwhelmed septic systems, cause road congestion for emergency vehicles, create fire hazards, use precious resources. This is the short list. The lack of compliance to the County's and State's COVID restrictions is illustration enough that this group of STR owners can not self regulate, further, without enforcement and consequences, they will continue to grow in number and ruin many neighborhoods.

ALL current STR's need to be registered, reviewed and reduced on paper to zero, then not exceed 5% of the housing stock. No rentals over 10 persons unless commercially zoned. A lottery should be established to favor local owners and onsite owners who have the ability to be ambassadors for our beautiful County and immediate responders to any issues present. B and B's are not a problem, many smaller rentals with local owners can coexist. The out of town owners with multiple properties have been exploiting Chelan County and we've been looking the other way. My neighborhood has been filing complaints for twenty years, we have the record.

Our declining school enrollment says it all. We are not going to have a beautiful town of caring citizens and a local workforce without your help. Please be compassionate, aggressive leaders, take the risk of not catering to the large rental owners who are exerting so much pressure on you. Please serve your neighborhood residential citizens as your first priority.

Thank you again,

Pat Thirlby

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Wednesday, May 13, 2020 8:10 AM
To: Lisa Grueter; RJ Lott
Subject: FW: [CD Planning][Possible Spam] Letter to Chelan County Planning Commission from STRACC
Attachments: Letter to CCPC.pdf

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Mike Beverick <mbbevein@gmail.com>
Sent: Tuesday, May 12, 2020 6:19 PM
To: CDPlanning <CDPlanning@CO.CHELAN.WA.US>; CD Director <CD.Director@CO.CHELAN.WA.US>
Cc: mcbeverick@gmail.com
Subject: [CD Planning][Possible Spam] Letter to Chelan County Planning Commission from STRACC

External Email Warning! This email originated from outside of Chelan County.

Please see attached.



SHORT TERM RENTAL ALLIANCE

of Chelan County

May 12, 2020

TO: Chelan County Planning Commission

FROM: Short-Term Rental Alliance of Chelan County (STRACC)

Please be advised that STRACC sent the attached letter to the Chelan County Board of Commissioners on or about May 12, 2020.

During this historic time in America, we believe legal procedures are more important than ever before. It's our assertion that the Chelan County Board of Commissioners plans to subvert your role in reviewing and approving any and all regulatory codes. It's as if the Chelan County Board of Commissioners have a predetermined outcome as it relates to STR codes. And they are using the current Covid-19 crisis to ramrod the new code through.

We would like you to weigh in on why property owners are in the same place that we were in nearly 6 months ago, but now with even stricter regulations.

Allow me to recap:

1. Last fall the Planning Commission board voted to reject proposed code to regulate STR's, and recommended that the BoCC do the same.
2. Now this spring, the BoCC has carefully orchestrated the schedule so that a brand new set of code has been prepared to be pushed through, come hell or high water.
3. It appears the Board of County Commissioners seems prepared to disregard your guidance and wisdom as they told the Planning Commission Chair there is no need for further comment, and are forcefully moving forward with more STR regulation with a plan to have it adopted by August at the latest.

We remind you that the anti-STR advocates would like something to be done about rentals that are a nuisance, and we agree. But the real solution is found in the current code of Chelan County which adequately covers the primary concerns of noise, parking, and garbage and does so while treating every property equally.

These codes will work, but in the last 15 years, we cannot find one instance of the County adequately enforcing these. You can avoid all the cost and trouble from a regulatory nightmare and the economic downside that will occur if you recommend the proposed code to the BoCC.

Please reject this new code, and ask the BoCC and the CCCD to enforce the current three codes on noise, parking and garbage, codes that apply fairly to everyone.

Mike Beverick
Chairman
Short-Term Rental Alliance of Chelan County
17357 North Shore Dr., Leavenworth, WA 98826
mcbeverick@gmail.com

Attached Letter to Board of Chelan County Commissioners

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, May 12, 2020 1:37 PM
To: Lisa Grueter; RJ Lott
Subject: FW: STR's
Attachments: strs Density.docx

Categories: Yellow

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Richard Thirlby <thirlbyrc@gmail.com>
Sent: Tuesday, May 12, 2020 11:19 AM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Fwd: STR's

External Email Warning! This email originated from outside of Chelan County.

----- Forwarded message -----

From: Richard Thirlby <thirlbyrc@gmail.com>
Date: Mon, May 11, 2020 at 5:22 PM
Subject: STR's
To: <cdplanning@co.chelan.wa.us>

see attached.

Dear Planning Commissioners: below are 6 elements of the STR regulations that I feel cannot be ignored. A myriad of other aspects (e.g. affordable housing, community, quality of life) are well discussed by others with concerns with the state of STR's in Chelan County. Thank you for your attention.

Density: as a resident of Chelan County just south of the Leavenworth city limit, it is alarming to find out that there are in excess of 800 STR's in the Leavenworth zip code. The negative impact of this density situation is profound and will not be addressed without aggressive changes, limitations and/or elimination of STR's in these high density geographic areas.

Grandfathering: Clearly, there will need to be reduction in the number and density of STR's. The status quo is unacceptable for the myriad of reasons outlined by RUN. Furthermore, how can one permit "grandfathering" of a business that is illegal and that has never registered with the county?

Safety and Liability for the County: does the County allow Hotels/Motels to operate if they do not pay business taxes, registration fees and/or comply with building codes addressing fire safety, carbon monoxide safety, septic mandates etc? The answer to these questions is "no." There are very concerning liability issues with the status quo.

Addressing acute issues at properties: the many issues occurring with day-to-day operation of STR's are not being addressed within the context of these businesses being owned and operated by off-site individuals. The industry standard mandates on-site interactions with the owner or manager within 30 minutes of a complaint or operational issue (e.g. septic overflow, noise).

Residential vs. Commercial Zoning: most STR's in Chelan County are operating in locations that are zoned residential. There are many issues and consequences resulting from this fact. However, two extremely important ones deserve mention. First, by definition, STR's are businesses and thus must operate in areas of Chelan County that are zoned commercial. Second. It is deceitful and illegal for STR's to operate in residential zones.

Richard C. Thirlby MD, FACS

Dear Planning Commissioners: below are 6 elements of the STR regulations that I feel cannot be ignored. A myriad of other aspects (e.g. affordable housing, community, quality of life) are well discussed by others with concerns with the state of STR's in Chelan County. Thank you for your attention.

Density: as a resident of Chelan County just south of the Leavenworth city limit, it is alarming to find out that there are in excess of 800 STR's in the Leavenworth zip code. The negative impact of this density situation is profound and will not be addressed without aggressive changes, limitations and/or elimination of STR's in these high density geographic areas.

Grandfathering: Clearly, there will need to be reduction in the number and density of STR's. The status quo is unacceptable for the myriad of reasons outlined by RUN. Furthermore, how can one permit "grandfathering" of a business that is illegal and that has never registered with the county?

Safety and Liability for the County: does the County allow Hotels/Motels to operate if they do not pay business taxes, registration fees and/or comply with building codes addressing fire safety, carbon monoxide safety, septic mandates etc? The answer to these questions is "no." There are very concerning liability issues with the status quo.

Addressing acute issues at properties: the many issues occurring with day-to-day operation of STR's are not being addressed within the context of these businesses being owned and operated by off-site individuals. The industry standard mandates on-site interactions with the owner or manager within 30 minutes of a complaint or operational issue (e.g. septic overflow, noise).

Residential vs. Commercial Zoning: most STR's in Chelan County are operating in locations that are zoned residential. There are many issues and consequences resulting from this fact. However, two extremely important ones deserve mention. First, by definition, STR's are businesses and thus must operate in areas of Chelan County that are zoned commercial. Second. It is deceitful and illegal for STR's to operate in residential zones.

Richard C. Thirlby MD, FACS

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Wednesday, May 13, 2020 1:05 PM
To: Lisa Grueter
Subject: FW: Comment on proposed STR Draft Code

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Jim Brown
Sent: Wednesday, May 13, 2020 10:45 AM
To: RJ Lott <RJ.Lott@CO.CHELAN.WA.US>; CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: FW: Comment on proposed STR Draft Code

Jim Brown

Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6228 Main office (509) 667-6225

Jim.Brown@co.chelan.wa.us



NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account may be a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

From: Bob Bugert
Sent: Wednesday, May 13, 2020 10:32 AM
To: Lauren Johnson <lj2341@gmail.com>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>
Cc: Jim Brown <Jim.Brown@CO.CHELAN.WA.US>
Subject: RE: Comment on proposed STR Draft Code

Lauren—

Thank you for your email. Your comments will be included in the record, and in our deliberations.

Best regards,

Bob Bugert

Chelan County Commissioner, District 2

Office: 509-667-6215

Mobile: 509-630-4480

From: Lauren Johnson <lj2341@gmail.com>

Sent: Wednesday, May 13, 2020 10:28 AM

To: Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>

Subject: Comment on proposed STR Draft Code

External Email Warning! This email originated from outside of Chelan County.

Dear Commissioners,

I encourage the Commission to proceed with adoption of Short Term Rental code without delay, making changes in order to strictly limit density and occupancy numbers.

Here are the changes I seek to the draft code:

1. Do not grandfather existing STR's for an unlimited time. A density limit must include a mechanism to sunset or significantly reduce the number of STR's in over-saturated areas such as 98826 zip code, where the density already exceeds 5% of houses.
2. I support the overlay district for 98826. The cap on density should be 5% of the single family housing stock in the area.
3. If existing STRs are initially permitted for a provisional period, all must be told that after 3 years, if the density is over 5%, a lottery will be held to determine which owners will receive annual permits.
4. STRs with owners living permanently on site should be given priority in the permitting if there is excess demand (more than 5%).
5. Include children in the occupancy limit of 10 people. Children have impacts on septic systems and water use, as well as contribute to noise.
6. WIsupport the non-transferability of permits when the property is sold and this must extend also to LLCs.

Thank you for the opportunity to comment.

Lauren Johnson

7785 East Leavenworth Rd, Leavenworth WA

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Wednesday, May 13, 2020 4:47 PM
To: RJ Lott; Lisa Grueter
Subject: FW: [Kirsten Larsen] Draft Short Term Rental Comments

Deanna Walter, AICP

Interim Assistant Director

Chelan County Community Development

316 Washington Street, Suite 301

Wenatchee, WA 98801

Phone: Direct (509) 667-6515 Main office (509) 667-6225

deanna.walterCD@co.chelan.wa.us



From: Angela Russell <ateam0340@gmail.com>
Sent: Wednesday, May 13, 2020 3:08 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: [Kirsten Larsen] Draft Short Term Rental Comments

External Email Warning! This email originated from outside of Chelan County.

May 13, 2020

Dear Ms Larsen,

Comments to the County RE: Short-Term Rental Standards

I was pleased to read the draft proposal that will be discussed at tonight's special commissioner's meeting. As a resident of Eagle Creek outside of Leavenworth, I know first hand about some of the issues surrounding the Short Term Rental arguments. I am thrilled that a three year moratorium is being proposed for the Leavenworth and Manson areas. I would like to off a suggestion as to the 1% per year increase for the other areas and for potentially the Leavenworth/Manson areas if the ratio of STRs to total dwellings drops below the cut off. My suggestion is that there is a cap for all areas on that ratio. Otherwise, if we allow the percent of STRs to increase by 1% each year, the compounding affect would have an overall increase of STRs of 17% by year 8.

Section 2 (A) Number. The annual number of new short-term rental land use permits issued must be capped to one percent (1%) of the total number of permitted short-term rentals in the county as determined through land use permit procedures in subsection (4) below.

I suggest that Manson and Leavenworth must have their ratio of STR to dwellings must drop to below 5% before any new STRs are permitted.

I suggest that all STRs, new and existing, have the number of guests restricted by septic design. Allowing for 2 adults per bedroom, which is how septic systems are designed. Then there wouldn't be a need to set 10 as the maximum number, if a house had a septic system designed for more than 5 bedrooms.

I like the idea of the three strikes. I understand the concern that it could lead to neighbors using the strikes to settle other disputes; but as it is, we haven't yet called the sheriff when the STR across the creek is loud, because in my opinion, having a deputy drive all the way out to our neighbor's house to ask a group to quiet down, is not a good use of county resources. But, if there was a way to issue complaints that didn't have to involve the sheriff department, I would use it. Or, like I read, if the neighbors were given the phone number of the representative who is within 30 minutes, I would call that person and let them deal with it. But, there needs to be the three strikes option, or it will become an ongoing cycle of noise/phone call/repeat. My suggestion here, is to add in on section E from the 3 strikes, "If three similar offenses occur (or five total offences) at any time during a twelve-month period, the penalty shall be revocation in addition to any required civil penalties under 16.20.030."

Most sincerely,

Angela Russell and Alec Gibbons
188 Winery Ln
Leavenworth, WA
ateam0340@gmail.com

Sent from [Mail](#) for Windows 10

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Monday, May 18, 2020 8:22 AM
To: Lisa Grueter; RJ Lott
Subject: FW: [Kirsten Larsen] Comments on Chelan County Short Term Rental Draft Code Considerations

Deanna Walter, AICP
Interim Assistant Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6515 Main office (509) 667-6225 deanna.walterCD@co.chelan.wa.us

-----Original Message-----

From: MARK JUDY <judytribe@msn.com>
Sent: Thursday, May 14, 2020 6:23 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Cc: MARK JUDY <judytribe@msn.com>
Subject: [Kirsten Larsen] Comments on Chelan County Short Term Rental Draft Code Considerations

External Email Warning! This email originated from outside of Chelan County.

Dear Kirsten,

Thank you for the opportunity to comment on the Draft of the Chelan County Short Term Rental (STR) Code proposals.

1. Regarding the method to provide assurance that STR owner's comply with all applicable local and state taxes. We file quarterly returns with the WA State Department of Revenue; however, the taxes are actually paid by the guests directly to, and collected by VRBO and AirBnB. VRBO and AirBnB then pay these taxes directly to Department of Revenue. This may create a difficulty in functionally report compliance by the STR owner.
2. How will verification actually occur for an existing STR owner to establish pre-existing STR status during the initial licensure process? What criteria will be required to establish an STR owner as a pre-existing STR owner?"
3. What happens to existing current reservations, and the marketing for future reservations, on the date this code is adopted?
4. (4) Land Use Permits(A): What happens to existing current reservations and the marketing for future reservations that may transverse each of the anniversary dates that the Annual Permit expires? Guest reservations are often made 6-9 months in advance of stay. Can a STR owner maintain Marketing and reservations into the following year, even if the STR Annual Permit expires 12/31 of each year?

Thank you for consideration of these pragmatic STR "transitional" questions with this potential pending change.

Thanks, Mark & Terri Judy (509-885-4176)

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Monday, May 18, 2020 10:04 AM
To: Lisa Grueter
Subject: FW: comments with regard to town hall meeting on Thurs.

Deanna Walter, AICP

Interim Assistant Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6515 Main office (509) 667-6225
deanna.walterCD@co.chelan.wa.us



From: Jim Brown
Sent: Monday, May 18, 2020 9:42 AM
To: RJ Lott <RJ.Lott@CO.CHELAN.WA.US>; CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: FW: comments with regard to town hall meeting on Thurs.

Jim Brown

Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6228 Main office (509) 667-6225
Jim.Brown@co.chelan.wa.us



NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account may be a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

From: Bob Bugert
Sent: Monday, May 18, 2020 8:37 AM
To: Bywater-Johnsons <bnsf@nwi.net>
Cc: Jim Brown <Jim.Brown@CO.CHELAN.WA.US>
Subject: RE: comments with regard to town hall meeting on Thurs.

Nancy—

Thank you for your email. We will include your comments in the record, and in our deliberations. I hope you and family are well.

Bob Bugert
Chelan County Commissioner, District 2
Office: 509-667-6215
Mobile: 509-630-4480

From: Bywater-Johnsons <bnsf@nwi.net>
Sent: Saturday, May 16, 2020 8:34 AM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
Subject: comments with regard to town hall meeting on Thurs.

External Email Warning! This email originated from outside of Chelan County.

Morning Bob,

I was unable to participate in your town hall meeting the other day due to work. I would like to make a few comments however to go on record for that meeting.

1. I am 100% in support of the county proceeding with regulations to manage STR. I think what the county has posted as a proposal is a fair way to proceed. I would also add that the recommendations as posted by the Friends of Leavenworth group are worthy of considering.

- Children under 6 be counted in the overall limit
- provide a mechanism to decrease the over saturation of STR in area codes with high density
- prioritize a STR where there is a person living on premises (this does allow some locals to afford housing and it is typically much smaller, and mellower groups)
- Add a cap on the density that is allowed per area.

Good planning in this area is an excellent way for the county to ensure that it is able to collect taxes on these commercial ventures, maintain a high quality of local neighborhood life, and ensure that owners of the STR are responsible and proceed as good neighbors.

I also notice that there is no mention in the guidelines to type of well, etc. I know in our area, many adjacent lots are on a class B well, and these are not intended for commercial use. They are intended for single family homes. To date, this has not been enforced when a single family home is utilized as a STR. I would suggest some type of verbage including type of well system/septic.

2. On another note, in our canyon (Steven's Canyon), there is a proposed cluster development. Many of us have commented to the county regarding this application and variance from the current RR10 zoning. I have personally read through the assessments on the area and have found deficiencies. In addition to that, there is no current requirement for a hydrology study to see if the canyons aquifer, which we all draw off of can sustain further increases in density. The water issue here stands as a central issue not only for all current residences down canyon, but also when we enter into fire season. It is my opinion that without requirements for assessing the overall water availability not just for today, but modeling into the future, the county is potentially putting many residents at risk of having water shortages, and also increasing fire danger.

I am not opposed to any growth, I realize that there is always tension between growth and maintaining the quality of life we all enjoy in this valley. I am strongly in support of smart, sustainable growth with an eye to what we would like our county to look like in the future.

Thank you for your efforts as Chelan County commissioner.

Sincerely,

Nancy Bywater