Chelan County Short-Term Rentals Code Review

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To support the Planning Commission's May 13, 2020 study session, this document addresses:

- Planning Commission Schedule – Short-Term Rentals
- Summary of Public Comments – March 28 to May 7, 2020
- Summary of Planning Commission Discussion – April 22, 2020
- Added Code Research and Options

PLANNING COMMISSION SCHEDULE – SHORT-TERM RENTALS

The Community Development Department and Planning Commission chair attended the Board of County Commissioners on April 28, 2020 meeting. Two options for a revised Short-Term Rental Code schedule were presented to allow for a little more time for Planning Commission review than the original schedule. The Board prefers to end by their original completion date of July 21, 2020 with a maximum completion date of August 4, 2020.

Therefore, the scheduled dates for Planning Commission activities include the following:

- Planning Commission Study Session: April 22 (completed)
- Planning Commission Study Session: May 13
- Planning Commission Hearing: June 3
- Planning Commission Deliberation: June 17

See Attachment A for details of schedule options presented to the Board.

SUMMARY OF PUBLIC COMMENTS – MARCH 28 TO APRIL 30, 2020

Approximately 29 emails and letters were received between March 28 to May 7, 2020 with varying opinions on the County's potential regulation of short-term rentals. A chart summarizes the comments and full texts follow. See Attachment B.

Themes were similar to those identified in the March 30, 2020 *Chelan County Short-Term Rental Situation Assessment & Options*.

Public comment topics included whether to:

- Recognize or to sunset existing short-term rentals.

- Address short-term rentals in commercial areas only and restricting them from residential zones in Peshastin UGA; and cleanup residential and tourism use definitions.
- Tie the overlay in Leavenworth area to zip code boundaries, or whether some zones should be exempt from 1% cap, e.g. Rural Recreational/Residential (RRR) zone.
- Continue with proposal for guest occupancy limits of 10 per the draft code or to allow larger short-term rentals perhaps with greater review.
- Require annual registration and fees, and how to scale them to different sizes of units.

Some commenters were concerned about the public review process during the COVID-19 pandemic. The County will provide public notices of meeting opportunities (see schedule above). Comments have been and continue to be collected for the Planning Commission to consider. Planning Commission hearings provide opportunities to comment orally or in writing.

SUMMARY OF PLANNING COMMISSION DISCUSSION – APRIL 22, 2020

On April 22, 2020, the Planning Commission discussed the first draft code in the April 10, 2020 packet. Some topics included:

- **Enforcement:** What would be the annual cost of enforcement? Can Sheriff citations cover costs? Citation based enforcement, is there enough manpower? Can there be a surcharge to allow hiring of code enforcement officers to avoid affecting Sheriff Department?
- **Permit Review:** Rather than first-come, first-served for new short-term rentals under the 1% cap, consider a lottery. Consider a tiered permit for owner-occupied units versus non-owner occupied units.
- **Larger Lodges:** Can there be a category for a larger unit with more review?
- **Emergency Response:** Consider requiring a land line for emergency responses.

One Commissioner Carl Blum provided a set of specific questions on the code in writing, and the questions were inadvertently detached from the original email. These are included in Attachment B, page 125 (PDF page 131). A response to the questions is included in Attachment C.

The Planning Commission was interested in another study session on May 13, 2020 to ask questions and shape the draft code before having a public hearing.

ADDED CODE RESEARCH AND OPTIONS

Based on the public comment and Planning Commission discussion in late April, additional code research and options are included in this paper. Covered topics include:

- Existing short-term rentals and Grandfathering or Sunseting Options
- Overlay Boundary, Exceptions to 1% Cap, Tiered Permitting
- Guest Occupancy
- Registration and Fees
- Definitions

For some topics, additional evaluation follows the chart.

Exhibit 1. Short-Term Rental Code Comments and Options

Topic	Range of Comments	Options for Short-Term Rentals (STRs)
Existing short-term rentals and Grandfathering or Sunseting Options	▪ Allow in Manson UGA. Allow owner-occupied STRs elsewhere. ▪ In impacted areas with more than 5% STRs do not recognize all existing ones. Prioritize owner-occupied STRs. Amortize or sunset others. ▪ None should continue in Residential zones in Peshastin UGA.	▪ Countywide: County could develop criteria. For example: similar uses being allowed in current zones, history of payment of applicable sales and hotel/motel taxes, not in violation of other codes, and others. See examples under Grandfathering or Sunseting Options below. ▪ Peshastin: Options for regulations could include prohibiting existing STRs with sunset clause, and restricting new ones in Residential zones and only allowing STRs in Commercial zones.
Overlay Boundary, Exceptions to 1% Cap, Tiered Permitting	▪ Is Zip Code best geographic unit to limit STRs in Leavenworth area? ▪ Allow STRs in RRR zone since intent is for recreation residential. Do not apply 1% cap. ▪ Should permitting be simpler for some unit types?	▪ Boundary for limitations on STRs in Leavenworth Area: The April 10th packet illustrated Zip Code, Census Tract, or Sub-basin boundary options. Zip Code is most helpful for the permit process. Sub-basin is most flexible to set boundaries but less useful for data or permit tracking. ▪ Exceptions to 1% cap could be considered for developments expressly used as second homes/recreation homes (see City of Chelan - the Lookout; see Bend, OR approach). ▪ See the Tiered Approaches below.
Guest Occupancy	▪ Allow up to 10 persons. ▪ Allow more than 10 persons based on size of home (square feet per person) or distance from other homes in area. Could allow increase on a case-by-case basis.	▪ A 10-person occupancy is a common standard in example regulations around state. See the March 30th Situation Assessment. ▪ Another option would be to allow larger STRs subject to a conditional use permit (e.g. Spokane). ▪ See Guest Occupancy approaches below.
Registration and Fees	▪ Register on an annual basis. ▪ Fee structure should be sliding based on the number of lodging units, or whether owner occupied or non-owner occupied. ▪ Keep fees low; STRs add to local economy.	▪ Permit fees would be based on cost of review and inspections. Annual renewal will cost less and involve self-certification. ▪ The County could consider a tiered permit with simpler standards/lower fees for owner-occupied versus non-owner occupied units or versus those used for weddings, etc. ▪ See Permit Costs below too.

Topic	Range of Comments	Options for Short-Term Rentals (STRs)
Definitions	▪ Peshastin UGA: Delete Boarding/Lodging House; add Lodging Facilities to Hotels/Motels. ▪ Consider changing "bed and breakfast"[1] to match the International Residential Code definition of Lodging House – a one-family dwelling where one or more occupants are primarily permanent in nature, and rent is paid for guestrooms. (Building Official suggestion)	▪ The County could make the requested changes to terms in the Peshastin UGA. Or definitions can be changed to address STRs. For example, City of Chelan has a definition of "boarding home/house" transient and non-transient. ▪ The IRC definition of lodging house is workable but would eliminate the distinction of 3 lodging units that is a difference with a Guest Inn that has 4-6 rooms.

Tiered Approaches – Owner Occupancy

The County could vary the allowances for short-term rentals based on whether the owner lives in the home as a permanent residence or whether there are larger group gathering (e.g. weddings). Or the 1% cap could exempt owner-occupied units or prioritize them. Example codes are summarized below.

Exhibit 2. Tiered Permit Approaches – Varying Owner Occupancy or Commercial Uses

Bend, OR	Spokane, WA	Walla Walla, WA
▪ Exempt: Resort zones. ▪ Type I: Admin., No Comment Period. Owner occupied STR or infrequent use <30 days in 4 periods. ▪ Type II: Admin., Notice with Comment Period, Whole House, concentration limits. ▪ Type III: Notice + Hearing: Group property designation.	▪ Type A occurs in a home (room or whole) with no commercial meetings. ▪ Type B where the short-term rental involves commercial meetings, such as weddings, banquets, fund-raisers, etc. Requires Conditional Use Permit.	▪ Short-term rental Type 1 means short-term rental at a dwelling that is the owner's principal residence and where either (1) rooms are rented and the owner is personally present at the dwelling during the rental period, or (2) the entire dwelling is rented no more than 90 total days in a calendar year. Existing and new ones allowed. ▪ Short-term rental Type 2 means short-term rental at a dwelling that is not the owner's principal residence. Existing ones allowed.

There is no reliable data in hand that indicates how many units are the primary residence of an owner. County Assessor data can be queried but not all permanent residents provide their mailing address as their situs address. Some may have accountants receive their tax notices, etc. The County records are for

[1] CCC 14.98.265 Bed and breakfast. "Bed and breakfast" means a facility in which one kitchen, a shared dining area, and not more than a total of three lodging units are available within a single-family residence providing short-term lodging for paying guests.

tax purposes, not identifying where their primary residence is.

AirDNA data identifies whole house rentals versus a private room. Private rooms tend to be rented out for fewer days (94 days on average) than whole house rentals (about 135 days). A whole house rental may still be a primary residence, just rented out in its entirely for some period of time.

Exhibit 3. Entire home/apt – AirDNA January 2020 – Unincorporated County by Zip Code

Zip Code	Count of Property ID	Average of Bedrooms	Average of Number of Bookings LTM	Average of Count Available Days LTM	Average of Occupancy Rate LTM
Cashmere	28	2.0	42	91	52%
Chelan	97	3.2	25	120	44%
Entiat	4	1.0	21	110	43%
Leavenworth	749	2.7	46	144	48%
Malaga	5	1.8	50	130	57%
Manson*	281	3.3	27	122	46%
Peshastin	53	2.8	39	139	42%
Wenatchee	30	2.6	29	97	55%
Grand Total	1,247	2.8	39	135	47%

Acronym – LTM = last 12 months
**Includes about 83 short-term rentals on tribal land.*
Sources: AirDNA February 2020; BERK 2020

Exhibit 4. Private Room – AirDNA January 2020 – Unincorporated County by Zip Code

Zip Code	Count of Property ID	Average of Bedrooms	Average of Number of Bookings LTM	Average of Count Available Days LTM	Average of Occupancy Rate LTM
Cashmere	**11**	**0.8**	**62**	**123**	**57%**
Chelan	**3**	**0.7**	**30**	**32**	**65%**
Leavenworth	**55**	**1.1**	**39**	**87**	**65%**
Manson*	**7**	**1.9**	**21**	**70**	**69%**
Peshastin	**3**	**1.0**	**36**	**116**	**50%**
Wenatchee	**13**	**1.5**	**37**	**121**	**57%**
Grand Total	92	1.1	40	94	63%

Acronym – LTM = last 12 months
**Includes about 83 short-term rentals on tribal land.*
Sources: AirDNA February 2020; BERK 2020

It appears possible to obtain voter registration data[2] to review whether a voter includes a local address as a primary residence, and it may be possible to obtain the area for a subarea. However, we are not able to cross-reference it to the AirDNA data where we have information in latitude/longitude and it is spatially located to protect privacy. However, voter registration information could be checked as a source of confirmation during permit review or code enforcement if the County wishes to regulate owner-occupied units differently than non-owner occupied units.

It is possible to review overall levels of permanent resident occupancies in primary dwellings. The State Office of Financial Management tracks occupied units and total units. Reviewing overall shares of occupied units, there has been little change from 2010 to 2019 in county Zip Codes; see Exhibit 5. There has been more change from 2000 to 2019 in Leavenworth and Manson Zip Codes with lower percentages of owner-occupied units. The trend to have short-term rental is more recent than back to the year 2000. It is possible that this information reflects that second homes have become short-term rentals more than primary homes becoming short-term rentals.

Exhibit 5. Occupied Housing Units as a percentage of Total Housing Units

Zip Code Name	Zip Code	2000	2010	2015	2019
Cashmere	98815	93%	92%	90%	89%
Chelan	98816	60%	54%	54%	55%
Entiat	98822	80%	75%	75%	74%
Leavenworth	98826	62%	51%	51%	52%
Malaga	98828	92%	91%	89%	88%
Manson	98831	71%	63%	63%	63%
Peshastin	98847	88%	82%	81%	80%
Wenatchee	98801	93%	94%	93%	93%

Source: State OFM Small Area Estimates, 2019; BERK 2020

Grandfathering or Sunseting Options

Since short-term rentals are a relatively new type of use of a residence, not all counties or cities consistently regulated them in the past. When new regulations are put in place, existing units could be grandfathered if it is determined they were legally operating at the time of the new code. Some communities will provide criteria by which a unit can establish itself as a legal use. Others will allow for a sunset or amortization period to allow the use to wind down.

[2] See http://www.soundpolitics.com/voterlookup.html, which uses information from the Washington State Voter Registration Database that can be ordered on a statewide basis.

The City of Walla Walla provides criteria to establish that a type 2 short-term rental (short-term rental that is not a primary residence) is non-conforming and can continue:

> *A. Short-term rental type 2 is not a permitted use in the city of Walla Walla.*
> *B. Only those type 2 short-term rentals that were lawfully established and existing as of November 9, 2017, will be allowed as nonconforming uses. Such uses may not be significantly changed, altered, extended, or enlarged and must cease as provided herein. A use shall not be considered lawfully established and existing unless the owner proves all of the following:*
> *1. That a location was used for short-term rental use during 2017 prior to November 9th;*
> *2. That the use was continuing as of November 9, 2017, and not merely intermittent or occasional;*
> *3. That the owner registered the short-term rental use and obtained a business registration card from the city of Walla Walla in accordance with Chapter 20.142 before November 9, 2017; and*
> *4. That all applicable taxes were fully and timely paid for all short-term rental use that occurred prior to November 9, 2017.*

Ventura County, CA allowed units that could not conform to the criteria to be considered non-conforming. For short-term rentals that do not fully meet standards, the short-term rental must obtain a permit and may only operate for two years.

> *Sec. 8109-4.6.12- Legal Nonconforming Short-Term Rentals and Homeshares*
> *This Sec. 8109-4.6.12 governs the continuation of legal nonconforming short-term rentals and homeshares, as defined below. Article 13 shall not apply to this Section.*
> *a. For purposes of this Section, a legal nonconforming short-term rental or homeshare is one that meets each of the following requirements:*
> *(1) A dwelling that was operating and rented as a short-term rental or home share as of the effective date of this Section, and has continued to operate as such to the present; and*
> *(2) The short-term rental or homeshare does not conform to the permit eligibility requirements of any or all of the following: (i) Sec. 8109-4.6.5.l(b), or (ii) Sec. 8109-4.6.5.2, subdivisions (a), (c), (d), or (e), or (iii) Sec. 8109-4.6.5.3.*
> *b. Except as specified in this Sec. 8109-4.6.12, a legal nonconforming short-term rental or homeshare shall be subject to and comply with all standards and requirements of this Section that apply generally to short-term rentals and homeshares.*
> *c. Applicants seeking a permit to operate a legal nonconforming short-term rental or homeshare shall comply with all general permitting requirements of this Section except for the permit eligibility requirements identified in Sec. 8109-4.6.12(a)(2) with which the owner or dwelling does not conform. As part of the permitting process, applicants shall:*
> *(a) submit documentation as specified by the Planning Director or designee establishing that the dwelling qualifies for legal nonconforming status pursuant to this Sec. 81 09-4.6.12; and*
> *(b) state all permit eligibility requirements identified in Sec. 8109-4.6.12(a)(2) with which the short-term rental or homeshare does not conform.*

d. A legal nonconforming short-term rental or homeshare shall be permitted to operate for a maximum of two years from the effective date of this Section, or until the sale or transfer of the property in whole or part, or until the permit is revoked for cause or is not renewed, whichever occurs first ("Grace Period").
e. After expiration or revocation of the permit authorizing a legal nonconforming short-term rental or homeshare, no person who seeks or receives any rent, payment, fee, commission, or compensation in any form from the subject legal nonconforming homeshare or short-term rental shall rent, offer for rent, advertise for rent, or facilitate the rental of the subject legal nonconforming homeshare or short-term rental.

Guest Occupancy

To avoid noise, parking issues, and other nuisance concerns, jurisdictions often limit occupancy. Per the March 30, 2020 Situation Assessment provided to the Planning Commission for the April 22, 2020 meeting, there are a variety of ways that counties and cities regulate occupancy. Some relate to bedrooms (examples San Juan County; and Bend and Cannon Beach, OR) and some relate to an overall number (e.g. max 10, Okanogan County). And some have a number per bedroom with an overall cap (e.g. 2 per bedroom up to 10 guests; Pierce County).

The occupancy limit of 10 is similar to example communities in the situation assessment. Some commenters provided example codes for other communities allowing for greater occupancy.

The City of Chelan indicates that a short-term rental of more than 10 tenants must meet standards per the building official, and be greater than 2000 square feet to comply with the International Residential Code.

The County could have a tiered permit option with a Conditional Use Permit required to allow more than 10 occupants. This is a discretionary permit and requires greater scrutiny including a hearing before the Hearing Examiner.

Permit Costs

Currently, vacation (short-term) rentals in Manson require a land use permit fee of $500. This accounts for Community Development Department and other departmental review time.

The initial permit fee contemplated in the draft code should cover:

Community Development Department fees would primarily involve staff review and permit decision: $75/hour, with a likely time commitment of review and coordination of 3 to 4 hours, or $225 to $300. Building official review could include a similar hourly charge of $75 with a building site visit of $55 (if not involving construction).

Fire Marshall Inspections range in cost from $25 to $100 depending on size of home and a land use review is $20.

Health District fees vary with common fees including:

- Land Use Review (per hour) $91
- Record Report, water, per hour: $91
- OSS Reinspection $156

Altogether, the fees could range from $550 to $900 depending on the size of the short-term rental and time for health department and fire inspection.

Exhibit 6. Fee Range for Initial Short-Term Rental Permits – 2020

Activity	Low	High
Planner Review (3-4 hours)	$225	$300
Building Official Review/Visit	$130	$130
Fire Marshall Visit and Land Use Application Review	$45	$100
Health Department Reviews/Inspections (to be confirmed)	$156	$338
Total	**$556**	**$868**

Source: Chelan County Code, Chelan County Fire Marshall, Chelan-Douglas Health District, BERK 2020

Inspections would not be needed for annual renewals. Only planner review time would be needed. Given self-certification, the process should be simple and could require as little as 2 hours or $150.

Enforcement

This topic is still pending a discussion with the County Sheriff and County Prosecuting Attorney. We hope to have information available for the May 13, 2020 study session.

ATTACHMENTS

- Attachment A: Schedule Options
- Attachment B: Comment Matrix and Letters
- Attachment C: Planning Commissioner Individual Comments 4/21 and Responses 5/7

Revised Schedule: Chelan County Short-Term Rentals Regulations

As part of Task 3 a schedule will be developed and maintained. Following is an approximate 6-month schedule. Dates are dependent on prior steps.

Step	Approximate Start Date	Approximate End Date	Hearing Notice Published Approx.	Activity
1	2/25/2020	2/25/2020		Contract Authorization
2	2/26/2020	3/11/2020		Preliminary Draft Situation Assessment
3	3/11/2020	3/20/2020		Staff/PAO Review
4	3/20/2020	3/26/2020		Revisions
5	3/31/2020	3/31/2020		BOCC Work Session
6	4/1/2020	4/6/2020		Regulation Writing and Outreach Materials
7	4/6/2020	4/10/2020		Staff/PAO Review
8	4/10/2020	4/17/2020		Revisions/Public Draft
9	4/24/2020	4/24/2020		Planning Commission Study Session
10	5/13/2020	5/13/2020		Planning Commission Study Session (Special)
11A	6/3/2020	6/3/2020	5/22	Planning Commission Hearing Option 1 (Special)
11B	6/10/2020	6/10/2020	5/29	Planning Commission Hearing Option 2 (Special)
12A	6/17/2020	6/17/2020		Planning Commission Deliberation Option 1 (Special)
12B	6/24/2020	6/24/2020		Planning Commission Deliberation Option 2
13A	6/30/2020	6/30/2020		BOCC Work Session Option 1 (if 12A)
13B	7/7/2020	7/7/2020		BOCC Work Session Option 2 (if 12B)
14A	7/14/2020	7/14/2020	7/3	BOCC Hearing Option 1 (if 13A)
14B	7/21/2020	7/21/2020	7/10	BOCC Hearing Option 2 (if 13B) – or deliberation and decision if ready
15A	8/4/2020	8/4/2020		BOCC Deliberation and Decision

- ***Process of Review:*** *See Chapter 14.13 Development Regulation Text Amendments*
- ***Public Hearing Notice:*** *Consider 14.08.060 Notice of public hearing. Also: 14.14.090 Staff reports and 14.14.120 Public participation program. Some of these pertain to Comprehensive Plan Amendments or Development Applications. However, all appear to require a minimum 10-days' notice before a public hearing.*

Draft **Chelan County Short-Term Rental Code: Comments Received March 28 to May 7, 2020** *Prepared by Lisa Grueter, BERK , 5/4/20*

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 4/10 first 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 4/10 first 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 4/10 draft 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. 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. 4/10 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 first draft code 4/10.
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 7, 2020** *Prepared by Lisa Grueter, BERK , 5/4/20*

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. Per 4/10 first draft code additional proposals will be developed for definitions 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 4/10 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 7, 2020** *Prepared by Lisa Grueter, BERK , 5/4/20*

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. In the 4/10 draft large STRs would not be allowed. Options for occupancy will be discussed. Some other options are 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 cancelation)	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.

Draft **Chelan County Short-Term Rental Code: Comments Received March 28 to May 7, 2020** *Prepared by Lisa Grueter, BERK , 5/4/20*

Received	Last Name	First Name	Contact	Other Associated Names	Subject Line	Summary of Comments	Potential Options and Responses
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. 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.
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. 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 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.

Draft **Chelan County Short-Term Rental Code: Comments Received March 28 to May 7, 2020** *Prepared by Lisa Grueter, BERK , 5/4/20*

Received	Last Name	First Name	Contact	Other Associated Names	Subject Line	Summary of Comments	Potential Options and Responses
4/30/2020	Rossing	Barbara	brossing@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. Sunsetting 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 5/13.

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Monday, March 30, 2020 7:52 AM
To: Lisa Grueter
Subject: FW: Short Term Vacation Rentals
Attachments: Proposed Elements for a Vacation Rental Ordinance v8 3.27.2020.pdf

This was received this weekend.

Kirsten Larsen, AICP
Planning Manager
Community Development Department

316 Washington Street, Suite 301
Wenatchee, WA 98807
Phone: (509) 667-6225 | Fax: (509) 667-6475
Kirsten.Larsen@co.chelan.wa.us

The Department of Community Development would appreciate your feedback. Please take a moment to complete our Public Experience Survey:
CLICK HERE TO TAKE THE SURVEY!

From: kirvil@comcast.net <kirvil@comcast.net>
Sent: Saturday, March 28, 2020 9:14 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>
Cc: Deanna Walter <Deanna.Walter@CO.CHELAN.WA.US>; Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: Short Term Vacation Rentals

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

Dear Commissioners:

We have been participating in the various public meetings and discussions related to regulation of short term vacation rentals for over two years. We were very disappointed when the October 2019 draft ordinance was shelved as we felt it was a good starting point.

We have reviewed the informal draft documents being circulated by Dan Beardslee and Commissioner Bugert (dated March 10, 2020). We believe they fail to address critical aspects of the problems vacation rentals are causing in the unincorporated areas of the county—specifically limits on the number of guests, size of houses, and density of vacation rentals allowed in the Leavenworth, Plain, Lake

Wenatchee and Manson areas.

We would remind the Commissioners that the starting point for regulation is the fact that the existing County zoning code does not allow short term rentals of entire houses in residential neighborhoods without an owner also living on site.

We would also point out that the Comprehensive Plan must provide the policy guidance for development of an ordinance that would allow vacation rentals in residential zones.

Goal H 1: Encourage the availability of affordable housing to all economic segments of the population of the county.

In the highly impacted areas of the county, conversion of homes to transient housing is decimating the supply of long term rentals and driving up the cost of single family homes. Any draft ordinance must limit the number of single family homes allowed to be converted to short term transient use.

Policy H 2.4: Encourage appropriate placement and use of vacation rentals.
Rationale: Vacation rentals impact the character of a neighborhood and impact housing stock.

Short term vacation rentals, especially the ones that rent to more than 10 guests, have significant adverse impacts on neighborhoods, and also environmental impacts due to failing septic systems and overdraft of wells. Increased risk of fire is also a concern due to visitors' lack of awareness of burn bans and high fire hazard in our area during the summer and fall.

We believe your first obligation as Commissioners is to protect the health, safety and welfare of the people who live in this county. As you know, much of the phenomenon we are witnessing here is purchase of homes by non-residents, the sole purpose being to convert them to vacation rentals

We have prepared the attached document which lists the basic elements that must be part of the short term vacation rental ordinance. We hope that you will act to protect neighborhoods in the County and preserve our housing supply for the people who live and work here.

Sincerely,

Barb Rossing
Greg Steeber
Pat Thirlby
Bob Fallon
George Wilson
Bruce Williams
Kirvil Skinnarland
Mara Bohman
Jerry Jennings

Leavenworth/Plain Area Residents' Committee on Short Term Rentals

Requested Elements for An Ordinance on Vacation Rentals in Chelan County
3/27/2020

Background – First, **t**he Chelan County zoning code does not currently allow short term rentals of entire houses in residential neighborhoods without an owner also living on site. Therefore, it must be made clear to all interested parties in this proceeding that the point we are starting from is that all short term rentals of whole houses in residential zones, except in Manson, are currently illegal.

Second, the Chelan County Comprehensive Plan chapter on Housing gives Goals and Policies for Housing, including priority on housing for residents (not transients); and supporting regulatory changes that promote the goal of affordable housing for residents.[i]

Definitions – These are at the end of the document

Purpose and Intent -- The intent of this code section is to protect year-round residents' enjoyment of their homes and neighborhoods and to maintain an adequate and affordable housing supply while allowing for the economic opportunity created by vacation rentals.
The purpose is to:

- Minimize the impact of vacation rentals on surrounding neighborhoods
- Minimize the commercial character of vacation rentals
- Limit overall density of vacation rentals so as to preserve rural residential neighborhood character

Note: This ordinance is intended to carry out the housing goals and policies of the County's Comprehensive Plan. See the section at the end of this document.

Location—Vacation rentals that meet all requirements listed below may be allowed in RR20, RR10, RR5, RR2.5, RC, and RP.

Note: The above zones are the same as the draft ordinance that came out in October 2019.

Registration and Fees

- All vacation rentals must be registered on an annual basis.
- The fee structure should be sliding based on the number of lodging units. Fees collected by the County must be sufficient to support a robust enforcement program.
- At the time of initial registration, notice must be provided to all property owners within 500 feet of the lot which contains the vacation rental. Notice shall include: (to be added)
- Registration is specific to the owner of the house and is not passed to new owners, renters or lessees if the property is sold, rented or leased.

Taxes

- Vacation rentals must pay Washington state sales tax, lodging tax and business and occupation tax. Any additional County taxes must also be paid.

Number of Guests and Size of Houses

- Vacation rentals in residential zones may have up to four lodging units (bedrooms).

- Maximum occupancy is two guests per lodging unit plus two additional guests. Guests include children.
- Occupancy of the home and property is limited to the registered guests at all times. This includes pool, yard, and all outdoor spaces

Note: The International Building Code (IBC) 310.4 Residential Group R-3 stipulates "10 or fewer occupants" for transient Congregate Living Facilities; while allowing "16 or fewer occupants" for non-transient Congregate Living Facilities. IBC has been adopted by Chelan County. Therefore, STR Code must recognize this distinction between transient and non-transient lodging facilities, and enforce the 10-person transient occupant limit for R-3 residential facilities.

Note: Vacation rentals that are larger than 4 bedrooms or wish to have an occupancy of more than 10 people should be located in commercial zones.

Parking

- The offstreet parking required shall be one per each lodging unit plus one. For example, a 4 bedroom house would need 5 parking spaces.

Health and Safety

- Vacation rentals shall meet all applicable noise, health, fire and safety and building codes and shall be operated so as to not give the appearance of being a business.
- Such rentals shall not infringe upon the right of neighboring residents to peaceful occupancy of their homes.
- Adequacy of the septic system to serve the number of guests allowed must be verified by the Chelan/Douglas Health Department prior to issuance of an initial permit.
- Adequacy of the water source to serve the number guests allowed must be verified by the Chelan/Douglas Health Department prior to issuance of an initial permit.
- The vacation rental must have an operational phone land line. (Fire Marshall recommendation)
- The location of fire extinguishers, emergency exit routes from the structure and property, location of the breaker box, water shut-off, gas shut-off, instructions regarding the septic system, and emergency numbers must be clearly posted inside the rental.
- Properties with pools must ensure barriers such as fencing, alarms and approved covers are installed as appropriate and are in functioning order.
- Portable fireplaces and fire pits must be kept locked when not in use or when burn bans are in effect. Information on burn bans must be posted inside the unit when in effect.
- Provision for year-round solid waste receptacle and pickup must be provided. Trash cans on the right-of-way, private road and/or access easements must be removed within 24 hours of pickup and stored in completely enclosed and secured solid waste receptacles that are protected from wildlife.
- A map showing the location of the property boundaries must be clearly displayed inside the rental.

Density

- Limits should be established for local areas of the county which are highly impacted by tourists including the 98826 (Leavenworth/Plain/Lake Wenatchee), 98816 (Chelan) and the 98831 (Manson) postal codes. This limit should be established by census tracts, school districts, or

voting precincts (for example, the Leavenworth Valley is precinct 125) and limit the number of vacation rentals to 5% of the single family homes in that geographic unit.

- In addition, there should be a spacing requirement so vacation rentals don't overtake a particular neighborhood. Set a limit of one vacation rental per 500 foot radius from the property boundary.

  Note: Same as the October 2019 proposed ordinance
- Lot size: Vacation rentals should be prohibited on non-conforming lots and in any cluster subdivision that was granted a density bonus resulting in more houses than otherwise allowed in the base zoning district
- New construction (using single family residence building permits) must be occupied for 5 years as a single family home (owner-occupied or long-term rental) before the owner can apply for a vacation rental permit. (Note: Five years is Maui County, Hawaii's requirement)
- Only one permit shall be issued to an individual or LLC for a vacation rental in the unincorporated area of Chelan County with the exception that one owner can receive up to 4 permits if his/her/its rental properties consists of no more than 4 total lodging units and allow no more than a combined maximum of 10 occupants. (Note: This is the Methow River District Okanogan County language, "Each property owner may rent only one nightly rental regardless of the number of properties owned.")

Sunsetting Provision

- If there are more vacation rental homes than the density limit of 5% of the number of single family homes, all existing vacation rentals, if they meet the requirements above, shall be issued temporary annual permits for up to 2 additional years of operation. After that, if there are more requests for permits than allowed in a geographic unit (e.g., precinct), a lottery shall be held to determine which owners receive permits.

Grandfathering Existing Rentals

- There shall be no grandfathering of existing short term vacation rental houses.

Complaints

- All vacation rentals must have a local representative available on a 24 hour basis to respond to complaints and/or emergencies within 30 minutes.
- The name and phone number of this representative must be posted on the home in a manner so as to be easily found by adjacent neighbors.

Enforcement

- The County shall hire one dedicated staff person to manage the permit system and oversee enforcement of the code.
- If necessary, additional resources may be contracted for. (ie. Host Compliance)
- The annual operating license for a vacation rental shall be revoked for one year after 3 verified violations are filed against a particular vacation rental. Complaints should be made to the Chelan County enforcement officer assigned to oversee this permit program. The first verified violation shall result in a written notice. The second verified violation will result in a fine in the amount of $500. The third verified violation will result in a one year suspension of the permit to operate a vacation rental.

Severability – The ordinance needs to contain a provision that is any one section of the ordinance is determined to be invalid, the rest of the ordinance shall stand.

[i] **CHELAN COUNTY COMPREHENSIVE PLAN – RELEVANT GOALS AND POLICIES**

The Chelan County Comprehensive Plan 2017-2037, Housing Element Chapter 5, sets a priority on housing for residents (not transients); and supports regulatory changes that promote the goal of affordable housing for residents:

Goal H 1: Encourage the availability of affordable housing to all economic segments of the population of the county.

Goal H 2: Promote a variety of residential densities and housing types.

Policy H 2.1: Promote a diversity of housing unit types and densities to meet the needs of all existing and future residents of the County, including both site-built and manufactured and modular homes.

Policy H 2.4: Encourage appropriate placement and use of vacation rentals.

Rationale: Vacation rentals impact the character of a neighborhood and impact housing stock.

Goal H 4: Support regulatory changes and economic programs that promote affordable housing options.

Definitions:

Short-Term Rental (STR) is the rental of a primary residence or portion thereof for a period of less than 30 nights, for which the guest compensates an owner or lessee of the unit.

Hosted Primary Residence STRs: An STR unit is a Hosted Primary Residence STR if the owner occupies the property as his or her primary residence for the majority of the year, and if the owner hosts one or more guests in a bedroom in the main dwelling or in an accessory dwelling unit and is generally present for the duration of the rental period.

Vacation Rental: A Vacation Rental is an entire residential unit that is not a primary residence and is rented to guests on a short-term basis, typically under 30 nights

Lodging Unit—means one bedroom or otherwise designated room used for sleeping.

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Wednesday, April 1, 2020 9:13 AM
To: Lisa Grueter
Subject: FW: more information on density

Categories:

FYI

Kirsten Larsen, AICP
Planning Manager
Community Development Department

316 Washington Street, Suite 301
Wenatchee, WA 98807
Phone: (509) 667-6225 | Fax: (509) 667-6475
Kirsten.Larsen@co.chelan.wa.us

The Department of Community Development would appreciate your feedback. Please take a moment to complete our Public Experience Survey:
CLICK HERE TO TAKE THE SURVEY!

From: Bob Bugert
Sent: Wednesday, April 1, 2020 9:12 AM
To: kirvil@comcast.net
Cc: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: RE: more information on density

Kirvil—
Thank you for providing these comments. We will add these as part of the record and in the Commission's deliberations on how to handle the density issue.
I appreciated your participation in yesterday's work session.

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

From: kirvil@comcast.net <kirvil@comcast.net>
Sent: Tuesday, March 31, 2020 5:43 PM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>

Cc: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: more information on density

Hi Bob,

After this morning's call, I emailed Deanna Walter to see if she could give me the number of single family residences in the 98826 zip code. She responded quickly.
There are 4733 properties with single family residences in our 98826 zip code. According to the information we received this morning from Berk, there are 868 short term rentals in this zip code. Some of these may be on lots with a full time owner on site and it is the accessory dwelling unit that is rented. But, this data does give us a perspective on the density of STRs we are dealing with.

Assuming the BOCC decides to adopt a 5% density limit for the heavily impacted zip codes, we may need to look at the following three provisions: 1) an immediate moratorium on new STRs in the heavily impacted areas of the county, 2) a provision that does not allow STR permits to pass to new owners when the property is sold, and 3) a goal to get down to a limit that only 5% of the single family housing stock in a geographic unit can be allowed to have permits for short term rentals. When you get the number down to below 5%, then new permits could be issued up to this limit. (I am assuming you are going to allow all the existing STRs to get permits as long as they meet the standards in the new ordinance so it will take years to get down to the 5% cap on density.)

Kirvil

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Wednesday, April 1, 2020 9:13 AM
To: Lisa Grueter
Subject: FW: more information on density

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Kirsten Larsen, AICP
Planning Manager
Community Development Department

316 Washington Street, Suite 301
Wenatchee, WA 98807
Phone: (509) 667-6225 | Fax: (509) 667-6475
Kirsten.Larsen@co.chelan.wa.us

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Bob Bugert
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Mobile: 509-630-4480

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Sent: Tuesday, March 31, 2020 5:43 PM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
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Subject: more information on density

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Kirvil

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Friday, April 3, 2020 10:39 AM
To: Lisa Grueter
Subject: FW: questions

FYI

Kirsten Larsen, AICP
Planning Manager
Community Development Department

316 Washington Street, Suite 301
Wenatchee, WA 98807
Phone: (509) 667-6225 | Fax: (509) 667-6475
Kirsten.Larsen@co.chelan.wa.us

The Department of Community Development would appreciate your feedback. Please take a moment to complete our Public Experience Survey:
CLICK HERE TO TAKE THE SURVEY!

From: kirvil@comcast.net <kirvil@comcast.net>
Sent: Friday, April 3, 2020 10:29 AM
To: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: questions

Hi Kirsten,

I am part of the Leavenworth/Plain/Lake Wenatchee residents' group that is tracking and commenting on the development of the STR ordinance. Our group is expanding to include residents from Peshastin and Manson as we all seem to share similar views on the essential elements of the ordinance.

The Berk presentation on Tuesday was very helpful. Is it possible to get some more information from Lisa?

For example, our group believes that density of units must be managed. We think regulation by zip code makes sense but we are interested in whether Lisa think that is the best geographic unit. We also think 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. It is clear from the data in the Berk reports that the Leavenworth, Manson and maybe the Peshastin zip codes are over this benchmark already. How have other jurisdictions that have put caps on density managed to get down to the amount of

STRs allowed when the current number is over the limit? It makes no sense to us to allow a 1% growth rate when we have too many to start with in certain parts of the county.

Finally, is April 10th the date that the draft ordinance will be released? Will you put it on your website immediately?

Thanks for your assistance.

Kirvil Skinnarland

From: Stan Winters <winterss1@me.com>
Sent: Friday, April 3, 2020 2:24 PM
To: Lisa Grueter
Cc: Ortiz Tricia
Subject: Chelan CO Short Term Rental Issue Feedback
Attachments: Simulacrum.docx; Inside Airbnb_One scary article.docx; Web Stories about STRs.docx

Hi Lisa,

We (Peshastin Community Council) had a phone meeting with you a few weeks ago... thank you for
spending that time with us.

If you are still accepting input I feel compelled to add my voice.

I am attaching a few documents here that I hope you will spend a few minutes with. As Chelan
County had been moving toward resolution on issues around Short-Term-Rentals an observation is
that there is urgency to get something completed. But I'm nervous that the decisions we seem to be
heading for won't solve the issues that will be created. The reason I'm feeling this is because I don't
hear about or sense a larger goal for our communities and for Chelan County. We can make
regulations and pick around the edges of these issues, but if you read the attached papers you will
see that you can not and will not win against the Short-Term-Rental, AirBnB industry. They will
transform our communities into something we probably don't want. Here is a quote from one of the
websites included:

* “Airbnb describes itself as a quaint little home-sharing service … but the reality is
that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels,” she says.
The attached documents, which are just excerpts from websites, show that regulation of Short-Term-
Rentals is all but impossible, and any alleged advantages that they bring to a community are in fact
either not actual advantages (like saying they bring in more tourists - they don't), or the costs they
impose on a community exceed the benefits, which are usually accrued by an absentee owner.

1. Web Stories about STRs: This includes several stories; one that shows the effects of the Corona

Virus on STRs. All of a sudden there is a glut of housing available in places that have been
experiencing shortages; rising costs of housing where STRs are present; wealth and racial inequity
in the STR business - higher wealth and white households take a disproportionate share of wealth
from non-primary residences at the expense of low income and non-white residents; and the
conclusion that AirBnB is clearly a business and should have to play by the same rules as other
lodging providers.

2. Inside AirBnB_One Scary Story: Read this to see what Chelan County will be up against. There
are many quotes that are worthy, but here is one that should scare us all:

Airbnb is engaged in “a city-by-city, block-by-block guerrilla war” against local governments.
Our fate, if we allow STRs, is constant litigation by extremely well-funded organizations.

3. Simulacrum: I had to look this one up, so I'll define it here: an unsatisfactory imitation or
substitute, "a bland simulacrum of American soul music". That's is what communities become when
they are overrun by
Short Term Rentals. Chelan isn't Chelan anymore... it's pretend Chelan. Leavenworth

(already a "fake" Bavarian town) becomes a fake of a fake. A key statement is: it is argued
that STRs provides an economic equalizer, helping even hosts of few means to boost incomes
and manage otherwise affordable housing costs. Yet a growing army of critics allege that, in
dozens of cities around the world, the proxy hotel service more often does the opposite,
hyper-accelerating affordable housing crises and gentrification patterns that force out
residents. And in Toronto, the platform has eliminated some 6,500 homes from the cities
badly pinched housing market.

The route we are trying to pursue in Peshastin is to classify whole house short term rentals in
the same group as all other similar lodging. The wording will be something like this: “
Hotels/Motels/Lodging Facilities”: definition“Lodging Facility: A building, group of buildings or a portion

of a building which is designed for or occupied as the temporary abiding place of individuals for less
than thirty (30) consecutive days, including, but not limited to establishments held out to the public as
auto courts, hostels, inns, motels, motor lodges, time share projects, tourist courts, guest inns, nightly
rentals, vacation rentals, and other similar uses."

This way we can apply our current zoning. Whole house overnight rentals are subject to
the same rules as all other similar lodging. Why should they get preferential treatment?
This keeps the whole house STRs out of the residential areas, which is exactly where the
problems are. And this makes all of the problems with this issue go away. If we don't go
this route and think we will be successful with regulations... the articles I've attached speak
to that... we will have to deal with issues forever and we'll eventually lose every issue. That
industry will stop at nothing.

Before we adopt regulations I think we should back up and start with a shared vision of what
we want Chelan County to look like as we move forward. I would much rather takes some
steps back to consider our long-range goals and vision for the future of our valley. Then we can
create regulations that will help get us there.

Thank you for listening.

Stan

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

There is evidence overwhelming evidence that Short Term Whole House Rentals are detrimental to communities and that any so called benefits our outweighed by the damages inflicted on neighborhoods and the housing shortages and rent increases that always follow Short Term Rentals. This is a sample of some of this evidence.

Short Term Rentals in the News:

Coronavirus is exposing how Airbnb caused rent worldwide to skyrocket, Daily Dot

https://www.dailydot.com/debug/airbnb-coronavirus-rental-marker/

During the Corona virus outbreak:

"For years now, housing experts have pointed to Airbnb as the cause of the world's ever-dwindling housing supply and skyrocketing rents.

Now, according to property website Daft Media, there has been a 64% increase in rental properties across Dublin. Other tourist destinations like Edinburgh and London also saw increases in new rental listings, at 62% and 45% respectively.

"Btw this is happening all across the US too. Show me a city with a housing crisis and I'll show you @Airbnb being front and center," he tweeted."

New York housing activist Peter Harrison, inventor of tenant organizing app HomeBody, points out that the same is happening in the U.S. market as well.

"Btw this is happening all across the US too. Show me a city with a housing crisis and I'll show you @Airbnb being front and center," he tweeted."

Mar 21

64% rise in rental properties across #Dublin in midst of #Covid_19 crisis according to property website as landlords start withdrawing their rentals from short-term listing sites like #Airbnb and are offering them into the market instead.

Airbnb Has Made Housing More Expensive In Some Parts of D.C., New Research Paper Finds

https://wamu.org/story/20/01/13/airbnb-has-made-housing-more-expensive-in-some-parts-of-d-c-new-research-paper-finds/

Home-sharing platforms like Airbnb, VRBO and HomeAway can offer visitors to D.C. all sorts of options for cheap places to stay, but they also seem to be making parts of the city more expensive for long-term residents.

The economic costs and benefits of Airbnb No reason for local policymakers to let Airbnb bypass tax or regulatory obligations

https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/

… in many local markets, the arrival and expansion of Airbnb is raising questions about its potential negative impacts on local housing costs, quality of life in residential neighborhoods, employment quality in the hospitality industry, and local governments' ability to enforce municipal codes and collect appropriate taxes.

- **The economic costs Airbnb imposes likely outweigh the benefits.** While the introduction and expansion of Airbnb into U.S. cities and cities around the world carries large potential economic benefits and costs, the costs to renters and local jurisdictions likely exceed the benefits to travelers and property owners.
- **Rising housing costs are a key problem for American families, and evidence suggests that the presence of Airbnb raises local housing costs.** The largest and best-documented potential cost of Airbnb expansion is the reduced supply of housing as properties shift from serving local residents to serving Airbnb travelers, which hurts local residents by raising housing costs. There is evidence this cost is real:
- Because housing demand is relatively inelastic (people's demand for somewhere to live doesn't decline when prices increase), even small changes in housing supply (like those caused by converting long-term rental properties to Airbnb units) can cause significant price increases. High-quality studies indicate that Airbnb introduction and expansion in New York City, for example, may have raised average rents by nearly $400 annually for city residents.

Studies claiming *that Airbnb is supporting a lot of economic activity often vastly overstate the effect because they fail to account for the fact that much of this spending would have been done anyway by travelers staying in hotels or other alternative accommodations absent the Airbnb option.*

- The rising cost of housing is a key problem for American families. Housing costs have risen significantly faster than overall prices (and the price of short-term travel accommodations) since 2000, and housing accounts for a significant share (more than 15 percent) of overall household consumption expenditures.
- Studies claiming that Airbnb is supporting a lot of economic activity often vastly overstate the effect because they fail to account for the fact that much of this spending would have been done anyway by travelers staying in hotels or other alternative accommodations absent the Airbnb option.

- **Property owners do benefit from Airbnb's capacity to lower the transaction costs of operating short-term rentals, but the beneficiaries are disproportionately white and high-wealth households.** Wealth from property ownership is skewed, with higher-wealth and white households holding a disproportionate share of housing wealth overall—and an even more disproportionate share of housing wealth from nonprimary residences because they are much more likely to own nonprimary residential property (such as multi-unit Airbnb rentals).

Wealth from property ownership is skewed, with higher-wealth and white households holding a disproportionate share of housing wealth overall—and an even more disproportionate share of housing wealth from nonprimary residences because they are much more likely to own nonprimary residential property (such as multi-unit Airbnb rentals).

- **City residents likely suffer when Airbnb circumvents zoning laws that ban lodging businesses from residential neighborhoods.** The status quo of zoning regulations in cities reflects a broad presumption that short-term travelers likely impose greater externalities on long-term residents than do other long-term residents. Externalities are economic costs that are borne by people not directly engaged in a transaction. In the case of neighbors on a street with short-term renters, externalities include noise and stress on neighborhood infrastructure like trash pickup. These externalities are why hotels are clustered away from residential areas. Many Airbnb rental units are in violation of local zoning regulations, and there is the strong possibility that these units are indeed imposing large costs on neighbors.
- ***Because Airbnb is clearly a business competing with hotel lodging, it should be subject to the same taxation regime as hotels.*** *In regard to zoning regulations, there is no empirical evidence that the net benefits of Airbnb introduction and expansion are so large that policymakers should reverse long-standing regulatory decisions simply to accommodate the rise of a single company.*

- **Potential costs**
- The single biggest potential cost imposed by Airbnb comes in the form of **higher housing costs for city residents** if enough properties are converted from long-term housing to short-term accommodations. If property owners take dwellings that *were* available for long-term leases and convert them to short-term Airbnb listings, this increases the supply of short-term rentals (hence driving down their price) but decreases the supply of long-term housing, increasing housing costs for city residents. (We refer to all long-term costs of shelter as "housing," including rentals and owners' equivalent rental costs.)

- **Potential benefit three: Travelers' spending boosts the economic prospects of cities**
- The lower prices and greater range of options made available by the introduction and expansion of Airbnb could, in theory, induce a large increase in travel and spark economic growth in destination cities. This is precisely the claim made in a report by NERA Economic Consulting (NERA 2017), which says that Airbnb "supported" 730,000 jobs and $61 billion in output globally, with roughly a quarter of this economic gain occurring in the United States.

> - ***To be blunt about these claims, they are flatly implausible.*** They rest on the assumption that all money spent by those renting Airbnb units is money that would not have been spent in some alternative accommodations had Airbnb not existed.

Potential costs of Airbnb introduction and expansion

Potential cost one: Long-term renters face rising housing costs

Potential cost two: Local government tax collections fall

Potential cost three: Externalities inflicted on neighbors

Potential cost four: Job quantity and quality could suffer

Conclusion: Airbnb should have to play by the same rules as other lodging providers

Airbnb Is Screwing Over New York's Vulnerable Neighborhoods

Everyone knows Airbnb is bad for the housing market. But it's starting to get worse.

https://www.vice.com/en_us/article/ywxynm/airbnb-is-screwing-over-new-yorks-vulnerable-neighborhoods

David Wachsmuth does not mince words when he talks about the impact of Airbnb rentals: *"They impose costs on every single other person in the city," he told me.*

Wachsmuth said there is a solution that doesn't require the entire dismantling of Airbnb culture. If the service were limited to homesharing—in other words, people who actually live in the units rent their

apartments out on weekends or holidays—the housing market would remain stable and people could still make money.

The Airbnb Effect: It's Not Just Rising Home Prices

https://www.citylab.com/equity/2019/02/study-airbnb-cities-rising-home-prices-tax/581590/

D.C. is restricting it. Florida might stop investing in it. New Orleans is trying to ban it completely. Across the country, legislators are not happy with Airbnb.

The study's author Josh Bivens argues, cities need to start treating Airbnb like any other hotel business, and regulate it accordingly. "It becomes a straight conflict between whose interests you care more about: long-term residents of the city, or those that visit it," Bivens said.

"It becomes a straight conflict between whose interests you care more about: long-term residents of the city, or those that visit it," Bivens said.

Since Airbnb helps homeowners take existing housing stock and turns some of it into short-term units, its biggest measured effect so far has been on housing prices—by repurposing units that might otherwise be long-term housing, it's straining an already supply-short market. Rents rise in the process.
Since 60 percent of the property wealth in homeowners' primary household is concentrated in the top 20 percent of households—and more than 80 percent of the wealth is held by white households—it stands to reason, Bivens says, that the ones who stand to make the most from Airbnb are already the wealthiest, and the whitest.

Is Airbnb Ameliorating – or Exacerbating – Inequality in Cities?

"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways."

https://www.usnews.com/news/cities/articles/2019-05-02/airbnbs-controversial-impact-on-cit"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways.

But as the platform has expanded beyond homeowners with a spare room to profit-minded investors who buy and then rent entire homes, it's also put a new squeeze on housing markets. Particularly for renters in high-demand cities, Airbnb can increasingly feel like a kind of digital grim reaper: In Toronto the platform has eliminated some 6,500 homes from the city's badly pinched housing market, according to a recent report from the coalition group Fairbnb. In Boston long-time residents of Chinatown – a dense neighborhood that's become the epicenter of that city's gentrification battle – are being displaced by overseas speculators, who buy property at inflated prices only to turn around and list on the site.

"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways."

Galia says
June 23, 2017 at 8:28 AM
Hello!
I just wanted to say that I understand and benefits from their experience, but I must say that AirnBnB apartments for tourists means a great lack of opportunities for locals who want to stay and live in their cities. We are suffering this big problem in Barcelona (Catalunya_Spain) now … The locals can not afford to rent the prices … I really think that this platform is **no longer collaborative: it is speculative**. Think globally :)) AirBnB and similar platforms destroy local communities for the benefit of tourists and private speculators.

How Taxpayers Subsidize AirBnB's Cheap Prices

https://www.nakedcapitalism.com/2017/01/how-taxpayers-subsidize-airbnbs-cheap-prices.html

Airbnb says one of the key benefits of what it calls "home sharing" is to reduce costs for travelers and to help hosts earn extra income. But hoteliers complain they face unfair competition, as a result of tax differences and gaps in regulatory enforcement of everything from hygiene to disabled access and fire safety….

The ability of AirBnB to operate at all is proof of the success of neoliberal indoctrination. Most communities have strict zoning laws. Renting out your home, even on a part-time basis, is a commercial activity. Most localities ignore violations of that distinction for businesses that don't generate traffic, such as a bookkeeper or web designer working from their home. But one of the reasons for this distinction was to preserve the integrity of residential communities and keep transients out. But it seems that nothing is to stand in the way of rental extraction in the name of the sharing economy…even when the sharing consists of pilfering from the very communities that cut businesses like AirBnB slack that they do not deserve.

Inside Airbnb's 'Guerrilla War' Against Local Governments

https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/

Airbnb has fought city officials over regulations aimed at preventing homes from being transformed into *de facto hotels* and requests from tax authorities for more specific data about hosts and visits.

Similar dramas are playing out around the country. From Nashville to New Orleans to Honolulu, Airbnb is battling local officials over requests to collect occupancy taxes and ensure that the properties listed on its site comply with zoning and safety rules. In the past five months alone, the company has spent more than half a million dollars to overturn regulations in San Diego and has sued Boston, Miami,

and Palm Beach County over local ordinances that require Airbnb to collect taxes or remove illegal listings. Elsewhere, Airbnb has fought city officials over regulations aimed at preventing homes from being transformed into ***de facto hotels*** and requests from tax authorities for more specific data about hosts and visits.

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments, says Ulrik Binzer, CEO of Host Compliance, which helps cities draft and enforce rules for short-term rentals, sometimes putting it at odds with hosting platforms. "They need to essentially fight every one of these battles like it is the most important battle they have."

As the city (Nashville) inched closer to prohibiting so-called "mini hotels"—non-owner-occupied homes used exclusively as vacation rentals—Airbnb shifted its focus from City Hall to the state Capitol three blocks away. In the latter half of 2017, the company more than doubled the number of lobbyists it employed in Tennessee, to from four to 11, and spent between $225,000 and $350,000 on lobbying between February 2017 and August 2018, according to reports the company filed with the state.

Around this time, a political action committee called the Committee to Expand Middle Class By Airbnb, Inc. donated $10,000 to groups representing Tennessee Republicans, according to campaign finance records. The donations included $2,500 to the campaign of state representative Cameron Sexton, who had introduced a bill in 2017 specifying that short-term rentals should not be considered hotels under state law. The bill, known as the Short-Term Rental Unit Act, was drafted in consultation with Airbnb and other short-term rental companies, including HomeAway, according to the *Tennessean*. It included a provision stripping cities of the power to ban existing short-term rentals. The Tennessee General Assembly passed the bill in April 2018

Inside Airbnb's 'Guerrilla War' Against Local Governments

The high-profile unicorn is battling cities from Boston to San Diego over collecting taxes and enforcing zoning rules.

"Airbnb describes itself as a quaint little home-sharing service … but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels," she says.

"READ MY LIPS: We want to pay taxes," Chris Lehane, Airbnb's global head of public policy, told the nation's mayors in 2016. In the years since, the home-sharing site has repeated the declaration in press releases, op-eds, emails, and on billboards. On its website, Airbnb says it is "democratizing revenue by generating tens of millions of new tax dollars for governments all over the world."

Palm Beach County tax collector Anne Gannon wasn't surprised. "*We knew we were going to get sued*," she says. "That's what they do all over the country. It's their mode of operation."

But when Palm Beach County, Florida, a popular tourist destination, passed an ordinance in October 2018 requiring Airbnb and other short-term rental companies to collect and pay the county's 6 percent occupancy tax on visits arranged through their sites, Airbnb sued.

Palm Beach County tax collector Anne Gannon wasn't surprised. "We knew we were going to get sued," she says. "That's what they do all over the country. It's their mode of operation."

Gannon has been cajoling, threatening, and ordering Airbnb to collect taxes for its hosts since 2014. Five years, three lawsuits, and millions in unpaid occupancy taxes later, she's still trying. "All we want them to do is pay their taxes," she says. "They absolutely don't want to pay their taxes the way we want to collect them. That's the bottom line."

Similar dramas are playing out around the country. From Nashville to New Orleans to Honolulu, Airbnb is battling local officials over requests to collect occupancy taxes and ensure that the properties listed on its site comply with zoning and safety rules. In the past five months alone, the company has spent

more than half a million dollars to overturn regulations in San Diego and has sued Boston, Miami, and Palm Beach County over local ordinances that require Airbnb to collect taxes or remove illegal listings. Elsewhere, ***Airbnb has fought city officials over regulations aimed at preventing homes from being transformed into de facto hotels and requests from tax authorities for more specific data about hosts and visits.***

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments, says Ulrik Binzer, CEO of Host Compliance, which helps cities draft and enforce rules for short-term rentals, sometimes putting it at odds with hosting platforms. "They need to essentially fight every one of these battles like it is the most important battle they have."

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments.

Founded in 2008 as an early champion of the sharing economy by allowing people to rent homes, apartments, and rooms to others, Airbnb has grown into a lodging colossus, offering more than 6 million places to stay in more than 191 countries. ***Its listings outnumber those of the top six hotel chains combined***, helping the company reportedly generate more than $1 billion in revenue in the third quarter of 2018. It is valued by investors at $31 billion, making it the country's second most valuable startup, after Uber. By comparison, Hilton and Marriott's current market capitalizations are $25 billion and $43 billion, respectively. Earlier this month, Airbnb acquired last-minute hotel booking service HotelTonight, reportedly for more than $400 million.

One reason Airbnb is often a cheap option for travelers: Running a hotel or bed and breakfast is expensive; snapping photos of your home, apartment, or spare room and filling out an online profile is not. Hotels must comply with a litany of health, safety, and zoning rules—as well as register with local agencies and agree to collect certain taxes—before they can book a single guest.

Airbnb maintains that, in some cases, it's not permitted to collect occupancy taxes required of hotels and other lodgings; it's also not responsible for ensuring the rooms and homes listed on its sites comply with zoning or health regulations. The company says it follows local and state laws but considers itself a "platform," serving merely to connect hosts and visitors, rather than a lodging provider—more akin to Facebook than Marriott.

The onus is on hosts, Airbnb argues, to collect and pay any relevant taxes and to comply with other regulations. In practice, though, few actually do—at least not without considerable effort by local authorities—according to interviews with more than a dozen local government officials and advisers.

Some officials agree with Airbnb. In an early 2018 survey of state tax departments by Bloomberg, officials in 25 states said it was the host's responsibility to pay occupancy tax for an Airbnb stay. Officials in 14 states said they consider it the responsibility of Airbnb or other short-term rental operators. The survey was taken before the US Supreme Court ruled in June that states may collect sales tax from online retailers even when they don't have a physical presence in that state. The survey did not include local authorities, who are often more reliant on revenue from occupancy taxes, especially in popular tourist areas.

To be sure, these aren't Airbnb's taxes, any more than Hilton "pays" taxes for its guests' hotel stays. Rather, the officials sparring with Airbnb want the company to collect and forward the taxes from guests, much as hotels do. Airbnb says it isn't required to collect the taxes in many places; early on, it largely didn't.

That changed around 2014, when Airbnb began striking deals with officials in select cities to collect and deliver taxes from its hosts. It calls these Voluntary Collection Agreements, or VCAs. In Portland, site of the first agreement, city officials legalized home-sharing and lowered the registration fee for short-term rentals around the same time Airbnb agreed to add a 11.5 percent occupancy tax on each booking. It later negotiated similar deals in San Francisco, Chicago, Philadelphia, Washington, DC, and elsewhere. The company says it has signed more than 350 such agreements nationwide and more than 500 around the world, and has collected more than $1 billion in taxes.

"Some governments have rules requiring platforms like Airbnb to collect and remit taxes, and we make every attempt to comply with these obligations," says Christopher Nulty, Airbnb's head of public policy. "However, many governments do not have such rules and so Airbnb has proactively established more than 500 voluntary collection agreements globally to ensure our community is paying their fair share of taxes. We are eager to do everything we can to ensure we are paying our fair share and willing to work with any government that will work with us."

However, those agreements don't require hosts to meet other zoning, health, and safety rules, and they prohibit cities from attempting to collect back taxes. Some also create obstacles for local agencies to identify and police hosts who list through the site. Dan Bucks, former director of the Montana Department of Revenue and former executive director of the US Multistate Tax Commission, analyzed some of the few publicly available Airbnb agreements and found that most prevented city officials from learning the names or addresses of Airbnb hosts, making it impossible for officials to enforce local codes. Bucks says the agreements helped Airbnb grow by "providing a shield of secrecy" to hosts. His study was partially funded by the American Hotel and Lodging Association, which is often at odds with Airbnb and other short-term rental companies.

"All we want them to do is pay their taxes."

ANNE GANNON, PALM BEACH COUNTY TAX COLLECTOR

Airbnb says its VCAs are designed to help government agencies collect tax revenue, not to help them enforce other laws related to short-term rentals. The company says the agreements show that it is a responsible corporate citizen.

Historically, other online rental services, such as Booking.com, HomeAway, and VRBO, have not collected these taxes in many places. In the past two years, HomeAway and VRBO have begun collecting some occupancy taxes in a handful of areas—sometimes using their own version of a VCA. Booking.com does not offer any occupancy-tax collection services, compounding the revenue drain for municipalities. Booking.com's global communications manager, Kim Soward, says the company pays all required taxes. Expedia Group—owner of HomeAway, VRBO, VacationRentals, and other sites—did not respond to multiple requests for comment.

Airbnb is the undeniable giant of the field, and is reportedly preparing for an initial public offering. About 51 percent of all short-term rental listings in the US are on Airbnb, according to an analysis by Binzer, of Host Compliance. VRBO controls 17 percent of listings and HomeAway 11 percent, he says.

Poster Child

New Orleans was hailed as the poster child for Airbnb's work with local governments after signing a VCA in December 2016. Around the same time, the city struck a deal with Airbnb to legalize short-term rentals while requesting that the company share the names and addresses of hosts, ban certain illegal

listings, and create an online system that automatically registers hosts with the city, among other things. Many viewed the deal as a sign Airbnb was learning to live with local taxes and regulations.

Today, city officials say they're disappointed. They say a surge in short-term rentals has exacerbated New Orleans' affordable housing crunch and turned entire residential blocks into de facto hotels. Jane's Place Neighborhood Sustainability Initiative, a local housing group, says there were 4,319 whole-unit Airbnb listings in the city last year, more than double the 1,764 in 2015. The group found that 11 percent of operators, including many from outside Louisiana, control 42 percent of the city's short-term rentals.

Today, city officials (New Orleans) say they're disappointed. They say a surge in short-term rentals has exacerbated New Orleans' affordable housing crunch and turned entire residential blocks into de facto hotels.

The largest operator, a company called Sonder, has 197 short-term rental permits. Nearly 80 percent of Sonder's listings are booked through platforms like Airbnb, according to Sonder's director of communications, Mason Harrison. "That's a different story than the mom-and-pop" narrative that Airbnb often uses to describe its hosts, says New Orleans councilmember Kristin Gisleson Palmer.

City officials say the registration system Airbnb launched in April 2017 didn't give them some data they had requested, such as the identity of the property owner or tenant, the number of bedrooms in the property, and contact information for the property manager. To collect the missing data, city staffers say they had to contact 4,786 applicants over three months. "We could not really effectively use [the data provided] for enforcement and holding folks accountable," Palmer says.

In May 2018, the city council imposed a nine-month freeze in some areas on new permits for renting a home without an owner present. The following month, Airbnb disabled the registration system—including another enforcement-enabling feature, which displayed hosts' license numbers on their Airbnb listings.

A February 15 report by the city's Department of Safety and Permits, obtained by WIRED, states that disabling the registration system caused a year of work by city officials tracking short-term rentals to

"disappear overnight." ***The report concludes that Airbnb and other short-term rental companies had engaged in "deliberate data obfuscation, refusal to provide the required data, and a total failure of cooperation with any enforcement mechanisms pursued by the City***." The report notes that Airbnb continues to collect and remit occupancy taxes for its listings in the city.

Airbnb says city officials' description of events is "inaccurate," and that it is supplying all the information that is required. The company says there were "initial bumps in the road that Airbnb was working with the city to address, only to have lawmakers abruptly change the rules in May 2018." Those changes, the company says, made the registration system ineffective.

"Housing affordability is a challenge in New Orleans—in fact 70 percent of our host community have said they rely on the income they make to stay in their homes," Airbnb says. The company says it is committed to working with officials to resolve any concerns.

A February report by the New Orleans Department of Safety and Permits is critical of short-term rental companies.

Blocking New Laws

Airbnb says it complies with laws that require it to collect and pay taxes for hosts. But it has also worked to forestall such laws—even seeking at times to strip cities of authority over short-term rentals. That's what happened in Nashville in late 2017 and early 2018.

As the city inched closer to prohibiting so-called **"mini hotels"**—non-owner-occupied homes used exclusively as vacation rentals—Airbnb shifted its focus from City Hall to the state Capitol three blocks away. In the latter half of 2017, the *company more than doubled the number of lobbyists* it employed in Tennessee, to from four to 11, and spent between $225,000 and $350,000 on lobbying between February 2017 and August 2018, according to reports the company filed with the state.

In January 2018, the Tennessee Department of Revenue signed a VCA with Airbnb. The agreement requires Airbnb to collect and pay the 7 percent state sales tax on its bookings, but does not cover the 5 percent occupancy tax in Nashville, by far its largest market in the state. A few days later, Nashville passed its ordinance prohibiting mini hotels.

Around this time, a political action committee called the Committee to Expand Middle Class By Airbnb, Inc. donated $10,000 to groups representing Tennessee Republicans, according to campaign finance records. The donations included $2,500 to the campaign of state representative Cameron Sexton, who had introduced a bill in 2017 specifying that short-term rentals should not be considered hotels under state law. The bill, known as the Short-Term Rental Unit Act, was drafted in consultation with Airbnb and other short-term rental companies, including HomeAway, according to the *Tennessean*. It included a provision stripping cities of the power to ban existing short-term rentals. The Tennessee General Assembly passed the bill in April 2018.

Local activists say the law cripples cities' ability to tackle an important local issue. "The Tennessee state Legislature and Tennessee's governor decided to severely weaken the basic protections for the health, safety, and well-being of Nashvillians that were created by our local government," John Stern, president of the Nashville Neighborhood Alliance, a residents' group, says via email.

Airbnb says the Tennessee law was the work of "state lawmakers who care deeply about this issue and worked to organize a broad coalition of supporters—including the business, technology, property rights, and home sharing communities." Sexton did not return a request for comment.

Similar scenarios have unfolded elsewhere after cities have moved to restrict short-term rentals. *In February 2016, the Austin City Council voted to phase out **mini hotels** in residential areas by 2022*. In the following months, several other Texas cities passed similar restrictions. Then, early in 2017, Texas state lawmakers introduced two bills in the legislature preventing municipalities from banning short-term rentals and enforcing many regulations.

A few months later, in April 2017, Airbnb announced that it had signed a VCA with Texas officials to collect state occupancy taxes. Bennett Sandlin, executive director of the Texas Municipal League, which represents cities, called the deal "a smokescreen to cover the company's refusal to pay taxes." The 2017 bills eventually stalled in the Texas legislature, but lawmakers plan to try again this year.

Airbnb says it has "excellent working relationships" with many Texas cities and hopes to extend the VCA with the state to "new tax agreements with Texas municipalities to help them collect new revenue from home sharing."

Where's the Money?

Gannon, the Palm Beach tax collector, has been tilting at travel companies for a decade. In 2009, she sued Expedia, Orbitz, Priceline, and Travelocity for failing to collect and pay occupancy taxes on the full cost of the hotel rooms they were selling; three years later, the companies settled the suit and agreed to pay nearly $2 million in back taxes.

She then turned to the online home-rental companies. In 2014, she sued Airbnb, HomeAway, and TripAdvisor, alleging they should be classified as "dealers" renting accommodations under Florida law, and thus required to collect occupancy taxes on behalf of their hosts. In January, after five years, a judge ruled that the services were not dealers under Florida law and did not have to collect the taxes for hosts. Gannon is appealing the ruling.

In 2015, the Florida Department of Revenue signed a VCA authorizing Airbnb to collect and remit the 6 percent sales tax for all listings in the state, plus local sales and occupancy taxes for some counties.

Soon after, Gannon asked to see the details of the agreement; state officials told her it was confidential. So she sued the Florida Department of Revenue, alleging that the agency's secrecy violated the state's public records law. A few hours later, the department faxed a copy of its Airbnb VCA to Gannon's office; she says she was instructed not to share it with anyone. It required Airbnb to provide the state only with aggregate data and allowed the company to withhold "any personally identifiable information" about hosts or guests. Most other VCAs signed with state or local governments contain identical language.

Officials say such details about hosts and their rentals are crucial to enforcing local laws and ensuring the lump sum tax payments match up with detailed data on stays. Shielding names and other details from tax officials "is a gross departure from standard practice," says Bucks, the former tax commissioner.

"We're the middle—the hosts are stuck in the middle."

MARIA VALE, AIRBNB HOST IN PALM BEACH COUNTY, FLORIDA

In New Orleans, the February report by the city's Department of Safety and Permits says Airbnb provided officials there with anonymous account numbers in place of addresses or taxpayer identifiers, making it difficult for the city to audit the information. "It is impossible to track whether we are getting

all the money that we are supposed to get," says Andrew Sullivan, chief of staff for Palmer, the New Orleans councilmember.

Airbnb disagrees. "Airbnb provides the necessary information to ensure tax payments are accurate, including number of nights, charges, and the amount of tax collected," Nulty says. He says the company welcomes audits; however, many of the company's VCAs prohibit cities from auditing Airbnb more than once every two years.

Airbnb's 2016 VCA with Sonoma County, California.

A Public Clash

Palm Beach County's monthly commissioners meeting is typically a dull affair. But October 16, 2018, was different.

The chambers were packed with people dressed in white, holding hot pink flyers. The reason: Gannon's proposal to amend the county's Tourist Development Ordinance to require platforms such as Airbnb to collect and remit occupancy taxes on behalf of hosts, and to share more data with the county.

A few weeks earlier, emails from Airbnb had arrived in the inboxes of its hosts in the county. "Home-sharing in Palm Beach County is under attack," many declared in bold letters, asserting that Gannon had proposed an "unfriendly" ordinance that would make hosts' lives more difficult. The emails implored hosts to attend the hearing and "use your voice to oppose this proposal and share the benefits" of home sharing.

Around 100 hosts attended the meeting. But Gannon was prepared. Having seen several of the emails, she assembled a three-page document rebutting what she calls Airbnb's "campaign of misinformation," line by line. The packet was printed on hot pink paper and given to each person who walked through the door.

During the meeting, some hosts expressed doubts about Airbnb's position. Some recalled seeing a message from Airbnb stating that it was collecting and remitting taxes on their rentals, though the company was not. "I have this underlying fear ... that I am breaking a law that I don't really know about," said Ruth Riegelhaupt-Herzig, an Airbnb host since 2015.

“We thought Airbnb took care of everything, and I was a little scared I was in trouble with the government,” host Maria Vale said at the meeting. “All I’m saying is we’re the middle—the hosts are stuck in the middle.”

Nulty says that Airbnb makes it clear to hosts which taxes it collects via this webpage, which lists areas with VCAs and what taxes they cover. The page does not explain which taxes hosts are required to collect on their own. A different Airbnb page instructs hosts to tell guests to bring extra money when checking in so the host can collect taxes in person. Riegelhaupt-Herzig says that isn’t effective, as most guests are wary of paying an additional 6 or 10 percent directly to the host, in addition to the booking charges they paid online through Airbnb.

What’s more, all stays booked in the area have a charge labeled “Occupancy Taxes and Fees” added to the final bill, because of the state’s VCA. “So for us to turn around and say, ‘I’m sorry, you haven’t paid the occupancy tax in Palm Beach County,’ they think we’re scamming them,” which isn’t good for a reviews-based business, Riegelhaupt-Herzig told WIRED. She says she has been paying the county occupancy tax since October out of her own pocket.

After more than an hour of testimony, commissioner Dave Kerner said Airbnb had allowed its hosts to “be misled” about paying taxes. “That is concerning,” Palm Beach County mayor Melissa McKinlay said. ”And so I will support this ordinance today.” It was approved unanimously seconds later.

In San Diego last year, Airbnb took a different tack to counter a new law. City officials had signed a VCA with Airbnb in 2015. But they grew unhappy with the setup’s lack of transparency and the inability to audit, says San Diego councilmember Barbara Bry. What’s more, Airbnb use had skyrocketed in San Diego since then. In March 2015, there were more than 2,600 rental units listed on short-term rental sites in San Diego, according to Host Compliance; by 2019, that total had soared to more than 11,500. Host Compliance says two-thirds of short-term rentals in San Diego are posted on Airbnb. Bry says that the rise of full-time investor-owned short-term rentals in residential areas has hurt enrollment in public schools, transformed neighborhoods into districts of mini hotels, and contributed to a citywide housing shortage.

Last August, the San Diego City Council passed an ordinance that banned the short-term rental of homes that aren’t the owner’s primary residence and required platforms to collect taxes on behalf of their hosts, effectively overriding their VCA. Bry says she assumed Airbnb would sue, but it didn’t.

Within days, Airbnb threw its weight behind a movement to overturn the new rules through a citywide referendum.

Public records show ***Airbnb donated $1.1 million*** to a California political action committee called "Committee To Expand the Middle Class, Supported by Airbnb, Inc." That group reported spending $300,000 to hire signature gatherers to circulate petitions opposing the San Diego ordinance. Airbnb also directly donated $276,358 to a second group around the same time, records show.

Four weeks after the city council approved the new rules, representatives of Airbnb, HomeAway, and Stand for Jobs delivered more than 62,000 signatures calling for a referendum to rescind the ordinance, nearly twice the number needed to force a citywide vote.

City councilmembers said they didn't want to risk losing the vote, so they rescinded the ordinance, with plans to try again. "I'm disappointed that a corporation reportedly valued at $31 billion descended upon our city with its unlimited millions of dollars and used deceptive tactics to force us to where we are today," Bry said during a council meeting on October 22, just before the council voted to rescind its ordinance.

Airbnb says the petitions garnered so many signatures because the ordinance "would have devastated the local economy, impacted property rights in every San Diego neighborhood, and cost the city millions annually in tax revenue."

The San Diego City Council plans to introduce a new short-term rental ordinance sometime this fall, Bry told WIRED. If Airbnb challenges a new ordinance, Bry says city officials will be more prepared, and will respond with their own public-education campaign and take the contested ordinance to a public vote.

City councilmembers said they didn't want to risk losing the vote, so they rescinded the ordinance, with plans to try again. "I'm disappointed that *a corporation reportedly valued at $31 billion descended upon our city with its unlimited millions of dollars and used deceptive tactics to force us to where we are today,"*

Airbnb's battles with local officials have intensified since last year's Supreme Court ruling in a case involving online retailers. Some tax experts say the decision undercuts Airbnb's position that it doesn't have to collect taxes for its hosts. "There is no doubt

whatsoever now that on a constitutional basis Airbnb can be required to collect [taxes]," says Bucks. "There is no justification for these special deals anymore." Airbnb says it's monitoring state-by-state developments related to the case.

Airbnb's recent lawsuits against Palm Beach, Boston, and Miami focus on another aspect of those cities' ordinances: a requirement that platforms remove listings that don't comply with the law. Airbnb says the requirements are unconstitutional and technologically unfeasible. But the company does remove illegal listings in its hometown of San Francisco, and has conducted occasional or ongoing purges in New Orleans, Santa Monica, Japan, Berlin, Vancouver, and, briefly, New York City. In New York, Airbnb sued to block a city ordinance requiring it to turn over more detailed information on listings; a judge in January blocked the law from taking effect.

In Boston, city councilor Michelle Wu helped lead the push last year for an ordinance aimed at discouraging hosts from turning apartments and homes into **mini hotels**. The ordinance requires hosts to register with the city and restricts short-term rentals to owner-occupied units. "Airbnb describes itself as a quaint little home-sharing service … but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels," she says.

On April 17, Airbnb sent emails to thousands of Boston Airbnb users criticizing Wu. The email claimed that she was aligned with "big hotel interests" and falsely said she intended to place a "restrictive 30-day cap on unhosted stays." Wu says Airbnb never sought to discuss the ordinance or check the claims in the email. Airbnb says Wu's proposal was "anti-tenant, anti-middle class," and "overly restrictive."

The ordinance passed in June. Four months later, Airbnb sued the city, alleging the rules—which went into effect January 1—violate state and federal laws. Wu says the city modeled its ordinance after San Francisco's, which Airbnb complies with. The Boston lawsuit—much like others recently filed by Airbnb—only challenges requirements that platforms remove illegal listings and share information with local officials to aid enforcement. The suit seeks an injunction against parts of the law, and the city has agreed not to enforce those sections until a judge rules.

A few weeks after Airbnb sued Boston, Massachusetts governor Charlie Baker signed legislation to tax and regulate short-term rentals at both the state and local levels. The law, which goes into effect in July, requires hosts to register with the state. Information about hosts—minus specific house numbers—will be displayed on a publicly available registry, and hosts who run multiple rentals must pay additional taxes. Airbnb says the law will "jeopardize the privacy of our hosts while placing significant and unnecessary burdens" on them. The company says it is working with state officials to address those concerns.

Airbnb's municipal confrontations have been a boon for Binzer, whose company Host Compliance works with 150 cities to identify short-term rental owners skirting taxes and regulations and to devise an enforcement strategy without striking deals with Airbnb. He used to be an occasional Airbnb host himself—and paid occupancy taxes—when he lived in Tiburon, California; then he was tapped to help local officials quantify Airbnb's business in town. He says cities are often overmatched by Airbnb, in part because the company periodically tweaks the site in ways that impede tax collectors and enforcement agencies.

For example, Binzer says that until December 2016, Airbnb included the street name of a property in the metadata attached to the listing. Airbnb's terms of service prohibit third parties from scraping its site for this kind of information, but critics say it's crucial for enforcement. Officials in some cities used this data to identify hidden hosts. Then Airbnb removed the street name, and altered the geocoding for listings, changing the latitude and longitude so properties appear in slightly different locations.

"It's a cat and mouse game," Binzer says. "They literally put the pin in the wrong place of where the actual property is."

Airbnb says it shields the street name and other personal information related to hosts "to ensure an added level of privacy when third-party scrape sites aim to compile listing information."

From Negotiation to Litigation

Around the time Palm Beach County Commissioners passed the short-term rental tax ordinance in October, Gannon says she spoke with a representative from Airbnb. She recalls the company floating a gradual implementation strategy: Airbnb would comply with some of the new rules immediately, but

others—like a system requiring hosts to be properly registered with tax authorities—would be phased in over time.

Gannon thought that seemed reasonable, as long as Airbnb collected and paid the taxes. But she didn't have time to see the discussion through. A month and a half after the ordinance was passed, Airbnb sued the county. The suit argues Airbnb can't be required to police illegal listings and share host information because "Airbnb is a realization of Congress's [free speech] goals" and a "classic intermediary." It doesn't question whether the company can be compelled to collect occupancy taxes; Airbnb is not collecting them in the county, though the ordinance went into effect on January 20. HomeAway also sued the county; the suits have since been combined.

"They were just stringing us along until they had their lawsuit ready to file," Gannon says. "It's typical of Airbnb … They're getting ready to issue an IPO and go public."

Airbnb's lawsuit against Palm Beach County, Florida.

Updated 3-21-2019, 5:30 pm EDT: This story was updated to clarify the relationship between the American Hotel and Lodging Association and Airbnb, to clarify a characterization of Airbnb's corporate citizenship, and to add a comment clarifying Airbnb's position about its cooperation with the city of New Orleans. The updated story also makes clear that HomeAway was among the companies that helped draft a Tennessee law and that HomeAway has sued Palm Beach County.

Updated 4-5-2019, 4:50 pm EDT: This story was updated to correct the amount Airbnb spent to oppose a San Diego ordinance.

Updated 4-12-2019, 6:00 pm EDT: This story was updated to incorporate additional comment from Airbnb regarding the company's stance on collecting taxes.

Is Airbnb Ameliorating – or Exacerbating – Inequality in Cities?
The short-term rental company professes noble aims, but experts argue it displaces tenants and puts pressure on tight housing markets.
By Trevor Bach ContributorMay 2, 2019, at 3:27 p.m.

Does Airbnb Hurt or Help Cities?

HARPER RICHARDS SPENT most of her childhood in New Orleans. By the time she was in her early 20s, she identified with the city's famous cultural openness and artistic bent, performing as a burlesque dancer and selling handicrafts, like earrings made from recycled guitar strings and coasters fashioned from salvaged Hurricane Katrina wood, at the Frenchmen Art Market.

But even working multiple jobs – at a jewelry store, serving pizza, driving for Uber – her income was relatively low; in early 2015, after learning she was pregnant, she began searching for a long-term home. "I was looking at what I could survive off," she says, "with my income and situation – about to be a single mother."

"One of the big questions that we have is, 'How much of an outsize role do we want tourism to have in our city – do we really want just to turn the entire city over to like basically being a simulacrum of New Orleans?'" says DeDecker. "How much are we asking of our residents to give up in order to make space for these tourists?"

She signed a lease on one half of a double shotgun house on Josephine Street in Central City, a working class neighborhood separated from downtown and the French Quarter by a freeway. She quickly made it home, repainting walls with a gold molding and turning one room into a nursery. "It was a really good scenario," she says. "Cheap rent and a good little neighborhood. My daughter made a bunch of friends across the street." Then her landlord put the house on the market; in March 2017 a property management company representing an out-of-town buyer gave her a 45-day notice. Richards and her daughter moved into a different place down the street, but the rent was hundreds of dollars more. Soon they left New Orleans. After renovations, the Josephine Street house was promptly listed on Airbnb.

"This Airbnb Displaced 5 People," Richards' neighbor spray-painted in big red letters on the home's sidewalk.

In just over a decade, Airbnb has transformed hospitality around the world. Its platform now counts some 500 million guest stays in 81,000 cities; in December it announced it had collected and dispersed $1 billion in tax revenue. But the company's rapid growth has also fueled a caustic debate about urban inequality. Airbnb, whose mission is "to democratize travel by allowing anyone to belong anywhere," argues that it provides an economic equalizer, helping even hosts of few means to boost incomes and manage otherwise unaffordable housing costs.

Yet a growing army of critics allege that, in dozens of cities around the world, ***the proxy hotel*** **service more often does the opposite, hyper-accelerating affordable housing crises and gentrification patterns that force out residents.**

"It's really the rich who are getting richer off of this situation," says Richards. "Airbnb has run so rampant across the entire city that there's barely any rentals left for locals, and the rentals that are available are skyrocketing in price."

How Airbnb Changed Housing

Like its closest Silicon Valley industry-disrupting cousins, the ride-sharing apps Uber and Lyft, Airbnb, with a simple, decentralized concept, virtually redefined a decades-old industry overnight: Through the magic of the internet, suddenly anyone with a spare room could become a hotelier, and travelers had an easy gateway to a new kind of experience. A few years after the company started in San Francisco in 2008, tourists could choose from hundreds or thousands of nontraditional hotel options in nearly every city in the world, including a carefully decorated room in a 1930s London flat ($64 a night), a tiny house made from reclaimed wood in West Seattle ($110 a night), and a shared traditional yurt in Ulaanbaatar, Mongolia ($10 a night).

"It's really the rich who are getting richer off of this situation," says Richards. "Airbnb has run so rampant across the entire city that there's barely any rentals left for locals, and the rentals that are available are skyrocketing in price."

"First and foremost it's our community," says Christopher Nulty, the company's head of public affairs for the Americas, explaining the company's success. "There's something really special about going and staying in someone else's home – staying outside the central hotel district and being able to see a new place through the eyes of a local."

But as ***the platform has expanded beyond homeowners with a spare room to profit-minded investors who buy and then rent entire homes***, it's also put a new squeeze on housing markets. Particularly for renters in high-demand cities, Airbnb can increasingly feel like a kind of digital grim reaper: In Toronto the platform has eliminated some 6,500 homes from the city's badly pinched housing market, according to a recent report from the coalition group Fairbnb. In Boston long-time residents of Chinatown – a dense neighborhood that's become the epicenter of that city's gentrification battle – are being displaced by overseas speculators, who buy property at inflated prices only to turn around and list on the site.

In Toronto the platform has eliminated some 6,500 homes from the city's badly pinched housing market.

"If you just walk around Chinatown you see the demographic change," says Karen Chen, executive director of the Chinese Progressive Association, which advocates for residents in the

neighborhood. "It's taking housing from the market, but as it's doing that it's actually creating a chain of rising rent."

A Chain of Rising Rents

Independent research confirms that Airbnb listings do in fact cause higher rents. "What's happening is that some landlords are switching from the long-term market to the short-term market," says Davide Proserpio, an assistant professor of marketing at the University of Southern California who co-authored a broad study on the issue. "Why? Because Airbnb reduces a lot of friction and makes renting in the short-term market quite easy for everyone."

The impact, unsurprisingly, varies wildly by city. One 2016 analysis predicted that if Boston's rapid rate of Airbnb expansion in 2015 continued for three more years the service would cause an average rent increase of as much as $2,136 annually. A 2018 study found that in New York the service has increased annual rent for the median tenant by $380, and over $700 in some neighborhoods.

"We're really looking at short-term rentals as like a housing justice issue," says Breonne DeDecker, a program manager at Jane Place, a housing rights nonprofit in New Orleans. In that city, where rents have exploded in areas with the highest concentrations of listings, DeDecker says Airbnb rentals have displaced so many locals that many traditionally residential districts – including in working-class black neighborhoods like the Seventh Ward and Treme – now resemble weekday ghost towns. "Thursday, Friday and Saturday it's just awash in young white tourists."

"We're really looking at short-term rentals as like a housing justice issue,". Airbnb rentals have displaced so many locals that many traditionally residential districts – including in working-class black neighborhoods like the Seventh Ward and Treme – now resemble weekday ghost towns. "Thursday, Friday and Saturday it's just awash in young white tourists."

Airbnb vehemently rejects conclusions that suggest the platform exacerbates inequality. Much of the underlying research, Nulty charges, was funded by the hotel industry and relies on "scraped, inaccurate data" on listings. (The industry has in fact waged an aggressive campaign against Airbnb, including funding research. Many studies rely on scraped web data as a proxy – Airbnb has repeatedly fought data collection attempts by regulators.) He points out that the company didn't invent the concept of vacation rentals – indeed, many whole home listings simply migrated onto Airbnb from other platforms – and that the majority of hosts are using the platform to rent a spare room to generate extra income, like an average $6,400 annually for hosts in New York.

An Economic Stimulus?

The platform, Nulty argues, can also serve as an important economic stimulus in underserved areas: the portion of Washington, D.C. east of the Anacostia River, a predominantly poor and black neighborhood, has virtually no traditional hotels but hundreds of Airbnb listings. The company does remove listings that violate local rental laws, including some 5,000 in New York, and has long been outspoken against evictions.

"We've been so clear about this," Nulty says. "We do not want bad actors on our platform who are purposefully evicting tenants with the intention of Airbnbing their space."

But analysts say that, on the whole, underlying home ownership patterns mean that the gains from Airbnb are disproportionately spread among a demographic that already skews both white and wealthy.

"We can say the winners from Airbnb – generally they're pretty concentrated at the top," says Josh Bivens, director of research at the Washington, D.C.-based, left-leaning Economic Policy Institute. In a report published in January Bivens concluded Airbnb's net economic costs outweigh its benefits: Even if the platform's impact on aggregate housing prices has been relatively small, he argues, it has accelerated an affordable housing crisis that, for millions of Americans, was already dire. "It's another straw on the camel's back."

Municipalities have struggled to keep up. Regulation of listings has been patchwork, with cities around the world taking different approaches aimed especially at curbing whole-home rentals. In 2016 Berlin implemented a near-total ban, later amended, on rentals of more than half an apartment. San Francisco passed laws that restrict listings to primary residences and cap stays where no host is present to 90 days annually. In December, Massachusetts passed a sweeping new law that opens up listings to hotel taxes and public disclosure. Governor Charlie Baker praised the measures as a "leveling of the playing field."

Yet even with rules in place, regulatory agencies are often overwhelmed, and savvy listers find ways to evade requirements: In Miami Beach one property manager was associated with more than $1.2 million in dozens of illegal listing fines; in February investigators in New York exposed a vast, city-wide scheme, orchestrated by an Israeli former real estate broker, that generated $20 million in revenue by using multiple identities, manipulated addresses and proxy corporations to flout city rental laws and the company's "one host, one home" rule – specific to New York and a handful of other cities. While in many cases the company has struck voluntary agreements with cities, it also regularly fights regulation and taxation attempts, including with lawsuits against Palm Beach County, Florida, New York and Boston.

"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways."

A heated regulatory battle is also underway in New Orleans, where some new City Council members campaigned on the issue of tightening the city's lax regulation of short-term rentals.

In March the city's planning commission endorsed a proposal to ban whole-home rentals in residential areas, representing a dramatic change of course – if the measures eventually pass a full council vote – for a mid-size city with some 11 million annual tourists. At stake, advocates say, is the identity of New Orleans itself.

"One of the big questions that we have is, 'How much of an outsize role do we want tourism to have in our city – do we really want just to turn the entire city over to like basically being a simulacrum of New Orleans?'" says DeDecker. "How much are we asking of our residents to give up in order to make space for these tourists?"

Trevor Bach, **Contributor**

Trevor Bach is a journalist based in Detroit. Follow him on Twitter.

Tags: New Orleans, Airbnb, inequality

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Thursday, April 16, 2020 8:13 AM
To: Lisa Grueter
Subject: FW: Leavenworth City Attorney Letter: Chiwawa Pines Decision does not apply
Attachments: Lvth attorney Graafstra Memo-Short-Term-Rentals-1-of-2.pdf; CityVision Magazine LeavenworthNightlyRentals Article 2017.pdf; Guest Opinion Revised STR Rossing.doc

Categories:

From: Bob Bugert
Sent: Monday, April 13, 2020 8:46 AM
To: Barbara Rossing <brossing@lstc.edu>; Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: FW: Leavenworth City Attorney Letter: Chiwawa Pines Decision does not apply

Barbara—
Thanks for your email. I am passing on your comments to Kirsten Larsen, so that they can be included in the record.
Best regards,

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

From: Barbara Rossing <brossing@lstc.edu>
Sent: Friday, April 10, 2020 12:47 PM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>; keith.overbay@co.chelan.wa.us
Cc: Deanna Walter <Deanna.Walter@CO.CHELAN.WA.US>
Subject: Fw: Leavenworth City Attorney Letter: Chiwawa Pines Decision does not apply

Dear Commissioner Bugert, England, Overbay:

Attached is the Leavenworth City Attorney's document from 3 years ago arguing that Chiwawa River Pines is NOT a precedent for government entities, because it is a road association, not a City or County. The City of Leavenworth has not been sued for its ban on short-term rentals in residential neighborhoods. Many people threatened lawsuits, using the Chiwawa River Pines ruling to try to argue that Leavenworth was acting illegally, but in fact there have been no lawsuits.

So I was sad to read of the Peshastin STR rescinding, which cited the Chiwawa River Pines case: https://www.co.chelan.wa.us/files/community-development/documents/Resolutions%20and%20Notices/Rescind%20AI%202019-001.pdf

I hope your County attorney might consult with Leavenworth City Attorney Thom H. Graafstra? It is of crucial important whether this case applies to a government entity. Graafstra argues that it does not apply: “Some may assert that municipal short term housing bans already have been found unlawful in the State of Washington. This is incorrect. No reported Washington decision has found a municipal ban on short term rentals unlawful.” He specifically says why the Chiwawa River Pines decision does not apply, in his view.

I am also attaching an article from City Visions magazine (the City Managers' professional association) about the Leavenworth regulations, and the process that included the City Attorney's letter in response to a threat of lawsuit. The very same people who are now threatening to sue the County if you enact STR regulations-- Dan Eby and others-- are quoted as threatening lawsuits against the City of Leavenworth. But that never happened.

The County, like the city, can ban or regulate STR businesses in residential zones, provided there is good Enforcement.

I appreciate the quote from city Manager Joel Walinski in the article: “Nothing prohibits these folks who want to do overnight rentals
from purchasing a piece of property in a commercial area where overnight rentals are allowed,” he notes. “Part of me says,
‘Well, if somebody wanted to open a factory in a residential area, we’d prohibit it, because that’s what zoning regulations are for.’
I understand that it’s a reach to compare an overnight rental with a factory, but in some respects it is the same. If you want to
get in the business of overnight rentals, there is a process for it: buy property in a commercial zone, and build yourself a lodging
facility. I think they call that a hotel.”

We are very much hoping for strong regulations. Thank you for letting me speak at the March 31 meeting. The final attachment is the Guest Opinion Piece I have submitted to the Wenatchee World and am in correspondence with editorial page editor Russ Hemphill, hoping to get it published this weekend.

best regards,
--Barbara Rossing, 7785 E. Leavenworth Rd, 548-7278

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MEMORANDUM – PUBLIC RECORD

TO: Mayor, City Administrator, Leavenworth City Council, and Leavenworth Planning Commission

FROM: Weed, Graafstra & Associates, Inc. P.S., City Attorneys for Leavenworth

DATE: 07/11/16

RE: Important Information Concerning Short Term (less than thirty day) Rentals

INTRODUCTION

These informational materials are prepared in response to the request of Leavenworth City Administrator, Joel Walinski. The goal of these materials is to generally survey legal issues related to short term rentals in residential zones in the City.

These informational materials address the following questions:

1. May a City completely ban, or preserve a ban of short term rentals in residential zones?
2. If a complete ban is lawful, how should that ban be written and implemented?
3. May a City impose a limited ban of short term rentals in residential zones?
4. If a limited ban is lawful, what options are available for that ban and how should the ban be written and implemented?
5. Rather than a ban or limited ban, may a City regulate short term rentals in residential zones?
6. What types of lawful regulation of short term rentals may be advisable? and
7. Depending on the option chosen to address short term rentals, what enforcement mechanisms are available to the City?

BACKGROUND

A. Current City Code

In 1989 by Ordinance 852 Leavenworth first defined "Transient Accommodation." That definition has been amended from time to time and is currently codified as LMC 18.08.405 and

reads as follows:

> **18.08.405 Transient accommodation.** "Transient accommodation" means a dwelling unit or motel room regularly rented to transient guests with a less than monthly rental period for each individual or group of guests.

The definition addresses rentals ('rented') "less than[a] monthly rental period to transient guests in both a motel room and in a dwelling unit." The term "transient guests" is not defined by code. "Dwelling unit" is defined in LMC 18.08.150 as follows:

> **18.08.150 Dwelling unit.** "Dwelling unit" means one room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rent, or lease, to one individual family on a monthly or longer basis, and which is physically separated from any other rooms or dwelling units which may be in the same structure and which contains independent cooking and sleeping facilities.

Leavenworth is divided into several zoning districts, including the Residential Low Density 6000 District (RL6), the Residential Low Density 12,000 District (RL 12) and the Multifamily Residential District. These zones and their permitted uses were established by Ordinance 1089 enacted in 1998.

The zoning code, generally Chapter 18.20, 18.21, 18.22 and 18.24 for residential zones, builds upon itself, such that uses permitted and prohibited in one zone, the RL6 zone, become the starting point for permitted and prohibited uses in the next zones, either the RL 12 or the Multifamily Residential Zone. Through this built up approach, Leavenworth currently does not permit, and therefore bans, "transient accommodations" in its residential zones.

In the RL 6 zone, a so-called "Group A home occupation" is allowed. LMC 18.20.020 G. But LMC 18.20.020 G 15 c. prohibits "transient accommodations" as a "Group A Home occupation" in the zone rendering "transient accommodations" not permitted and therefore currently banned in that zone in the City. In the RL 12 zone "Group A home occupations" are allowed to the same extent as in the RL 6 zone, and since they are not permitted in the RL 6 zone they are not permitted in the RL 12 zone. LMC 18.21.020 G. Group A home occupations are not addressed in the Multifamily Residential District. Instead, LMC 18.22.020 permits uses that "are permitted outright in the low density residential districts." LMC 18.22.020 A. Since "transient accommodation" is not permitted in the RL 6 or RL 12 zones, by this carryover in LMC 18.22.020 a transient accommodation is not permitted but banned in the Multifamily Zone.

In summary based upon Ordinance 1089 from 1998 short term overnight vacation rentals (transient accommodations) currently are not permitted but banned in the City in its common

residential zones, the RL 6, RL 12 and Multifamily Residential zones.

B. Changes in Rental Options since 1998

In 1996 shortly before the City's current code was enacted, VRBO (Vacation Rental by Owner) was founded. In 2004 HomeAway, Inc. was founded. HomeAway acquired VRBO in 2006. HomeAway now owns a multitude of short term rental sites and purports to have more than 1,000,000 vacation rental listings in 190 countries. AirBNB grew into existence between 2007 and 2009. This company also has hundreds of thousands of listings and has done millions of guest bookings.

In addition to these multinational listing companies, there have been vacation rental companies established statewide and in the Leavenworth market. The city has received many reports of short term rentals in its residential zones in violation of its current ban.

These for profit short term rental sites should not be confused with house sharing arrangements, where an owner allows third parties to reside in their residence either for support or assistance or with the expectation of reciprocity. Homeshare, a housing exchange goes back to the 1970s, but has been experiencing growth since 1999, with the establishment of Homeshare International. What manner and amount of home sharing is occurring in Leavenworth is unknown.

Human imagination will undoubtedly find other lodging arrangements to satisfy needs or to generate profits. It is therefore likely, that however Leavenworth addresses short term rentals, or rental like arrangements in its residential zones, the City will be in a chronic catch up mode.

C. Organization of the Balance of this Paper

The balance of this paper will address the questions posed in the introduction. To keep the length of this paper manageable and readable, each question and answer will be kept to one page or less. As a result, legal analysis will be provided in a summary fashion with a minimum of citation to either applicable statutes or case law. A single copy of this paper with an appendix containing source materials, and where applicable, legal authorities, will be supplied to City Administrator Walinski, and will be available for inspection and reference.

ADDRESSING THE QUESTIONS

Question 1: May a City completely ban, or preserve a ban of short term rentals in residential zones? SHORT ANSWER: *Yes, in certain circumstances where justified by the record made to establish or preserve a ban, a complete ban may be imposed.*

Local zoning is the exercise of police power (ie., "local police, sanitary and other regulations") under Article XI section 11 of the Washington Constitution. A local zoning ordinance is presumed valid, until it is shown to "be clearly unreasonable, arbitrary or capricious." Therefore, if an ordinance promotes the "public safety, health or welfare and bears a reasonable and substantial relationship to accomplishing the purpose pursued," a zoning ordinance is valid and lawful. The City's current ban, and any preservation of the ban, will be measured against this standard. Thus, if a ban is to be preserved by an Ordinance making only technical changes, the current record and the record for Ordinance 1089 from 1998 will need to demonstrate that short term rentals are (1) inconsistent with the Comprehensive Plan and related planning documents of the City, (2) have documented negative impacts on the residential zones and their residents, and/or (3) impede or negatively impact other important goals of the City, for example perhaps achieving population and affordable housing goals. On a proper record a ban would be lawful because it is reasonable and it accomplishes the purpose pursued.

Some may assert that municipal short term housing bans already have been found unlawful in the State of Washington. This is incorrect. No reported Washington decision has found a municipal ban on short term rentals unlawful. The only Washington case law relates to private bans in subdivision covenants. In a number of Washington cases, such private bans on short term rentals have been found unenforceable for a variety of reasons. In these private ban cases, there is language in the opinions that questions if true differences exist between a long term rental and a short term rental.

We are aware also of one Superior Court decision, Aquavella v. City of Seattle, where the City of Seattle's municipal ban on short term rentals was found by the Superior Court not in fact to impose a ban on short term rentals. This case is not a precedent and does not provide guidance on the lawfulness of municipal bans on short term rentals.

There are cases on municipal short term rental bans outside Washington. This case law is a mixed bag. In some cases, the purported ban was found, on its specific terms, not to ban the rental arrangement at issue. A case or two may hold that bans based on public perception of impacts from short term housing are not lawful bans. On the other hand, cases also demonstrate examples where a ban, based upon a proper record of actual impacts and public goals thwarted (preserving affordable housing stock) are lawful.

For these reasons, we conclude that municipal bans of short term rentals, on the proper record, are lawful in Washington.

Question 2: If a complete ban is lawful, how should that ban be written and implemented?
SHORT ANSWER: *Zoning bans have been found unenforceable in instances where "single family residences" are permitted, and the ban inadequately relates to ill-defined short term*

occupancies. It is important that any definition of "single family" be written so that a short term rental is not permitted by the permission for a "single family residence."

For example, in the Seattle Case, the Court evaluated whether rental of condominium units for three or more days at a time violated City Codes as an impermissible lodging use. The Court found that the City's definition of lodging use "a retail sales and service use in which the primary activity is the provision of rooms to transients." SMC 23.84.024 did not apply in this case. The City did not explicitly define transients and when the Court looked elsewhere, the dictionary and the Condominium CC&R's (which prohibited rentals less than three days), the Court found that the disputed activity did not fall within the City's lodging definition and was a residential use permitted in the multi-family zone.

For these reasons we conclude that any complete ban must be carefully written to not be part of a zoning code where single family residential is outright permitted, but an ill-defined prohibition is established for short term rentals. Courts have found zoning permitting "single family residences" to permit short term rentals unless there is extreme care taken in defining what is a single family residence, and in such definition it is clear that short term rental is not included. Depending upon the policy direction taken on the question of short term rentals we will work with staff, the planning commission and the city council to insure as best as possible that ambiguity does not develop in what is permitted and prohibited in Leavenworth.

Question 3: May a City impose a limited ban of short term rentals in residential zones? SHORT ANSWER: *Yes, reason based distinctions are permissible in imposing a zoning code provision.*

Zoning to be lawful must be "generally applicable" and satisfy the criteria discussed in answer to Question 1 to be lawful. "Spot zoning" is its evil opposite and not lawful because it either favors a particular property or discriminates against a particular property. Therefore, differential regulation is lawful and permissible, even for adjacent lands, if it is justified by the public interest, bears a rational relationship to achieving that public interest, and is not designed to achieve a private interest.

Within this large context, it is permissible to address short term rentals differently in different zoning districts. It is permissible to make distinctions based on distance from or proximity to commercial areas. It is also possible to impose partial bans based on amount of use during a period of time. In fact this is the approach Seattle has taken to respond to the Seattle Case. A copy of Seattle's new proposed ordinance (the "Seattle Ordinance"), scheduled for further action on July 20, 2016 is in the Appendix to this paper.

Question 4: If a limited ban is lawful, what options are available for that ban and how

should the ban be written and implemented? SHORT ANSWER: *So long as reason based, and not based on private interest, both ban/no ban based on geographic area, or ban some of the time but not all of the time are lawful.*

The proposed Seattle Ordinance distinguishes between owner occupied and non-owner occupied residences. "Owner occupied" residences are not restricted by time for short term rentals. "Non-owner occupied" residences are subject to a partial time ban, and short term rentals are limited to 90 days in a twelve (12) month period.

Geography based regulations generally come in two forms. The first form is a ban or regulation based on the zone within which the potential rental is located. For example, cities and counties have had regulations upheld when short term or transient rentals are banned in all residential areas or a subset of residential areas (i.e. banned in low density residential only but allowed in moderate density or multi-family zones). The second form is when regulations allow short term or transient rentals that are within a certain distance to commercial or business zones regardless of the particular parcel's zoning designation. This second form is far less common.

Question 5: Rather than a ban or limited ban, may a City regulate short term rentals in residential zones? SHORT ANSWER: *Yes.*
We have found multiple examples of regulation of short terms rentals. The types of regulations employed range across a broad spectrum, and include: registration/business licensing requirements, taxation (sales and lodging tax), occupancy time or number limits, parking limits, initial and follow up inspections, setbacks, and limits on concentration in a neighborhood or street segment.

Generally, there has been little litigation on these types of regulations, though there has been a challenge by HomeAway whether lodging or related taxes apply to them, and/or whether they must collect taxes for their bookings. Hotels.com has litigated with some success questions whether local registration, business licensing and taxation apply to their internet services.

Question 6: What types of lawful regulation of short term rentals may be advisable? SHORT ANSWER: *If the policy decision is made not to preserve the current ban, or not to impose a rigorous limited ban, regulations ranging from registration and taxation, owner/nonowner regulations, limits on number of occupants, requirements for parking and inspection may be advisable.*

Based upon our review to summarize the applicable law in this Memorandum, and to review articles containing general information and trends on short term housing, we have arrived at the firm conviction that regulation in the following areas may be advisable:

a. Registration and business licensing. This will require revisions to the definitions in LMC 5.04.020 to make clear that rental of transient accommodations is business and the activity of engaging in business. In light of litigation involving HomeAway and Hotels.com registration of such national services, if included, may pose the risk of litigation.
b. Lodging Tax. To resolve any ambiguity, if lodging taxation is desired, the addition of a definition to LMC 3.48.020 defining the "furnishing of lodging" would be indicated. Since the City's sales or use tax taxes sales that are taxable under State law, we do not see any need to revise LMC Chapter 3.24 related to sales tax.
c. Owner/non-owner regulations. The Seattle Ordinance provides an example where broad overnight rental is allowed in an owner occupied unit, but limited rentals are allowed for non-owner occupied units. This type of approach would indicate a new chapter in Title 18 LMC.
d. Occupancy limits. Special occupancy limits and access requirements consistent with appropriate life safety concerns are broadly recommended. Such regulations if desired probably should appear in Title 18 LMC
e. Inspection requirements. To insure compliance with other regulations that might be imposed an initial and a periodic inspection could be a requirement. These requirements probably would be best located in a new proposed chapter in Title 18 LMC
f. Parking Requirements. City code also contains parking requirements for certain occupancies (for example for an accessory dwelling unit; see LMC 18.20.020 B 3). If regulation is pursued, a similar approach, perhaps variable by zone, would appear to be warranted.

Question 7: Depending on the option chosen to address short term rentals, what enforcement mechanisms are available to the City? SHORT ANSWER: *The City has choices among its enforcement mechanism. We recommend an active enforcement approach utilizing the notice and order provisions of Chapter 21.13 LMC*

Leavenworth addresses municipal code enforcement in three ways. Some misconduct is designated criminal and made a misdemeanor, other misconduct is made a civil infraction, and yet other misconduct becomes the basis of a notice leading to administrative enforcement. The City has no felony power.

A misdemeanor must occur in the presence of a police officer to be cited, and processing of the misdemeanor goes to the Chelan County District Court. Depending on outcome, the City may be saddled with a jail bill, that may or may not be recoverable, and if a fine is imposed, the fine if paid does not go to the city but is paid to the District Court. Misdemeanor prosecution has the advantage of a genuine "sting" up to potentially jail time, but the serious disadvantages of

"police observation," associated costs for police and potential jail time, potential liability associated with a wrongful arrest, and the City loss of control over the process since the matter is handled by the prosecutor and the courts. Note there is also lack of clarity on who to cite, the owner or tenant.

A civil infraction need not occur in the presence of a police officer. However, a civil infraction is referred to the Chelan County District Court too, and if the infraction is sustained, any penalty for the infraction is paid to the District Court. A civil infraction does not have the "sting" of a misdemeanor, but does preserve the civil as opposed to criminal nature of the enforcement. Costs of a civil infraction are thus greatly reduced. A civil infraction also has the disadvantage of loss of control because the matter is handled by the courts.

The City therefore generally has used its enforcement and penalty provisions of Chapter 21.13 to deal with land use issues and enforcement matters. This code has been updated to address any due process concerns. The code is typical for such enforcement codes, and to some degree time consuming. However, it does lead to the City potentially recovering some of its costs of enforcement because penalties imposed go to the City if paid.

Because of the advantages and disadvantages set out, it has been and remains our opinion that the enforcement process of Chapter 21.13 generally should apply to zoning code violations.

Should the policy decision be made to require registration and to impose taxation, then enforcement mechanisms consistent with business licensing (Chapter 5.04 LMC) and lodging taxation (Chapter 3.48 LMC) should be imposed too.

In preparing this paper, we have come across repeated statements that local government is "catching up" as it relates to short term rentals. This observation has typically been accompanied by an admonishment that if a city wishes to deal with short term rentals, then its enforcement process must be active and not merely complaint driven and passive. An active program to monitor and a program of quick response to complaints is necessary to bring about enforcement and even then enforcement likely will be costly and difficult. We concur in these observations.

APPENDIX – REFERENCE LIST

BACKGROUND REFERENCES

1) LMC Ch 12.20 Residential Low Density 6,000 District (RL6)
2) LMC Ch 18.21 Residential Low Density 12,000 District (RL12)
3) LMC Ch 18.22 Multifamily Residential District
4) LMC Ch 18.24 Supplementary Residential Districts Regulations
5) HomeAway Wikipedia article
6) Airbnb Wikipedia article
7) Homeshare Wikipedia article

QUESTION 1 REFERENCES

1) *Welden v. San Juan County*, 135 Wn.2d 678, 958 P.2d 273 (Wash. 1998)
2) *Edmonds Shopping Center Associates v. City of Edmonds*, 117 Wn.App 344, 71 P.3d 233 (Wash.App Div 1 2003)
3) *Cannabis Action Coalition v. City of Kent*, 183 Wn.2d 219, 351 P.3d 151 (Wash. 2015)
4) Letter from Attorney Wright A. Noel dated June 14, 2016
5) *Ross v. Bennett*, 148 Wn.App. 40, 203 P.3d 383 (Wash.App. Div 1 2008)
6) *Wilkinson v. Chiwawa Communities Association,* 180 Wn.2d 241, 327 P.3d 614 (Wash. 2014).
7) *Acquavella v. City of Seattle*, Case No 08-2-39188-4 SEA
8) *Cope v. City of Cannon Beach*, 317 Or. 339, 855 P.2d 1083 (Or. 1993)
9) *Ewing v. City of Carmel*, 234 Cal.App.3d 1579, 286 Cal. Rptr 382 (Ca.App 1991)
10) *Spilka v. Town of Inlet*, 778 N.Y.S 2d 222, 8 A.D.3d 812 (NY 2004)
11) *City of Venice v. Gywnn*, 76 So.3d 401, 37 Fla. L. Weekly D 47 (Fla.App. 2 Dist. 2011)
12) *Vilas County v. Accola*, 364 Wis.2d 409, 866 N.W. 2d 406 (Wis.App 2015)

QUESTION 2 REFERENCES

1) See *Acquavella v. City of Seattle*, Case No 08-2-39188-4 SEA under QUESTION 1 References
2) MRSC article: Airbnb: Regulation of Internet-Based Businesses August 25, 2014
3) MRSC article: local Government Catching Up with Airbnb and Other Short-Term Transient rental Businesses

QUESTION 3 REFERENCES

1) *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (Wash. 1997)
2) City of Seattle Draft Ordinance

QUESTION 4 REFERENCES

1) See proposed Draft Seattle Ordinance under Question 3 reference materials
2) See *Cope v. City of Cannon Beach*, 317 Or. 339, 855 P.2d 1083 (Or. 1993) under Question 1 reference materials

Lv-16-013/m white paper appendix reference list 160711

3) See *Ewing v. City of Carmel*, 234 Cal.App.3d 1579, 286 Cal. Rptr 382 (Ca.App 1991) under Question 1 reference materials
4) See *Spilka v. Town of Inlet*, 778 N.Y.S 2d 222, 8 A.D.3d 812 (NY 2004) under Question 1 reference materials
5) See *City of Venice v. Gywnn*, 76 So.3d 401, 37 Fla. L. Weekly D 47 (Fla.App. 2 Dist. 2011) under Question 1 reference materials
6) See *Vilas County v. Accola*, 364 Wis.2d 409, 866 N.W. 2d 406 (Wis.App 2015) under Question 1 reference materials

QUESTION 5 REFERENCES

1) Airbnb Housing Laws in Anaheim, CA
2) Airbnb Housing Laws in Los Angeles, CA
3) Airbnb Housing Laws in San Francisco, CA
4) Airbnb Housing Laws in Tacoma, WA
5) Airbnb Housing Laws in Seattle, WA
6) Airbnb Housing Laws in Bellevue, WA
7) *City of Portland v. homaway.com*, Case no. 3:15-cv-01984-MO June 7, 2016
8) *Louisville/Jefferson County Metro Government v. Hotels.com*, 590 F.3d 381 (6th Cir. 2009)

QUESTION 6 REFERENCES

1) MRSC Topic page: Lodging Tax (Hotel-Motel tax)
2) LMC Ch 5.04 Business License Tax – Generally
3) LMC Ch 3.24 Sales or Use Tax
4) LMC Ch 3.48 Lodging Tax
5) WAC 246-360-010 Definitions
6) WAC 246-360-020 Licensure
7) WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, and similar lodging businesses
8) RCW 67.28.180 Lodging tax authorized – Conditions
9) RCW 67.28.1816 Lodging tax – Tourism promotion
10) Santa Monica Home-Sharing Ordinance information and sample registration

QUESTION 7 REFERENCES

1) LMC Ch 21.13 Enforcement And Penalties

Contents

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City of Leavenworth Mayor Cheri Kelley Farivar and City Administrator Joel Walinski

PHOTOGRAPH BY MIKE KANE

A HALF-CENTURY AFTER ITS NEAR DEATH AND RESURRECTION AS A TOURIST MECCA, THE **CITY OF LEAVENWORTH** CONFRONTS A NEW EXISTENTIAL THREAT: **PEER-TO-PEER VACATION RENTALS TRANSFORMING ITS CIVIC SOUL.**

HOME RULE

BY **TED KATAUSKAS**
PHOTOS BY **MIKE KANE**

Mayor Cheri Kelley Farivar and City Administrator Joel Walinski in downtown Leavenworth

IN THE EARLY 1960S, decades after the railroad pulled up its tracks and moved to Wenatchee, after the sawmill stopped spinning timber into lumber, after the mines went bust and frosts killed off the orchards and half the population moved away, two entrepreneurs from Seattle hatched an audacious plan to save the moribund city of Leavenworth.

Back then, motorists on US Highway 2 slowed to take in the boarded-up storefronts, appliances rusting on front lawns, overgrown vacant lots, and the condemned high school, and they drove on. But Ted Price and Bob Rodgers, on a road trip from the city to the mountains, stopped. Seeing promise, they put down roots. Smitten by Leavenworth's alpine surroundings, they convinced local leaders that what this dying town needed wasn't a new factory or some other generic engine of economic resuscitation, but an elaborate Disney-style makeover (inspired by the storybook Bavarian village of Garmisch-Partenkirchen) as a destination for outdoor enthusiasts looking for an escape from the Emerald City, a two-and-a-half-hour drive away.

As proof of concept, Price and Rodgers pointed to the Squirrel Tree, a once-unremarkable greasy spoon 15 miles up the highway in Coles Corner that they had remodeled into a half-timbered Tyrolean-style *bierstube* and inn. Here, the staff wore dirndls and lederhosen to serve weekend crowds jam-packed with Seattleites and Tacomans who came to yodel along with the house oompah band. But upscale that success to an entire town?

Price, a pharmaceutical rep who chaired a committee on the city's community revitalization task force (Leavenworth Improvement for Everyone, or LIFE), had traveled to Solvang, California. He showed his peers a slide show of how Solvang had transformed itself from a nearly bankrupt agricultural town in the Santa Ynez Valley into "Little Denmark," a Danish-themed tourist boomtown complete with windmills. With the mastermind behind Danish Solvang (who offered his services for free) and a German-born architect from Seattle, Leavenworth launched Project Alpine, led and funded by local business owners who set about "Bavarianizing" the cityscape one building at a time, starting in 1965 with LaVerne Wyles's Chikamin Hotel (renamed the Edelweiss) and Alpine Electric (owned by Owen and Pauline Watson), which added an Alpine Haus Gift Shoppe. Other storefronts followed. By 1968, Leavenworth was featured in *Look* magazine. Two years later, Leavenworth's Design Review Board mandated that all new construction and remodeling projects would adhere to city-approved Bavarian aesthetics. And just like that, Price and Rodgers's unorthodox vision for Leavenworth was realized.

It succeeded beyond all projections. Attracting more than two million visitors a year, Leavenworth today is one of the most-visited destinations in the state, second only to Seattle. On weekends during the most popular of its three dozen annual festivals—Oktoberfest, Christmas Tree Lighting, Maifest—the town population swells tenfold, to 25,000. This is when the downside of Leavenworth's success is felt most acutely by locals living in residential neighborhoods, where more and more homes

Tourists snap a photo of themselves in the Bavarian-themed downtown.

have been snatched up as investment properties and rented out by the night to strangers via peer-to-peer vacation rental platforms like Craigslist and Airbnb, flouting a citywide prohibition on overnight rentals in residential neighborhoods.

"There have been complaints, especially during our festivals and Oktoberfest weekend," says Mayor Cheri Kelley Farivar. "There's nobody at the house—it's vacant all week—then on Friday night, four or five cars show up and park illegally on somebody else's property because there's no off-street parking. They make all kinds of noise and party way into the wee hours until neighbors call the police, then in the morning they're gone, leaving two or three bags of garbage on the porch. Of course this doesn't characterize every property, but there's been a lot of angst, a lot of apprehension from the community, asking, 'Who are these people who are invading us?'"

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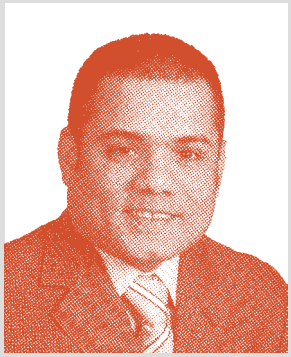
After a deluge of complaints from residents last winter—and pressure from property managers and vacation home owners to legalize overnight residential rentals—Leavenworth decided that it needed to revisit its ban, regulations governing "transient lodging" and bed-and-breakfasts that were drafted in 1989, seven years before the first internet vacation rental agency, VRBO.com, was founded. In the Spring 2016 edition of its *Leavenworth Courier* newsletter, the city published a front-page announcement that its planning commission would be convening the first in a series of public hearings seeking community input on whether or not vacation/overnight rental properties should be allowed within residential neighborhoods. On April 6, 2016, the night of the first public meeting, it was standing-room-only in Leavenworth's council chambers; the conversation was spirited—and surprisingly one-sided, with only a fraction of the 65 in the audience raising a hand or speaking out in opposition to an overnight residential rental ban.

"That hearing was packed out," says Mary Part Barton, a stay-at-home mom and founding member of Leavenworth Neighbors United, a group of homeowners who favor an overnight rental ban in residential neighborhoods. "One of the things we want to protect is affordable housing. There really isn't any in Leavenworth. Folks who live and work here can't afford a house and can't afford a 30-day rental."

Local real estate statistics support this assessment. Using the standard 30-percent-of-income rule, a resident earning the median household income in Leavenworth ($37,348) can afford to pay $933.70 a month for housing. But according to Trulia.com, the median home price in Leavenworth is $325,000 (up 57 percent since 2012); given current interest rates, a homeowner would expect to pay a monthly mortgage of $1,529, 61 percent more than is deemed affordable. Meanwhile, in December, the median monthly apartment rental hovered at $1,647, still further beyond the realm of local affordability. For residents of Seattle, on the other hand, where the median home price is $559,375

SHARING TIME
Q&A WITH KEVIN DESOUZA

Kevin Desouza, a Foundation Professor in the School of Public Affairs at Arizona State University, on what Washington's local electeds need to learn from Uber and Yelp if they want their cities not just to survive, but to thrive, in the sharing economy.



You're regarded as one of the nation's foremost experts on the sharing economy. How did that become a focus of your academic research?
I've always been interested in the convergence of information and technology and innovation. Early in my career when the sharing economy was in its infancy, I began studying the social, economic, and policy implications for local governments across the United States and internationally. I continue to be interested in how emerging technologies can reshape governance and the future of public agencies.

What sort of reshaping do you foresee?
Before, you would have public agencies or private enterprises that had monopolies like taxi cab associations or hotel chains that did credentialing and created the platforms where services or goods were transacted. With the new economy, you don't need to have an association deal with things like certification: with Uber, if a given driver is good or bad, you can have actual customers of the service rate the driver.

Any other examples?
In most local governments, and especially in most counties, you have armies of inspectors that go out and rate all kinds of things, like a food establishment that's rated on hygiene and other things. Does that score mean anything to most people? Most people will tell you no. When they want to look at the quality of an establishment, they go to Yelp or Open Table. They don't go to the county website, so why continue to invest in that?

Why is that significant?
You are removing intermediaries who add very little value and [by assessing a fee] are taking away value from the exchange. The new economy is more about having individuals or organizations who want to transact a thing or a service just work with each other rather than through an intermediary.

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Greg Morisoli at his Cascade Cabin rental property

and the median income is more than double that in Leavenworth, the average home in the Bavarian village isn't just affordable; it's a bargain, especially when the monthly mortgage can be recouped by renting the home for just three nights via Airbnb. As overnight rental speculators buy up existing single-family homes (Leavenworth has perhaps 500), prices increase while housing options for locals decrease.

"The more you allow short-term rentals, the better it is for individuals who own property and those who like to rent without using a hotel. It has more private than public benefits," says Andy Lane, a land use attorney from Seattle's Cairncross & Hempelmann who sits on Leavenworth's planning commission. "It takes homes out of the long-term rental market, and ultimately that can raise housing prices … and people who work at restaurants and work for the city or the Forest Service can't afford to live here."

Dan Eby, cofounder (with contractor Greg Morisoli and former Chelan County planning commissioner Randy Sexauer) of Come Stay in Our Village, a coalition of property managers and vacation home owners who oppose a short-term rental ban in Leavenworth neighborhoods, isn't buying that argument.

"The affordable housing crowd likes to tout the idea that vacation rentals are keeping prices high, but prices were already high," says Eby, owner of Destination Leavenworth, a vacation home management company who attended the April 6 public hearing. "Leavenworth will never be affordable for lower-income people. That has nothing to do with vacation rentals."

That notion is seconded by Morisoli, who owns Cascade Cabin, a five-bedroom vacation rental (listing for $575 a night) on acreage within Leavenworth's urban growth boundary that, if the ban is upheld, would run afoul of city code.

"In any resort community, whether it's Leavenworth or Vail or Aspen, affordable housing doesn't exist in the core, and you have to move to the outlying area," reasons Morisoli. "Back in the '60s, Leavenworth took a chance to become a resort community. As it has evolved, the internet has opened up a whole new opportunity for people to rent out their property with Airbnb, VRBO, TripAdvisor, and HomeAway. For a lot of folks, this supplemental income is essential to keep a property. We're working on the premise that property rights are sacred."

Eby, president of the state's Vacation Rental Managers Association, reached out to Joy Langley, Northwest government affairs manager at Expedia (which owns VRBO.com and HomeAway), who advocates on behalf of vacation rental property owners in cities in Washington and Oregon that are considering new regulations or bans on short-term rentals.

"It's challenging," Langley says. "You have the vacation home owners saying, 'Look, I have been doing this responsibly for 20 years. I have been able to have a home in Leavenworth and use it for my family and occasionally rent the property out to travelers.' They go to a city council meeting to tell that story, and they get vilified. That's unfortunate, because this is an issue that will take both sides to solve."

> For a lot of folks, this supplemental income is essential to keep a property. We're working on the premise that property rights are sacred.
>
> —GREG MORISOLI
> RENTAL OWNER

Eby and Morisoli also retained an Issaquah attorney in June to draft a letter addressed to Leavenworth's mayor, city administrator, and council that began, "I am writing to outline the reasons why the City's recent efforts to ban vacation rentals are contrary to existing Washington law, and to let you know that my clients are open to discussing reasonable regulations of vacation rentals that will benefit the City … and allow my clients to continue to use their properties for the purpose for which they were purchased."

In response, Leavenworth's city administrator, Joel Walinski, asked City Attorney Thom H. Graafstra to determine whether the city could preserve, and refine, its short-term rental ban. In a four-page counterargument Graafstra submitted to the mayor, city administrator, council, and planning commission in July, he opined, "Some may assert that municipal short term housing bans already have been found unlawful in the State of Washington. This is incorrect. No reported Washington decision has found a municipal ban on short term rentals unlawful."

With the city attorney's blessing, Leavenworth's planning commission continued exploring the community's support for, or opposition to, a ban. Over eight months, the planning commission hosted nine workshops and forums, inviting the public to submit whatever evidence they could gather to support their opinions, which would be compiled into a dossier and admitted into the public record at a final planning commission hearing on November 2, after which the commission would make its official

recommendation to the council. It's an impressive document, spanning 687 pages and encompassing eight studies and white papers (on the impact of short-term rentals in cities and towns from Maui to New York City), seven national newspaper and magazine articles, PowerPoint presentations by the Come Stay in Our Village Coalition and Leavenworth Neighbors Unite, a petition signed by 302 residents supporting a ban, and 48 written public comments (from "Don't change the code—enforce it!" to "I don't hold much hope in stopping this activity but we should TAX THE CRAP OUT OF THEM!").

In the end, the majority's desire to retain the ban prevailed. After hearing from the crowd that filled the firehouse auditorium (including a taxi driver who described a group of Oktoberfest revelers he dropped off at a nightly rental "puking" and "peeing" at "one, two o'clock in the morning"), the planning commission voted unanimously to uphold, and bolster, the existing ban on overnight rentals in residential neighborhoods.

"In a controversial issue like this, you think you can make everybody happy, but that is not realistic," says Lane, the planning commissioner and former weekender who several years ago made his Leavenworth vacation home his full-time residence—in what once was a "zombie neighborhood" of mostly second homes that were vacant more than they were occupied. "Even now, with the code we are proposing, there still is a group that says, 'Absolutely it should never be allowed,' and there still is a subset of the pro group saying, 'It should be allowed without regulation at all.' In my mind, we dispensed with the legal argument and got down to the guts of the matter: as a community, what should we be doing?"

Expedia's Langley believes that instead of banning short-term rentals, the city ought to be addressing the underlying issue that's been fueling a call for a ban.

"In the city of Leavenworth, they've expressed that they are looking to create workforce labor housing," she says. "The reality is, vacation rentals provide value not only to the homeowner, but to small business owners and their employees who see more customers because of the rentals. By limiting the activity to the commercial area, you are not guaranteeing more workforce labor housing; you are eliminating any revenue that could have been created by the tax base or licensure fees for those properties."

◆ ◆ ◆

If the city council signs off on the planning commission's recommendation at the next public hearing on January 24, Leavenworth will allow overnight rentals in residential areas, as long as property owners have their rentals certified as bed-and-breakfasts, which require the presence of a manager on premises, adequate off-street parking, passage of health and safety inspections, and other measures.

"The B and B rules are a challenge," stresses Langley, who estimates that 100 vacation home owners in Leavenworth list their properties on Expedia's HomeAway, most of which are outside of city limits and not affected by the ban. "The best

How can cities capitalize on that?
Seattle, where I lived for quite a while, has been trying to advance the extension of light rail. That's a nice idea, but given trends in autonomous vehicles, carpooling, and people using bicycles, is there a future for a service like light rail, which goes in predefined places? If a city were just to advance on the Uber pool rather than having commuters drive to the train station, it could create many different efficient models that are more flexible and customizable. Cities have to rethink how they manage urban transportation and how they manage their own fleets.

What do they need to rethink about that?
Most cities have a large investment in fleets of vehicles that go from Point A to Point B and 90 percent of the time are idle. Is that a good use of resources? If a community has paid for those assets and the city is not using them, I see no reason why we can't have a model where the community can actually use them.

What larger questions should cities be asking?
How much of what we do has come out of field-based regulation, as opposed to new models where individuals are trusting exchange markets in ways they never did before, where people are taking Uber or renting houses without complicated lease agreements.

One important conclusion from your research?
Managers and professionals that work in local governments fail to get involved in the early stages of innovations. Experimentation is absent in most local governments; there's pressure not to waste resources on what might be a doomed project. Any city or community needs at least to have an appetite for experimentation in innovation. But it's very important also to have a process in place, not just an individual who is the chief innovator. Everybody in local government needs to have a way to contribute, to run small experiments and share what they learn.

Any last words for Washington electeds?
You have this massive movement in terms of removing intermediaries. And as the most recent election has shown, people are open to trying crazy things. Local governments need to be thinking about what they are doing and not just reacting to today. They need to be asking, "What is our vision for the future of our community, and how does that vision connect to trends that are happening in the exchange economy?"

Your most important takeaway?
That the sharing economy has caused some disruption, and most people would agree now that it is reaching a point of equilibrium in most places. However, the next wave of technologies is going to make the disruptions of the sharing economy seem like child's play.

> We have always presumed people are interested in property rights, but here in Leavenworth people are more interested in feeling part of a residential community.
>
> —CHERI KELLEY FARIVAR
> LEAVENWORTH MAYOR

practices for bed-and-breakfasts may not work for vacation rentals. It's trying to fit a square peg into a round hole."

Regulations like requiring HomeAway property owners to make someone locally available who can respond to any complaints within 30 minutes could make sense, Langley offers. But she warns that outlawing neighborhood rentals ultimately could backfire, as homeowners pull their listings from established vacation rental platforms for the anonymity of internet listing services that are more difficult for cities to track and police.

"When they are on our platform, we can work with homeowners," she says. "If they move off, it's impossible to regulate; you're driving this activity underground. When that happens, nobody benefits. In the short term, the owners might, but the municipality loses."

As City Administrator Walinski points out, however, there are other options.

"Nothing prohibits these folks who want to do overnight rentals from purchasing a piece of property in a commercial area where overnight rentals are allowed," he notes. "Part of me says, 'Well, if somebody wanted to open a factory in a residential area, we'd prohibit it, because that's what zoning regulations are for.' I understand that it's a reach to compare an overnight rental with a factory, but in some respects it is the same. If you want to get in the business of overnight rentals, there is a process for it: buy property in a commercial zone, and build yourself a lodging facility. I think they call that a hotel."

The primary lesson Mayor Kelley Farivar says she takes away from the whole debate is that as an elected official, one should never make presumptions, citing a resident who testified at another public hearing.

"We have always presumed people are interested in property rights, but here in Leavenworth people are more interested in feeling part of a residential community," she says. "One gentleman, who spoke most eloquently, said, 'My daughter just learned to ride a bike. She was riding up and down the sidewalk and a half an hour later was carried home by a neighbor after she wrecked her bike and scuffed up her knees and elbows. It struck me as we were ministering to my daughter's knees that an overnight renter would never bring my daughter home.' Everyone wants Leavenworth to still feel like a small town."

That may be so, says Langley, but Leavenworth's pre-resort days are long gone, and they don't factor into the realities of the new economy.

"It's vital that all stakeholders recognize the importance of community," says Langley, whose grandfather owned a cabin in Leavenworth, and who was married there. "Travelers choose vacation rentals because they want their family to experience a community. I know I did."

For his part, Dan Eby says he'd rather not sue, but if Leavenworth's city council approves its planning commission's recommendation, he adds that he may have no choice.

"I'm not inclined to do that, but it is still an option," he says. "Leavenworth is a small town, but it's really booming because of the scenery and the Bavarian feel people want to experience. It's one thing to have a sign that says, 'Welcome to Leavenworth!' but then to say, 'You can't stay here or there.' There's going to come a time when the city comes to its senses: that it marketed itself as a tourist town."

Walinski says he is grateful that Price and Rodgers so long ago pushed for Leavenworth's reinvention as a tourist mecca. But he also insists that at its heart, Leavenworth is still the small neighborly town it once was.

"We want to welcome people here and maintain why people came: it's an idyllic community," he says. "If we just turned it into a bunch of rental units, you kind of lose that sense of community."

And out in the urban growth boundary, Greg Morisoli worries about losing his Leavenworth nest egg should he have to shutter his Cascade Cabin rental, which pays the mortgage.

"This has caused us so much angst," he says. "I'm 60 years old, and this is what we were counting on for our retirement income. If they ban overnight rentals, we'll probably have to sell the property and move on. … We don't know what will happen, so we're just sitting here, waiting."

So is pro-ban activist Mary Pat Barton, in her home in Leavenworth's residential district.

"The city has a right to bring this back around," she says. "We care about our neighborhoods, we care about our workers, and we won't let you just come in and take over. At the state level, there are billion-dollar companies with lots of money and lobbyists trying to change our laws. I don't know how this is going to go. One day, I feel good about it. Another day, I want to buy a tepee and walk away from it all."

Should it come to that, Barton can always rent one a few hours away in the Columbia River Gorge town of Stevenson, for $189 a night on Airbnb.

Guest Opinion: (submitted to Wenatchee World)

TITLE: **Legalize Short Term Rentals, But Limit Size and Density**
OR: Legalize Short Term Rentals In Chelan County, Limit Size and Density

by Barbara Rossing, Leavenworth;
with Jerry Jennings, George Wilson (Lake Wenatchee), Kirvil Skinnarland, Mara Bohman, Pat Thirlby, Bob Fallon, Greg Steeber, Bruce Williams (Leavenworth)

More than 1300 short term rentals (STR's) operate in Chelan County residential zones, according to a new March 30 report commissioned by the Chelan County Commissioners. More than two-thirds, or 868, are located in the Leavenworth zip code. All operate in a legal limbo.

The explosion of commercial whole-house rentals, facilitated by Airbnb, Home Away, VRBO and other web platforms, makes the short-term rental issue urgent, especially in Leavenworth, Plain, Lake Wenatchee and Manson.

Although Chelan County Code technically requires a Conditional Use Permit for all STR's operating in rural residential neighborhoods (except Manson), this Code has not been enforced. Confusing back and forth legal rulings about short term rentals in Peshastin underscore the need for clear Code.

Thankfully, a 2019 Washington State law (RCW 64.37) requiring owners of STR's to pay sales, lodging and occupancy taxes, gives clarity. Rentals for fewer than thirty nights are subject to the same business and lodging taxes as hotels. This makes STR's legally different from long-term rental housing.

The question now facing Chelan County commissioners is how to legalize, license and regulate an appropriate number of short-term rentals, while preserving rural residential neighborhoods primarily for residents (including both long-term renters and home-owners). Enforcement must also be part of new regulations.

The issue is urgent in the Leavenworth valley. We have witnessed entire residential streets becoming zones of party houses, with overflowing septic systems, out-of-control noise, traffic, parking, trash, winter driving accidents, fireworks, trespassing, burn-ban violations, and threats against residents who complain. Large lodges are being constructed under the false guise of a "single family home" building permit, then immediately converted into rental lodges, since nightly rental income is so much more lucrative than long-term rental. Affordable workforce housing for families is becoming impossible to find.

Zoning is key. The City of Leavenworth enforces a total ban on STR's in residential zones, only permitting them in commercial zones. We are not asking the County for such a sweeping ban in residential zones, but rather a compromise.

In our experience, size and number of STR occupants, as well as the owner's on-site presence, are the most determinative factors for reducing noise, traffic, and other problems. We support regulations that legalize and license some STR's, and limit occupants to ten (including children), a limit set by the International Residential Code for transient occupancy. Swimming pool and facility use must be limited to registered guests only, similar to hotel policies.

Density of STR's per neighborhood also matters. According to the study presented to the County Commissioners, the density of STR's in the rural Leavenworth 98826 zip code has increased more than ten-fold since 2014. More than 12% of our houses are now STR's, with new STR's far outpacing new home construction.

Density restrictions must limit the number of whole-house rental licenses in each zip code or voting precinct, so that no more than five percent of houses become STR's in any residential neighborhood. A lottery or other system should determine allocation of licenses, with priority to owners living on site. Sunsetting provisions could be adopted, similar to other new laws, in order to decrease STR density over time. New homes constructed using a "single family" building permit must be used as single-family for at least five years, a policy successfully implemented in Maui County, Hawaii. Large lodges or inns could petition to have their area re-zoned as commercial.

Other counties have grappled with this issue, and have adopted strong regulations to preserve residential neighborhoods. Okanogan County regulates STR density in the Methow River District by prohibiting an owner from operating more than one STR, by requiring a Conditional Use Permit, and by limiting occupants to ten. Pierce County limits STR occupants to ten.

We encourage the Chelan County Commissioners to adopt and enforce robust Code that will limit the size and density of STR's in our residential neighborhoods, in order to keep housing affordable and to protect the quality of life for residents.

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Thursday, April 16, 2020 7:59 AM
To: Lisa Grueter
Subject: FW: Proposed Short Term Rental Regulations

Categories:

Hi Lisa,
I have been sick this week. I will be catching up on emails today. Here is a comment forwarded from the BOCC.
Thank you,
Kirsten

Kirsten Larsen, AICP
Planning Manager
Community Development Department

316 Washington Street, Suite 301
Wenatchee, WA 98807
Phone: (509) 667-6225 | Fax: (509) 667-6475
Kirsten.Larsen@co.chelan.wa.us

The Department of Community Development would appreciate your feedback. Please take a moment to complete our Public Experience Survey:
CLICK HERE TO TAKE THE SURVEY!

From: Bob Bugert
Sent: Sunday, April 12, 2020 9:08 PM
To: Bob Fallon <bobfallon@gmail.com>
Cc: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: RE: Proposed Short Term Rental Regulations

Bob—
Thanks for the thoughtful email—and for providing these comments on the proposed code for short-term rentals. I am passing these on to Kirsten Larsen, to be in the record.
I hope you are well.

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

From: Bob Fallon <bobfallon@gmail.com>
Sent: Saturday, April 11, 2020 8:50 PM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
Subject: Proposed Short Term Rental Regulations

Bob
I had the pleasure of listening in on your coffee 2.5 hours with the Plain folks on Friday. Very impressive dialogue, and I can continue to be impressed with the efforts you are making to communicate with your constituents. Thank you very much.

Amongst the many issues discussed concerning proposed Short Term Rental (STR) regulations was enforcement of violations of whatever code is developed. I was stunned, and I think I heard this correctly, that there is ambivalence and controversy over who action should be taken against, the owner of the establishment or the renter. Action MUST be taken against the owner for a number of reasons:

- Every regulation I've ever seen discusses escalating penalties for repeat offenses. The renter will only occasionally be a repeat, therefore every regulation assumes the penalty is levied against the owner.
- It will be virtually impossible to track down the renter, while the owner will always be there
- The renter is a one off event, so doesn't care if he is cited, he can just ignore it.
- The owner is always involved and has a vested interest in keeping the property operating and will therefore take it upon himself to be sure the regulations are followed.
- RCW 64.37 addresses violations and penalties: 64.37.030 (3) For a first violation of this section, the city or county attorney must issue a warning letter to the owner or operator. An owner that violates this section after receiving a warning letter is guilty of a class 2 civil infraction under chapter 7.80 RCW.
- Chelan County regulations should conform to the state regulations for a variety of reasons.

Please pass these thoughts to the staff person who is collecting comments on STRs.

Thanks Bob

Bob Fallon
881-8504
bobfallon@gmail.com

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Thursday, April 16, 2020 8:13 AM
To: Lisa Grueter
Subject: FW: Friday Plain Meeting

Categories: Red Category

Another comment

From: Bob Bugert
Sent: Monday, April 13, 2020 8:43 AM
To: Jim Passage <jimpassage@msn.com>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>
Cc: Gerri Passage <gerripassage@msn.com>; Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: RE: Friday Plain Meeting

Jim—
Thanks for your email. I am passing on your comments to Kirsten Larsen, so that they can be included in the record.

It was unfortunate that you could not link into the zoom meeting properly. There was a large attendance and that created some technical problems. Hopefully we will have that glitch resolved for the next meeting.

Hope you are well.

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

From: Jim Passage <jimpassage@msn.com>
Sent: Sunday, April 12, 2020 5:53 PM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>
Cc: Jim Passage <jimpassage@msn.com>; Gerri Passage <gerripassage@msn.com>
Subject: Friday Plain Meeting

Bob

Thank you for all you and your fellow Commissioners do for our community!!!

I finally was able to tuned into your meeting but the audio did not work. We use Zoom regularly, I do not know what the issue was Friday. Oh well, we are dealing with a new way of doing business and there will be some bumps in the road. Patience and perseverance.

These are the questions I wanted to pose.

1) Have you considered a taxing formula other than the $500 regressive flat tax?
2) Will a portion of the tax, vacation rental facilities owners will pay, be allocated to the Sherriff's office to cover the costs the Sherriff's office will incur to deal with the various issues they will get called upon to resolve?
3) Given that all these facilities, which are small business, are currently suffering financially, is this the right time to impose another financial burden on them?
4) The 1500 new small businesses, vacation rental facilities, that were created over the past 10 years, pay $2+ million annually in business taxes, plus they pay property taxes. This is money government agencies were not collecting 10 years ago. Now it is being suggested these small businesses should pay an additional $750,000 in taxes to the county. What do these 1500 small business owners get in return for this additional tax burden?

Jim Passage

Sent from Mail for Windows 10

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Thursday, April 16, 2020 10:25 AM
To: Lisa Grueter
Subject: FW: Short Term Rental RRR Zoning

Hi Lisa,
I think the draft does consider these questions below, but wanted you to have this email to see if anything else may need to be considered for planned developments.
Thank you,
Kirsten

From: Mark D. Babcock <MDB@tenningen.com>
Sent: Monday, April 13, 2020 9:46 AM
To: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>; RJ Lott <RJ.Lott@CO.CHELAN.WA.US>
Cc: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Short Term Rental RRR Zoning

Hello Kirsten,

As you may be aware we (Marita Properties, LLC) have a preliminary approved PUD (PD2018-051) pending in Rural Recreational Residential zoning in the Chelan valley. In reviewing the Draft Code posted a few days ago regarding Short Term Rentals we have a few concerns and/or request clarification on CCCD's intentions/recommendations regarding STR in the RRR zoning. Following is an outline of these issues:

1. Our original application and intention has from inception has been to develop a managed vacation rentable community. This has been in play in all engineering and design criteria stipulated by CCCD and Public Works. All rental activities are to be managed by an exclusive agent, controlled by HOA covenants, and lot owners would be buying into the project with the knowledge of its being a STR development. The project is located in Rural ***Recreational***/Residential and RC zoning.
2. We specifically acquired our properties because of their RRR ***Recreationa***l and RC commercial zoning. We paid a premium for this zoning status.
3. We currently have a potential sale of our approved project that is dependent on its availability to be a STR development.
4. Obviously any attempt to redefine RRR to effectively being in the same category as traditional Residential zones would be very harmful to us.
5. There is very little RRR zoning in Chelan County. It has a specific intention in the Comprehensive Plan to be more suitable to recreational improvements than traditional residential zones.
6. In fact in the very limited RRR zoning in the Chelan valley there are several Wineries, Tasting Rooms, associated Restaurants, Wedding venues, and Guest Lodging facilities already existing and operating.
7. Our STR community is line with this current use and activity within the zoning.
8. It appears that the proposed Draft would limit STR within RRR to a countywide 1% cap, the same as traditional residential zones. Maybe we are misunderstanding this as the intention of the Draft?
9. It appears that at the same time that STR would now be allowed in Rural Commercial RC? Residential isn't even allowed in RC, why would STR be allowed? Misunderstanding on our part?:

10. Just as we are permitted to build hotel lodging on our RC parcel with no “County Cap”, it seems it would go without saying that STR would not be “capped” in RRR a specific Recreational zoning.

We would greatly appreciate clarification on these issues. As mentioned maybe I am not fully understanding the Draft. I have expressed these same concerns in the County Commissioners Hearing and have discussed them with Dave Kuhl in the past. Please let me know how to participate in the Planning Commission hearing on the 22nd. Also I did not receive any email notice of community comments period that appears to have been April 1-3, despite subscribing to notifications and participating in the past. I happened to catch that this was back on the “front burner” in the Wenatchee World notices.

Thanks again for your input on this critical issue to us. Please don’t hesitate to call me to discuss.

Regards,
Mark Babcock
206-947-4366

Mark D. Babcock
Managing Member

Marita Properties, LLC
Tenningen Group, LLC
190 Grandview Ln.
Chelan, WA 98816

206-947-4366

Lisa Grueter

From: Lisa Grueter
Sent: Monday, April 13, 2020 4:38 PM
To: Stan Winters
Cc: Kirsten Larsen
Subject: RE: Chelan CO Short Term Rental Issue Feedback

Hi Stan,

Thanks for your email. Ideally having comments on definitions by 4/22 would be helpful.

Kirsten and I plan to review definitions and propose changes after we hear input at the 4/22 study session with the Planning Commission.

Lisa Grueter, AICP
206.493.2367 | **DIRECT**
www.berkconsulting.com

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From: Stan Winters <winterss1@me.com>
Sent: Monday, April 13, 2020 4:10 PM
To: Lisa Grueter <Lisa@berkconsulting.com>
Subject: Re: Chelan CO Short Term Rental Issue Feedback

Hi Lisa,

Our Peshastin group will be meeting again later this week and we just want to make sure we are proceeding properly.

We met with Bob Bugert last week. 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. I'm wondering about what is the best way to make sure it is incorporated into the bigger picture. And of course we don't want to miss any deadlines.

Can you give me your suggestions on the best way to proceed and mesh with what you are putting together?

Thanks Lisa.

Stan

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

On April 3, 2020 at 2:35 PM, Lisa Grueter <Lisa@berkconsulting.com> wrote:

Thanks Stan,

I will review the attachments and your thoughts below.

I am sharing this with Kirsten as she's keeping track of comments from across the County.

Thanks for providing them,

Lisa Grueter, AICP

206.493.2367 | **DIRECT**

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From: Stan Winters <winterss1@me.com>
Sent: Friday, April 3, 2020 2:24 PM
To: Lisa Grueter <Lisa@berkconsulting.com>
Cc: Ortiz Tricia <ortzie8@gmail.com>
Subject: Chelan CO Short Term Rental Issue Feedback

Hi Lisa,

We (Peshastin Community Council) had a phone meeting with you a few weeks ago... thank you for spending that time with us.

If you are still accepting input I feel compelled to add my voice.

I am attaching a few documents here that I hope you will spend a few minutes with. As Chelan County had been moving toward resolution on issues around Short-Term-Rentals an observation is that there is urgency to get something completed. But I'm nervous that the decisions we seem to be heading for won't solve the issues that will be created. The reason I'm feeling this is because I don't hear about or sense a larger goal for our communities and for Chelan County. We can make regulations and pick around the edges of these issues, but if you read the attached papers you will see that you can not and will not win against the Short-Term-Rental, AirBnB industry. They will transform our communities into something we probably don't want. Here is a quote from one of the websites included:

- **"Airbnb describes itself as a quaint little home-sharing service … but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels," she says.**

The attached documents, which are just excerpts from websites, show that regulation of Short-Term-Rentals is all but impossible, and any alleged advantages that they bring to a community are in fact either not actual advantages (like saying they bring in more tourists - they don't), or the costs they impose on a community exceed the benefits, which are usually accrued by an absentee owner.

1. **Web Stories about STRs:** This includes several stories; one that shows the effects of the Corona Virus on STRs. All of a sudden there is a glut of housing available in places that have been experiencing shortages; rising costs of housing where STRs are present; wealth and racial inequity in the STR business - higher wealth and white households take a disproportionate share of wealth from non-primary residences at the expense of low income and non-white residents; and the conclusion that AirBnB is clearly a business and should have to play by the same rules as other lodging providers.

2. **Inside AirBnB_One Scary Story**: Read this to see what Chelan County will be up against. There are many quotes that are worthy, but here is one that should scare us all:

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments.

Our fate, if we allow STRs, is constant litigation by extremely well-funded organizations.

3. **Simulacrum**: I had to look this one up, so I'll define it here: an unsatisfactory imitation or substitute, "a bland simulacrum of American soul music". That's is what communities become when they are overrun by

Short Term Rentals. Chelan isn't Chelan anymore... it's pretend Chelan. Leavenworth (already a "fake" Bavarian town) becomes a fake of a fake. A key statement is: it is argued that STRs provides an economic equalizer, helping even hosts of few means to boost incomes and manage otherwise affordable housing costs. Yet a growing army of critics allege that, in dozens of cities around the world, ***the proxy hotel*** **service more often does the opposite, hyper-accelerating affordable housing crises and gentrification patterns that force out residents.** And in Toronto, the platform has eliminated some 6,500 homes from the cities badly pinched housing market.

The route we are trying to pursue in Peshastin is to classify whole house short term rentals in the same group as all other similar lodging. The wording will be something like this: " Hotels/Motels/Lodging Facilities": definition"Lodging Facility: A building, group of buildings or a portion of a building which is designed for or occupied as the temporary abiding place of individuals for less than thirty (30) consecutive days, including, but not limited to establishments held out to the public as auto courts, hostels, inns, motels, motor lodges, time share projects, tourist courts, guest inns, nightly rentals, vacation rentals, and other similar uses."

This way we can apply our current zoning. Whole house overnight rentals are subject to the same rules as all other similar lodging. Why should they get preferential treatment? This keeps the whole house STRs out of the residential areas, which is exactly where the problems are. And this makes all of the problems with this issue go away. If we don't go this route and think we will be successful with regulations... the articles I've attached speak to that... we will have to deal with issues forever and we'll eventually lose every issue. That industry will stop at nothing.

Before we adopt regulations I think we should back up and start with a shared vision of what we want Chelan County to look like as we move forward. I would much rather takes some steps back to consider our long-range goals and vision for the future of our valley. Then we can create regulations that will help get us there.

Thank you for listening.

Stan

Stan and Vania Winters
8200 Riverview Rd
Peshastin, WA 98847
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There is evidence overwhelming evidence that Short Term Whole House Rentals are detrimental to communities and that any so called benefits our outweighed by the damages inflicted on neighborhoods and the housing shortages and rent increases that always follow Short Term Rentals. This is a sample of some of this evidence.

Short Term Rentals in the News:

Coronavirus is exposing how Airbnb caused rent worldwide to skyrocket, Daily Dot

https://www.dailydot.com/debug/airbnb-coronavirus-rental-marker/

During the Corona virus outbreak:

"For years now, housing experts have pointed to Airbnb as the cause of the world's ever-dwindling housing supply and skyrocketing rents.

Now, according to property website Daft Media, there has been a 64% increase in rental properties across Dublin. Other tourist destinations like Edinburgh and London also saw increases in new rental listings, at 62% and 45% respectively.

"Btw this is happening all across the US too. Show me a city with a housing crisis and I'll show you @Airbnb being front and center," he tweeted."

New York housing activist Peter Harrison, inventor of tenant organizing app HomeBody, points out that the same is happening in the U.S. market as well.

"Btw this is happening all across the US too. Show me a city with a housing crisis and I'll show you @Airbnb being front and center," he tweeted."

Mar 21

64% rise in rental properties across #Dublin in midst of #Covid_19 crisis according to property website as landlords start withdrawing their rentals from short-term listing sites like #Airbnb and are offering them into the market instead.

Airbnb Has Made Housing More Expensive In Some Parts of D.C., New Research Paper Finds

https://wamu.org/story/20/01/13/airbnb-has-made-housing-more-expensive-in-some-parts-of-d-c-new-research-paper-finds/

Home-sharing platforms like Airbnb, VRBO and HomeAway can offer visitors to D.C. all sorts of options for cheap places to stay, but they also seem to be making parts of the city more expensive for long-term residents.

The economic costs and benefits of Airbnb No reason for local policymakers to let Airbnb bypass tax or regulatory obligations

https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/

… in many local markets, the arrival and expansion of Airbnb is raising questions about its potential negative impacts on local housing costs, quality of life in residential neighborhoods, employment quality in the hospitality industry, and local governments' ability to enforce municipal codes and collect appropriate taxes.

- **The economic costs Airbnb imposes likely outweigh the benefits.** While the introduction and expansion of Airbnb into U.S. cities and cities around the world carries large potential economic benefits and costs, the costs to renters and local jurisdictions likely exceed the benefits to travelers and property owners.
- **Rising housing costs are a key problem for American families, and evidence suggests that the presence of Airbnb raises local housing costs.** The largest and best-documented potential cost of Airbnb expansion is the reduced supply of housing as properties shift from serving local residents to serving Airbnb travelers, which hurts local residents by raising housing costs. There is evidence this cost is real:
- Because housing demand is relatively inelastic (people's demand for somewhere to live doesn't decline when prices increase), even small changes in housing supply (like those caused by converting long-term rental properties to Airbnb units) can cause significant price increases. High-quality studies indicate that Airbnb introduction and expansion in New York City, for example, may have raised average rents by nearly $400 annually for city residents.

Studies claiming *that Airbnb is supporting a lot of economic activity often vastly overstate the effect because they fail to account for the fact that much of this spending would have been done anyway by travelers staying in hotels or other alternative accommodations absent the Airbnb option.*

- The rising cost of housing is a key problem for American families. Housing costs have risen significantly faster than overall prices (and the price of short-term travel accommodations) since 2000, and housing accounts for a significant share (more than 15 percent) of overall household consumption expenditures.
- Studies claiming that Airbnb is supporting a lot of economic activity often vastly overstate the effect because they fail to account for the fact that much of this spending would have been done anyway by travelers staying in hotels or other alternative accommodations absent the Airbnb option.

- **Property owners do benefit from Airbnb's capacity to lower the transaction costs of operating short-term rentals, but the beneficiaries are disproportionately white and high-wealth households.** Wealth from property ownership is skewed, with higher-wealth and white households holding a disproportionate share of housing wealth overall—and an even more disproportionate share of housing wealth from nonprimary residences because they are much more likely to own nonprimary residential property (such as multi-unit Airbnb rentals).

Wealth from property ownership is skewed, with higher-wealth and white households holding a disproportionate share of housing wealth overall—and an even more disproportionate share of housing wealth from nonprimary residences because they are much more likely to own nonprimary residential property (such as multi-unit Airbnb rentals).

- **City residents likely suffer when Airbnb circumvents zoning laws that ban lodging businesses from residential neighborhoods.** The status quo of zoning regulations in cities reflects a broad presumption that short-term travelers likely impose greater externalities on long-term residents than do other long-term residents. Externalities are economic costs that are borne by people not directly engaged in a transaction. In the case of neighbors on a street with short-term renters, externalities include noise and stress on neighborhood infrastructure like trash pickup. These externalities are why hotels are clustered away from residential areas. Many Airbnb rental units are in violation of local zoning regulations, and there is the strong possibility that these units are indeed imposing large costs on neighbors.
- ***Because Airbnb is clearly a business competing with hotel lodging, it should be subject to the same taxation regime as hotels.*** *In regard to zoning regulations, there is no empirical evidence that the net benefits of Airbnb introduction and expansion are so large that policymakers should reverse long-standing regulatory decisions simply to accommodate the rise of a single company.*

- **Potential costs**
- The single biggest potential cost imposed by Airbnb comes in the form of **higher housing costs for city residents** if enough properties are converted from long-term housing to short-term accommodations. If property owners take dwellings that *were* available for long-term leases and convert them to short-term Airbnb listings, this increases the supply of short-term rentals (hence driving down their price) but decreases the supply of long-term housing, increasing housing costs for city residents. (We refer to all long-term costs of shelter as "housing," including rentals and owners' equivalent rental costs.)

- **Potential benefit three: Travelers' spending boosts the economic prospects of cities**
- The lower prices and greater range of options made available by the introduction and expansion of Airbnb could, in theory, induce a large increase in travel and spark economic growth in destination cities. This is precisely the claim made in a report by NERA Economic Consulting (NERA 2017), which says that Airbnb "supported" 730,000 jobs and $61 billion in output globally, with roughly a quarter of this economic gain occurring in the United States.

> - ***To be blunt about these claims, they are flatly implausible.*** They rest on the assumption that all money spent by those renting Airbnb units is money that would not have been spent in some alternative accommodations had Airbnb not existed.

Potential costs of Airbnb introduction and expansion

Potential cost one: Long-term renters face rising housing costs

Potential cost two: Local government tax collections fall

Potential cost three: Externalities inflicted on neighbors

Potential cost four: Job quantity and quality could suffer

Conclusion: Airbnb should have to play by the same rules as other lodging providers

Airbnb Is Screwing Over New York's Vulnerable Neighborhoods

Everyone knows Airbnb is bad for the housing market. But it's starting to get worse.

https://www.vice.com/en_us/article/ywxynm/airbnb-is-screwing-over-new-yorks-vulnerable-neighborhoods

David Wachsmuth does not mince words when he talks about the impact of Airbnb rentals: *"They impose costs on every single other person in the city," he told me.*

Wachsmuth said there is a solution that doesn't require the entire dismantling of Airbnb culture. If the service were limited to homesharing—in other words, people who actually live in the units rent their

apartments out on weekends or holidays—the housing market would remain stable and people could still make money.

The Airbnb Effect: It's Not Just Rising Home Prices

https://www.citylab.com/equity/2019/02/study-airbnb-cities-rising-home-prices-tax/581590/

D.C. is restricting it. Florida might stop investing in it. New Orleans is trying to ban it completely. Across the country, legislators are not happy with Airbnb.

The study's author Josh Bivens argues, cities need to start treating Airbnb like any other hotel business, and regulate it accordingly. "It becomes a straight conflict between whose interests you care more about: long-term residents of the city, or those that visit it," Bivens said.

"It becomes a straight conflict between whose interests you care more about: long-term residents of the city, or those that visit it," Bivens said.

Since Airbnb helps homeowners take existing housing stock and turns some of it into short-term units, its biggest measured effect so far has been on housing prices—by repurposing units that might otherwise be long-term housing, it's straining an already supply-short market. Rents rise in the process.
Since 60 percent of the property wealth in homeowners' primary household is concentrated in the top 20 percent of households—and more than 80 percent of the wealth is held by white households—it stands to reason, Bivens says, that the ones who stand to make the most from Airbnb are already the wealthiest, and the whitest.

Is Airbnb Ameliorating – or Exacerbating – Inequality in Cities?

"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways."

https://www.usnews.com/news/cities/articles/2019-05-02/airbnbs-controversial-impact-on-cit"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways.

But as the platform has expanded beyond homeowners with a spare room to profit-minded investors who buy and then rent entire homes, it's also put a new squeeze on housing markets. Particularly for renters in high-demand cities, Airbnb can increasingly feel like a kind of digital grim reaper: In Toronto the platform has eliminated some 6,500 homes from the city's badly pinched housing market, according to a recent report from the coalition group Fairbnb. In Boston long-time residents of Chinatown – a dense neighborhood that's become the epicenter of that city's gentrification battle – are being displaced by overseas speculators, who buy property at inflated prices only to turn around and list on the site.

"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways."

Galia says
June 23, 2017 at 8:28 AM
Hello!
I just wanted to say that I understand and benefits from their experience, but I must say that AirnBnB apartments for tourists means a great lack of opportunities for locals who want to stay and live in their cities. We are suffering this big problem in Barcelona (Catalunya_Spain) now … The locals can not afford to rent the prices … I really think that this platform is **no longer collaborative: it is speculative**. Think globally :)) AirBnB and similar platforms destroy local communities for the benefit of tourists and private speculators.

How Taxpayers Subsidize AirBnB's Cheap Prices

https://www.nakedcapitalism.com/2017/01/how-taxpayers-subsidize-airbnbs-cheap-prices.html

Airbnb says one of the key benefits of what it calls "home sharing" is to reduce costs for travelers and to help hosts earn extra income. But hoteliers complain they face unfair competition, as a result of tax differences and gaps in regulatory enforcement of everything from hygiene to disabled access and fire safety….

The ability of AirBnB to operate at all is proof of the success of neoliberal indoctrination. Most communities have strict zoning laws. Renting out your home, even on a part-time basis, is a commercial activity. Most localities ignore violations of that distinction for businesses that don't generate traffic, such as a bookkeeper or web designer working from their home. But one of the reasons for this distinction was to preserve the integrity of residential communities and keep transients out. But it seems that nothing is to stand in the way of rental extraction in the name of the sharing economy…even when the sharing consists of pilfering from the very communities that cut businesses like AirBnB slack that they do not deserve.

Inside Airbnb's 'Guerrilla War' Against Local Governments

https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/

Airbnb has fought city officials over regulations aimed at preventing homes from being transformed into *de facto hotels* and requests from tax authorities for more specific data about hosts and visits.

Similar dramas are playing out around the country. From Nashville to New Orleans to Honolulu, Airbnb is battling local officials over requests to collect occupancy taxes and ensure that the properties listed on its site comply with zoning and safety rules. In the past five months alone, the company has spent more than half a million dollars to overturn regulations in San Diego and has sued Boston, Miami,

and Palm Beach County over local ordinances that require Airbnb to collect taxes or remove illegal listings. Elsewhere, Airbnb has fought city officials over regulations aimed at preventing homes from being transformed into ***de facto hotels*** and requests from tax authorities for more specific data about hosts and visits.

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments, says Ulrik Binzer, CEO of Host Compliance, which helps cities draft and enforce rules for short-term rentals, sometimes putting it at odds with hosting platforms. "They need to essentially fight every one of these battles like it is the most important battle they have."

As the city (Nashville) inched closer to prohibiting so-called "mini hotels"—non-owner-occupied homes used exclusively as vacation rentals—Airbnb shifted its focus from City Hall to the state Capitol three blocks away. In the latter half of 2017, the company more than doubled the number of lobbyists it employed in Tennessee, to from four to 11, and spent between $225,000 and $350,000 on lobbying between February 2017 and August 2018, according to reports the company filed with the state.

Around this time, a political action committee called the Committee to Expand Middle Class By Airbnb, Inc. donated $10,000 to groups representing Tennessee Republicans, according to campaign finance records. The donations included $2,500 to the campaign of state representative Cameron Sexton, who had introduced a bill in 2017 specifying that short-term rentals should not be considered hotels under state law. The bill, known as the Short-Term Rental Unit Act, was drafted in consultation with Airbnb and other short-term rental companies, including HomeAway, according to the *Tennessean*. It included a provision stripping cities of the power to ban existing short-term rentals. The Tennessee General Assembly passed the bill in April 2018

Is Airbnb Ameliorating – or Exacerbating – Inequality in Cities?
The short-term rental company professes noble aims, but experts argue it displaces tenants and puts pressure on tight housing markets.
By Trevor Bach ContributorMay 2, 2019, at 3:27 p.m.

Does Airbnb Hurt or Help Cities?

HARPER RICHARDS SPENT most of her childhood in New Orleans. By the time she was in her early 20s, she identified with the city's famous cultural openness and artistic bent, performing as a burlesque dancer and selling handicrafts, like earrings made from recycled guitar strings and coasters fashioned from salvaged Hurricane Katrina wood, at the Frenchmen Art Market.

But even working multiple jobs – at a jewelry store, serving pizza, driving for Uber – her income was relatively low; in early 2015, after learning she was pregnant, she began searching for a long-term home. "I was looking at what I could survive off," she says, "with my income and situation – about to be a single mother."

"One of the big questions that we have is, 'How much of an outsize role do we want tourism to have in our city – do we really want just to turn the entire city over to like basically being a simulacrum of New Orleans?'" says DeDecker. "How much are we asking of our residents to give up in order to make space for these tourists?"

She signed a lease on one half of a double shotgun house on Josephine Street in Central City, a working class neighborhood separated from downtown and the French Quarter by a freeway. She quickly made it home, repainting walls with a gold molding and turning one room into a nursery. "It was a really good scenario," she says. "Cheap rent and a good little neighborhood. My daughter made a bunch of friends across the street." Then her landlord put the house on the market; in March 2017 a property management company representing an out-of-town buyer gave her a 45-day notice. Richards and her daughter moved into a different place down the street, but the rent was hundreds of dollars more. Soon they left New Orleans. After renovations, the Josephine Street house was promptly listed on Airbnb.

"This Airbnb Displaced 5 People," Richards' neighbor spray-painted in big red letters on the home's sidewalk.

In just over a decade, Airbnb has transformed hospitality around the world. Its platform now counts some 500 million guest stays in 81,000 cities; in December it announced it had collected and dispersed $1 billion in tax revenue. But the company's rapid growth has also fueled a caustic debate about urban inequality. Airbnb, whose mission is "to democratize travel by allowing anyone to belong anywhere," argues that it provides an economic equalizer, helping even hosts of few means to boost incomes and manage otherwise unaffordable housing costs.

Yet a growing army of critics allege that, in dozens of cities around the world, ***the proxy hotel*** **service more often does the opposite, hyper-accelerating affordable housing crises and gentrification patterns that force out residents.**

"It's really the rich who are getting richer off of this situation," says Richards. "Airbnb has run so rampant across the entire city that there's barely any rentals left for locals, and the rentals that are available are skyrocketing in price."

How Airbnb Changed Housing

Like its closest Silicon Valley industry-disrupting cousins, the ride-sharing apps Uber and Lyft, Airbnb, with a simple, decentralized concept, virtually redefined a decades-old industry overnight: Through the magic of the internet, suddenly anyone with a spare room could become a hotelier, and travelers had an easy gateway to a new kind of experience. A few years after the company started in San Francisco in 2008, tourists could choose from hundreds or thousands of nontraditional hotel options in nearly every city in the world, including a carefully decorated room in a 1930s London flat ($64 a night), a tiny house made from reclaimed wood in West Seattle ($110 a night), and a shared traditional yurt in Ulaanbaatar, Mongolia ($10 a night).

"It's really the rich who are getting richer off of this situation," says Richards. "Airbnb has run so rampant across the entire city that there's barely any rentals left for locals, and the rentals that are available are skyrocketing in price."

"First and foremost it's our community," says Christopher Nulty, the company's head of public affairs for the Americas, explaining the company's success. "There's something really special about going and staying in someone else's home – staying outside the central hotel district and being able to see a new place through the eyes of a local."

But as ***the platform has expanded beyond homeowners with a spare room to profit-minded investors who buy and then rent entire homes***, it's also put a new squeeze on housing markets. Particularly for renters in high-demand cities, Airbnb can increasingly feel like a kind of digital grim reaper: In Toronto the platform has eliminated some 6,500 homes from the city's badly pinched housing market, according to a recent report from the coalition group Fairbnb. In Boston long-time residents of Chinatown – a dense neighborhood that's become the epicenter of that city's gentrification battle – are being displaced by overseas speculators, who buy property at inflated prices only to turn around and list on the site.

In Toronto the platform has eliminated some 6,500 homes from the city's badly pinched housing market.

"If you just walk around Chinatown you see the demographic change," says Karen Chen, executive director of the Chinese Progressive Association, which advocates for residents in the

neighborhood. "It's taking housing from the market, but as it's doing that it's actually creating a chain of rising rent."

A Chain of Rising Rents

Independent research confirms that Airbnb listings do in fact cause higher rents. "What's happening is that some landlords are switching from the long-term market to the short-term market," says Davide Proserpio, an assistant professor of marketing at the University of Southern California who co-authored a broad study on the issue. "Why? Because Airbnb reduces a lot of friction and makes renting in the short-term market quite easy for everyone."

The impact, unsurprisingly, varies wildly by city. One 2016 analysis predicted that if Boston's rapid rate of Airbnb expansion in 2015 continued for three more years the service would cause an average rent increase of as much as $2,136 annually. A 2018 study found that in New York the service has increased annual rent for the median tenant by $380, and over $700 in some neighborhoods.

"We're really looking at short-term rentals as like a housing justice issue," says Breonne DeDecker, a program manager at Jane Place, a housing rights nonprofit in New Orleans. In that city, where rents have exploded in areas with the highest concentrations of listings, DeDecker says Airbnb rentals have displaced so many locals that many traditionally residential districts – including in working-class black neighborhoods like the Seventh Ward and Treme – now resemble weekday ghost towns. "Thursday, Friday and Saturday it's just awash in young white tourists."

"We're really looking at short-term rentals as like a housing justice issue,". Airbnb rentals have displaced so many locals that many traditionally residential districts – including in working-class black neighborhoods like the Seventh Ward and Treme – now resemble weekday ghost towns. "Thursday, Friday and Saturday it's just awash in young white tourists."

Airbnb vehemently rejects conclusions that suggest the platform exacerbates inequality. Much of the underlying research, Nulty charges, was funded by the hotel industry and relies on "scraped, inaccurate data" on listings. (The industry has in fact waged an aggressive campaign against Airbnb, including funding research. Many studies rely on scraped web data as a proxy – Airbnb has repeatedly fought data collection attempts by regulators.) He points out that the company didn't invent the concept of vacation rentals – indeed, many whole home listings simply migrated onto Airbnb from other platforms – and that the majority of hosts are using the platform to rent a spare room to generate extra income, like an average $6,400 annually for hosts in New York.

An Economic Stimulus?

The platform, Nulty argues, can also serve as an important economic stimulus in underserved areas: the portion of Washington, D.C. east of the Anacostia River, a predominantly poor and black neighborhood, has virtually no traditional hotels but hundreds of Airbnb listings. The company does remove listings that violate local rental laws, including some 5,000 in New York, and has long been outspoken against evictions.

"We've been so clear about this," Nulty says. "We do not want bad actors on our platform who are purposefully evicting tenants with the intention of Airbnbing their space."

But analysts say that, on the whole, underlying home ownership patterns mean that the gains from Airbnb are disproportionately spread among a demographic that already skews both white and wealthy.

"We can say the winners from Airbnb – generally they're pretty concentrated at the top," says Josh Bivens, director of research at the Washington, D.C.-based, left-leaning Economic Policy Institute. In a report published in January Bivens concluded Airbnb's net economic costs outweigh its benefits: Even if the platform's impact on aggregate housing prices has been relatively small, he argues, it has accelerated an affordable housing crisis that, for millions of Americans, was already dire. "It's another straw on the camel's back."

Municipalities have struggled to keep up. Regulation of listings has been patchwork, with cities around the world taking different approaches aimed especially at curbing whole-home rentals. In 2016 Berlin implemented a near-total ban, later amended, on rentals of more than half an apartment. San Francisco passed laws that restrict listings to primary residences and cap stays where no host is present to 90 days annually. In December, Massachusetts passed a sweeping new law that opens up listings to hotel taxes and public disclosure. Governor Charlie Baker praised the measures as a "leveling of the playing field."

Yet even with rules in place, regulatory agencies are often overwhelmed, and savvy listers find ways to evade requirements: In Miami Beach one property manager was associated with more than $1.2 million in dozens of illegal listing fines; in February investigators in New York exposed a vast, city-wide scheme, orchestrated by an Israeli former real estate broker, that generated $20 million in revenue by using multiple identities, manipulated addresses and proxy corporations to flout city rental laws and the company's "one host, one home" rule – specific to New York and a handful of other cities. While in many cases the company has struck voluntary agreements with cities, it also regularly fights regulation and taxation attempts, including with lawsuits against Palm Beach County, Florida, New York and Boston.

"They want to be a company that operates in the space of the really large hotel chains, and yet claim to not be a hotel chain," says Bivens. "I don't think you can have it both ways."

A heated regulatory battle is also underway in New Orleans, where some new City Council members campaigned on the issue of tightening the city's lax regulation of short-term rentals.

In March the city's planning commission endorsed a proposal to ban whole-home rentals in residential areas, representing a dramatic change of course – if the measures eventually pass a full council vote – for a mid-size city with some 11 million annual tourists. At stake, advocates say, is the identity of New Orleans itself.

"One of the big questions that we have is, 'How much of an outsize role do we want tourism to have in our city – do we really want just to turn the entire city over to like basically being a simulacrum of New Orleans?'" says DeDecker. "How much are we asking of our residents to give up in order to make space for these tourists?"

Trevor Bach, **Contributor**

Trevor Bach is a journalist based in Detroit. Follow him on Twitter.

Tags: New Orleans, Airbnb, inequality

Inside Airbnb's 'Guerrilla War' Against Local Governments

The high-profile unicorn is battling cities from Boston to San Diego over collecting taxes and enforcing zoning rules.

"Airbnb describes itself as a quaint little home-sharing service … but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels," she says.

"READ MY LIPS: We want to pay taxes," Chris Lehane, Airbnb's global head of public policy, told the nation's mayors in 2016. In the years since, the home-sharing site has repeated the declaration in press releases, op-eds, emails, and on billboards. On its website, Airbnb says it is "democratizing revenue by generating tens of millions of new tax dollars for governments all over the world."

Palm Beach County tax collector Anne Gannon wasn't surprised. "*We knew we were going to get sued*," she says. "That's what they do all over the country. It's their mode of operation."

But when Palm Beach County, Florida, a popular tourist destination, passed an ordinance in October 2018 requiring Airbnb and other short-term rental companies to collect and pay the county's 6 percent occupancy tax on visits arranged through their sites, Airbnb sued.

Palm Beach County tax collector Anne Gannon wasn't surprised. "We knew we were going to get sued," she says. "That's what they do all over the country. It's their mode of operation."

Gannon has been cajoling, threatening, and ordering Airbnb to collect taxes for its hosts since 2014. Five years, three lawsuits, and millions in unpaid occupancy taxes later, she's still trying. "All we want them to do is pay their taxes," she says. "They absolutely don't want to pay their taxes the way we want to collect them. That's the bottom line."

Similar dramas are playing out around the country. From Nashville to New Orleans to Honolulu, Airbnb is battling local officials over requests to collect occupancy taxes and ensure that the properties listed on its site comply with zoning and safety rules. In the past five months alone, the company has spent

more than half a million dollars to overturn regulations in San Diego and has sued Boston, Miami, and Palm Beach County over local ordinances that require Airbnb to collect taxes or remove illegal listings. Elsewhere, ***Airbnb has fought city officials over regulations aimed at preventing homes from being transformed into de facto hotels and requests from tax authorities for more specific data about hosts and visits.***

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments, says Ulrik Binzer, CEO of Host Compliance, which helps cities draft and enforce rules for short-term rentals, sometimes putting it at odds with hosting platforms. "They need to essentially fight every one of these battles like it is the most important battle they have."

Airbnb is engaged in "a city-by-city, block-by-block guerrilla war" against local governments.

Founded in 2008 as an early champion of the sharing economy by allowing people to rent homes, apartments, and rooms to others, Airbnb has grown into a lodging colossus, offering more than 6 million places to stay in more than 191 countries. ***Its listings outnumber those of the top six hotel chains combined***, helping the company reportedly generate more than $1 billion in revenue in the third quarter of 2018. It is valued by investors at $31 billion, making it the country's second most valuable startup, after Uber. By comparison, Hilton and Marriott's current market capitalizations are $25 billion and $43 billion, respectively. Earlier this month, Airbnb acquired last-minute hotel booking service HotelTonight, reportedly for more than $400 million.

One reason Airbnb is often a cheap option for travelers: Running a hotel or bed and breakfast is expensive; snapping photos of your home, apartment, or spare room and filling out an online profile is not. Hotels must comply with a litany of health, safety, and zoning rules—as well as register with local agencies and agree to collect certain taxes—before they can book a single guest.

Airbnb maintains that, in some cases, it's not permitted to collect occupancy taxes required of hotels and other lodgings; it's also not responsible for ensuring the rooms and homes listed on its sites comply with zoning or health regulations. The company says it follows local and state laws but considers itself a "platform," serving merely to connect hosts and visitors, rather than a lodging provider—more akin to Facebook than Marriott.

The onus is on hosts, Airbnb argues, to collect and pay any relevant taxes and to comply with other regulations. In practice, though, few actually do—at least not without considerable effort by local authorities—according to interviews with more than a dozen local government officials and advisers.

Some officials agree with Airbnb. In an early 2018 survey of state tax departments by Bloomberg, officials in 25 states said it was the host's responsibility to pay occupancy tax for an Airbnb stay. Officials in 14 states said they consider it the responsibility of Airbnb or other short-term rental operators. The survey was taken before the US Supreme Court ruled in June that states may collect sales tax from online retailers even when they don't have a physical presence in that state. The survey did not include local authorities, who are often more reliant on revenue from occupancy taxes, especially in popular tourist areas.

To be sure, these aren't Airbnb's taxes, any more than Hilton "pays" taxes for its guests' hotel stays. Rather, the officials sparring with Airbnb want the company to collect and forward the taxes from guests, much as hotels do. Airbnb says it isn't required to collect the taxes in many places; early on, it largely didn't.

That changed around 2014, when Airbnb began striking deals with officials in select cities to collect and deliver taxes from its hosts. It calls these Voluntary Collection Agreements, or VCAs. In Portland, site of the first agreement, city officials legalized home-sharing and lowered the registration fee for short-term rentals around the same time Airbnb agreed to add a 11.5 percent occupancy tax on each booking. It later negotiated similar deals in San Francisco, Chicago, Philadelphia, Washington, DC, and elsewhere. The company says it has signed more than 350 such agreements nationwide and more than 500 around the world, and has collected more than $1 billion in taxes.

"Some governments have rules requiring platforms like Airbnb to collect and remit taxes, and we make every attempt to comply with these obligations," says Christopher Nulty, Airbnb's head of public policy. "However, many governments do not have such rules and so Airbnb has proactively established more than 500 voluntary collection agreements globally to ensure our community is paying their fair share of taxes. We are eager to do everything we can to ensure we are paying our fair share and willing to work with any government that will work with us."

However, those agreements don't require hosts to meet other zoning, health, and safety rules, and they prohibit cities from attempting to collect back taxes. Some also create obstacles for local agencies to identify and police hosts who list through the site. Dan Bucks, former director of the Montana Department of Revenue and former executive director of the US Multistate Tax Commission, analyzed some of the few publicly available Airbnb agreements and found that most prevented city officials from learning the names or addresses of Airbnb hosts, making it impossible for officials to enforce local codes. Bucks says the agreements helped Airbnb grow by "providing a shield of secrecy" to hosts. His study was partially funded by the American Hotel and Lodging Association, which is often at odds with Airbnb and other short-term rental companies.

"All we want them to do is pay their taxes."

ANNE GANNON, PALM BEACH COUNTY TAX COLLECTOR

Airbnb says its VCAs are designed to help government agencies collect tax revenue, not to help them enforce other laws related to short-term rentals. The company says the agreements show that it is a responsible corporate citizen.

Historically, other online rental services, such as Booking.com, HomeAway, and VRBO, have not collected these taxes in many places. In the past two years, HomeAway and VRBO have begun collecting some occupancy taxes in a handful of areas—sometimes using their own version of a VCA. Booking.com does not offer any occupancy-tax collection services, compounding the revenue drain for municipalities. Booking.com's global communications manager, Kim Soward, says the company pays all required taxes. Expedia Group—owner of HomeAway, VRBO, VacationRentals, and other sites—did not respond to multiple requests for comment.

Airbnb is the undeniable giant of the field, and is reportedly preparing for an initial public offering. About 51 percent of all short-term rental listings in the US are on Airbnb, according to an analysis by Binzer, of Host Compliance. VRBO controls 17 percent of listings and HomeAway 11 percent, he says.

Poster Child

New Orleans was hailed as the poster child for Airbnb's work with local governments after signing a VCA in December 2016. Around the same time, the city struck a deal with Airbnb to legalize short-term rentals while requesting that the company share the names and addresses of hosts, ban certain illegal

listings, and create an online system that automatically registers hosts with the city, among other things. Many viewed the deal as a sign Airbnb was learning to live with local taxes and regulations.

Today, city officials say they're disappointed. They say a surge in short-term rentals has exacerbated New Orleans' affordable housing crunch and turned entire residential blocks into de facto hotels. Jane's Place Neighborhood Sustainability Initiative, a local housing group, says there were 4,319 whole-unit Airbnb listings in the city last year, more than double the 1,764 in 2015. The group found that 11 percent of operators, including many from outside Louisiana, control 42 percent of the city's short-term rentals.

Today, city officials (New Orleans) say they're disappointed. They say a surge in short-term rentals has exacerbated New Orleans' affordable housing crunch and turned entire residential blocks into de facto hotels.

The largest operator, a company called Sonder, has 197 short-term rental permits. Nearly 80 percent of Sonder's listings are booked through platforms like Airbnb, according to Sonder's director of communications, Mason Harrison. "That's a different story than the mom-and-pop" narrative that Airbnb often uses to describe its hosts, says New Orleans councilmember Kristin Gisleson Palmer.

City officials say the registration system Airbnb launched in April 2017 didn't give them some data they had requested, such as the identity of the property owner or tenant, the number of bedrooms in the property, and contact information for the property manager. To collect the missing data, city staffers say they had to contact 4,786 applicants over three months. "We could not really effectively use [the data provided] for enforcement and holding folks accountable," Palmer says.

In May 2018, the city council imposed a nine-month freeze in some areas on new permits for renting a home without an owner present. The following month, Airbnb disabled the registration system—including another enforcement-enabling feature, which displayed hosts' license numbers on their Airbnb listings.

A February 15 report by the city's Department of Safety and Permits, obtained by WIRED, states that disabling the registration system caused a year of work by city officials tracking short-term rentals to

"disappear overnight." ***The report concludes that Airbnb and other short-term rental companies had engaged in "deliberate data obfuscation, refusal to provide the required data, and a total failure of cooperation with any enforcement mechanisms pursued by the City***." The report notes that Airbnb continues to collect and remit occupancy taxes for its listings in the city.

Airbnb says city officials' description of events is "inaccurate," and that it is supplying all the information that is required. The company says there were "initial bumps in the road that Airbnb was working with the city to address, only to have lawmakers abruptly change the rules in May 2018." Those changes, the company says, made the registration system ineffective.

"Housing affordability is a challenge in New Orleans—in fact 70 percent of our host community have said they rely on the income they make to stay in their homes," Airbnb says. The company says it is committed to working with officials to resolve any concerns.

A February report by the New Orleans Department of Safety and Permits is critical of short-term rental companies.

Blocking New Laws

Airbnb says it complies with laws that require it to collect and pay taxes for hosts. But it has also worked to forestall such laws—even seeking at times to strip cities of authority over short-term rentals. That's what happened in Nashville in late 2017 and early 2018.

As the city inched closer to prohibiting so-called **"mini hotels"**—non-owner-occupied homes used exclusively as vacation rentals—Airbnb shifted its focus from City Hall to the state Capitol three blocks away. In the latter half of 2017, the *company more than doubled the number of lobbyists* it employed in Tennessee, to from four to 11, and spent between $225,000 and $350,000 on lobbying between February 2017 and August 2018, according to reports the company filed with the state.

In January 2018, the Tennessee Department of Revenue signed a VCA with Airbnb. The agreement requires Airbnb to collect and pay the 7 percent state sales tax on its bookings, but does not cover the 5 percent occupancy tax in Nashville, by far its largest market in the state. A few days later, Nashville passed its ordinance prohibiting mini hotels.

Around this time, a political action committee called the Committee to Expand Middle Class By Airbnb, Inc. donated $10,000 to groups representing Tennessee Republicans, according to campaign finance records. The donations included $2,500 to the campaign of state representative Cameron Sexton, who had introduced a bill in 2017 specifying that short-term rentals should not be considered hotels under state law. The bill, known as the Short-Term Rental Unit Act, was drafted in consultation with Airbnb and other short-term rental companies, including HomeAway, according to the *Tennessean*. It included a provision stripping cities of the power to ban existing short-term rentals. The Tennessee General Assembly passed the bill in April 2018.

Local activists say the law cripples cities' ability to tackle an important local issue. "The Tennessee state Legislature and Tennessee's governor decided to severely weaken the basic protections for the health, safety, and well-being of Nashvillians that were created by our local government," John Stern, president of the Nashville Neighborhood Alliance, a residents' group, says via email.

Airbnb says the Tennessee law was the work of "state lawmakers who care deeply about this issue and worked to organize a broad coalition of supporters—including the business, technology, property rights, and home sharing communities." Sexton did not return a request for comment.

Similar scenarios have unfolded elsewhere after cities have moved to restrict short-term rentals. *In February 2016, the Austin City Council voted to phase out **mini hotels** in residential areas by 2022*. In the following months, several other Texas cities passed similar restrictions. Then, early in 2017, Texas state lawmakers introduced two bills in the legislature preventing municipalities from banning short-term rentals and enforcing many regulations.

A few months later, in April 2017, Airbnb announced that it had signed a VCA with Texas officials to collect state occupancy taxes. Bennett Sandlin, executive director of the Texas Municipal League, which represents cities, called the deal "a smokescreen to cover the company's refusal to pay taxes." The 2017 bills eventually stalled in the Texas legislature, but lawmakers plan to try again this year.

Airbnb says it has "excellent working relationships" with many Texas cities and hopes to extend the VCA with the state to "new tax agreements with Texas municipalities to help them collect new revenue from home sharing."

Where's the Money?

Gannon, the Palm Beach tax collector, has been tilting at travel companies for a decade. In 2009, she sued Expedia, Orbitz, Priceline, and Travelocity for failing to collect and pay occupancy taxes on the full cost of the hotel rooms they were selling; three years later, the companies settled the suit and agreed to pay nearly $2 million in back taxes.

She then turned to the online home-rental companies. In 2014, she sued Airbnb, HomeAway, and TripAdvisor, alleging they should be classified as "dealers" renting accommodations under Florida law, and thus required to collect occupancy taxes on behalf of their hosts. In January, after five years, a judge ruled that the services were not dealers under Florida law and did not have to collect the taxes for hosts. Gannon is appealing the ruling.

In 2015, the Florida Department of Revenue signed a VCA authorizing Airbnb to collect and remit the 6 percent sales tax for all listings in the state, plus local sales and occupancy taxes for some counties.

Soon after, Gannon asked to see the details of the agreement; state officials told her it was confidential. So she sued the Florida Department of Revenue, alleging that the agency's secrecy violated the state's public records law. A few hours later, the department faxed a copy of its Airbnb VCA to Gannon's office; she says she was instructed not to share it with anyone. It required Airbnb to provide the state only with aggregate data and allowed the company to withhold "any personally identifiable information" about hosts or guests. Most other VCAs signed with state or local governments contain identical language.

Officials say such details about hosts and their rentals are crucial to enforcing local laws and ensuring the lump sum tax payments match up with detailed data on stays. Shielding names and other details from tax officials "is a gross departure from standard practice," says Bucks, the former tax commissioner.

"We're the middle—the hosts are stuck in the middle."

MARIA VALE, AIRBNB HOST IN PALM BEACH COUNTY, FLORIDA

In New Orleans, the February report by the city's Department of Safety and Permits says Airbnb provided officials there with anonymous account numbers in place of addresses or taxpayer identifiers, making it difficult for the city to audit the information. "It is impossible to track whether we are getting

all the money that we are supposed to get," says Andrew Sullivan, chief of staff for Palmer, the New Orleans councilmember.

Airbnb disagrees. "Airbnb provides the necessary information to ensure tax payments are accurate, including number of nights, charges, and the amount of tax collected," Nulty says. He says the company welcomes audits; however, many of the company's VCAs prohibit cities from auditing Airbnb more than once every two years.

Airbnb's 2016 VCA with Sonoma County, California.

A Public Clash

Palm Beach County's monthly commissioners meeting is typically a dull affair. But October 16, 2018, was different.

The chambers were packed with people dressed in white, holding hot pink flyers. The reason: Gannon's proposal to amend the county's Tourist Development Ordinance to require platforms such as Airbnb to collect and remit occupancy taxes on behalf of hosts, and to share more data with the county.

A few weeks earlier, emails from Airbnb had arrived in the inboxes of its hosts in the county. "Home-sharing in Palm Beach County is under attack," many declared in bold letters, asserting that Gannon had proposed an "unfriendly" ordinance that would make hosts' lives more difficult. The emails implored hosts to attend the hearing and "use your voice to oppose this proposal and share the benefits" of home sharing.

Around 100 hosts attended the meeting. But Gannon was prepared. Having seen several of the emails, she assembled a three-page document rebutting what she calls Airbnb's "campaign of misinformation," line by line. The packet was printed on hot pink paper and given to each person who walked through the door.

During the meeting, some hosts expressed doubts about Airbnb's position. Some recalled seeing a message from Airbnb stating that it was collecting and remitting taxes on their rentals, though the company was not. "I have this underlying fear ... that I am breaking a law that I don't really know about," said Ruth Riegelhaupt-Herzig, an Airbnb host since 2015.

“We thought Airbnb took care of everything, and I was a little scared I was in trouble with the government,” host Maria Vale said at the meeting. “All I’m saying is we’re the middle—the hosts are stuck in the middle.”

Nulty says that Airbnb makes it clear to hosts which taxes it collects via this webpage, which lists areas with VCAs and what taxes they cover. The page does not explain which taxes hosts are required to collect on their own. A different Airbnb page instructs hosts to tell guests to bring extra money when checking in so the host can collect taxes in person. Riegelhaupt-Herzig says that isn’t effective, as most guests are wary of paying an additional 6 or 10 percent directly to the host, in addition to the booking charges they paid online through Airbnb.

What’s more, all stays booked in the area have a charge labeled “Occupancy Taxes and Fees” added to the final bill, because of the state’s VCA. “So for us to turn around and say, ‘I’m sorry, you haven’t paid the occupancy tax in Palm Beach County,’ they think we’re scamming them,” which isn’t good for a reviews-based business, Riegelhaupt-Herzig told WIRED. She says she has been paying the county occupancy tax since October out of her own pocket.

After more than an hour of testimony, commissioner Dave Kerner said Airbnb had allowed its hosts to “be misled” about paying taxes. “That is concerning,” Palm Beach County mayor Melissa McKinlay said. ”And so I will support this ordinance today.” It was approved unanimously seconds later.

In San Diego last year, Airbnb took a different tack to counter a new law. City officials had signed a VCA with Airbnb in 2015. But they grew unhappy with the setup’s lack of transparency and the inability to audit, says San Diego councilmember Barbara Bry. What’s more, Airbnb use had skyrocketed in San Diego since then. In March 2015, there were more than 2,600 rental units listed on short-term rental sites in San Diego, according to Host Compliance; by 2019, that total had soared to more than 11,500. Host Compliance says two-thirds of short-term rentals in San Diego are posted on Airbnb. Bry says that the rise of full-time investor-owned short-term rentals in residential areas has hurt enrollment in public schools, transformed neighborhoods into districts of mini hotels, and contributed to a citywide housing shortage.

Last August, the San Diego City Council passed an ordinance that banned the short-term rental of homes that aren’t the owner’s primary residence and required platforms to collect taxes on behalf of their hosts, effectively overriding their VCA. Bry says she assumed Airbnb would sue, but it didn’t.

Within days, Airbnb threw its weight behind a movement to overturn the new rules through a citywide referendum.

Public records show ***Airbnb donated $1.1 million*** to a California political action committee called "Committee To Expand the Middle Class, Supported by Airbnb, Inc." That group reported spending $300,000 to hire signature gatherers to circulate petitions opposing the San Diego ordinance. Airbnb also directly donated $276,358 to a second group around the same time, records show.

Four weeks after the city council approved the new rules, representatives of Airbnb, HomeAway, and Stand for Jobs delivered more than 62,000 signatures calling for a referendum to rescind the ordinance, nearly twice the number needed to force a citywide vote.

City councilmembers said they didn't want to risk losing the vote, so they rescinded the ordinance, with plans to try again. "I'm disappointed that a corporation reportedly valued at $31 billion descended upon our city with its unlimited millions of dollars and used deceptive tactics to force us to where we are today," Bry said during a council meeting on October 22, just before the council voted to rescind its ordinance.

Airbnb says the petitions garnered so many signatures because the ordinance "would have devastated the local economy, impacted property rights in every San Diego neighborhood, and cost the city millions annually in tax revenue."

The San Diego City Council plans to introduce a new short-term rental ordinance sometime this fall, Bry told WIRED. If Airbnb challenges a new ordinance, Bry says city officials will be more prepared, and will respond with their own public-education campaign and take the contested ordinance to a public vote.

City councilmembers said they didn't want to risk losing the vote, so they rescinded the ordinance, with plans to try again. "I'm disappointed that *a corporation reportedly valued at $31 billion descended upon our city with its unlimited millions of dollars and used deceptive tactics to force us to where we are today,"*

Airbnb's battles with local officials have intensified since last year's Supreme Court ruling in a case involving online retailers. Some tax experts say the decision undercuts Airbnb's position that it doesn't have to collect taxes for its hosts. "There is no doubt

whatsoever now that on a constitutional basis Airbnb can be required to collect [taxes]," says Bucks. "There is no justification for these special deals anymore." Airbnb says it's monitoring state-by-state developments related to the case.

Airbnb's recent lawsuits against Palm Beach, Boston, and Miami focus on another aspect of those cities' ordinances: a requirement that platforms remove listings that don't comply with the law. Airbnb says the requirements are unconstitutional and technologically unfeasible. But the company does remove illegal listings in its hometown of San Francisco, and has conducted occasional or ongoing purges in New Orleans, Santa Monica, Japan, Berlin, Vancouver, and, briefly, New York City. In New York, Airbnb sued to block a city ordinance requiring it to turn over more detailed information on listings; a judge in January blocked the law from taking effect.

In Boston, city councilor Michelle Wu helped lead the push last year for an ordinance aimed at discouraging hosts from turning apartments and homes into **mini hotels**. The ordinance requires hosts to register with the city and restricts short-term rentals to owner-occupied units. "Airbnb describes itself as a quaint little home-sharing service … but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels," she says.

On April 17, Airbnb sent emails to thousands of Boston Airbnb users criticizing Wu. The email claimed that she was aligned with "big hotel interests" and falsely said she intended to place a "restrictive 30-day cap on unhosted stays." Wu says Airbnb never sought to discuss the ordinance or check the claims in the email. Airbnb says Wu's proposal was "anti-tenant, anti-middle class," and "overly restrictive."

The ordinance passed in June. Four months later, Airbnb sued the city, alleging the rules—which went into effect January 1—violate state and federal laws. Wu says the city modeled its ordinance after San Francisco's, which Airbnb complies with. The Boston lawsuit—much like others recently filed by Airbnb—only challenges requirements that platforms remove illegal listings and share information with local officials to aid enforcement. The suit seeks an injunction against parts of the law, and the city has agreed not to enforce those sections until a judge rules.

A few weeks after Airbnb sued Boston, Massachusetts governor Charlie Baker signed legislation to tax and regulate short-term rentals at both the state and local levels. The law, which goes into effect in July, requires hosts to register with the state. Information about hosts—minus specific house numbers—will be displayed on a publicly available registry, and hosts who run multiple rentals must pay additional taxes. Airbnb says the law will "jeopardize the privacy of our hosts while placing significant and unnecessary burdens" on them. The company says it is working with state officials to address those concerns.

Airbnb's municipal confrontations have been a boon for Binzer, whose company Host Compliance works with 150 cities to identify short-term rental owners skirting taxes and regulations and to devise an enforcement strategy without striking deals with Airbnb. He used to be an occasional Airbnb host himself—and paid occupancy taxes—when he lived in Tiburon, California; then he was tapped to help local officials quantify Airbnb's business in town. He says cities are often overmatched by Airbnb, in part because the company periodically tweaks the site in ways that impede tax collectors and enforcement agencies.

For example, Binzer says that until December 2016, Airbnb included the street name of a property in the metadata attached to the listing. Airbnb's terms of service prohibit third parties from scraping its site for this kind of information, but critics say it's crucial for enforcement. Officials in some cities used this data to identify hidden hosts. Then Airbnb removed the street name, and altered the geocoding for listings, changing the latitude and longitude so properties appear in slightly different locations.

"It's a cat and mouse game," Binzer says. "They literally put the pin in the wrong place of where the actual property is."

Airbnb says it shields the street name and other personal information related to hosts "to ensure an added level of privacy when third-party scrape sites aim to compile listing information."

From Negotiation to Litigation

Around the time Palm Beach County Commissioners passed the short-term rental tax ordinance in October, Gannon says she spoke with a representative from Airbnb. She recalls the company floating a gradual implementation strategy: Airbnb would comply with some of the new rules immediately, but

others—like a system requiring hosts to be properly registered with tax authorities—would be phased in over time.

Gannon thought that seemed reasonable, as long as Airbnb collected and paid the taxes. But she didn't have time to see the discussion through. A month and a half after the ordinance was passed, Airbnb sued the county. The suit argues Airbnb can't be required to police illegal listings and share host information because "Airbnb is a realization of Congress's [free speech] goals" and a "classic intermediary." It doesn't question whether the company can be compelled to collect occupancy taxes; Airbnb is not collecting them in the county, though the ordinance went into effect on January 20. HomeAway also sued the county; the suits have since been combined.

"They were just stringing us along until they had their lawsuit ready to file," Gannon says. "It's typical of Airbnb … They're getting ready to issue an IPO and go public."

Airbnb's lawsuit against Palm Beach County, Florida.

Updated 3-21-2019, 5:30 pm EDT: This story was updated to clarify the relationship between the American Hotel and Lodging Association and Airbnb, to clarify a characterization of Airbnb's corporate citizenship, and to add a comment clarifying Airbnb's position about its cooperation with the city of New Orleans. The updated story also makes clear that HomeAway was among the companies that helped draft a Tennessee law and that HomeAway has sued Palm Beach County.

Updated 4-5-2019, 4:50 pm EDT: This story was updated to correct the amount Airbnb spent to oppose a San Diego ordinance.

Updated 4-12-2019, 6:00 pm EDT: This story was updated to incorporate additional comment from Airbnb regarding the company's stance on collecting taxes.

Lisa Grueter

From: Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Sent: Thursday, April 16, 2020 12:53 PM
To: Lisa Grueter
Subject: FW: Upcoming Short Term rental regulations vote April 22
Attachments: STR Materials_2020_0410_sub.pdf; ATT00001.txt

-----Original Message-----
From: Shannon Rome <rome.s.3@icloud.com>
Sent: Thursday, April 16, 2020 12:38 PM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Kirsten Larsen <Kirsten.Larsen@CO.CHELAN.WA.US>
Subject: Upcoming Short Term rental regulations vote April 22

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

I am confused how the county can, in good faith, proceed with this action (see attachment below from county website) when it is not possible to have public comment or meetings?

These regulations are already covered by regular laws / ordinances for noise/parking etc. — additionally properties outside downtown areas may not even have any parking issues, noise issues etc.

Can you please advise if this process will be held off due to the statewide as well as Chelan County “stay at home’ mandates?!?!

We have in good faith forgone 6 weeks of income already by allowing guests to cancel for full refunds and have blocked our calendar for the duration of stay at home once it was announced, additionally many reservations for after the mandate expires are already moving or outright cancelling reservations.

I understand that your group is anti short term rentals, but I think the mandates and peoples reluctance to travel is rough enough on all of us without adding the nail in the coffin of adding onerous licensing and other restrictions.
We collect and Pay Chelan county lodging and other taxes and remit them and have been doing so for over 20 years, we don't use any of the resources of Chelan county, rather we bring guests that spend money at restaurants and shops, and they visit businesses that run activities like skiing, rafting, etc.
We also pay our property taxes which have increased substantially, again this goes to support the county, and we are not taking from those resources.

I just feel like too many government arms are using the horrible effects of COVID -19 to further agendas that were not able to be moved forward before because of reasonable opposition. Now that public opposition cannot happen, votes to add new restrictions to property owners should not happen at this time either.

I look forward to your response on this matter.

https://www.co.chelan.wa.us/files/community-development/documents/Public%20Notice/STR%20Materials_2020_0410_sub.pdf

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, April 21, 2020 3:47 PM
To: Lisa Grueter
Subject: FW: 2020 STR Draft Code
Attachments: 2020 STR Regulations Attempt Round Two (1).pdf

Deanna Walter, AICP
Interim Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6228 Main office (509) 667-6225
deanna.walterCD@co.chelan.wa.us

From: Sean Lynn <sean@loveleavenworth.com>
Sent: Monday, April 20, 2020 11:45 AM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: 2020 STR Draft Code

Hi Deanna,
We have not officially met. I have been involved in the STR discussions for several years now with our commissioners and with various county and city officials. My wife and I own Love Leavenworth Vacation Rentals and do not oppose smart, thoughtful regulations and truly want to see a reasonable solution to some of the challenges that STR's can create in our community neighborhoods. As I have told previous directors my phone and emails are always available to CCCD staff if needed and I am open minded to solutions. I sent a letter to the commissioners and instead of asking Carlye to forward decided to reach out and introduce myself. I hope all is well with you and your team and look forward to meeting you in person one day. Attached is my open letter to the commissioners. Sean Lynn

Sean Lynn
Love Leavenworth LLC.
Leavenworth Washington
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www.loveleavenworth.com

2020 Short Term Rental Regulations Part Two

April 20, 2020
Open letter to Chelan County Commissioners

Dear Sirs,
Once again we are embarking on what is sure to be an even more contentious battle in the attempt to draft code regulations for STR's in our county. The 2020 Berk study ordered on STR's was well done in many aspects and it is nice to see some real and valuable data. I found it particularly interesting that only 38% of the public response from last year's STR draft code attempt actually supported regulations for STR's. That leaves 62% neutral or opposing STR regulations.

In my opinion there is critical economic and labor data absent from the Berk study that is needed to assist policy makers in making important decisions. Using the recent Berk and Host Compliance data we see in unincorporated Chelan County STR's generate over $51 million dollars of taxable rental revenue annually. This is a large and important number but not nearly as critical as the $40 million dollars that is spent by travelers on goods and services in our County while staying in a Short Term Rental.[1] Love Leavenworth Vacation Rentals in 2019 serviced 82 homes in the Leavenworth area, using our internal data combined with Berk data we estimate that $17.3 million dollars is spent county wide annually on labor directly servicing these homes and creating almost 1500 jobs for workers in Chelan County.[2] Labor and economic data is a critical component when considering regulating STR's and more data on the subject from a neutral party would be greatly appreciated.

I am requesting that there be a public discussion on delaying potential draft code amendments this year for two very important reasons. In my opinion the Covid 19 Pandemic will and is creating great economic and emotional stress on all of us in Chelan County. I am seeing signs that this recent emotional stress on our communities will spill into the halls and offices of county officials, as well as pack hearing proceeding rooms with emotionally charged individuals should you decide to proceed with the draft code process in the current environment. A recent excerpt from an opinion piece in the Wenatchee World on April 15, 2020 describing the neighborhoods of Leavenworth:

"We have witnessed entire residential streets becoming zones of party houses, with overflowing septic systems, out-of-control noise, traffic, parking, trash, winter driving accidents, fireworks, trespassing, burn-ban violations, and threats against residents who complain." Authored by the Rev. Dr. Barbara Rossing of Leavenworth.

[1] Formula derived from Host Compliance study 2018 in San Diego.
[2] Seasonal and Part-time jobs included.

The excerpt is not representative of the Leavenworth community neighborhoods that I know and love but I do think it is an example of critically negative views from those that oppose STR's and a tactic that will be employed in full force when allowed to speak in public settings.

I have also seen signs in the STR community that the financial stress from the Covid shutdown has owners and operators making poor decisions. While the bulk of the operators and owners shuttered their STR homes to protect the community during the Governor's proclamation period a few decided to keep operating which created the need for a county-wide resolution forcing STR's to close. It was unfortunate that the County had to step in to shut down STR's and a large blow to the credence that STR's are generally a self-regulating body.

Short Term Rentals are going to play a vital role in the economic recovery of our thriving tourist industries in Chelan County. Tourism experts predict that "Drive to" tourist markets are expected to make some of the fastest recoveries in the tourism sectors. Restaurants, retail shops, outfitters, landscapers, cleaning companies and many more service providers are all counting on the lodging sector and our local Chambers of Commerce to do what they can to bring travelers back into our area when it is safe to do.

For better or worse we want to be "Washington's Playground" and that is a concept that many of us have invested heavily in. Do we really need a contentious battle over STR's this summer with neighbors yelling at neighbors in public settings? The STR regulation issue is certainly important. I am not opposed to some smart simple regulation that opens up communication between neighbors as well as identifying and regulating bad actors within the industry. It is true that STR's are now intrinsically woven into the fabric of tourism across our nation and on a global scale. It is my opinion that if you live in a community that benefits from and thrives on tourism that STR's will be part of that community's neighborhood character by default due to market driven needs.

I greatly respect and admire all 3 of you and the difficult positions you hold. There is no doubt that the coming days, weeks and months ahead will hold many difficult and new challenges that will require your critical leadership and decision making skills. I am of the opinion that laser focus on our local economic recovery and prevention of a Covid 19 outbreak should be our leaders top priorities. Therefore, I respectfully request that a public discussion on the merits of delaying the STR draft code process be held. Thank you for your time and consideration.

Sean Lynn
Owner Love Leavenworth Vacation Rentals

Lisa Grueter

From: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
Sent: Monday, April 20, 2020 4:34 PM
To: Lisa Grueter
Subject: FW: Please forward to Berk Consulting and confirm it was sent

Lisa—
For your info.
Hope you are well.

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

From: Bob Bugert
Sent: Monday, April 20, 2020 4:24 PM
To: 'Nathan Newell' <nnewell@gmail.com>; CD Director <CD.Director@CO.CHELAN.WA.US>; Deanna Walter <Deanna.Walter@CO.CHELAN.WA.US>
Cc: Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>
Subject: RE: Please forward to Berk Consulting and confirm it was sent

Nathan and Kendall—
Thank you for your email and comments related to the draft code provided by Berk Consulting. This information will be included in the public record.

If you are interested in listening to the Planning Commission's work session, here is the link to the zoom meeting:

Topic: Chelan County's Planning Commission Zoom Meeting
Time: Apr 22, 2020 07:00 PM Pacific Time (US and Canada)

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

From: Nathan Newell <nnewell@gmail.com>
Sent: Monday, April 20, 2020 4:16 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>; Deanna Walter <Deanna.Walter@CO.CHELAN.WA.US>
Cc: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>
Subject: Please forward to Berk Consulting and confirm it was sent

To whom it may concern at Berk Consulting,

We have reviewed your proposed vacation rental codes to Chelan County and agree with everything except the occupancy recommendations (11.88.280.3b).

My family owns and operates a 5800 sf vacation rental on 5 acres in Leavenworth, Chelan County. We qualify every guest that stays to make sure they will not be disruptive to our neighbors and will obey the existing county code. We cater to multi-generational families, business retreats and church retreats. We live 22 minutes away in Wenatchee. We employ a maintenance manager that can get to the vacation rental in 5 minutes if necessary. Our neighbors are mostly farmers and have our contact information if there is an issue. They are supportive of our vacation rental. We have been operating for 5+ years with no incident.

The cap on occupancy proposed by your firm will shut us down. We paid $31,000 in taxes in 2019 that will disappear if the 2 person/bedroom policy is adopted.

Listed below are some fair-minded ideas employed by other counties that take large lodges into consideration.

1) **Case-by-case basis** Placer County, CA has adopted regulations that allow vacation rental occupancy limits to be increased on a case-by-case basis. A vacation rental's reputation can help determine how many guests should be permitted. A vacation rental with no complaints would be approved for a higher occupancy than one with a history of complaints.

2) **Square-footage** Bear Lake, CA uses square footage to determine occupancy. The Building Officials and Code Administrators (BOCA) use square footage as a guideline for occupancy: 150 square feet for the first occupant, 100 square feet for each additional occupant.

3) **Acreage** Occupancy can be increased in areas where homes are further apart. The Manson code in Chelan County regulates vacation homes based on a 500 ft distance from other residences.

A combination of square footage, acreage and a history of good or bad behavior could be combined to determine the occupancy for Chelan County Vacation Rentals.

Thank you for your hard work on this. Feel free to call or email with any questions.

Sincerely,

Nathan and Kendall Newell
509-393-2330

Lisa Grueter

From: Stan Winters <winterss1@me.com>
Sent: Monday, April 20, 2020 4:00 PM
To: Lisa Grueter
Subject: Re: Chelan CO Short Term Rental Issue Feedback

Thanks for getting back to me so quickly.

I have a question about one of the points. Technically there are no legal STRs in Chelan County. There is nothing in the Chelan County Code that allows STRs anywhere. In Peshastin our use chart lists allowed uses. There is no allowed use for Short Term Rentals. The closest use that is allowed in Peshastin would be hotels, and they are only allowed in the commercial zones. In fact, Bed and Breakfasts are allowed in the residential zones with a CUP. 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. There are no legal STRs in Peshastin, and this was verified by the Community Development Director and the Hearing Examiner. The case was to go to Superior Court but the county dropped the case, saying that they wouldn't , for the time being, enforce the code. But they didn't say that these STRS aren't illegal. The existing STRs have received violation notices, and ignored them.

These people have knowingly violated Chelan County code for more than three years now and should not be grandfathered in and allowed to continue operating their business in the Peshastin residential zones.

My question what process led to the idea that current STRs should be grandfathered? Should I start one today. None of them are licensed, so what makes one a short term rental?

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.

Thank you Lisa.

Stan

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

On April 20, 2020 at 3:27 PM, Lisa Grueter <Lisa@berkconsulting.com> wrote:

> Hi Stan,
>
> Thanks for sending your comments on 4/22 in association with your meeting.

Thanks also for your question below – several standards need to be read together in the draft as it is not a straight allowance.

All uses in the use table are subject to the development standards and there are some strict ones, in particular in the Residential zones.

While the Use table in 11.22.030 would permit STRs in residential zones, Section 11.88.280(2)(A) provides the 1% cap, and then Section 11.88.280 (2)(D)(i) indicates that only "existing legal" STRs are allowed and no new ones may be located in Residential zones in the Peshastin UGA. To be determined is: whether they can be allowed in the future (subject to the 1% cap) if the share of existing short-term rentals decreases after a period of time as discussed on Section 11.88.280 (2)(D)(ii). Under this draft, in the end what would be permitted are existing legal ones and not new ones until later the share of STRs meets a desired percent level (percentage to be determined).

Because at first only existing legal ones would be allowed but later new ones may be permitted if thresholds are met we showed STRs as permitted in the Use table up front. There are other ways to approach it. Within the framework I've described, the code draft could be amended to identify "existing legal" in the Use table up front for residential zones with a note that points to future permitted allowances if thresholds are met.

I hope this helps clarify the intent we had with this first draft.

I'm sure our next draft will reflect input from the Planning Commission and additional public comments. Thanks,

Lisa Grueter, AICP

206.493.2367 | **DIRECT**

www.berkconsulting.com

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STRATEGY | ANALYSIS | COMMUNICATIONS

Helping Communities and Organizations Create Their Best Futures

From: Stan Winters <winterss1@me.com>
Sent: Monday, April 20, 2020 2:56 PM
To: Lisa Grueter <Lisa@berkconsulting.com>
Cc: Steve Keene <stkeene@gmail.com>; Ortiz Tricia <ortzie8@gmail.com>; Malmquist Lauri <lam@nwi.net>
Subject: Re: Chelan CO Short Term Rental Issue Feedback

Hi Lisa,

Our Peshastin Community Council will be meeting this Wednesday afternoon (4/22). Is it okay if we provide our comments to you after that meeting? I know that you'll have the Planning Commission meeting that evening.

I have one question for now. I was emailed the draft code and I was most surprised to see STRs allowed in all of the residential zones in Peshastin. I'd like to be able to explain this to the other council members when we meet on Wednesday. We have expressed our wishes steadily over the past three years (really for the past 12 years since we wrote our UGA document). The intention and goal has always been to protect our community neighborhoods and save them for people who live and work here. With that said, why would your draft report propose exactly the opposite, allowing STRs in every zone? I would think we would at least start from where we had been.

I think on our phone call we told the story of our last Community Council election in which the couple who own two of the illegal STRs in Peshastin ran for office. We had 114 people show up for our meeting. They received 4 votes each. The community definitely does not want STRs in the residential areas. I know the question about why the draft was written this way will come up in our meeting so could you help me with an explanation I can share with our council?

Thank you, Lisa,

Stan

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

On April 13, 2020 at 4:37 PM, Lisa Grueter <Lisa@berkconsulting.com> wrote:

Hi Stan,

Thanks for your email. Ideally having comments on definitions by 4/22 would be helpful.

Kirsten and I plan to review definitions and propose changes after we hear input at the 4/22 study session with the Planning Commission.

Lisa Grueter, AICP

206.493.2367 | **DIRECT**

www.berkconsulting.com

BERK

STRATEGY | ANALYSIS | COMMUNICATIONS

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---

From: Stan Winters <winterss1@me.com>
Sent: Monday, April 13, 2020 4:10 PM
To: Lisa Grueter <Lisa@berkconsulting.com>
Subject: Re: Chelan CO Short Term Rental Issue Feedback

Hi Lisa,

Our Peshastin group will be meeting again later this week and we just want to make sure we are proceeding properly.

We met with Bob Bugert last week. 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. I'm wondering about

what is the best way to make sure it is incorporated into the bigger picture. And of course we don't want to miss any deadlines.

Can you give me your suggestions on the best way to proceed and mesh with what you are putting together?

Thanks Lisa.

Stan

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

On April 3, 2020 at 2:35 PM, Lisa Grueter <Lisa@berkconsulting.com> wrote:

> Thanks Stan,
>
> I will review the attachments and your thoughts below.
>
> I am sharing this with Kirsten as she's keeping track of comments from across the County.
>
> Thanks for providing them,
>
> **Lisa Grueter, AICP**
>
> 206.493.2367 | **DIRECT**
>
> **www.berkconsulting.com**

BERK

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---

From: Stan Winters <winterss1@me.com>
Sent: Friday, April 3, 2020 2:24 PM
To: Lisa Grueter <Lisa@berkconsulting.com>
Cc: Ortiz Tricia <ortzie8@gmail.com>
Subject: Chelan CO Short Term Rental Issue Feedback

Hi Lisa,

We (Peshastin Community Council) had a phone meeting with you a few weeks ago... thank you for spending that time with us.

If you are still accepting input I feel compelled to add my voice.

I am attaching a few documents here that I hope you will spend a few minutes with. As Chelan County had been moving toward resolution on issues around Short-Term-Rentals an observation is that there is urgency to get something completed. But I'm nervous that the decisions we seem to be heading for won't solve the issues that will be created. The reason I'm feeling this is because I don't hear about or sense a larger goal for our communities and for Chelan County. We can make regulations and pick around the edges of these issues, but if you read the attached papers you will see that you can not and will not win against the Short-Term-Rental, AirBnB industry. They will transform our communities into something we probably don't want. Here is a quote from one of the websites included:

- **“Airbnb describes itself as a quaint little home-sharing service … but the reality is that it has grown to be a corporate entity that makes millions of dollars from businesses taking advantage of loopholes and running de facto hotels,” she says.**

The attached documents, which are just excerpts from websites, show that regulation of Short-Term-Rentals is all but impossible, and any alleged advantages that they bring to a community are in fact either not actual advantages (like saying they bring in more tourists - they don't), or the costs they impose on a community exceed the benefits, which are usually accrued by an absentee owner.

1. **Web Stories about STRs:** This includes several stories; one that shows the effects of the Corona Virus on STRs. All of a sudden there is a glut of housing available in places that have been experiencing shortages; rising costs of housing where STRs are present; wealth and racial inequity in the STR business - higher wealth and white households take a disproportionate share of wealth from non-primary residences at the expense of low income and non-white residents; and the conclusion that AirBnB is clearly a business and should have to play by the same rules as other lodging providers.

2. **Inside AirBnB_One Scary Story**: Read this to see what Chelan County will be up against. There are many quotes that are worthy, but here is one that should scare us all:

Airbnb is engaged in “a city-by-city, block-by-block guerrilla war” against local governments.

Our fate, if we allow STRs, is constant litigation by extremely well-funded organizations.

3. **Simulacrum**: I had to look this one up, so I'll define it here: an unsatisfactory imitation or substitute, "a bland simulacrum of American soul music". That's is what communities become when they are overrun by

Short Term Rentals. Chelan isn't Chelan anymore... it's pretend Chelan. Leavenworth (already a "fake" Bavarian town) becomes a fake of a fake. A key statement is: it is argued that STRs provides an economic equalizer, helping even hosts of few means to boost incomes and manage otherwise affordable

housing costs. Yet a growing army of critics allege that, in dozens of cities around the world, ***the proxy hotel*** **service more often does the opposite, hyper-accelerating affordable housing crises and gentrification patterns that force out residents.** And in Toronto, the platform has eliminated some 6,500 homes from the cities badly pinched housing market.

The route we are trying to pursue in Peshastin is to classify whole house short term rentals in the same group as all other similar lodging. The wording will be something like this: " Hotels/Motels/Lodging Facilities": definition"Lodging Facility: A building, group of buildings or a portion of a building which is designed for or occupied as the temporary abiding place of individuals for less than thirty (30) consecutive days, including, but not limited to establishments held out to the public as auto courts, hostels, inns, motels, motor lodges, time share projects, tourist courts, guest inns, nightly rentals, vacation rentals, and other similar uses."

This way we can apply our current zoning. Whole house overnight rentals are subject to the same rules as all other similar lodging. Why should they get preferential treatment? This keeps the whole house STRs out of the residential areas, which is exactly where the problems are. And this makes all of the problems with this issue go away. If we don't go this route and think we will be successful with regulations... the articles I've attached speak to that... we will have to deal with issues forever and we'll eventually lose every issue. That industry will stop at nothing.

Before we adopt regulations I think we should back up and start with a shared vision of what we want Chelan County to look like as we move forward. I would much rather takes some steps back to consider our long-range goals and vision for the future of our valley. Then we can create regulations that will help get us there.

Thank you for listening.

Stan

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

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Wednesday, April 22, 2020 5:41 PM
To: Lisa Grueter
Subject: FW: [Kirsten Larsen] Short term vacation rental draft code

Deanna Walter, AICP
Interim Director
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316 Washington Street, Suite 301
Wenatchee, WA 98801
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deanna.walterCD@co.chelan.wa.us

From: Jennifer Goodridge <j_goodridge@hotmail.com>
Sent: Tuesday, April 21, 2020 9:50 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: [Kirsten Larsen] Short term vacation rental draft code

Hi Kristen

I am writing to provide comments on the Chelan County Short Term Rental Code.

1. I was previously signed up to be notified about this process but I no longer appear to be receiving emails (unless they have gone into my junk email?). Thankfully, STRACC sent me a notification that draft code has been published. I tried to add my name here https://www.co.chelan.wa.us/community-development/forms/join-newsletter but it did not work. I have provided comments on this process before. Please be sure that my email is added to your email list and keep me informed about the development of code for short term rentals and any official public comment periods.
2. I am opposed to any sort of percent cap on the number of vacation rentals. If the County has concerns about affordable housing in the Leavenworth area, then I think a plan for addressing this issue should be developed. I feel like the short term rental code was originally drafted to address noise complaints and now it is being used to talk about affordable housing. I do not think it is fair to penalize one group of landowners who are trying to make a living in an area with very high property taxes and tell them they can't rent to visitors when there is clearly a demand for places for tourists to stay overnight. Those of us who live in Leavenworth have to deal with all of these tourists and I think we have a right to make money off them and use that money to pay our property taxes which continue to rise. Also, the section of code about the cap is very confusing – even for someone who understands code.

3. I did not see anything in the draft code about the cost of these permits. Please consider a tiered cost system depending upon the number of nights rented per year and/or the type of vacation rental. I do not think there should be a flat rate for a permit when some units sleep 2 and don't make as much money as some units that sleep 8 or more.
4. Has there been a public survey of the issues associated with vacation rentals? If so, are those results available? I am unclear about the issues that this code is trying to address and whether or not those issues reflect the majority of citizens or a few loud complainers. I thought initially this code was about how to address noise complaints but it appears to have taken a turn and be more about affordable housing which is such an odd role for Chelan County. Since when has Chelan County cared about the cost of living in Leavenworth? I think Leavenworth government and residents should deal with the cost of living in Leavenworth.
5. Finally, I think this is a very bad time to be running a public process about code development when we are all stuck in our homes and we can't come to public meetings. Please consider revising the timeline so that you are not having public meetings and/or public comment periods during a pandemic when we are supposed to stay at home. The County has already botched the development of this code once, please try to incorporate and address public comments better this time.

Can you please respond to this email so that I can watch and make sure it doesn't end up in my junk mail.
Thank you-
Jennifer Hadersberger

Sent from Mail for Windows 10

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, April 21, 2020 3:47 PM
To: Lisa Grueter
Subject: FW: [CD Planning]Delay workshop on STRs

Deanna Walter, AICP
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From: Zelda Holgate <zeldascott123@gmail.com>
Sent: Tuesday, April 21, 2020 8:05 AM
To: CDPlanning <CDPlanning@CO.CHELAN.WA.US>
Cc: CD Director <CD.Director@CO.CHELAN.WA.US>; Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>
Subject: [CD Planning]Delay workshop on STRs

April 21, 2020

Dear Planning Commission,

I am a vacation rental property manager in Plain. I have owned Natapoc Lodging since November 2011 but it has been in business since April of 1989. I take my role as property manager very seriously and work diligently for my owners, guests and neighbors. Ask anyone in Plain, including all of my neighbors and they will tell you the same.

I have some grave concerns about you addressing the short term rental subject while we are in the middle of a crisis. Both the letter to the Dan Eby that was shared via email and on Facebook (without giving Dan and other STR managers time to respond), and the Wenatchee World Op Ed published last week have incited those against short term rentals. The hate against outsiders is apparent if you look at any Facebook post on the Leavenworth Washington page. Those against vacation rentals, including our commissioners, are using this time to their advantage as we operators are struggling to get through each day. I think these discussions, workshops, etc. need to be tabled for a year.

I was at the planning commission meeting last year when they voted down the draft code and recommended the commissioners due the same. At that meeting it was stated that the commission would like to see a workshop where all parties were involved, including the stake holders. This week's workshop only has feedback from the Berk study and Host Compliance. No stake holders were invited nor were we contacted to participate in or provide insight to the Berk study. You are getting only one side of the story. You are not being presented with all the facts. Especially the negative impact regulation would have on the taxable income the county earns on STRs.

I would also like to share that two of the names listed on the op ed last week, Jerry Jennings and George Wilson, have turned down every offer I have made to work with their neighbor vacation rental owners. I have offered for over a year to discuss solutions to their issues and Jerry turned me down because she didn't want her neighbor to get into trouble (?) and George continues to put me off. This shows me that they are not interested in fixing the actual issues; they just want it shut down.

I am frustrated by your timing, Berk originally said they could not compile the accurate information before October of 2020 and the Commissioners said they needed it much more quickly. The powers that be are trying to rush this through as they did last year and we all know where that got the County…nowhere. I implore you to consider holding off any workshops, etc. until this Covid crisis is over and we can all be present. Zoom meetings are not the way to have such an important topic discussed.

Thank you for taking this into consideration and making it part of the public record.

Zelda Holgate
Natapoc Lodging
www.natapoc.com
info@natapoc.com
509-763-3313
888-NATAPOC(888-628-2762)

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, April 21, 2020 4:57 PM
To: Lisa Grueter
Subject: FW:
Attachments: DOC045.pdf

This is the last one I have for you. I can't recall what this was attached to, but the most importantly, you received it and it is included within the file of record.

Deanna Walter, AICP
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316 Washington Street, Suite 301
Wenatchee, WA 98801
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deanna.walterCD@co.chelan.wa.us

From: Lynn Machado
Sent: Tuesday, April 21, 2020 4:36 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject:

Please note that in response to Covid 19, our office is closed to the public.
You can reach the Planner on Call line at: 509-667-6224
General Questions and Inquiries can call: 509-667-6554
You may need to leave a message, and we will do our best to return all calls as quickly as we can. Thank you for your patience and understanding during this time. Stay safe and healthy.

Kindest Regards,
Lynn Machado

Community Development Office Manager
316 Washington Street, Suite 301
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Phone: (509) 667-6225
lynn.machado@co.chelan.wa.us

✓

STR Draft Code Questions

11.88.280 (2) (D) (i) This references "existing legal short-term rentals". Only the Manson UGA requires permitting. Can we assume those STRs not permitted when this is implemented will not be allowed?

11.88.280 (3) (B) (i) Is the International Residential Code used elsewhere in Chelan County?

11.88.280 (3) (B) How is the number of bedrooms determined? Who and when is the number of advertised bedrooms checked against the permitted? For properties on a septic, when is the number checked with the septic system?

11.88.280 (3) (A) "...operated out of an owner's primary residence..." Does this mean owners that live outside of Chelan can't use their property as a vacation rental? In other words , what is the definition of "primary residence"?

11.88.280 (3) (B) The two paragraphs seem to be in conflict. During the daytime occupancy, some people may have to leave if their are children 6 or under. Is the intent to limit daytime guests greater than nighttime?

11.88.280 (3) (C) How is "off street parking" determined when private roads or easements are the only way to access the property?

11.88.280 (3) (D) Is the intent to require recycling containers for all properties?

11.88.280 (3) (G) Can the owners/managers post more than one sign? Is there a number of signs limit?

11.88.280 (3) (C) Which land use will apply to parking standards (CCC 11.90)?

11.88.280 (4) (I) Does this mean an STR property can continue as an STR if the new owners re-certify the property is in compliance with the CCC? In other words, the new owners do not have to apply as a new STR at the beginning of the next cycle?

11.88.280 (4) Once the first land use permit is approved, will it then forever be recertified by the owner?

16.20.030 (2) (E) What is the definition of a "similar offense"?

11.88.280 (3) (I) Who is responsible for notifying renters of burn bans? In other words, how will the fire conditions of CCC 7.52 be transmitted to renters?

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Tuesday, April 21, 2020 4:00 PM
To: Lisa Grueter
Subject: FW: Omnia Lodge, Lake Wenatchee
Attachments: Omnia Mtn Lodge.docx

Deanna Walter, AICP
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From: Deanna Walter
Sent: Tuesday, April 21, 2020 3:52 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Fw: Omnia Lodge, Lake Wenatchee

From: George Wilson <gwwilson@nwi.net>
Sent: Tuesday, April 21, 2020 9:04 AM
To: Deanna Walter
Subject: Omnia Lodge, Lake Wenatchee

Hi Deanna-

Thanks for the call! Thank your fellow Travis for me also- seemed to be a nice young man and tried to be helpful.

Attached is a Word document I just threw a lot of screen shots, etc on to look at this place. I just don't understand how a project like this would

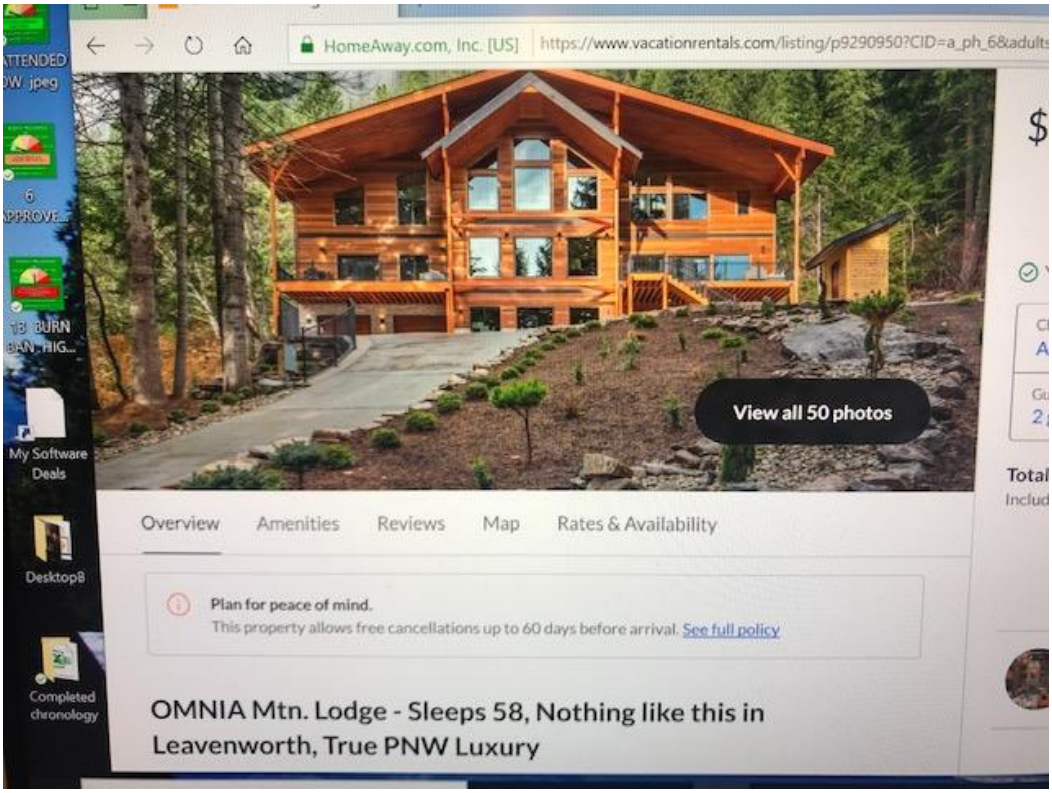
get through the permitting and building inspection process when it's so obviously more than a single family home. As I understand it the site is zoned strictly residential.

The link to the online ad is https://www.vrbo.com/9290950ha?adultsCount=2&arrival=2020-04-27&departure=2020-04-30

Thank you- would like to hear what you think is the rightful status of this place.....

George

Omnia Mtn Lodge ad screen shot 4-18-2020



OMNIA Mtn. Lodge - Sleeps 58, Nothing like this in Leavenworth, True PNW Luxury

Property overview

Leavenworth, WA, USA18.6 mi to Leavenworth center

- Lodge8000 sq. ft.
- Sleeps: 58
- Bedrooms: 10
- Bathrooms: 7
- Min Stay: 2 nights

Tons of amenities, Great for families, reunions, gatherings, corporate and church retreats, events and conferences. Unparalleled luxury in Leavenworth.

This stunning luxury lodge is situated between Leavenworth and Stevens Pass Ski Resort to allow for easy access to the region's top attractions. Omnia Mountain Lodge is built to highlight the surrounding features of Lake Wenatchee and mountain views. Omnia has a unique ambiance that ties in the latest trends in modern design while delivering cozy, mountain themed pacific northwest vibes.

Delight in the beauty and serenity of Leavenworth's most glamorous vacation rentals. The generous use of windows fill this home with unsurpassed views of beautiful trees, the lake, and the mountains. The entire home has captured the modern and simplistic luxury.

Countless comforts and amenities that enable our guests a unique opportunity to hold large gatherings of family, friends, or business associates in a luxurious, one-of-a-kind and unforgettable setting

Newly designed and built in late 2019, OMNIA Mountain lodge boasts over 8,000 square feet of luxury featuring: 10 Bedrooms, 7 1/2 bathrooms, 2 Jacuzzis with swim spa, Sauna, seating for over 50 people, theatre and kids play area, furnished game room, and over 1,200sqft of covered decks. This impressive lodge is Leavenworth's largest, newest, and most luxurious property.

Mountain and rustic themed unique bedrooms stocked with all the necessities for comfort and relaxation. A combination of king bedrooms and double queens as well as a ground floor array of luxury bunk beds ensure the perfect sleeping arrangements are found.

Two Beautiful full-height hot tubs looking out at the mountains ensure that our guests experience the perfect relaxation and rejuvenation that OMNIA Mountain Lodge has to offer.

Extra-large gourmet open kitchen is a chef's dream, featuring world-class appliances, two large "smart" fridges, two dishwashers, two ovens, Huge Islands with beautiful white marble seat up to 15 guests, and a custom imported live edge wood table from Thailand seats up to 40 people.

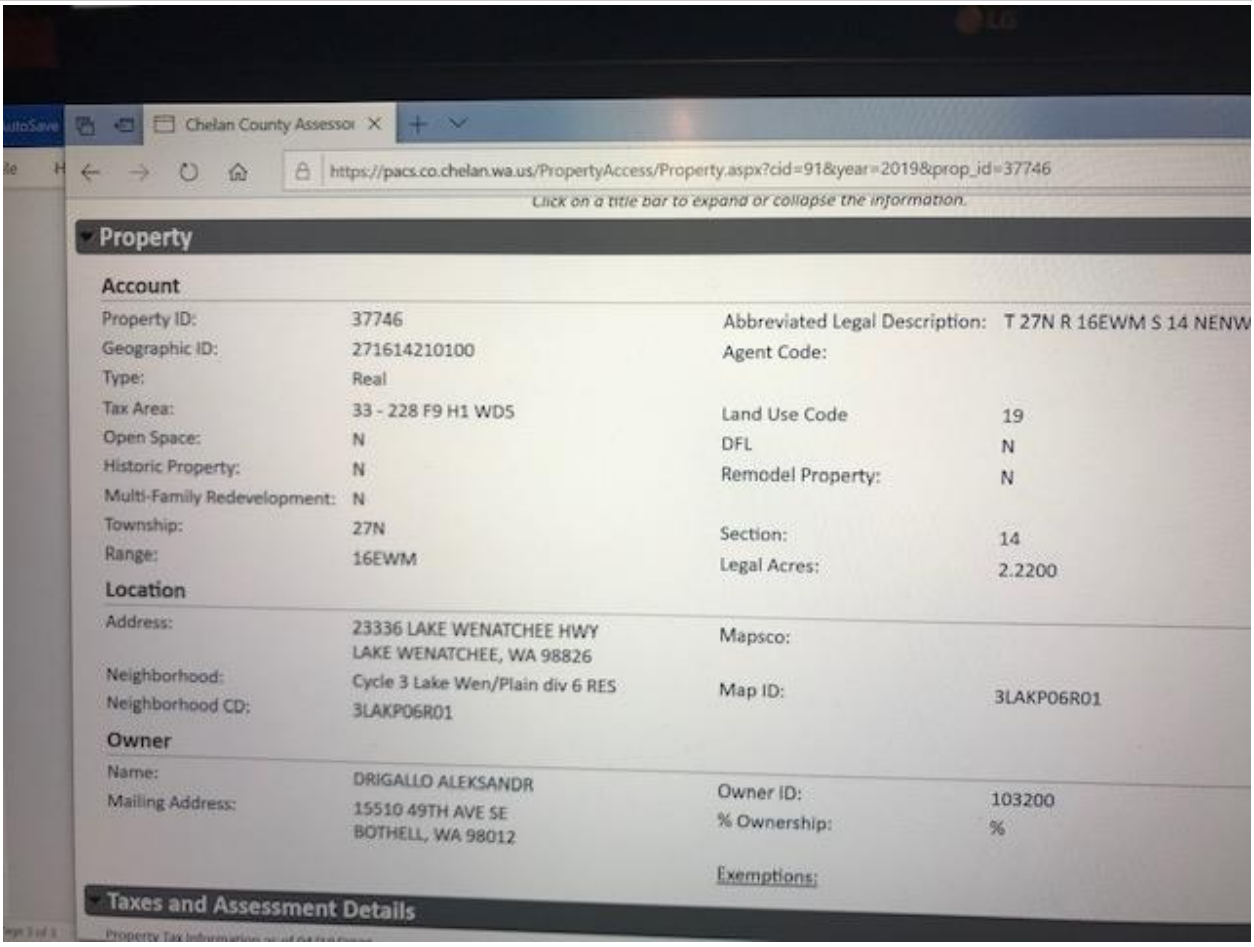
Natural light flows through OMNIA with huge floor to ceiling windows that capture the beauty of the surrounding scenery creating a spectacular mountain ambiance. Custom craft stonework, tile, and wood floors throughout, heated floors throughout the home and designer furnishings make each room a breathtaking mountain modern dream.

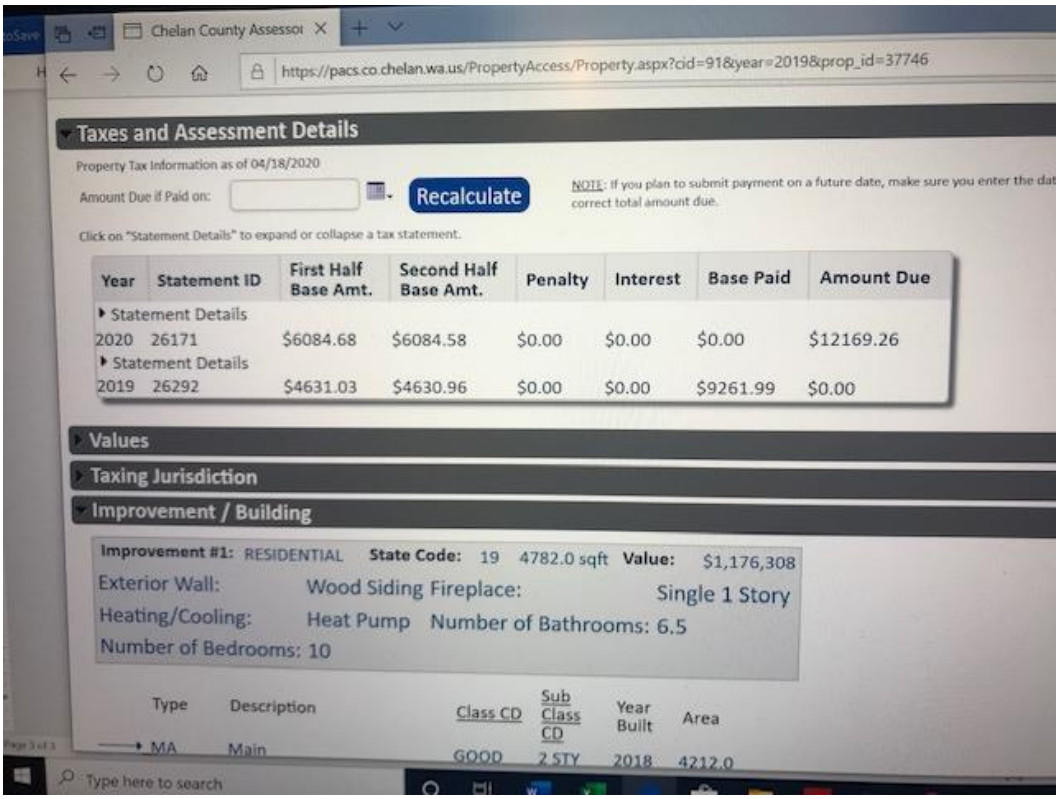
Check in at 4PM

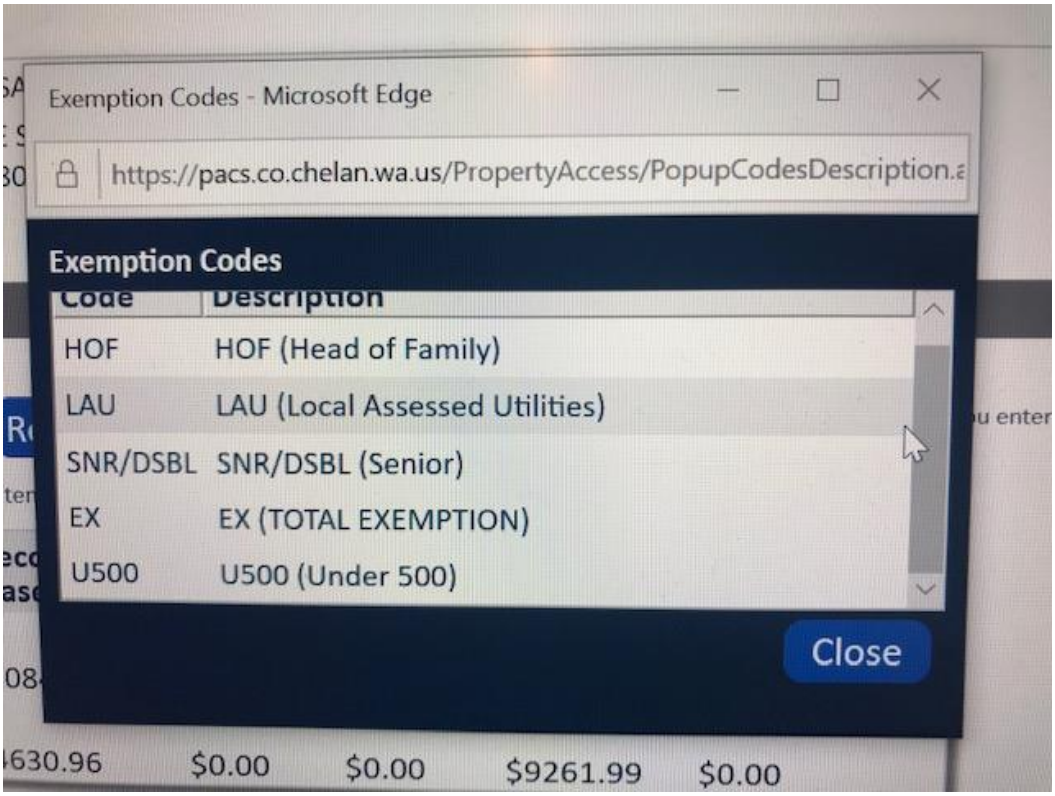
Check out at 11AM

Restrictions: No pets, no smoking (outside smoking area only)

COUNTY ASSESSOR PARCEL RECORD SCREEN SHOTS ON 4-18-2020




Chelan County Assesso
https://pacs.co.chelan.wa.us/PropertyAccess/Property.aspx?cid=91&year=2019&prop_id=37746
Taxes and Assessment Details
Property Tax Information as of 04/18/2020
Amount Due if Paid on:
Recalculate
NOTE: If you plan to submit payment on a future date, make sure you enter the dat
correct total amount due.
Click on "Statement Details" to expand or collapse a tax statement.
Year Statement ID First Half Base Amt. Second Half Base Amt. Penalty Interest Base Paid Amount Due
Statement Details
2020 26171 $6084.68 $6084.58 $0.00 $0.00 $0.00 $12169.26
Statement Details
2019 26292 $4631.03 $4630.96 $0.00 $0.00 $9261.99 $0.00
Values
Taxing Jurisdiction
Improvement / Building
Improvement #1: RESIDENTIAL State Code: 19 4782.0 sqft Value: $1,176,308
Exterior Wall: Wood Siding Fireplace: Single 1 Story
Heating/Cooling: Heat Pump Number of Bathrooms: 6.5
Number of Bedrooms: 10
Type Description Class CD Sub Class CD Year Built Area
MA Main GOOD 2 STY 2018 4212.0
Type here to search


Exemption Codes - Microsoft Edge
https://pacs.co.chelan.wa.us/PropertyAccess/PopupCodesDescription.a
Exemption Codes
Code Description
HOF HOF (Head of Family)
LAU LAU (Local Assessed Utilities)
SNR/DSBL SNR/DSBL (Senior)
EX EX (TOTAL EXEMPTION)
U500 U500 (Under 500)
Close
$0.00 $0.00 $9261.99 $0.00

Lisa Grueter

From: Mark D. Babcock <MDB@tenningen.com>
Sent: Thursday, April 23, 2020 11:29 AM
To: April Hare
Cc: Jess Monnette
Subject: Short Term Rental Proposed Draft for 11.88.280

April D. Hare
Deputy Prosecuting Attorney
P.O. Box 2596
Wenatchee, WA 98807

Dear Ms. Hare,

As you know from your familiarity of the Conditioned Approval of Planned Development PD 2018-051 we are the owners of parcels within Rural Recreational/Residential (RRR) zoning in the Lake Chelan valley. As our application and the engineering standards imposed upon our PD by county agencies with regards to streets, parking, and other infra-structure indicate, our PD is intended to be a vacation rentable community and is in the appropriate zoning.

My concern is that the current Draft Code regarding Short Term Rentals (STR), (11.88.280) being proposed, worked on, and considered for adoption by the BOCC is not addressing specific issues that must be addressed before new Code should or can be legally adopted:

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.

After sitting in on the Planning Commission meeting last night for several hours, other meetings, and several discussions with various county officials, I am writing you with these concerns as your department reviews the proposed Draft Code and makes recommendations to the BOCC. Unfortunately the Planning Department with its ongoing staffing challenges does not seem to have the resources addressing these issues or articulating them into the process. Consequently it seems there is no dialogue at the Planning Commission level in any of the published material or work sessions leading up to recommendations to be made to the BOCC, regarding specifically STR designed plats and developments. I have tried on numerous occasions to get this discussion into the dialogue. Furthermore the consultants retained by the Planning Commission to draft the new Code do not seem to be specifically addressing anything but the narrow scope given them, including this notion that STR should be limited to 1% of total residences. Again where does this number come from and what is the legal basis for it?

As the chair and commissioner of a small utility district I do appreciate and sympathize with all the people and officials working hard on this issue especially in this challenging time. It is a tough issue to find the correct balance. Even so all

the issues must get into the record early on, and be given their fair weight in considering something as far reaching as adding new regulations that affect citizens' freedoms, livihoods, and investments.

Your consideration of these issues in your, or others at the Prosecuting Attorney's office in recommendations to both the Planning Commission and the BOCC are appreciated.

Regards,

Mark D. Babcock
Managing Member

Marita Properties, LLC
190 Grandview Ln.
Chelan, WA 98816

206-947-4366

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Wednesday, April 22, 2020 1:03 PM
To: Lisa Grueter
Subject: FW: [CD Planning]Fwd: Leavenworth - COVID-19 emergency (Reservation cancelation)
Attachments: Open Letter to Vacation Rental Professionals 03_26_2020.pdf

Categories: Yellow

Deanna Walter, AICP
Interim Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6228 Main office (509) 667-6225
deanna.walterCD@co.chelan.wa.us

From: Emily Morgan
Sent: Wednesday, April 22, 2020 12:23 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: FW: [CD Planning]Fwd: Leavenworth - COVID-19 emergency (Reservation cancelation)

From: Chris Fratini [mailto:chris.fratini@gmail.com]
Sent: Wednesday, April 22, 2020 12:16 PM
To: CDPlanning
Subject: [CD Planning]Fwd: Leavenworth - COVID-19 emergency (Reservation cancelation)

To Whom It May Concern

On March 26 the office of the Chelan County Commissioner shared a letter to all short term rental owners discouraging the promotion of short term rentals to people outside the county during the COVID-19 pandemic and asking short term rental owners to make their homes available to first responders and medical personnel treating local patients infected with the Corona Virus. Shortly after that resolutions 2020-38 & 39 laid out some regulations stemming from and expanding upon Gov. Inslee's stay-at-home orders.

Short term rentals have been a hot topic at the commissioner's office for some time now. Although often acting on anecdotal evidence, there is some merit to the concerns. I wanted to add our voice to the mix, as owners and operators of a small short-term rental home, and in response to the appeal. As the letter correctly points out, this is an opportunity for our industry to show our ability to "self-regulate and to meet the greater good of the county."

We have been contacted by a traveling nurse from Arizona coming to our town to work on contract with the Confluence Health in Wenatchee until, at least, the end of July. We felt this was an opportunity to do good and demonstrate our industry's willingness to be good members of the community. We accepted her request to stay with us at a price that's less than 25% of our regular monthly rate; it will cover about half our mortgage. We felt it was the right thing to do. To make our home available, we proactively canceled several pre-existing reservations and rescheduled our customary extended Spring and Summer visits.

While we are cognizant of the fact that normalcy is still far in the future, we are proud of how our State is responding to this emergency and can't wait for the time when the streets of our little town will once again be filled with tourists. While their presence sometimes brings challenges and controversy, their absence comes with far more severe hardships in the form of disappearing jobs and loss of tax revenue. Every enterprise comes with its benefits and its drawbacks: what's good for the duck hunter is not good for the duck.

I hope this small gesture will help in balancing your views on our essential industry.

Be well. Be safe.

Sincerely,

Chris Fratini
Leavenworth, WA

Official Signed Letter from Chelan County Board of Commissioners, Open Letter to Vacation Renal Professionals (Click here to read signed version)

March 26, 2020

Chelan County Commissioners

Open Letter to Vacation Rental Professionals in Response to Covid 19

Dan Eby
Chelan County Vacation Rentals Professionals
940 US Highway 2
Leavenworth, WA 98826

March 26, 2020

SENT VIA Email: dan@destinationleavenworth.com

Dan,

We are writing to you with the hope that you will share this letter with members of the Chelan County Vacation Rental Professionals. The Board of Chelan County Commissioners is seeking many options to provide the best protection to the citizens of Chelan County from the COVID-19 (Coronavirus) pandemic, and we seek your assistance on a difficult issue that has arisen.

On March 17, Chelan County adopted and enacted Resolution 2020-32 declaring an emergency in order to respond to the COVID-19 pandemic. This resolution listed findings and conclusions supporting the emergency declaration and the county's response to the outbreak, including reliance on Governor Inslee's COVID-19 proclamations and the activation of the county's Comprehensive Emergency Management Plan. Since that resolution was adopted and enacted, Governor Inslee has issued further proclamations related to the COVID-19 emergency including Proclamation 20-25 which directs Washingtonians to stay at home and refrain from vacation travel.

As you may know, the number of persons infected with COVID-19 continues to increase statewide and in Chelan County. Since the COVID-19 emergency was declared by Governor Inslee on February 29, there has been an influx of people

coming to Chelan County from urban centers and counties. We have heard anecdotal information that some expect better access to medical and other public facilities, groceries, and services by relocating to Chelan County during the emergency period. This assumption is inaccurate as Chelan County has fewer hospital beds available per capita than is needed and other public facilities are short in supply on a per capita basis.

People coming to Chelan County to avoid COVID-19 emergency directives and recommendations in other communities have the potential to negatively impact the public health, safety, and welfare in Chelan County and are also disregarding Governor Inslee's Proclamation 20-25 by not staying home. As such, we are trying to be proactive in protecting our citizens, and seek your help in this effort.

Under our county's Comprehensive Emergency Management Plan, we are focused on the following emergency response actions; residential relocation and shelter-in-place actions, restricted public facility access, and the relocation and/or evacuation of residents as necessary.
Should this need arise, we must ensure that service workers who need isolation or respite from home have access to local housing. Vacation Rentals may be able to provide a direct service to our community by making your homes available to service providers and possibly local citizens who are displaced because of COVID-19 isolation needs.

During this acute time period, we respectfully ask that owners and operators of Vacation Rentals in Chelan County cooperate in not promoting rentals to people from outside Chelan or Douglas Counties during the emergency. This request is intended to assist the first responders and medical personnel in Chelan and Douglas Counties who need alternative residential accommodations due to their risk of exposure to COVID-19. Their daily work prompts their need to reduce the risk of exposure to their own families. In short, your rentals may be needed for those professionals who are providing service to our community, and are at risk themselves. This action also reduces the risk of introducing pathogens to Chelan County, thereby alleviating impacts to our first responders.

The Vacation Rentals Professionals have promoted an ability to self-regulate to meet the greater needs of the County, and we believe this is an opportunity for you to demonstrate that ability. We recognize that this is an inordinate request, but these are inordinate times. Thank you for considering this need for our community.

Sincerely,

Board of Chelan County Commissioners
Doug England, Chairman
Bob Bugert, Commissioner
Kevin Overbay, Commissioner

Chelan County Community Development | Website

Lisa Grueter

From: Stan Winters <winterss1@me.com>
Sent: Wednesday, April 22, 2020 5:09 PM
To: Bob Bugert; kevin.overbay@co.chelan.wa.us; doug.england@co.chelan.wa.us; Lisa Grueter; CD.Director@co.chelan.wa.us
Cc: communitycouncil@peshastin.org
Subject: Peshastin Community Council Comments on Short Term Rentals
Attachments: PCC Planning Commission Letter 4.22.2020.docx

Hello all,

Please see the attached document: PCC Planning Commission Letter 4_22_2020.

This document includes Peshastin Community Council comments/recommendations on Short Term Rentals in the Peshastin Urban Growth Area.

Thank you,

Stan

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

Peshastin Community Council
P O Box 711
Peshastin, WA 98847
communitycouncil@peshastin.org

April 22, 2020

Chelan County Community Development
316 Washington St
Suite 301
Wenatchee WA 98801

To Whom It May Concern,

The Peshastin Community Council represents the residents of the Community of Peshastin and unanimously wishes to convey the following to the Chelan County Community Development Department and the Planning Board of Commissioners:

1. The people of Peshastin voted in 2008 to approve the regulations in the Peshastin UGA, Chelan County Code 11.22 and its subsections, 010, 020, 030, 040, and 050. The Chelan County Commissioners also voted to approve these regulations. These regulations are a valid subset of Chelan County Title 11 Zoning Code and the 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. Hotels/Motels, and Short-Term Rentals (STRs) are permitted in zones C-D, C-H, I, and I-C, but **not** in zones R1, R2, or R3, and the community would like it to stay that way. 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. Washington State 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 Peshastin Community Council presented a request to Chelan County Community Development in August 2019 requesting a change in the use definition of Hotels/Motels to Hotels/Motels/Lodging Facilities and to delete the term Boarding/Lodging House, since it has become obsolete. The Council has repeatedly mentioned and inquired about this request, without response from the County.

The Community of Peshastin is not totally against Short-Term Rentals, but definitely does not approve of them in any of the residential zones within the UGA.

Sincerely,

Peshastin Community Council
Lauri Malmquist, Chair
Stan Winters, Vice Chair
Tricia Ortiz, Secretary
Cheryl Parsley, Treasurer
Doug Clarke, Member
Steve Keene, Member
Leticia Vizcaino, Member

Cc: Chelan County Planning Commission
Chelan County Board of Commissioners

Lisa Grueter

From: Lauri <lam@nwi.net>
Sent: Wednesday, April 22, 2020 5:26 PM
To: Stan Winters
Cc: bob.bugert@co.chelan.wa.us; kevin.overbay@co.chelan.wa.us; doug.england@co.chelan.wa.us; Lisa Grueter; CD.Director@co.chelan.wa.us; Peshastin Community Council
Subject: Re: Peshastin Community Council Comments on Short Term Rentals

Excellent job, Stan ans Steve. Succinct and clear. Thank you!

On Thu, 23 Apr 2020 00:08:48 -0000, Stan Winters <winterss1@me.com> wrote:
> Hello all,
> Please see the attached document: PCC Planning Commission Letter
> 4_22_2020.
> This document includes Peshastin Community Council
> comments/recommendations on Short Term Rentals in the Peshastin Urban
> Growth Area.
> Thank you,
> Stan
> Stan and Vania Winters
> 8200 Riverview Rd
> Peshastin, WA 98847
> 509 293-0457

--
Lauri Malmquist
lam@nwi.net

Lisa Grueter

From: Tango Cash <snowman_312@hotmail.com>
Sent: Wednesday, April 22, 2020 5:30 PM
To: Lauri
Cc: Stan Winters; bob.bugert@co.chelan.wa.us; kevin.overbay@co.chelan.wa.us; doug.england@co.chelan.wa.us; Lisa Grueter; CD.Director@co.chelan.wa.us; Peshastin Community Council
Subject: Re: Peshastin Community Council Comments on Short Term Rentals

I really like #4, it lays the blame where it should be, the county screwed up and not us

Sent from my iPhone

> On Apr 22, 2020, at 5:26 PM, Lauri <lam@nwi.net> wrote:
>
> Excellent job, Stan ans Steve. Succinct and clear. Thank you!
>
>> On Thu, 23 Apr 2020 00:08:48 -0000, Stan Winters <winterss1@me.com> wrote:
>> Hello all,
>> Please see the attached document: PCC Planning Commission Letter
>> 4_22_2020.
>> This document includes Peshastin Community Council
>> comments/recommendations on Short Term Rentals in the Peshastin Urban
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>> Thank you,
>> Stan
>> Stan and Vania Winters
>> 8200 Riverview Rd
>> Peshastin, WA 98847
>> 509 293-0457
>
> --
> Lauri Malmquist
> lam@nwi.net
>

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Wednesday, April 22, 2020 12:19 PM
To: Lisa Grueter
Subject: FW: [CD Planning]STR comment

Deanna Walter, AICP
Interim Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6228 Main office (509) 667-6225 deanna.walterCD@co.chelan.wa.us

-----Original Message-----
From: Jamie A. Strother
Sent: Wednesday, April 22, 2020 9:10 AM
To: Shannon Rome <rome.s.3@icloud.com>
Cc: CDPlanning <CDPlanning@CO.CHELAN.WA.US>; CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: RE: [CD Planning]STR comment

Thank you for your comment. I will forward this on to the planner conducting the planning commission meeting.

Jamie A. Strother
Planner
Community Development Department

316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: (509) 667-6230 | Fax: (509) 667-6475 jamie.strother@co.chelan.wa.us

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The Department of Community Development would appreciate your feedback. Please take a moment to complete our Public Experience Survey:
CLICK HERE TO TAKE THE SURVEY!

-----Original Message-----
From: Shannon Rome [mailto:rome.s.3@icloud.com]
Sent: Wednesday, April 22, 2020 9:03 AM
To: CDPlanning <CDPlanning@CO.CHELAN.WA.US>
Subject: [CD Planning]STR comment

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

To Whom it may concern;

We have in good faith forgone 6 weeks of income by allowing guests to cancel for full refunds and also have blocked our calendar for the duration of “stay at home” once it was announced, additionally many reservations for after the mandate expires are already moving or outright cancelling reservations.

I understand that your group is anti short term rentals, but I think the mandates that are more restrictive for short term vacation rentals than for hotels and peoples reluctance to travel is rough enough on all of us without adding the nail in the coffin of adding onerous licensing and other restrictions.
We collect and Pay Chelan county lodging and other taxes and remit them and have been doing so for over 20 years, we bring guests that spend money at restaurants and shops, and they visit businesses that run activities like skiing, rafting, etc.
We also pay our property taxes which have increased substantially, again this goes to support the county.
Our guests are not different than our own family traveling there to use our cabin, the ability to rent the cabin when our family cannot use it helps us keep the cabins up and provide employment to cleaning services, hot tub services, yard services, contracting services for maintenance and improvements just to mention a few- all things we would have to greatly reduce or not need at all if we were unable to rent.

I just feel like too many government arms are using the horrible effects of COVID -19 to further agendas that were not able to be moved forward before because of reasonable opposition. Now that public opposition cannot happen, planning discussions and votes to add new restrictions to property owners should not happen at this time either.

Please record my comment as opposing overreaching regulation on private property being used as short term rentals, which are legally considered the same as long term rentals and in our case are consistent with owner use (should we go to our properties ourselves with family or friends). We care about our properties, the area, and the people that provide services in our area, not to mention restaurants, stores, and activity organizers that all benefit from our guests.

Sincerely;
Shannon M Rome
Heaven Can Wait LLC
www.hcwlodge.com
Heaven Can Wait Lodge
Osprey Nest Cabin

Ph 425-985-6455
Fax 425-497-1839

Sent from my iNormous

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Wednesday, April 22, 2020 10:12 AM
To: Lisa Grueter
Subject: FW: Terminating existing non-owner occupied short term rentals is not a "taking" if owners can use their property for long term rentals
Attachments: UW Law Review Community Consequences of Airbnb.pdf

Deanna Walter, AICP
Interim Director
Chelan County Community Development
316 Washington Street, Suite 301
Wenatchee, WA 98801
Phone: Direct (509) 667-6228 Main office (509) 667-6225
deanna.walterCD@co.chelan.wa.us

From: Bruce Williams <bwseattle@gmail.com>
Sent: Wednesday, April 22, 2020 9:59 AM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>
Cc: Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>; Deanna WalterCD <Deanna.WalterCD@CO.CHELAN.WA.US>; Douglas Shae <Douglas.Shae@CO.CHELAN.WA.US>
Subject: Re: Terminating existing non-owner occupied short term rentals is not a "taking" if owners can use their property for long term rentals

Sorry! Here's the attached UW Law Review article. The section on takings starts on page 1609 but the whole article is interesting.

Bruce Williams
bwseattle@gmail.com
509.888.1935
206.972.6865

On Wed, Apr 22, 2020 at 9:30 AM Bob Bugert <Bob.Bugert@co.chelan.wa.us> wrote:

> Bruce—
>
> Thank you for your email and comments. These will be included as part of the public record—and in our deliberations.

The 2019 article in the University of Washington Law School Law Review was not attached. Could you please provide that, as it would be helpful.

Thanks again, Bruce.

Bob Bugert

Chelan County Commissioner, District 2

Office: 509-667-6215

Mobile: 509-630-4480

From: Bruce Williams <bwseattle@gmail.com>
Sent: Wednesday, April 22, 2020 8:08 AM
To: Bob Bugert <Bob.Bugert@CO.CHELAN.WA.US>; Doug England <Doug.England@CO.CHELAN.WA.US>; Kevin Overbay <Kevin.Overbay@CO.CHELAN.WA.US>
Subject: Terminating existing non-owner occupied short term rentals is not a "taking" if owners can use their property for long term rentals

Dear Commissioners,

The study prepared by Berk Consulting showed that the unincorporated area around Leavenworth has been heavily impacted by the rapid rise in the number of short term rentals (STR's). In particular,

- the number of STR's in the Leavenworth area has increased from 59 to 868 in just 5 years, from 2014 to 2019.
- 12% of the housing stock in our area is now in STR's. The laws of supply and demand suggest this is a significant factor in our local housing shortage and affordability issues.

All this in a residential area where the county code for years has provided that the legal permissible tourist accommodations were only owner-occupied bed and breakfasts and owner-occupied lodges. I think it is reasonable to believe that when the code was drafted, no one anticipated, or would have allowed, non-owner occupied nightly rentals in residential areas.

In case you haven't already seen it, I would like to share a little research I did on the legality of prohibiting STR's in areas where they already exist.

Please consider the following language from the Host Compliance website. https://hostcompliance.com/short-term-vacation-rental-faqs

"2. Restricting short-term rentals does not constitute "taking of property"

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. 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, 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).

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

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. "

In other words, it is not a taking to require existing STR's to cease being used that way as long as there are other economically viable uses such as long term rentals or the owners' residing in the properties. (In the Cannon Beach case it appears there was a sunset provision in which the owners were allowed to continue using the properties as STR's for 5 years after the ordinance was adopted but this does not appear to be part of the Courts reasoning.)

I did some additional research to see if the Cannon Beach case has been cited by other courts, particularly in Washington. I didn't find any but the case is

discussed in a 2019 University of Washington Law School Law Review article that discusses the legal aspects of regulating STR's. It is entitled "Community Consequences of Airbnb," a copy of which attached. The article approves of the logic of the Cannon Beach case and suggests that other courts would reach the same conclusion. I recommend you read the entire article, which provides a thoughtful analysis of many aspects of STR's and how they should be regulated.

Presumably if there were courts ruling the other way, the Host Compliance site and the law review article would have mentioned them.

So rather than taking the enormous number of questionably legal STR's in our neighborhoods as a given, I'd like you to consider what the optimal number would be and move towards that. You can, and I think should, set a much lower number than the current number. As long as the current owners can use their property as a long term rental, there should not be a takings issue. And it would be a great benefit for Leavenworth workers if there were more long term rentals on the market.

Like the Cannon Beach situation, maybe it would be appropriate to allow them to continue for a few years until a specific sunset date. However, if you go that route, there should be a <u>firm commitment to that sunset date</u>.

I want to be clear that <u>I am not opposed to owner-occupied STR's</u> in my neighborhood. (By that I mean where the property is the <u>primary</u> residence of the owners of the property and they rent out either a portion of their house or their ADU. Just like the owner occupied B&B's provided for in the code, the primary use of these properties is, appropriately, residential: providing housing for residents of our community. The STR is a secondary use. The owner-occupants are members of our community. Not surprisingly, i don't hear of any problems caused by owner occupied STR's. As residents, the interests of the owner-occupants are aligned with those of their neighbors in

protecting the the quality of life in the neighborhood. Because they are on site, there is much less likelihood of problems with their guests and they can quickly stop any problems that develop.

I would suggest that owner-occupied STR's be allowed to continue in residential area with some explicit code language that provides that they are legal and provides appropriate regulation. I don't know if a numerical limit is needed for those.

It would be helpful if Berk did an analysis (if they have, I didn't see it) of the number of owner-occupied STR's and the number of non-owner occupied ones.

Consistent with the existing code that prohibits non-owner occupied bed and breakfasts and lodges, I think the number of non-owner occupied STR's allowed in residential areas should be zero. I

The current draft proposal suggests a single cap that would include both non-owner occupied and owner occupied STR's. They are fundamentally different and should be treated differently. If you continue 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.

Thank you for your consideration of these thoughts.

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COMMUNITY CONSEQUENCES OF AIRBNB

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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.

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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 neighborhood[4]; 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 Soothe[8]—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

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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_l_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].

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=atlfb [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.atairbnb.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]

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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;

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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 listings[37]—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]

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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,

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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-YZ2Z].

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

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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 income[57] 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.

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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 crisis[62] 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

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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

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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 "reallocat[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

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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. SAMAAN, 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

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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 Initiative[109] 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

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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, *Airbnbusiness: 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

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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 City[137] and San Francisco[138] reached similar

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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

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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 middles 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

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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"

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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 Cócola 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

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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 PLOSONE 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 Wisconsin[165] 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.

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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 Rickets 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.

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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, familiar 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

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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

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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

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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

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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 Authority[232] 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

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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/5HNB-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 states[238] 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,

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lodging-tax-agreementbetween-airbnb-and-the.html#document/p3/a167055 [https://perma.cc/F4TC-UJJL]; 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 tax[244] 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

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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-PICAYUNE (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 un-shared 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

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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

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[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 is 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 company[288] 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]

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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 Compliance[295] 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]

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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.ocregister.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

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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

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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/jL7lVydk49fn6pdx2Q6kIP/ [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

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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.

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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 Breach, 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

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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: Steve Keene <stkeene@peshastin.org>
Sent: Thursday, April 23, 2020 11:17 PM
To: buhr@wenatcheeworld.com
Cc: Bob Bugert; Doug England; Kevin Overbay; Jim Brown; Jim Brown; Randy Baldwin; Jordan McDevitt; Lisa Grueter; Peshastin Community Council
Subject: Wenatchee World Article: Chelan county looks again vacation rental regulations
Attachments: PCC Planning Commission Letter 4.22.2020.pdf; Peshastin UGA Document Changes 08.03.2019.pdf

Dear Mr. Buhr,

I and another Peshastin Community Council member, Stan Winters, were both in "virtual" attendance at last night's, April 22, Zoom meeting of the Chelan County Planning Commission. After reading your article in the Wenatchee World today, I think there needs to be some clarification as to what the residents of Peshastin are actually asking the county to do regarding Short-Term Rentals (STRs) in our Urban Growth Area (UGA).

I'm afraid your comments in the article regarding Peshastin were only half correct. "Peshastin residents asked that their urban-growth area cease allowing short-term rentals entirely. The Peshastin urban-growth does not currently allow short-term rentals, but there are some ongoing lawsuits in regards to the matter."

The second sentence is partially correct. The Peshastin UGA does not currently, nor has it ever, allowed short-term rentals in the R-1, R-2, or R-3 residential zones, and there is an appeal of a case still pending where a "Director's Determination" and a Hearing Examiner both agreed that Chelan County Code 11.22.030 does not allow STRs in residential zones. "Cease allowing" is totally incorrect. STRs have never been allowed in the residential zones, but they are, and have been, allowed in the the commercial and industrial zones. Peshastin is asking that nothing change in its UGA zoning regulations other than to clarify the definition of Hotels/Motels to include Lodging Facilities, and to group STRs along with them, in the same way Washington State RCW 64.37 does.

I and Mr. Winters were both extremely upset with what we heard in regard to the "Key Elements" of the proposal from Lisa Grueter of Berk Consulting. The Peshastin Community Council met Wednesday afternoon, April 22, and these "Key Elements" were a major topic of discussion. The attached letter outlines the unanimous comments of the Council members, the concerns of the community, and was sent to the Chelan County Board of Commissioners (CCBOC), Development Department, Planning Commission, and Berk Consulting, a couple of hours prior to the meeting. This was by no means the first time the Council has discussed or shared its concerns with Ms Gruether. The letter was also submitted via the Zoom chat function during the meeting, but was not brought up or mentioned by the moderator in the course of the meeting.

I have also attached a copy of the document that the Peshastin Community Council submitted to Chelan County Development in August 2019, requesting a few simple clarifications of activity definitions for the Peshastin UGA code 11.22.030. While repeatedly mentioned and inquired about by us, no one from the county has ever acknowledged this request or brought it before the Planning Commission or CCBOC for discussion or implementation.

The citizens of Peshastin created the Peshastin UGA in 2008 after two years of hard work and support from Chelan County. The CCBOC voted to adopt the regulations and include them in Title 11 of the Chelan County Code. The Community Council, and the citizens we represent, sincerely hope the various commissioners consider the wishes of their constituents, full-time residents in Peshastin, and our strong desire to **continue** to uphold and enforce the regulations of the Peshastin UGA in the manner in which they were conceived and approved.

We are pleased that your article did quote Commissioner Doug England, "The new regulations are in a preliminary process with a lot of ideas that may not become law… The commissioners can accept or reject any of the planning commission's recommendations." The citizens of Peshastin sincerely hope that our county government will not only acknowledge, but also support, the wishes of its constituents in this matter.

Sincerely,

Steve Keene, Member
Peshastin Community Council

Peshastin Community Council
P O Box 711
Peshastin, WA 98847
communitycouncil@peshastin.org

April 22, 2020

Chelan County Community Development
316 Washington St
Suite 301
Wenatchee WA 98801

To Whom It May Concern,

The Peshastin Community Council represents the residents of the Community of Peshastin and unanimously wishes to convey the following to the Chelan County Community Development Department and the Planning Board of Commissioners:

1. The people of Peshastin voted in 2008 to approve the regulations in the Peshastin UGA, Chelan County Code 11.22 and its subsections, 010, 020, 030, 040, and 050. The Chelan County Commissioners also voted to approve these regulations. These regulations are a valid subset of Chelan County Title 11 Zoning Code and the 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. Hotels/Motels, and Short-Term Rentals (STRs) are permitted in zones C-D, C-H, I, and I-C, but **not** in zones R1, R2, or R3, and the community would like it to stay that way. 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. Washington State 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 Peshastin Community Council presented a request to Chelan County Community Development in August 2019 requesting a change in the use definition of Hotels/Motels to Hotels/Motels/Lodging Facilities and to delete the term Boarding/Lodging House, since it has become obsolete. The Council has repeatedly mentioned and inquired about this request, without response from the County.

The Community of Peshastin is not totally against Short-Term Rentals, but definitely does not approve of them in any of the residential zones within the UGA.

Sincerely,

Peshastin Community Council
Lauri Malmquist, Chair
Stan Winters, Vice Chair
Tricia Ortiz, Secretary
Cheryl Parsley, Treasurer
Doug Clarke, Member
Steve Keene, Member
Leticia Vizcaino, Member

Cc: Chelan County Planning Commission
Chelan County Board of Commissioners

From: **Stan & Vânia Winters** winterss1@me.com
Subject: [SPAM] Peshastin UGA Document Changes
Date: August 3, 2019 at 12:04 PM
To: dave.kuhl@co.chelan.wa.us, Bob Bugert bob.bugert@co.chelan.wa.us, doug.england@co.chelan.wa.us, kevin.overbay@co.chelan.wa.us

To: Dave Kuhl
August 3, 2019

Angel Hallman

Hello Dave,

At the Peshastin Community Council meeting on July 10th, 2019, the Council, with overwhelming community support, voted in favor of continuing the zoning codes as they currently exist within the Peshastin UGA, that is, nightly rentals allowed only in commercial and industrial zones within the UGA, but not in any of the three residential zones. "

We voted to add definitions to the UGA document, as we had discussed, as follows:

"Definitions of terms used in the Peshastin UGA document will be identical to those used in the Chelan County code definitions, unless specifically noted otherwise".

Current Peshastin UGA Zoning Chart Page 11

Commercial Uses								
	R-1	R-2	R-3	C-D	C-H	I	I-C	P-U
Hotels/Motels				PRM	PRM	PRM	PRM	

Change to:

Page 11: Hotels/Motels. We recommend adding "Lodging Facilities" to this land use, with definition as follows:

Commercial Uses								
	R-1	R-2	R-3	C-D	C-H	I	I-C	P-U
Hotels/Motels/Lodging Facilities*				PRM	PRM	PRM	PRM	

** A building, group of buildings or a portion of a building which is designed for or occupied as the temporary abiding place of individuals for less than thirty (30) consecutive days including, but not limited to establishments held out to the public as auto courts, hostels, inns, motels, motor lodges, time share projects, tourist courts, guest inns, nightly rentals*

inns, motels, motor lodges, time share projects, tourist courts, guest inns, nightly rentals, and other similar uses.

Current Peshastin UGA Zoning Page 7

Residential Use								
	R-1	R-2	R-3	C-D	C-H	I	I-C	P-U
Boarding/Lodging House	PRM	PRM	PRM	CUP	PRM	PRM		

Change to:

Page 7:

Delete land use of Boarding/Lodging House

Sincerely,

Stan Winters, Peshastin Community Council
8200 Riverview Rd
Peshastin, WA 98847
509 293-0457

Lisa Grueter

From: Deanna Walter <Deanna.Walter@CO.CHELAN.WA.US>
Sent: Monday, April 27, 2020 12:23 PM
To: Lisa Grueter
Subject: Fw: Support for proposed overnight rental guidelines

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From: Doug England
Sent: Friday, April 24, 2020 9:16 AM
To: Bob Bugert; Kevin Overbay; Deanna Walter
Subject: FW: Support for proposed overnight rental guidelines

-----Original Message-----
From: Brett and Nancy <bnsf@nwi.net>
Sent: Friday, April 24, 2020 9:12 AM
To: Doug England <Doug.England@CO.CHELAN.WA.US>
Subject: Support for proposed overnight rental guidelines

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

Dear Commissioner England;

I just read through the proposed guidelines for Chelan County on the planning page. I would just like to state my support for the proposed guidelines. We live in the the Leavenworth zip code, in a rural area. We have been affected by many of the issues that the guidelines are trying to manage. I wholeheartedly hope that the county adopts the proposed guidelines.

Thank you for your time spent on this matter.

Sincerely,

Nancy Bywater

Lisa Grueter

From: CD Director <CD.Director@CO.CHELAN.WA.US>
Sent: Monday, April 27, 2020 10:57 AM
To: Lisa Grueter
Subject: FW: Thank you for including in the public 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: Barb Knapp <dknapp3140@aol.com>
Sent: Friday, April 24, 2020 5:58 PM
To: CD Director <CD.Director@CO.CHELAN.WA.US>
Subject: Thank you for including in the public record

To Whom it may concern at Berk Consulting,

We were recently made aware of your proposed vacation rental codes for Chelan County specifically regarding STR. We would ask for your strong consideration regarding your limiting total occupancy to 10 or less. We hope you will consider a process for reviewing and granting larger occupancy limits based on the size, location, history, quality of property. We are not a place for reckless, careless trouble making guests. We would strongly ask that you review specifically our offering on https://www.vrbo.com/631085. You will see we operate a fine luxurious home that is meant for making remarkable experiences in the beautiful town of Leavenworth. We are also members of The Leavenworth Chamber of Commerce and support our community in many ways.

Our family owns and operates a 9000 sf home on 3 acres, riverfront, Leavenworth, Chelan County. We have successfully operated this business offering the exceptional first class accommodations for family gatherings, business retreats as well as church retreats. We are very careful about screening our guests and have yet to suffer one neighbor complaint! We have invested heavily to bring this remarkable log home and it's surrounding acreage to a level not usually associated with STR. We are good friends with our neighbors and intend to keep it that way! We have a team of community members/ businesses that support our efforts to keep this remarkable property in top shape both inside and out. 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. We appreciate your thoughtful consideration.

Finally, during this unprecedented time of the world pandemic it seems prudent to delay any such action to further stress or harm any family business as a remarkable misuse of power and civility. We would encourage a delay to this proposed regulation change for at least 1 year in order for all families to regain their financial footing during this crisis.

Respectfully submitted,

Dennis & Barbara Knapp
Owner/Operators
The Grand River Lodge
Leavenworth

206-769-4899

Lisa Grueter

From: Barbara Rossing <brossing@lstc.edu>
Sent: Thursday, April 30, 2020 9:58 AM
To: Lisa Grueter
Cc: deanna.walterCD@co.chelan.wa.us
Subject: Re: Chelan CO STR Questions-- schedule? owner-occupied? sun-setting?

Dear Lisa Grueter
It was good to talk with you briefly. I am wondering the following:

1. Schedule for upcoming STR meetings and process? We strongly the schedule proposed at the Commissioners meetings earlier this year be followed, with urge a Zoom public hearings. It will not be safe to hold large group meetings for many months. We hope the May 13 Planning Commission work session is still on, with Public Hearing soon to follow; and then a similar process with County Commission. Might you send the updated schedule, and when the public hearing will likely be?

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)? Is there a way to find out? The Berk Situation Assessment report p. 38 Attachment B: "Unit Types used as Short Term Rentals" broke down rentals into apartments, cabins, whole-house, cottages, chalets, etc., which was great, but it wasn't clear which ones had owners on site. The reason: Our group wants preference in any lottery system for owner on-site-- people who rent out a room or dwelling on their property where they live, not owner-absent whole-house rentals.

3. Sunsetting 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%. There needs to be a fair way to sunset many. (and here also, our preference is to sunset the large owner-absent whole-house rentals-- which is why we hope you can sort owner-occupied from non-owner-occupied.).

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. Carl Blum's questions would be especially pertinent, since he mentioned those.

Thank you very much.

Barbara Rossing
7785 E Leavenworth Rd
548-7278

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

✓

STR Draft Code Questions

Comments were provided by Planning Commissioner Carl Blum on 4/21.
Responses drafted by Lisa Grueter, BERK Consulting on 5/7

11.88.280 (2) (D) (i) This references "existing legal short-term rentals". Only the Manson UGA requires permitting. Can we assume those STRs not permitted when this is implemented will not be allowed? See 5/7 paper for options on addressing existing units.

11.88.280 (3) (B) (i) Is the International Residential Code used elsewhere in Chelan County? Yes. At least Chelan & Wenatchee doing a code search.

11.88.280 (3) (B) How is the number of bedrooms determined? Who and when is the number of advertised bedrooms checked against the permitted? For properties on a septic, when is the number checked with the septic system? During initial permit review bedrooms would be determined by the County and Health District. Advertisements would be considered during enforcement as well as permits on file.

11.88.280 (3) (A) "...operated out of an owner's primary residence..." Does this mean owners that live outside of Chelan can't use their property as a vacation rental? In other words , what is the definition of "primary residence"? The intent of the section was to distinguish the main house versus an accessory dwelling. See the 5/7 report for options on addressing owner occupied or non-owner occupied housing.

11.88.280 (3) (B) The two paragraphs seem to be in conflict. During the daytime occupancy, some people may have to leave if their are children 6 or under. Is the intent to limit daytime guests greater than nighttime? Noted. Paragraph (3)(B)(ii) should read "including children over 6 years old."

11.88.280 (3) (C) How is "off street parking" determined when private roads or easements are the only way to access the property? The standard would be 1 space in addition to the requirement for the dwelling. The reference to Off-Street Parking is just due to the name of the Chelan County Code Section 11.90.

11.88.280 (3) (D) Is the intent to require recycling containers for all properties? Curbside recycling would be provided where it is offered as a service; can be clarified.

11.88.280 (3) (G) Can the owners/managers post more than one sign? Is there a number of signs limit? Comment noted. The number of signs can be clarified. One identification sign was anticipated on the building. If there is a long driveway more than one sign would be appropriate such as for emergency response.

11.88.280 (3) (C) Which land use will apply to parking standards (CCC 11.90)? Depends on the unity style - single family or attached condo, etc.

11.88.280 (4) (I) Does this mean an STR property can continue as an STR if the new owners re-certify the property is in compliance with the CCC? In other words, the new owners do not have to apply as a new STR at the beginning of the next cycle? As written it would mean an annual permit is needed but not a new initial permit. We can review other options.

11.88.280 (4) Once the first land use permit is approved, will it then forever be recertified by the owner? In order to continue the use an annual permit would need to be obtained.

16.20.030 (2) (E) What is the definition of a "similar offense"? (E) should probably refer to (D) to define "similar".

11.88.280 (3) (I) Who is responsible for notifying renters of burn bans? In other words, how will the fire conditions of CCC 7.52 be transmitted to renters?

That would be specified in the fire protection plan. We could clarify that it is the responsibility of the qualified person.