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July 22, 2021

Via E-mail and First-Class mail

Newberg Planning Commission
C/O Newberg Community Development Department
PO Box 970
414 E. First Street
Newberg, Oregon 97132
Keith.Leonard@NewbergOregon.gov

**RE: Lauri Hines and Roy Neff re: Conditional Use Application, Docket No. CUP
21-0001**

Dear Newberg Planning Commission Members,

This office represents Applicants Lauri Hines and Roy Neff (“Applicants”). Applicants seek a conditional use permit (“CUP”) to allow a short-term rental (“STR”) on their Property located at 412 W. 5th Street, Newberg, Oregon 97132 (the “Property”). Applicants have attached additional photographs, studies, academic papers, and other materials for the Planning Commission to aid in the assessment of the Application and, specifically, to address some concerns expressed by neighbors.

Applicants wholly agree that homeownership is one of the foundations of the American way of life. Applicants also believe that bringing travel and tourism to the most authentic and rural areas of our great and diverse country is both necessary and desirable endeavor. Applicants believe that the rise in popularity of STRs supports their belief that Americans who want to see the beauty of Oregon need look no further than Oregon’s rural communities; STRs allow Americans from all across this country visit and patronize beautiful areas of the country that are not commonly visited.

Applicants hope that their additional materials will aid the Planning Commission in making findings in their favor and will aid the Planning Commission in its ultimate decision.

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RESPONSE TO SPECIFIC CONCERNS

Noise

One concern that has been consistently echoed by opponents to this CUP is noise. Data on whether STRs lead to higher-than-normal noise, however, does not support any conclusion that STRs are noisier than standard, long-term rentals. *See* Exhibit 10. Further, Applicants' guests must agree to, and abide by, the Master Lodging Agreement; this is where further restrictions, such as not parking on the street, may be made. *See* Exhibit 19.

Crime

One concern asserted by Mr. Jim Forkner was that transient people coming and going from the City would add to the crime potential. Our guests receive a background check through the Airbnb app. Our rentals are also considered luxury rentals.

The readership demographic of Northwest Travel and Life are closely aligned with the visitors coming out to the coast and wine regions who use Applicants' STRs; Northwest Travel and Life stated that Applicants' average guest fits the demographic of their average reader, in that they are overwhelmingly college educated, have an average income in excess of \$125,000 per year, and are older (average age 52). *See* Exhibit 17. Additionally, new research shows that a 10% increase in the number of Airbnb hosts *decreases* neighborhood crime by over 2.5% due, at least in part, to the quality and maintenance of STRs when compared to multifamily property. *See* Exhibit 11.

On-Street Parking

Thus far, the Staff Report correctly states that there are two off-street parking spaces. However, Applicant's Property can accommodate significantly more than two vehicles. The Property has two driveways, one extending nearly the depth of the lot, and has a three-car garage. Applicants estimate that the Property can accommodate no fewer than five cars, and likely more. In fact, Applicants believe the property can accommodate ten cars. Assuming that the Property will be at maximum capacity allowed by local ordinance (ten persons) with each rental, which is not common, five vehicles would easily accommodate ten persons. Applicant's guests are normally families with children, who would use fewer than five vehicles.

Applicants would also agree as a condition of their Application, if the Planning Commission deems it desirable or prudent, that Applicant's guests will not be permitted to park on the street, notwithstanding any signage. Applicants will include that language in their "House Rules" if necessary or desired by the Planning Commission. As part of the Application, Applicants note that


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there will be a gate installed on each of the two driveways. Notwithstanding any requirement to bar on-street parking in Applicants' "House Rules," Applicants expect that their guests will prefer to park behind the gate where their vehicles are more secure than parked on the street.

Access for Emergency Vehicles

Related to concerns about on-street parking, several opponents have expressed concerns about 5th street being too narrow to accommodate emergency vehicles if Applicants' guests park on the street. Notwithstanding Applicants' willingness to bar on-street parking in their "House Rules" and Applicants' expectation that guests will not wish to park on the street (preferring to park behind the gate), Applicants note that large trucks drive up and down 5th Street daily.

Newberg Public Works allows City trucks to park directly across the street from Applicants' address (approximately 413 W. 5th Street). These trucks drive past Applicant's address when exiting 413 W. 5th Street. Additionally, firetrucks and other emergency vehicles can, and do, drive down 5th Street notwithstanding the current absence of no parking signs. *See Exhibit 13.*

Other Materials Addressing STRs

To aid in the Planning Commission's assessment of the Application, Applicants attach 22 Exhibits which include information about the benefits STRs bring to communities.

Further, Applicant Lauri Hines has also attached a personal letter addressing her firsthand knowledge of some of the issues and objections made thus far to the Planning Commission. *See Exhibit 1.*

Please include this letter and its attached Exhibits in the official record for this Application.

Thank you,



Tony L. Aiello, Jr., OSB #203404
Tony@RuralBusinessAttorneys.com



July 22, 2021

Newberg Planning Commission
% Newberg Community Development Department
P.O. Box 970
414 E. First Street
Newberg, OR 97132

RE: Hines/Neff Conditional Use Application, Docket no. CUP21-0001

Dear Newberg Planning Commission Members:

dAttorney Andrew Stamp is sadly mistaken in his letter of July 8, 2021 when he characterizes visitors to the Willamette Valley as people who “...Party, drink alcohol, smoke marijuana, play loud music, litter, entertain, dine and socialize outdoors...and otherwise conduct themselves in a much more disruptive and disharmonious manner...”

According to Travel Oregon, visitors to the Willamette Valley spend \$2 billion in Willamette Valley each year, creating employment for 22,600 locals.

The attached report, “Oregon 2017 Regional Visitor Report Willamette Valley Region”, commissioned by Travel Oregon and conducted by Longwood International, characterizes the demographics and spending patterns of visitors to the Willamette Valley. Some of their findings include:

- 48% of visitors are fellow Oregonians, 19% are from California and 14% from Washington
- Primary reasons for travel to the region are visiting family (50%) visiting historic places (34%) cultural activities (24%) and wine tasting (16%)
- The average age of Willamette Valley visitors is 48.7 years
- 28% of Willamette Valley visitors are members of AARP
- 65% of visitors are married
- The average party size is 2.8 people
- The average stay is 2.3 nights
- 48% of visitors are retired
- 56% have college or post-graduate degrees

None of these statistics point to our guests exhibiting the “...loud, disruptive mischief...” Mr. Stamp fears.

With regard to loud music and disruption, the attached report from Noise Aware, prepared in partnership with Home Away, shows that not only are short-term rentals no louder than long-term residents, **they are quieter than long-term residents for the majority of each week.**

Mr. Stamp is also mistaken in his assertion that there are only two parking spaces on the property. There are two driveways, and the property can easily accommodate 10 vehicles in the very unlikely event that each guest opted to drive separately. See attached Neighborhood Overview PDF for confirmation.

Mr. Stamp's characterizes this as a "...*quiet residential neighborhood composed of single-family detached homes...*" but the reality is this street backs up to Newberg Public works (where his client, Mr. Umfleet, stated he was calling from on the hearing on July 8) and directly across from our residence there is what appears to be a full-blown industrial site.



There are large industrial vehicles, some of which appear to belong to the City of Newberg, driving up and down the street on a daily basis. The commercial trucks directly across from us leave at 5:30 in the morning. They are loud and completely unsuited for a residential neighborhood. Please refer to the Neighborhood Overview PDF for details, and to the attached Timeline for 412 W. 5th Street Lawsuit for additional views of the immediate surroundings.

With respect to the design of our home, I am unaware of Mr. Stamp's qualifications as a designer or an architect. This property is said to be the original farmhouse and residence of David and Susand Ramsey, who received 640 acres as a Donation Land Claim given to early settlers. Mr. Ramsay built and operated a sawmill on the banks of Chehalem Creek, which borders our property.

Mr. Stamp's defamatory claim that "...*it does not appear that the Applicants have made any effort to make the proposed development as attractive as the nature of the use...*" is outrageous and incorrect. We have spent over \$200,000 to date bringing this historic farmhouse and its grounds back to a decent condition as pictured below:



Before

Exhibit 1 page 3



After

Exhibit 1 page 4

The delays caused by Mr. Umfleet's antics are causing us significant financial damage, which is being evaluated for civil litigation.

Please refer to the Timeline for 412 W. 5th Street Lawsuit file to see pictures of the neighboring homes, including Mr. Umfleet's. Instead of welcoming gentrification in their neighborhood, they are (hypocritically, it seems) complaining about a short term rental, which the Oregon Supreme Court deemed in *Yogman v Parrott* to be a residential use, when their own homes are in disarray and there is an industrial use in their midst.

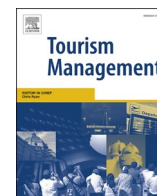
With regard to sidewalks in the neighborhood, it is my understanding that when the City does get around to paving the road and installing sidewalks there will be a significant cost to every homeowner on the street. Mr. Umfleet should consider whether he is prepared to pay a significant sum for these improvements should the City decide to move forward based on Mr. Stamp's comments.

Mr. Stamp's ringing defense of the sacred nature of homeownership is unintentionally hilarious, given his client, Mr. Umfleet, lives in a home on a split lot while going on record in opposition of our right to do the same. Mr. Umfleet has also brazenly stated to me his desire to continue to unlawfully use our property as his personal parking lot. To quote Mr. Stamp, Mr. Umfleet's actions "*...threaten the ability...to reap the expected benefits of their...residence...a cornerstone of the American Dream...*"

Given the above, and the included evidence for your review, we respectfully ask the Planning Commissioners to recognize Mr. Stamp's missive for what it is; a blatant attempt to impede our ability to use our home in the prescribed manner while his client Mr. Umfleet continues to trespass on our property. We further request that the Planning Commissioners approve the staff recommendation to approve our application without further delay.

Sincerely,

Lauri Hines, CCIM, CPM
President
Dream Homes of Oregon



The Airbnb paradox: Positive employment effects in the hospitality industry

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ABSTRACT

The purpose of this study is to examine the extent to which Airbnb supply affects employment in the hospitality, tourism, and leisure industries. Accordingly, we analyzed the effects of Airbnb supply on various sectors in the hospitality, tourism, and leisure industries in 12 major metropolitan statistical areas in the United States for the period between July-2008 and February-2018. The results showed that Airbnb supply positively affects employment in all sectors of the hospitality, tourism, and leisure industries. The magnitudes of these effects are not only statistically but also economically significant. Although prior studies have showed that Airbnb has an adverse impact on hotels' financial performance measures, our results show that employment in the hotel sector increases with increased Airbnb listings. While this outcome might be contradictory to the general conjecture, such evidence calls for a comprehensive investigation of Airbnb's overall economic impact. Research and practical implications are further discussed.

1. Introduction

The emergence of the sharing economy, notably Airbnb, has been the subject of much debate among both hospitality scholars and practitioners in recent years (Gutiérrez, García-Palomares, Romanillos, & Salas-Olmedo, 2017; Heo, Blal, & Choi, 2019). Particularly, a seemingly disproportionate amount of the dialogue has focused on the competitive threats that companies such as Airbnb pose to traditional lodging providers (i.e., hotels) (e.g., Haywood, Mayock, Freitag, Owoo, & Fiorilla, 2017; Zervas, Proserpio, & Byers, 2017). Indeed, several studies have found that Airbnb negatively impacts hotel revenues (e.g., Dogru, Mody, & Suess, 2019; Zervas et al., 2017). However, while the emergence of the sharing economy has disrupted the mainstream hospitality industry (Bailey, 2017), it is not clear that the effects of this disruption have been entirely adverse. In fact, certain sectors of the economy have seen employment growth as a result of the sharing economy. For example, because of its typically lower price points, Airbnb has increased the demand for leisure-based travel (Fang, Ye, & Law, 2016). As a result of the increases in leisure travel, new jobs have been created in entertainment companies, restaurants, and bars to accommodate the higher demand (Alyakoob & Rahman, 2018; Fang et al., 2016; NERA, 2017).

While there is at least some evidence that Airbnb has contributed to

driving up employment in the non-lodging sectors of the hospitality industry (e.g., attractions, restaurants, bars, etc.) (Fang et al., 2016; NERA, 2017), critics of the sharing economy assert that companies such as Airbnb are actually eliminating jobs in various hotel segments (HVS, 2015; Mahmoud, 2016). These critics argue that alternative accommodation providers siphon off demand from hotels, resulting in decreased occupancy rates. Typically, this argument is based on a conventional wisdom that stipulates that because declining occupancy corresponds with a decrease in available jobs in hotels, Airbnb is driving employment downward in the lodging sector (e.g., O'Rourke, n.d.), especially in larger tourism destinations (Gerdeman, 2018). However, while such conclusions may seem logical based on the argument that decreases in revenue lead to subsequent decreases in employment (e.g., Gerdeman, 2018), the extent to which Airbnb has negatively impacted employment in the lodging sector of the hospitality industry has not been explicitly addressed in the extant literature. Thus, the objective of the present research is to investigate the extent to which the supply of Airbnb inventory affects hospitality, tourism, and leisure employment in large market urban destinations.

Identifying the effect of Airbnb on employment makes several important contributions in terms of understanding the sharing economy's consequences for the hospitality industry. The primary

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contribution of this work is the identification of a significant and positive effect of Airbnb supply on employment in the hospitality, tourism, and leisure industries in terms of overall employment as well as employment in the various sectors (i.e., arts, entertainment, restaurants and bars). Additionally, this research demonstrates that these positive effects also extend to the lodging sector. Importantly, the results are robust to alternative empirical specifications, various control variables, and differing metrics of Airbnb supply (i.e., all listings, entire homes, private rooms, and shared rooms, both total and active).

The results of this research contribute to the growing body of literature concerning the effects Airbnb on the hospitality industry by providing evidence that although shared accommodation services like Airbnb may affect certain key performance metrics in the lodging sector (Dogru, Mody, & Suess, 2019), decreasing occupancy is not suppressing employment in the lodging sector or in any of the other peripheral sectors of the hospitality industry. In fact, the additional demand generated by the supply of Airbnb in large cities appears to be driving employment upward. After providing a detailed account of these findings, these contributions are considered in terms of their specific implications for practitioners, scholars, and policymakers interested in better understanding the effects of Airbnb on the hospitality, tourism, and leisure industries.

2. Literature review

2.1. Economic impacts of Airbnb

The economic implications of the sharing economy have been at the centre of debate in both academia and industry, mainly because of its potential (but mostly uncalculated) impacts (Altinay & Taheri, 2019; Dann, Teubner, & Weinhardt., 2019; Mody, Hanks, & Dogru, 2019). Sharing economy platforms are perceived to be a major threat by traditional lodging businesses (Sigala, 2017); however, their peer-to-peer nature provides cost saving benefits and convenience to consumers while allowing accommodation providers to generate extra income (Möhlmann, 2015).

Within the hospitality industry, Airbnb is considered a major disruptor to the lodging sector, with evidence suggesting that Airbnb has adverse economic impacts on this sector when visitors shift their demand from traditional lodging to Airbnb accommodations. According to a 2015 report by Morgan Stanley, between 42% and 36% of Airbnb guests switched over from traditional lodging (e.g. hotels), whereas 31% of Airbnb guests stayed with the platform rather than staying with friends and family (Intelligence & Producer, 2017). A more recent study by Guttentag and Smith (2017) found that nearly two-thirds of their sample had used Airbnb as a hotel substitute, while Hajibaba and Dolnicar (2017) concluded that Australian customers considered peer-to-peer (P2P) accommodation networks as a substitute to traditional lodging providers across segments—from economy to higher-end hotels.

In the state of Texas, Zervas et al. (2017) found that a 1% increase in Airbnb supply decreased hotel revenues by 0.04%. In a more recent study across ten major U.S. cities, Dogru et al. (2019) also found that a 1% increase in Airbnb supply decreases hotel revenues by between 0.02 and 0.04%. Moreover, Zervas et al. (2017) found that it was mainly economy hotels that are substituted for through Airbnb accommodation, suggesting an increased likelihood for employees in economy hotels to lose their jobs. Additionally, Dogru et al. (2019) showed the negative economic impacts of Airbnb on the economy hotel and luxury hotel segments are similar in magnitude, indicating a more wide-spread threat to employment across multiple segments.

While such research supports the hypothesis that Airbnb is negatively affecting the lodging sector by taking some of the hotels' market share, there is other (conflicting) evidence that Airbnb has little or no negative effect on the hotel industry, and is thus potentially increasing the size of the accommodation pie by adding new segments of

customers. For example, Haywood et al. (2017) showed that Airbnb does not affect hotel room demand and revenues in major U.S. hotel markets. Similarly, in the Boston market, Dogru, Mody, and Suess (2017a) found that Airbnb did not adversely impact growth rates for the hotel industry's occupancy rate (OCC), average daily rate (ADR), and revenue per available room (RevPAR). In particular, the Boston hotel industry's OCC, ADR and RevPAR reached their highest levels in recent years despite significant growth in Airbnb supply. Additionally, a recent report by TravelClick (2018) indicates that in the first two quarters of 2018, hotels increased their rates and occupancies across all market segments, growing RevPAR during a period of rapid Airbnb expansion. Such evidence suggests that the growth of the overall accommodation industry is robust and competitive.

Beyond its impact on the lodging sector, proponents of Airbnb argue that it has positive economic impacts on the wider hospitality, tourism, and leisure industries, such as restaurants, bars, and attractions, through increases in income and job creation. Kaplan and Nadler (2015) contend that Airbnb can contribute to the overall economy by facilitating additional visitor arrivals to cities. In particular, Airbnb can provide affordable options to visitors in cities where hotels are overbooked and disproportionately high-priced, suggesting these alternative accommodations should not be considered as competitors to hotels (Kaplan & Nadler, 2015). For example, in a study of major U.S. cities, Farronato and Fradkin (2018) found that in capacity-constrained hotel markets and during periods of peak demand, the additional supply of accommodations enabled by Airbnb reduces 'hotels' typically aggressive pricing power, making it more affordable for more people to travel to these cities. Farronato and Fradkin (2018) have estimated that around half of Airbnb bookings would not have been hotel stays had Airbnb not existed, demonstrating that the company brings in additional visitors. Furthermore, with Tussyadiah and Pesonen (2016) finding that Airbnb guests stay longer at the destination and participate in more activities during their stay, there is evidence to suggest that Airbnb promotes spending, which makes a positive contribution to the broader economy, beyond the lodging sector.

In general, additional visitor arrivals drive economic growth due to increased spending in local communities (Archer & Fletcher, 1996; Crompton, Lee, & Shuster, 2001). The economic links between various sectors of the hospitality, tourism, and leisure industries—such as restaurants, bars, attractions, entertainment, and local arts and crafts—mean that every dollar spent by (additional) Airbnb guests or hosts in the community financially benefits businesses and local residents. For example, an Airbnb guest spends money on renting the accommodation, which provides income to the owner of the listing. The owner, in turn, may hire a neighbor or someone else from the community to do housekeeping and general upkeep of the listing, thus creating additional employment and income. Finally, the guest may spend money in the local café near the listing or buy something from a local store that would have otherwise been spent inside the typical tourist zone where visitors tend to stay, as Tussyadiah and Pesonen (2016) suggest is typical with Airbnb guests. Quattrone, Proserpio, Quercia, Capra, and Musolesi (2016) highlight that Airbnb guests spend a considerable part of their money in the hosting communities, thus enhancing the positive spillover effects of income and spending on the local economy (Keynes, 1937). Among these positive spillover effects, employment remains an area on which there is little empirical research.

In New Orleans, Levendis and Dicle (2016) found positive economic impacts of Airbnb on the economy, with a total increase of \$134 million in income and an additional 4480 additional jobs created. Similarly, Fang et al. (2016) found that Airbnb has positive impacts on tourism employment in the state of Idaho; Airbnb created more jobs by driving additional tourists to the state. Such studies, while providing initial evidence of Airbnb's employment impact, are limited both in volume, and, more importantly, in their inferential, temporal, and/or geographical scope. Moreover, they tend to discuss the hospitality and tourism industry as a whole, and thus not do clarify the employment

relationships between Airbnb and the various sectors of the hospitality and tourism industry; sectors which may be differently impacted by this disruptive phenomenon. Accordingly, the jury is still out on whether and to what extent Airbnb impacts employment in the hospitality, tourism, and leisure industries (Dann, Teubner, & Weinhardt, 2019). To answer this question more conclusively, we rely on the economic concepts of induced demand and joint demand to develop our hypothesis that an increase in Airbnb supply has a positive effect on employment in the hospitality, tourism, and leisure industries.

2.2. Induced demand and joint demand as drivers of employment growth

2.2.1. Induced demand and employment

Airbnb is often presented as a direct competitor and disruptive threat to traditional lodging companies, such as hotels (Haywood et al., 2017; Zervas et al., 2017). For example, while demonstrating that Airbnb has an overall positive impact on tourism employment in the state of Idaho, Fang et al. (2016) also contend that the marginal effect of additional jobs decreases as the size of the sharing economy increases, since low-end hotels are being shocked and replaced by Airbnb; thus while employees in low-end hotels would lose their jobs, Airbnb houses do not need to hire any workers. Thus, they argue that employment in the accommodation (i.e. hotel and related lodging) sector is negatively impacted by Airbnb i.e. that Airbnb has a negative spillover effect on its “competitors”, while other sectors of the wider tourism industry experience a positive spillover effect, whereby more jobs are created to serve the additional tourists visiting the state. Thus, they contend that Airbnb’s overall employment effect on the tourism industry largely depends on the “net difference” between its positive spillover impacts on non-accommodation sectors of the industry and its negative spillover impacts on other accommodation businesses, such as hotels. While such an explanation is intuitively plausible and rhetorically appealing, it is not based on any theoretical concepts and/or rigorous empirical assessment.

In the present study, we contend that Airbnb’s impact may be alternatively construed as indicative of and/or a boost to overall economic performance within a destination. For example, Griswold (2016) reported the ADR for hotels in the United States in 2016 was \$163.90, while the ADR for Airbnb was only 2% lower, at \$160.47. Griswold further reported that while in cities with relatively high average daily hotel rates—like Washington D.C., San Francisco, and New York—Airbnb had significantly lower average rates (54% lower, 32% lower, and 34% lower than hotels, respectively), in cities with average daily hotel rates lower than the national average—like Orlando, Chicago, and New Orleans—Airbnb actually had higher average rates, by factors of 7%, 13%, and 14% respectively.

Given the evidence that both hotels and Airbnb seem to be growing, and are undercutting each other in terms of rates across different markets, it is plausible that the increase in total accommodation supply is benefitting both the traditional hotels and the relatively new sharing sectors of the accommodation industry, as explained by the economic phenomenon of induced demand. First described by city planners who noticed that more road capacity led to more cars on the road, induced demand is as described as “the great intellectual black hole in city planning, the one professional certainty that everyone thoughtful seems to acknowledge, yet almost no one is willing to act upon” (Hart & Spivak, 1993, p. 80). Phillips (2005) explained the concept of induced demand with the example of vending machines, showing that an overall greater availability of food items leads to more purchases of the items. Perhaps the best example of induced demand in the hospitality industry would be the building of Walt Disney World in central Florida. For 20 years after the resort opened, the Orlando area had the second fastest population growth of any area in the country, growing nearly ten-fold in size from 1950 to 1990 (Demographia, 1996).

The concept of induced demand tempers the results of studies that have demonstrated the negative effects of Airbnb supply on hotel

industry performance (Dogru et al., 2019; Dogru, Mody, & Suess, 2017b; Zervas et al., 2017), because its tenets suggest that additional accommodation supply may actually result in increased accommodation demand. According to the principles of induced demand, Airbnb’s negative impact on hotels’ economic performance does not necessarily mean that the accommodation pie is not growing. It only indicates that Airbnb is taking a significant slice of a (potentially growing) pie that would have otherwise have not been growing as quickly and would only have been consumed by the hotel industry. Thus, based on this concept, we contend that the increase in supply provided by Airbnb may allow more and different kinds of travelers to visit destinations, and as such, induce demand for accommodation in these destinations, creating positive feedback loops of increased supply and demand. Several studies referenced above (Dogru et al., 2017a; Farronato & Fradkin, 2018; Haywood et al., 2017) are indicative of induced demand effects in the case of the accommodation industry comprising traditional hotels and Airbnb. With induced demand, more hires would need to be added to better service the additional influx of travelers, thereby increasing overall employment, including within the hotel industry. In summation the arguments of Hart and Spivak (1993) and Phillips (2005), suggest that if Airbnb is able to induce demand to a market, then the negative effect on its competitors—the hotel industry—should be less than the positive effects to the hospitality and tourism industry as a whole, because Airbnb would essentially grow the market. The positive feedback loop of a growing hospitality and tourism market could even help traditional lodging in the long term by making a given destination a more attractive place for people to travel and stay (benefitting hotels), while creating short- and long-term benefits for other sectors of the hospitality and tourism industry that benefit from additional travelers to the area.

2.2.2. Joint demand and employment

Beyond the effects induced demand (Hart & Spivak, 1993) that would necessitate a workforce expansion to service additional demand, increases in the total accommodation supply may also drive up demand for complementary goods and services, such as restaurants, bars, attractions, entertainment, and local arts and crafts. This economic phenomenon, known as joint demand, refers to the relationship between two or more commodities or services when they are demanded together. A precursor to Marshallian economics, the concept of joint demand was first conceptualized in 1863 by Hans von Mangoldt, who examined the joint demand for a pair of goods. Essentially, joint demand suggests that purchases are in fixed proportions under a given spending constraint, such that an increase in the supply of A “induces buyers to take more of it and, because of fixed proportions, to demand more B too” (Humphrey, 1996, p. 14). In the present context of the lodging industry, an increase in the supply of accommodation via Airbnb would not only induce more visitors to travel, as explained by the concept of induced demand, but also lead them to demand more complementary services such as restaurants, bars, attractions, entertainment, and local arts and crafts at the destinations to which they travel. In turn, these complementary service providers would need to hire more employees to meet the additional demand, thus driving up overall employment within the hospitality, tourism, and leisure industries.

As an example of the concept of joint demand, using a spatial cluster analysis in Victoria, Australia, Chhetri, Chhetri, Arrowsmith, and Corcoran (2017) found employment is geographically clustered around hospitality organizations and that there are positive cross-sector spillover effects both in terms of money spent and jobs created as the hospitality industry grows. As a corollary, the expansion of Airbnb and the corresponding increase in overall hotel supply (as suggested by the concept of induced demand) would create conditions that economically benefit restaurants, bars, attractions, entertainment, and local arts and crafts, and create more employment opportunities in these complementary sectors.

3. Methodology

3.1. Sample and data

The sample of this study comprises twelve major metropolitan statistical areas (MSAs) in the United States, namely *Boston, Chicago, Denver, Houston, Los Angeles, Miami, Nashville, New York, New Orleans, San Francisco, Seattle and Washington D.C.* for the period between July 2008 and February 2018. This period covers the dates from the emergence of Airbnb to the most recent time the data were available. The motivation for choosing these twelve MSAs in the U.S. is threefold. First, these MSAs comprise the major cities in the U.S. in terms of hospitality and tourism. Second, the MSAs comprise the top performing cities in terms of Airbnb supply in the U.S. Thus, our sample closely represents the entire U.S. market for Airbnb and the broader hospitality industry. Third, the selected MSAs comprise cities included in previous studies that have examined the effects of Airbnb on hotels, which allows for a direct comparison between the impacts of Airbnb on hotels versus that on employment in the hospitality industry (e.g., Dogru et al., 2017a; Dogru et al., 2017b; Haywood et al., 2017).

The study's dependent variables are *monthly employment* in the hospitality, tourism, and leisure industries, and in its various sectors, namely, arts, entertainment and recreation (NAICS 71), accommodation and food services (NAICS 72), accommodation (i.e., hotel) (NAICS 721), and food services and drinking places (i.e., restaurants and bars) (NAICS 722). The hospitality, tourism, and leisure industries are the major sector that encompass the number of employees in all the subsectors, such as arts, entertainment and recreation (NAICS 71), accommodation and food services (NAICS 72), accommodation (i.e., hotel) (NAICS 721), and food services and drinking places (i.e., restaurants and bars) (NAICS 722). While analyzing the effects of Airbnb supply on the major sector (i.e., hospitality, tourism, and leisure industries) might provide insights regarding the Airbnb's overall impact, this examination alone may not be sufficient because the effects of Airbnb on subsectors of the hospitality, tourism, and leisure industries cannot be determined. Therefore, we obtained employment data on subsectors of the hospitality, tourism, and leisure industries. For example, accommodation and food services (NAICS 72) category includes all the employment in both accommodation (i.e., hotel) (NAICS 721) and food services and drinking places (i.e., restaurants and bars) (NAICS 722), while the accommodation (i.e., hotel) (NAICS 721) sector comprises the employment only in the hotel sector. We also used *annual employment* in the hospitality, tourism, and leisure industries and its various sectors as additional dependent variables to provide robust estimates of the employment effects of Airbnb. Employment data were obtained from the Bureau of Labor Statistics for the period between January 2000 and February 2018.

The study's main independent variable is *Airbnb supply* (i.e., total number of listings), which is measured as the cumulative number of listings created (including entire homes, and private and shared rooms) since the emergence of Airbnb. Furthermore, we created alternative measures of Airbnb supply. In particular, we measured *active Airbnb supply*, calculated as the cumulative number of listings created (including entire homes, and private and shared rooms) since the emergence of Airbnb that were still active within the previous twelve months. To be included in the active Airbnb supply measure, an Airbnb unit must be rented for one or more days within the previous twelve months. We also created Airbnb supply measures for the different types of Airbnb listings (i.e., we created separate measures of the *total* and *active* cumulative listings of entire homes, private rooms, and shared rooms). Airbnb data were obtained from AirDNA, a company that provides short-term rental data and analytics to entrepreneurs, investors, and academic researchers. The data for Airbnb listings covers the period between July 2008 and February 2018.

Following extant literature in macroeconomics and hospitality and tourism, we included a number of control variables in our models to account for the potential effects of macroeconomic factors on

employment irrespective of the increase in Airbnb supply. In particular, population, income, airport passenger arrivals, and employee earnings (i.e., wages) might affect employment in the economy in general or in a particular industry (Cooper & Wilson, 2002; Dogru et al., 2017b; Keynes, 1937). We first conducted empirical analyses using data at a monthly-frequency level. Although data on population, income and wages are not readily available at a monthly frequency for MSAs, there are alternative figures that can be used as proxy measures. For example, labor force is very closely related to population and commonly used as a proxy measure of population when conducting analyses with monthly data (e.g., Stover & Bae, 2018; Stover & McCormack, 2012). Therefore, we used labor force numbers to control for the potential effects of population on employment. Labor force data were acquired from the Bureau of Labor Statistics for the period between January 2000 and February 2018. Also, per capita income, gross domestic product and other widely known income variables are not available at monthly frequencies. Instead, the coincident index, which is published by the Federal Reserve Bank of Philadelphia at a monthly frequency, can be utilized as a proxy for income. Thus, we adopted the coincident index to control for the potential effects of income on employment (e.g., Lee & Jang, 2012; Mariano & Murasawa, 2010). The coincident index data were obtained from the Federal Reserve Bank of Philadelphia for the period between January 2000 and February 2018. A proxy measure of wages for MSAs at the monthly level was not available. Furthermore, the number of airport passenger arrivals was included to control for the potential effects of tourism demand dynamics on employment. We obtained the airport passenger arrivals data from the Bureau of Transportation Statistics. The airport passenger arrivals data were available for the period between October 2002 and February 2018.

We conducted additional empirical analyses using annual-level data to test the robustness of our findings from the empirical analyses of monthly-level data. For the annual level data, we used control measures of population and per capita income obtained from the Bureau of Economic Analysis for the period between 2005 and 2017. We also included the respective industry's wages, obtained from the Bureau of Labor Statistics for the period between 2007 and 2017, as an additional control variable in the annual-level empirical analyses. Wages and per capita income were adjusted for inflation using the consumer price index (CPI Year 2001 = 100). We obtained CPI data from the Bureau of Labor Statistics.

3.2. Empirical design

We utilized the panel data fixed effect regression model to examine the effects of Airbnb supply on employment in the hospitality, tourism, and leisure industries (i.e., arts, entertainment, and recreation; hotels, and restaurants and bars). In our analyses, standard errors are clustered based on the MSAs to produce heteroscedasticity-robust estimates. Similar to the methodology employed in Dogru et al. (2019) and Zervas et al. (2017), we treated Airbnb supply as a variable intervention in time against employment in the hospitality, tourism, and leisure industries in the twelve MSAs. More specifically, the analysis of Airbnb's effects on employment in the hospitality, tourism, and leisure industries allows for the comparison of hotel performance measures before and after Airbnb's emergence in these twelve MSAs. The study's dataset includes the period prior to the emergence of Airbnb—between January 2000 and June 2008—when there were no Airbnb listings and thus the Airbnb supply variables take the value of zero, and, the period after the emergence of Airbnb—between July 2008 and February 2018—when the Airbnb supply measures (including total listings, entire homes, and private room, and shared rooms) take the value of the number of cumulative listings created (total and active). The empirical design of the models takes the following forms:

$$\log LHEMP_{it} = \beta_0 + \beta_1 \log \text{Airbnb supply}_{it} + \sum_{k=1}^n \beta_k X_{it} + c_i + \tau_t + m_t + e_{it} \tag{1}$$

$$\log ARTEMP_{it} = \beta_0 + \beta_1 \log \text{Airbnb supply}_{it} + \sum_{k=1}^n \beta_k X_{it} + c_i + \tau_t + m_t + e_{it} \tag{2}$$

$$\log AFEMP_{it} = \beta_0 + \beta_1 \log \text{Airbnb supply}_{it} + \sum_{k=1}^n \beta_k X_{it} + c_i + \tau_t + m_t + e_{it} \tag{3}$$

$$\log ACCEMP_{it} = \beta_0 + \beta_1 \log \text{Airbnb supply}_{it} + \sum_{k=1}^n \beta_k X_{it} + c_i + \tau_t + m_t + e_{it} \tag{4}$$

$$\log FDEMP_{it} = \beta_0 + \beta_1 \log \text{Airbnb supply}_{it} + \sum_{k=1}^n \beta_k X_{it} + c_i + \tau_t + m_t + e_{it} \tag{5}$$

The dependent variables are log LHEMP, log ARTEMP, log AFEMP, log ACCEMP, and log FDEMP, natural logarithmic versions of employment in leisure and hospitality; arts entertainment and recreation; accommodation and food services; accommodation; and food services and drinking places in MSA *i* at time *t*. The independent variable is log Airbnb supply in MSA *i* at time *t*, and takes the forms of all listings, entire homes, private rooms, shared rooms, active all listings, active entire homes, active private rooms, and active shared rooms. *X* represents a set of control variables in MSA *i* at time *t*, and includes log labor force or log population, log coincident index or log per capita income, log airport arrivals, and log wages. *e* is the error term and α_0 and β_{1-k} are the models' parameters. All models include year fixed effects τ_t to control for time-specific economic and other conditions over time, month fixed effects m_t to control for seasonality, and MSA fixed effects c_i to control for MSA-specific dynamics and characteristics. We used logarithmic transformation to account for data-skewness in the study variables. Our main focus in the empirical designs specified above are the coefficients of log Airbnb supply (i.e., β_1), which shows the effect of Airbnb supply on employment in the hospitality, tourism, and leisure industries.

3.3. Summary statistics

Table 1 presents the total number of Airbnb listings for the twelve MSAs in the U.S., both total and active, including all listings together and separately for entire homes, private rooms, and shared rooms created since the emergence of Airbnb, for the years between 2008 and 2017.

The figures show that Airbnb listings have been increasing dramatically year-over-year. While only 124 Airbnb listings were created in 2008 in these twelve MSAs, the total number of Airbnb listings created

has reached 673,089 as of December 2017. Most of these Airbnb listings are entire homes, which are considered to adversely affect housing markets and the hotel industry, followed by private and shared rooms. Although these figures represent the total number of Airbnb listings created, these listings may not necessarily be rented. That is, Airbnb properties may be removed from the platform by the listing agent or may not be booked by potential guests within a given year. To account for this discrepancy, we used alternative measures of active Airbnb listings, which include Airbnb properties that are rented at least once within the previous twelve months. By this measure, 62 out of the 124 Airbnb listings created in 2008 were still active as of December 2017 and the total number of Airbnb listings created since 2008 and booked at least once in the previous 12 months accumulated to 325,704 for the twelve MSAs.

Table 2 presents the number of Airbnb listings—together, and for entire homes, private rooms, and shared rooms—created since the emergence of Airbnb for the twelve MSAs separately, as of December 2017. The total number of Airbnb listings created ranged between 14,607 in Nashville and 202,321 in New York.

4. Empirical findings

4.1. Effects of Airbnb supply on overall hospitality, tourism and leisure employment

This section presents the results from the analyses of the effects of Airbnb supply on employment in the hospitality, tourism, and leisure industries and its various sectors. The analyses were conducted utilizing panel data fixed effect regression analysis. Table 3 shows the results of the impact of Airbnb supply (both all and active only), including all listings, entire homes, private rooms, and shared rooms on employment in the hospitality, tourism, and leisure industries, controlling for the macroeconomic factors. For example, column 1 of Table 3 shows the effects of all Airbnb supply (i.e., total cumulative listings that includes entire homes, private rooms, and shared rooms) on employment in the hospitality, tourism, and leisure industries.

Overall, the results show that Airbnb listings positively affect employment in the hospitality, tourism, and leisure industries. In particular, a 1% increase in Airbnb supply increases employment in the hospitality, tourism, and leisure industries by approximately 0.015% ($\beta: 0.0145, p < 0.05$). Although this effect might be perceived as marginal, it is economically significant. In a recent study, Dogru et al. (2019) showed that Airbnb supply has been increasing by more than 100% year over year. Similar trends can be observed in our data. Considering the growth rate of Airbnb supply, a 100% increase in Airbnb supply increases employment in the hospitality, tourism, and leisure industries by 1.5%. In other words, for every 100 Airbnb listings created, approximately 1.5 jobs are created, on average, in the hospitality, tourism, and leisure industries. Thus, Airbnb has a positive economic impact in terms of employment in these industries.

Columns 2, 3, and 4 of Table 3 present the results of the effects of

Table 1
Total Airbnb Listings created since the emergence of Airbnb.

| Year | Total Listings | | | | Total Active Listings | | | |
|------|------------------|------------------|-------------------|------------------|-----------------------|------------------|-------------------|------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| 2008 | 124 | 53 | 67 | 4 | 62 | 28 | 34 | – |
| 2009 | 794 | 450 | 334 | 10 | 410 | 229 | 177 | 4 |
| 2010 | 2784 | 1697 | 1051 | 34 | 1391 | 819 | 556 | 14 |
| 2011 | 8664 | 5320 | 3168 | 172 | 4010 | 2438 | 1514 | 55 |
| 2012 | 23,304 | 14,392 | 8464 | 442 | 9732 | 5997 | 3604 | 128 |
| 2013 | 54,289 | 33,571 | 19,592 | 1120 | 20,242 | 12,715 | 7258 | 266 |
| 2014 | 138,614 | 83,838 | 50,916 | 3854 | 40,340 | 25,490 | 14,292 | 555 |
| 2015 | 293,894 | 171,670 | 111,446 | 10,772 | 82,223 | 51,362 | 29,405 | 1453 |
| 2016 | 482,433 | 279,382 | 183,336 | 19,687 | 174,858 | 108,030 | 62,403 | 4407 |
| 2017 | 673,089 | 388,642 | 256,388 | 27,268 | 325,704 | 194,995 | 119,964 | 10,251 |

Table 2
Total Airbnb Listings created since the emergence of Airbnb as of December 2017.

| MSA | Total Listings | | | | Total Active Listings | | | |
|----------------|------------------|------------------|-------------------|------------------|-----------------------|------------------|-------------------|------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Boston | 34,721 | 17,212 | 16,508 | 965 | 18,413 | 9566 | 8462 | 364 |
| Chicago | 33,407 | 19,388 | 12,439 | 1543 | 14,937 | 8696 | 5716 | 494 |
| Denver | 17,855 | 10,364 | 6769 | 704 | 10,058 | 6128 | 3667 | 251 |
| Houston | 26,779 | 18,686 | 7433 | 588 | 14,201 | 9989 | 3914 | 256 |
| Los Angeles | 128,274 | 74,557 | 46,271 | 7306 | 64,411 | 6 | 22,250 | 3234 |
| Miami | 70,299 | 48,035 | 19,635 | 2513 | 36,872 | 25,884 | 9867 | 1040 |
| Nashville | 14,607 | 10,370 | 3985 | 230 | 9472 | 7158 | 2213 | 96 |
| New York | 202,321 | 107,104 | 87,803 | 7213 | 84,072 | 44,604 | 36,972 | 2376 |
| New Orleans | 14,938 | 10,480 | 4094 | 340 | 9354 | 7086 | 2129 | 125 |
| San Francisco | 62,282 | 32,747 | 25,948 | 3518 | 27,190 | 14,810 | 11,305 | 1025 |
| Seattle | 25,392 | 15,501 | 9066 | 799 | 14,995 | 9459 | 5162 | 358 |
| Washington, DC | 42,214 | 24,198 | 16,437 | 1549 | 21,729 | 12,771 | 8307 | 632 |

Table 3
The effects of Airbnb listings on Hospitality, Tourism, and Leisure industries.

| | Total Listings | | | | Total Active Listings | | | |
|-------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|-----------------------------|----------------------------|----------------------------|----------------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Log Airbnb Supply | 0.0145 ^b (2.68) | 0.0152 ^b (2.75) | 0.0179 ^b (2.75) | 0.0186 ^b (2.39) | 0.01562 ^b (2.64) | 0.0170 ^b (2.59) | 0.0185 ^b (2.73) | 0.0190 ^c (2.10) |
| Log Labor Force (Population) | 0.7158 ^a (3.55) | 0.7378 ^a (3.67) | 0.7399 ^a (3.89) | 0.8194 ^a (3.59) | 0.7298 ^a (3.54) | 0.7426 ^a (3.58) | 0.7538 ^a (3.79) | 0.8068 ^a (3.52) |
| Log Coincident Index (Income) | 0.1480 (1.23) | 0.1397 (1.12) | 0.1406 (1.22) | 0.0871 (0.62) | 0.1348 (0.72) | 0.1302 (0.99) | 0.1244 (1.02) | 0.1042 (0.68) |
| Log Airport Arrivals Constant | 0.1447 ^a (4.03) | 0.1421 ^a (3.89) | 0.1428 ^a (3.90) | 0.1430 ^a (3.86) | 0.1423 ^a (3.93) | 0.1403 ^a (3.84) | 0.1419 ^a (3.87) | 0.1458 ^a (3.89) |
| | -1.0692 (-0.33) | -1.3189 (-0.41) | -1.6245 (-0.52) | -2.299 (-0.68) | -1.1826 (-0.36) | -1.3215 (-0.40) | -1.4827 (-0.47) | -2.225 (-0.66) |
| <i>R-Square</i> | | | | | | | | |
| <i>Within groups</i> | 0.93 | 0.93 | 0.93 | 0.94 | 0.93 | 0.93 | 0.93 | 0.94 |
| <i>Between groups</i> | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 |
| <i>Overall</i> | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 |
| Number of obs. | 2185 | 2149 | 2173 | 1941 | 2156 | 2122 | 2141 | 1805 |

The dependent variable is number of employments in leisure and hospitality industry. All regressions control for year, month and MSA effects. Standard errors are clustered at MSA level. Robust t-statistics are in parentheses. a, b and c denote 1%, 5% and 10% statistical significance levels, respectively.

Airbnb supply by listing type (i.e., entire homes, private rooms, and shared rooms) on employment in the hospitality, tourism, and leisure industries. As with the effects of overall Airbnb supply, these effects are also positive and statistically significant, and confirm Airbnb's positive employment impact. Specifically, a 1% increase in Airbnb supply of entire homes, private rooms, and shared rooms increases employment in the hospitality, tourism, and leisure industries by approximately 0.015% each ($\beta: 0.0152, p < 0.05$); 0.018% ($\beta: 0.0179, p < 0.05$); and 0.019% ($\beta: 0.0186, p < 0.05$), respectively.

As indicated previously, while the Airbnb supply figures used here include all listings created since the emergence of Airbnb, some of these listings may be inactive either because they were removed from the platform by the listing agent or were not booked by potential guests within a given year. Because using these Airbnb supply variables that include inactive listings may be a less than optimal way to examine the relationship between Airbnb supply and employment in the hospitality, tourism, and leisure industries, we further examined the effects of only active Airbnb supply (defined as properties that are rented at least once within the previous twelve months) on employment in the hospitality, tourism, and leisure industries. Columns 4 to 8 of Table 3 present these results, which are consistent with the effects of all Airbnb supply on employment (i.e., active Airbnb listings positively affect employment in the hospitality, tourism, and leisure industries). In particular, a 1% increase in active Airbnb supply of all listings, entire homes, private rooms, and shared rooms increases employment by approximately 0.02% each. Our findings demonstrate clear support for the proposition that increased visitor activity and spending enabled by Airbnb increases

both overall economic activity and employment.

4.2. Effects of Airbnb supply on employment within sectors

In addition to examining how employment within the overall hospitality, tourism, and leisure industries is affected by increased Airbnb supply, we further considered its impact on the various sectors of these industries, including arts, entertainment and recreation; hotels; and restaurants and bars. It would be reasonable to assume that while Airbnb listings positively affect employment in arts, entertainment and recreation, and in restaurants and bars, an increased Airbnb supply may have negative effects on employment in the hotel sector. Tables 4–7 report the results of our testing in these various sectors.

The results presented in Table 4 show that Airbnb supply positively affects employment in the arts, entertainment and recreation sector (NAICS 71). In particular, a 1% increase in Airbnb supply increases employment in this sector by approximately 0.05% ($\beta: 0.0432, p < 0.05$). We also analyzed the effects of entire homes, private rooms, and shared rooms separately on employment in this sector, as indicated in columns 2, 3, and 4 of Table 4. These effects were also all positive and statistically significant. That is, a 1% increase in Airbnb supply of entire homes, private rooms, and shared rooms increases employment in the arts, entertainment and recreation sector by between 0.04% and 0.06%, approximately. We found similar results in terms of the effects of only active Airbnb supply on employment in this sector, as presented in columns 5 to 8 of Table 4. Thus, for every 100 Airbnb listings created, approximately 4–6 jobs are created, on average, in the arts,

Table 4
The effects of Airbnb listings on Employment in Arts, Entertainment, and Recreation (NAICS 71).

| | Total Listings | | | | Total Active Listings | | | |
|-------------------------------|-------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Log Airbnb Supply | 0.0432 ^b (2.75) | 0.0391 ^b (2.85) | 0.0566 ^a (3.75) | 0.0502 ^a (4.31) | 0.0460 ^a (3.16) | 0.0476 ^a (3.34) | 0.0579 ^a (3.66) | 0.0513 ^a (4.56) |
| Log Labor Force (Population) | 0.3519 (0.79) | 0.3881 (0.88) | 0.4323 (1.13) | 0.4260 (0.93) | 0.3679 (0.90) | 0.3836 (0.92) | 0.4952 (1.25) | 0.3853 (0.81) |
| Log Coincident Index (Income) | 0.7788 ^a (5.90) | 0.7469 ^a (6.25) | 0.7220 ^a (6.79) | 0.7484 ^a (3.94) | 0.8100 ^a (6.70) | 0.8075 ^a (7.02) | 0.6957 ^b (6.10) | 0.8126 ^b (3.63) |
| Log Airport Arrivals | 0.2026 ^a (4.03) | 0.1989 ^a (3.70) | 0.1953 ^a (3.95) | 0.2009 ^a (3.24) | 0.1989 ^a (3.80) | 0.1996 ^a (3.60) | 0.1904 ^a (3.83) | 0.2032 ^a (3.12) |
| Constant | -1.2936 (0.24) | -1.6224 (-0.29) | -2.0992 (-0.45) | -2.1996 (-0.42) | -1.6051 (-0.31) | -1.8285 (-0.35) | -2.8225 (-0.36) | -1.9076 (-0.36) |
| <i>R-Square</i> | | | | | | | | |
| <i>Within groups</i> | 0.80 | 0.79 | 0.82 | 0.82 | 0.81 | 0.80 | 0.82 | 0.82 |
| <i>Between groups</i> | 0.80 | 0.81 | 0.82 | 0.81 | 0.81 | 0.81 | 0.82 | 0.81 |
| <i>Overall</i> | 0.80 | 0.81 | 0.82 | 0.81 | 0.81 | 0.81 | 0.83 | 0.82 |
| Number of obs. | 909 | 893 | 901 | 792 | 883 | 877 | 711 | 711 |

The dependent variable is number of employments in arts, entertainment, and recreation industry. All regressions control for year, month and MSA effects. Standard errors are clustered at MSA level. Robust t-statistics are in parentheses. a and b denote 1% and 5% statistical significance levels, respectively.

Table 5
The effects of Airbnb listings on Employment in Hotels and Restaurants and Bars (NAICS 72).

| | Total Listings | | | | Total Active Listings | | | |
|-------------------------------|----------------------------|--------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Log Airbnb Supply | 0.0101 ^b (2.12) | 0.01149 ^b (2.63) | 0.0120 ^c (1.94) | 0.0201 ^a (4.20) | 0.0123 ^b (2.40) | 0.0149 ^b (2.59) | 0.0128 ^b (2.17) | 0.0180 ^a (3.45) |
| Log Labor Force (Population) | 0.8606 ^a (4.60) | 0.8860 ^a (4.90) | 0.8769 ^a (4.91) | 1.0110 ^a (4.79) | 0.8934 ^a (4.76) | 0.9114 ^a (4.94) | 0.9042 ^a (4.76) | 1.000 ^a (4.73) |
| Log Coincident Index (Income) | 0.1531 (1.28) | 0.1413 (1.19) | 0.1356 (1.15) | 0.0399 (0.25) | 0.1355 (1.12) | 0.1308 (0.58) | 0.1136 (0.93) | 0.0584 (0.36) |
| Log Airport Arrivals | 0.1416 ^a (3.31) | 0.1397 ^a (3.21) | 0.1408 ^a (3.28) | 0.1412 ^a (3.35) | 0.1398 ^a (3.27) | 0.1384 ^a (3.22) | 0.1404 ^a (3.28) | 0.1444 ^a (3.45) |
| Constant | -3.3551 (-1.17) | -3.6455 (-1.31) | -3.5038 (-1.28) | -5.0390 (-1.76) | -3.9497 (-1.40) | -3.6271 (-1.23) | -3.7987 (-1.33) | -5.0125 (-1.73) |
| <i>R-Square</i> | | | | | | | | |
| <i>Within groups</i> | 0.94 | 0.94 | 0.94 | 0.94 | 0.94 | 0.94 | 0.94 | 0.95 |
| <i>Between groups</i> | 0.91 | 0.91 | 0.91 | 0.91 | 0.91 | 0.91 | 0.91 | 0.91 |
| <i>Overall</i> | 0.91 | 0.91 | 0.91 | 0.92 | 0.91 | 0.91 | 0.91 | 0.91 |
| Number of obs. | 1455 | 1432 | 1444 | 1283 | 1429 | 1415 | 1415 | 1193 |

The dependent variable is number of employments in accommodation and food services industry. All regressions control for year, month and MSA effects. Standard errors are clustered at MSA level. Robust t-statistics are in parentheses. a, b and c denote 1%, 5% and 10% statistical significance levels, respectively.

Table 6
The effects of Airbnb listings on Employment in Hotels (NAICS 721).

| | Total Listings | | | | Total Active Listings | | | |
|-------------------------------|--------------------------------|--------------------------------|--------------------------------|---------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Log Airbnb Supply | 0.0165 (1.57) | 0.0228 ^b (2.89) | 0.0138 (0.95) | 0.0389 ^a (13.96) | 0.0244 ^b (2.54) | 0.0311 ^a (3.55) | 0.0204 (1.63) | 0.0342 ^a (4.42) |
| Log Labor Force (Population) | 1.3497 ^b (4.02) | 1.3906 ^a (4.41) | 1.4085 ^a (4.44) | 1.8699 ^a (5.33) | 1.4562 ^a (4.59) | 1.4867 ^a (4.82) | 1.5252 ^a (4.87) | 1.8572 ^a (5.06) |
| Log Coincident Index (Income) | -0.2217 (-1.06) | -0.1983 (-0.96) | -0.3242 (-1.62) | -0.6959 ^a (-2.85) | -0.2609 (-1.23) | -0.2318 (-1.10) | -0.3934 (-1.89) | -0.6562 (-3.13) |
| Log Airport Arrivals | 0.1097 ^a (6.60) | 0.1088 ^a (6.51) | 0.1029 ^a (5.85) | 0.0913 ^a (7.12) | 0.1033 ^a (6.68) | 0.1038 ^a (7.42) | 0.0972 ^a (6.12) | 0.0902 ^a (5.85) |
| Constant | -10.20 ^b (-2.32) | -10.87 ^b (-2.65) | -10.52 ^b (-2.48) | -15.45 ^a (-3.75) | -11.48 ^a (-2.80) | -12.05 ^a (-3.05) | -11.82 ^a (-2.88) | -15.42 ^a (-3.45) |
| <i>R-Square</i> | | | | | | | | |
| <i>Within groups</i> | 0.78 | 0.79 | 0.79 | 0.85 | 0.80 | 0.81 | 0.80 | 0.86 |
| <i>Between groups</i> | 0.76 | 0.76 | 0.76 | 0.78 | 0.77 | 0.77 | 0.77 | 0.78 |
| <i>Overall</i> | 0.76 | 0.76 | 0.76 | 0.79 | 0.76 | 0.77 | 0.76 | 0.79 |
| Number of obs. | 894 | 878 | 886 | 777 | 868 | 862 | 857 | 696 |

The dependent variable is number of employments in accommodation industry. All regressions control for year, month and MSA effects. Standard errors are clustered at MSA level. Robust t-statistics are in parentheses. a, b and c denote 1%, 5% and 10% statistical significance levels, respectively.

entertainment and recreation sector. We must note that the impact of Airbnb listings on employment in this sector is higher than that on employment in the overall hospitality, tourism, and leisure industries

(15 jobs, on average, for every 1000 Airbnb listings).

Table 5 shows the effects of Airbnb supply on employment in the hotels, restaurants and bars sector (NAICS 72). Airbnb positively affects

Table 7
The effects of Airbnb listings on Employment in Restaurants and Bars (NAICS 722).

| | Total Listings | | | | Total Active Listings | | | |
|-------------------------------|--|--|--|---|---|--|---|---|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Log Airbnb Supply | 0.0137 ^a (3.13) | 0.0156 ^a (4.55) | 0.01512 ^b (3.21) | 0.0205 ^a (5.39) | 0.0178 ^a (4.08) | 0.0226 ^a (6.64) | 0.0178 ^a (3.81) | 0.0212 ^a (8.59) |
| Log Labor Force (Population) | 0.7606 ^a (6.25) | 0.7840 ^a (7.08) | 0.7765 ^a (6.86) | 0.8510 ^a (6.61) | 0.7934 ^a (7.58) | 0.8118 ^a (8.50) | 0.8101 ^a (7.22) | 0.8444 ^a (7.06) |
| Log Coincident Index (Income) | 0.2639 ^b (2.21) | 0.2624 ^b (2.26) | 0.2405 ^b (2.04) | 0.2038 ^c (1.74) | 0.2639 ^b (2.34) | 0.2745 ^b (2.61) | 0.2260 ^c (1.92) | 0.2327 ^c (1.99) |
| Log Airport Arrivals Constant | 0.1746 ^a (3.79) −3.0145 (−1.41) | 0.1734 ^a (3.37) −3.3309 (−1.68) | 0.1730 ^a (3.69) −3.1225 (−1.57) | 0.1798 ^a (4.23) −4.1389 ^b (−2.11) | 0.1726 ^a (3.72) −3.7803 ^b (−2.16) | 0.1729 ^a (3.86) −3.6097 (−1.49) | 0.1723 ^a (3.67) −3.5384 ^c (−1.88) | 0.1860 ^a (4.69) −4.2564 ^b (−2.34) |
| <i>R-Square</i> | | | | | | | | |
| <i>Within groups</i> | 0.95 | 0.95 | 0.95 | 0.96 | 0.96 | 0.96 | 0.95 | 0.96 |
| <i>Between groups</i> | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 |
| <i>Overall</i> | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 | 0.93 |
| Number of obs. | 1089 | 1073 | 1081 | 972 | 1063 | 1057 | 1052 | 882 |

The dependent variable is number of employments in food services and drinking places industry. All regressions control for year, month and MSA effects. Standard errors are clustered at MSA level. Robust t-statistics are in parentheses. a, b and c denote 1%, 5% and 10% statistical significance levels, respectively. Robustness Tests.

employment in this sector; a 1% increase in Airbnb supply of entire homes, private rooms, and shared rooms increases employment by between 0.01% and 0.02%. These effects are statistically significant and consistent in the case of active listings only. While these employment effects are lower than those for the overall hospitality, tourism, and leisure industries, and the arts, entertainment and recreation sector, the extent to which Airbnb supply affects the hotel (NAICS 721) and restaurants and bars (NAICS 722) sectors separately is not clear. We further examined these differences, as reported in Tables 6 and 7.

The results show that Airbnb supply positively affects employment in both the hotel sector and the restaurants and bars sector. All the coefficients of the Airbnb supply measures in Tables 6 and 7 are statistically significant with the exception of the coefficient reported in Column 3 of Table 6, which shows that the impact of Airbnb supply private rooms on employment in the hotel sector was positive but statistically insignificant. These results collectively suggest that a 1% increase in Airbnb supply of all listings, entire homes, private rooms, and shared rooms increases employment by between 0.01% and 0.04% in the hotel sector and by between 0.01% and 0.02% in the restaurants and bars sector. Columns 5 to 8 of both Tables 6 and 7 report similar estimates for only the active Airbnb supply.

5. Robustness analysis

While the results in the previous section strongly suggest that Airbnb has a positive impact on employment in the hospitality, tourism, and leisure industries, and its various sectors, we conducted additional analyses to test the robustness of these findings. Fang et al. (2016) presented evidence showing that the relationship between Airbnb supply and employment in the tourism industry is parabolic, suggesting that a limited supply of Airbnb has positive effects on employment; however, after a certain threshold, increasing the supply of Airbnb reduces employment in the tourism industry. While there is no theoretical rationale for a parabolic relationship between Airbnb supply and employment, we modeled a quadratic relationship between these variables to test for the robustness of the results presented in the previous section, in view of Fang et al.'s (2016) results. Specifically, we added the quadratic term of log Airbnb supply (i.e., $\log \text{Airbnb supply}_{it}^2$) into equation (1), and re-analyzed the effects of Airbnb supply of all listings, entire homes, private rooms, and shared rooms on employment in the hospitality, tourism, and leisure industries. Table 8 presents these results.

Coefficients of the variable log Airbnb supply, which depict the

Table 8
The effects of Airbnb listings on Employment in Hospitality, Tourism, and Leisure industries: Quadratic Relationship.

| | Total Listings | | | | Total Active Listings | | | |
|--------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|-------------------------------|----------------------------|----------------------------|----------------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Log Airbnb Supply | −0.0003 (−0.06) | 0.0022 (0.40) | 0.0002 (0.04) | 0.0044 (1.05) | 0.0009 (0.17) | 0.0022 (0.32) | 0.0027 (0.51) | −0.0012 (−0.32) |
| Log Airbnb Supply ² | 0.0010 (1.63) | 0.0009 (1.50) | 0.0009 (1.40) | 0.0007 (0.96) | 0.0011 (1.48) | 0.0011 (1.37) | 0.0009 (1.12) | 0.0014 ^c (1.92) |
| Log Labor Force (Population) | 0.4932 ^a (2.94) | 0.4381 ^b (2.50) | 0.5205 ^a (2.99) | 0.4309 ^a (2.71) | 0.4352 ^a (2.61) | 0.3829 ^b (2.37) | 0.4620 ^b (2.42) | 0.3708 ^b (2.47) |
| Log Coincident Index (Income) | 0.1160 (1.65) | 0.1275 ^c (1.81) | 0.1148 (1.46) | 0.1127 (1.02) | 0.1433 ^b (1.99) | 0.1503 ^c (2.19) | 0.1419 (1.63) | 0.1415 (1.44) |
| Log Airport Arrivals | 0.0948 ^a (3.54) | 0.0950 ^a (3.69) | 0.0936 ^a (3.30) | 0.0783 ^a (3.09) | 0.0956 ^a (3.58) | 0.0933 ^a (3.79) | 0.0945 ^a (3.30) | 0.1002 ^a (3.90) |
| Constant | 3.0939 (1.29) | 3.8573 (1.52) | 2.7116 (1.08) | 4.2779 ^b (2.00) | 3.8170 (1.60) | 4.5941 ^c (1.99) | 3.4398 (1.28) | 4.7205 ^b (2.25) |
| <i>R-Square</i> | | | | | | | | |
| <i>Within groups</i> | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.95 | 0.94 | 0.94 |
| <i>Between groups</i> | 0.95 | 0.95 | 0.96 | 0.95 | 0.95 | 0.94 | 0.95 | 0.93 |
| <i>Overall</i> | 0.95 | 0.94 | 0.95 | 0.94 | 0.94 | 0.93 | 0.94 | 0.92 |
| Number of obs. | 1369 | 1333 | 1357 | 1125 | 1340 | 1306 | 1325 | 989 |

The dependent variable is number of employments in leisure and hospitality industry. All regressions control for year and MSA effects. Standard errors are clustered at MSA level. Robust t-statistics are in parentheses. a, b and c denote 1%, 5% and 10% statistical significance levels, respectively.

linear relationship between Airbnb supply and employment in the hospitality, tourism, and leisure industries, are statistically insignificant in all columns of Table 8. These coefficients were statistically significant when we modeled only a linear relationship between Airbnb supply and employment, in the absence of the quadratic term (see Table 3). We observe similar findings for the coefficients of the quadratic term for log Airbnb supply. These results collectively suggest that the relationship between the Airbnb supply and employment in the hospitality, tourism, and leisure industries is linear rather than parabolic.

We also examined the effects of cumulative Airbnb supply on employment in the hospitality, tourism, and leisure industries using several control variables. Unlike the empirical analyses using monthly-level data, data for employee wages, population, and per capita income were only available at annual-level frequency and were thus used as control variables in additional robustness analyses. We further included the hotel room supply variable to control for the potential effects of hotel room supply on employment in the hospitality, tourism, and leisure industries. Table 9 reports the findings from analyses using annual-level data.

Column 1 of Table 9 shows the effects of active Airbnb supply on employment in the hospitality, tourism, and leisure industries. The coefficient of log Airbnb supply (β : 0.0147, $p < 0.01$) is similar to the estimate produced using monthly-level data [Column 1 of Table 3 (β : 0.0145, $p < 0.05$)], suggesting that analyses using monthly and annual data yield similar results even after controlling for additional macroeconomic and industry specific variables. Further examination of the effects of active Airbnb supply on employment in the various sectors of the hospitality, tourism, and leisure industries, controlling for employee wages, population, and per capita income using annual data, also yielded similar results (see columns 2, 3, 4, and 5 of Table 9). An increase in active Airbnb supply positively affects employment in the arts, entertainment and recreation, hotels, and restaurants and bars sectors. These results are statistically significant and are consistent with the findings from our analyses using monthly data.

We also replicated the analyses of the effects of Airbnb supply on

Table 9
The effects of Active Airbnb listings on Employment in Hospitality Tourism, and Leisure industries: Annual Data.

| | (1) | (2) | (3) | (4) | (5) |
|-----------------------|---------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| | All Sample | (NAICS 71) | (NAICS 72) | (NAICS 721) | (NAICS 722) |
| Log Airbnb Supply | 0.0147 ^a (2.83) | 0.0214 ^b (2.59) | 0.0181 ^a (4.12) | 0.0194 ^a (2.76) | 0.0161 ^a (4.48) |
| Log Population | 0.7177 ^a (6.03) | 0.9189 ^a (2.89) | 0.6276 ^a (3.40) | 0.5280 (1.21) | 0.3295 (1.28) |
| Log Per Capita Income | 0.1948 ^c (1.80) | 0.5189 ^b (2.32) | 0.0863 (0.56) | -0.1480 (-0.49) | 0.1454 (1.02) |
| Log Wages | -0.3651 ^b (-2.46) | -1.1204 ^a (-4.46) | -0.2462 (-1.35) | -0.2504 (-0.51) | 0.0366 (0.20) |
| Log Airport Arrivals | 0.1397 ^b (2.57) | 0.1556 ^c (1.75) | 0.1743 ^b (2.05) | 0.0860 (0.81) | 0.0459 (0.63) |
| Log Hotel Supply | 0.3811 ^b (2.17) | -0.0244 (-0.07) | 0.4724 ^a (2.83) | 0.5792 ^b (2.04) | 0.4475 (1.66) |
| Constant | -5.4690 (-1.24) | -0.3711 (-0.04) | -6.2595 (-0.93) | -4.2192 (-0.47) | -2.7359 (-0.37) |
| <i>R-Square</i> | | | | | |
| <i>Within groups</i> | 0.96 | 0.85 | 0.95 | 0.76 | 0.96 |
| <i>Between groups</i> | 0.81 | 0.86 | 0.75 | 0.53 | 0.58 |
| <i>Overall</i> | 0.78 | 0.93 | 0.78 | 0.56 | 0.47 |
| Number of obs. | 154 | 123 | 123 | 104 | 120 |

The dependent variable is number of employments in leisure and hospitality industry and its subsectors. All regressions control for year and MSA effects. Standard errors are clustered at MSA level. Robust t-statistics are in parentheses. a, b and c denote 1%, 5% and 10% statistical significance levels, respectively.

employment in the hospitality, tourism, and leisure industries and its various sectors utilizing an alternative empirical technique. Specifically, we employed the Panel Auto Regressive Distributed Lag (ARDL) technique developed by Pesaran, Shin, and Smith (1999). The panel ARDL model might be advantageous over the panel random and panel fixed effect regression techniques because the panel ARDL model provides consistent, reliable, and asymptotically unbiased coefficient estimates (Pesaran et al., 1999). Also, the panel ARDL technique resolves possible autocorrelation issues that might exist in the model.

Pesaran et al. (1999) recommended two alternative panel ARDL estimators, namely the pooled mean group estimator and the mean group estimator, and suggested the use of the Hausman (1978) homogeneity tests to determine the panel ARDL estimators that is suitable in the context of the panel data under investigation. Thus, we conducted the Hausman (1978) test of homogeneity and the results suggested the use of the mean group estimator. Therefore, we employed the panel ARDL regression technique with the mean group estimator to examine the effects of Airbnb supply on employment in the hospitality, tourism, and leisure industries and its various sectors as specified in empirical models (1), (2), (3), (4), and (5). Table 10 presents the results of the impact of Airbnb supply (both all and active only), including all listings, entire homes, private rooms, and shared rooms on employment in the hospitality, tourism, and leisure industries, controlling for the macroeconomic factors, including the hotel room supply.

The statistically significant error correction terms provide evidence of cointegration can in the empirical models (see adjustment speed in Table 10). The negative and statistically significant error correction coefficients (i.e., adjustment speed) suggest that the relationship between independent and dependent variables reach their long-term equilibrium. Column 1 of Table 10 shows the effects of all Airbnb supply (i.e., total cumulative listings that includes entire homes, private rooms, and shared rooms) on employment in the hospitality, tourism, and leisure industries. The results show that Airbnb listings positively affect employment in the hospitality, tourism, and leisure industries. Although the magnitude of the coefficient of log Airbnb supply (β : 0.0089, $p < 0.05$) is smaller than the estimate produced using panel fixed effect technique [Column 1 of Table 3 (β : 0.0145, $p < 0.05$)], the effect of Airbnb supply on the employment in the hospitality, tourism, and leisure industries is positive and statistically significant after controlling for additional macroeconomic and industry specific variables. This outcome provides clear support for the proposition that increased visitor activity and spending enabled by Airbnb increases employment in the hospitality, tourism, and leisure industries.

Columns 2, 3, and 4 of Table 10 present the results of the effects of Airbnb supply by listing type (i.e., entire homes, private rooms, and shared rooms) on employment in the hospitality, tourism, and leisure industries. As with the effects of overall Airbnb supply, these effects are also positive and statistically significant, and confirm Airbnb's positive employment impact. Columns 4 to 8 of Table 10 present these results, which are consistent with the effects of all Airbnb supply on employment (i.e., active Airbnb listings positively affect employment in the hospitality, tourism, and leisure industries).

Overall, our results are robust to different empirical specifications (i.e., models with or without employee wages), various control variables (e.g., coincident index vs. per capita income), alternative empirical techniques (e.g., panel fixed effects and panel ARDL), and a range of Airbnb supply measures (i.e., all listings, entire homes, private rooms, and shared rooms). This allows us to assert with some degree of confidence that Airbnb does indeed have a positive effect on employment within the hospitality, tourism, and leisure industries.

6. Discussion and conclusion

The debate about Airbnb's impacts on the hospitality, tourism, and leisure industries continues. In the lodging sector, there is research that supports conflicting arguments: that Airbnb does (e.g., Dogru et al.,

Table 10
The effects of Airbnb listings on Hospitality, Tourism, and Leisure industries: Alternative Empirical Application.

| | Total Listings | | | | Total Active Listings | | | |
|-------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|------------------------------|----------------------------|
| | (1) All Listings | (2) Entire Homes | (3) Private Rooms | (4) Shared Rooms | (5) All Listings | (6) Entire Homes | (7) Private Rooms | (8) Shared Rooms |
| Log Airbnb Supply | 0.0089 ^b (2.62) | 0.0105 ^a (3.16) | 0.0105 ^b (2.50) | 0.0086 ^c (1.76) | 0.0106 ^a (2.71) | 0.0128 ^a (3.35) | 0.0130 ^a (2.67) | 0.0061 (1.17) |
| Log Labor Force (Population) | -0.3206 (-0.85) | -0.2637 (-0.75) | -0.2513 (-0.68) | 0.5318 (1.49) | -0.2853 (-0.76) | -0.1968 (-0.59) | -0.1471 ^a (-0.38) | 0.7772 ^b (2.15) |
| Log Coincident Index (Income) | 0.4680 ^c (1.83) | 0.4353 ^c (1.80) | 0.4008 (1.42) | 0.2262 (0.82) | 0.4458 ^c (1.67) | 0.3966 ^c (1.67) | 0.3662 (1.20) | 0.1846 (0.81) |
| Log Airport Arrivals | 0.2748 ^c (1.93) | 0.2547 ^c (1.75) | 0.2897 ^b (2.15) | 0.2773 ^b (2.39) | 0.2794 ^b (2.00) | 0.2743 ^b (2.04) | 0.2984 ^b (2.11) | 0.2746 ^b (2.35) |
| Log Hotel Supply | -0.0476 (-0.15) | -0.0123 (-0.04) | -0.0955 (-0.30) | -0.0960 (-0.35) | -0.0675 (-0.22) | -0.1131 (-0.38) | -0.1418 (-0.45) | -0.0771 (-0.27) |
| Constant | 2.8279 ^b (2.53) | 2.7918 ^b (2.34) | 2.7725 ^b (2.54) | -0.5267 (-0.45) | 2.7984 ^b (2.38) | 2.8766 ^b (2.36) | 2.6701 ^b (2.27) | -1.8004 (-1.22) |
| Adjustment Speed | -0.32 ^a | -0.33 ^a | -0.33 ^a | -0.36 ^a | -0.32 ^a | -0.33 ^a | -0.33 ^a | -0.35 ^a |
| Short-term coefficients | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Number of obs. | 2185 | 2149 | 2173 | 1941 | 2156 | 2122 | 2141 | 1805 |

The dependent variable is number of employments in leisure and hospitality industry. a, b and c denote 1%, 5% and 10% statistical significance levels, respectively. z statistics are in parenthesis. All models include short-run coefficients.

2019) and does not (e.g., Haywood et al., 2017) have an adverse impact on performance across hotel segments. However, there is a dearth of research that examines the impact of Airbnb beyond its effects on hotel performance metrics. To this end, drawing upon the concepts of induced demand and joint demand, the present study hypothesized that an increase in Airbnb supply has a positive (spillover) effect on employment in the hospitality, tourism, and leisure industries.

Our results, across a variety of empirical specifications and measures, and using alternative control variables, were highly consistent in demonstrating that Airbnb does indeed have a positive effect on employment in the hospitality, tourism, and leisure industries. Not only was there a significant impact on overall employment in these industries, but also each subsector of hospitality, tourism, and leisure industries were individually benefitted by the increasing Airbnb supply. Of particular note is the lodging sector, where we found that a 1% increase in Airbnb supply across various measures, increases employment between 0.02% and 0.04%, which is higher than the effects for the restaurants and bars sector and overall employment numbers. Given that various hotel segments are perceived to be directly and negatively impacted by Airbnb, as guests shift their demand towards the sharing economy, this finding is perhaps the most significant of all.

We provide comprehensive evidence to refute the argument that an increase in Airbnb supply causes hotel workers to lose their jobs due to arguably declining lodging industry performance. In fact, given the positive effects of employment across the board, it is likely that hotel workers have more job opportunities from which to choose, given the readily transferable skill-set across hospitality, tourism, and leisure industries. The concept of induced demand provides a strong theoretical rationale for such effects. As the supply of accommodations in a destination increases, it becomes more attractive to more, and a potentially wider, range of travelers, some of whom may have otherwise not traveled to the destination at all (Fang et al., 2016).

In addition to inducing more demand to the destination, an increase in Airbnb supply also causes an increase in the demand for complementary services, as explained by the concept of joint demand, and evidenced in the present study in terms of the positive effects of Airbnb supply on employment in all sectors of the hospitality, tourism, and leisure industries. The concept of joint demand—inter-industry linkages in a region as a result of tourism expenditures—is inherent to the popular tourism multiplier studies, which indicate higher tourism visitation and expenditure has positive spillover effects on output and employment across industry sectors (Frechting & Horvath, 1999). Interestingly, in the present study, the magnitude of these positive spillover effects was the largest in the arts, entertainment, and recreation sectors. This might be explained by several factors. First, visitors might spend the excess cash from their overall travel budgets—i.e., the money left over from

purchasing Airbnb accommodations that are often cheaper than traditional hotel accommodations—on purchasing local arts and crafts and other products, museum experiences, and other entertainment and recreation opportunities, all of which contribute to higher employment in the lodging sector. Second, it is possible that Airbnb hosts, themselves, provide additional guest services in the areas of arts, entertainment, and recreation, which may require them to hire employees to provide these services, thus adding employment to the sector. For example, an Airbnb host might also offer a local walking tour through the Airbnb Experiences platform, and hire a friend or neighbor to take guests around the city.

While the positive effects of Airbnb supply on employment in restaurants and bars may intuitively be expected, it is interesting to note that these effects were the lowest in magnitude (even in comparison to the lodging sector). This may be due to the fact that regardless of the type of accommodation in which visitors stay, Airbnb or hotels, they are likely to spend money in local restaurants and bars. Thus, the relative impact of Airbnb supply on the food and beverage sector is lower, as increased visitor spending and the resulting employment benefits can be attributed to accommodation of various types, including peer-to-peer and alternative accommodations. The findings of this study have important research and practical implications.

6.1. Research and practical implications

The present study is the first to comprehensively examine—both methodologically and geographically—the effects of Airbnb on employment in the hospitality, tourism, and leisure industries. Previous research quantifying macroeconomic effects is limited. The present study adds to the limited body of evidence in the context of Airbnb’s impacts, which extends the lodging sector’s performance (Sigala, 2019). From a theoretical standpoint, we demonstrate induced demand and joint demand effectively explain Airbnb’s impact on hospitality, tourism, and leisure industries’ employment. We also establish that the employment benefits of Airbnb on the sectors within these industries is linear and not quadratic, in contrast to Fang et al.’s (2016) findings in the case of Idaho. Our approach provides an analytical foundation for future research.

Our findings pertaining to Airbnb’s positive employment effects indicate a need to temper the mainstream rhetoric around the sharing economy. While it is plausible that Airbnb negatively affects lodging sector performance in terms of taking a share of the hotels’ piece of an accommodation pie, it must also be acknowledged that Airbnb is also potentially growing the overall size of the pie, which, in turn, benefits the economy as a whole. The lodging sector’s stance on Airbnb has been largely combative thus far, and there is a need to acknowledge that it is

perhaps not the devil it is made out to be. A more conciliatory approach by the various hotel segments towards the sharing economy—both in terms of their lobbying and legislative demands and public-facing narrative—would enable a more constructive process for regulating peer-to-peer accommodations.

For destinations, our findings pose further questions related to a best approach for regulating Airbnb. Most jurisdictions, both in the U.S. and internationally, are still grappling with how to regulate the disruptive alternative accommodation segment, in particular its negative externalities (Nieuwland & van Melik, 2018). Jurisdictions must consider a regulatory response to sharing economy employment that encompasses issues surrounding supplier safety and insurance, guaranteed earnings and employment benefits, and supplier discrimination and contractual security (Acevedo, 2016).

However, echoing Fang et al. (2016), we argue that, in addition to its negative effects, jurisdictions must also consider Airbnb's positive economic spillovers, such as in the case of employment, when designing their regulatory frameworks. A negative-externality-minimization approach must be replaced by a positive-benefit-maximization perspective that accounts for the wider macroeconomic implications of Airbnb, a perspective that goes far beyond creating a level playing field for the traditional hotel sector. In particular, destinations can benefit greatly from the tax revenue generated from Airbnb rentals, provided these rentals do not have adverse effects on the housing market and residents' quality of life.

6.2. Limitations and recommendation for future research

While our research adopts a comprehensive methodological and geographical approach to examine Airbnb's employment effects, it does have certain limitations. Although we presented evidence that Airbnb has positive effects on employment in overall and subsectors of hospitality, tourism, and leisure industries, the overall impact of Airbnb on the economy and communities requires a broader examination that goes beyond employment. That is, Airbnb's employment effects need to be considered in view of a comprehensive macroeconomic assessment of its impacts. For example, there is evidence to suggest that Airbnb contributes to a variety of housing problems in cities, including shortages in the long-term rental supply by incentivizing owners to "hotelize" units to tourists (Lee, 2016), an increase in rental and housing prices (Barron, Kung, & Proserpio, 2017), and gentrification (Wachsmuth & Weisler, 2018).

Also, while some argue that Airbnb has more negative than positive impacts on residents' quality of life (Jordan & Moore, 2018), others have found that residents perceive Airbnb's positive impacts to outweigh the negative (Mody, Suess, & Dogru, 2019). Thus, in determining the most effective regulation for the sharing economy, legislators must be armed with research that compares Airbnb's employment effects with its impact on other macro-economic and social indicators such as local housing—in terms of prices and availability (including rental vacancy rates and spatial patterns)—and residents' quality of life. Furthermore, future research is necessary to investigate the Airbnb's impact on tourism demand, such as tourist arrivals, tourism receipts, and so on. Additionally, future research must also determine the effectiveness of regulation—such as limits on the number of days a unit can be rented, or allowing the rental of only private and shared rooms—in jurisdictions where it has been enacted, on macroeconomic indicators such as employment, housing, and resident quality of life. Furthermore, our sample, albeit comprehensive, is limited to 12 major U.S. hotel markets at the metropolitan statistical area (MSA) level. Future studies that examine the relationship between Airbnb supply and employment in hospitality, tourism, and leisure industries in different cities, states or countries can assist in substantiating our findings.

Our study also presents avenues for future research on Airbnb's employment effects, and other macroeconomic analyses in which employment can be a component. While we demonstrated a positive

impact of Airbnb supply on employment in hospitality, tourism, and leisure industries, future research can delve into the nature of such employment. For example, do the jobs being created offer higher or lower wages than existing opportunities in the job market? What impact does this have on existing jobs? Do workers shift from one job to another, or one sector to another within the hospitality, tourism, and leisure industries, or do these additional jobs contribute to reducing unemployment in a city? How do these additional jobs impact the supply and demand of labor in other, non-hospitality industries? These questions are critical in determining the nature and magnitude of Airbnb's overall employment effects on the economy. Relatedly, there is evidence to suggest that the sharing economy or the "gig-economy" boosts entrepreneurial activity through flexible employment and micro-entrepreneurship; however, these findings are preliminary, and "a better understanding and definition of the type of entrepreneurship or employment that the sharing economy creates is required" (Sigala, 2019, p. 9). This is particularly important given that the narratives surrounding Airbnb's income effects are contradictory. While critics argue that Airbnb activity ends up profiting people who are already wealthy, proponents indicate that Airbnb combats middle class income stagnation—that mostly middle-income and below middle-income groups profit the most from Airbnb, including students who are otherwise unemployed (Quattrone et al., 2016).

Authors contribution statement

Dr. Tarik Dogru designed the general framework of the study and implemented the empirical analysis. Dr. Nathan Line wrote the introduction. Dr. Makarand Mody, Dr. Courtney Suess, and Dr. Sean McGinley developed the theoretical framework, and wrote the literature review and conclusion with support from Dr. Tarik Dogru and Dr. Nathan Line. All authors discussed and contributed to the theoretical framework, empirical strategy, results, and theoretical and policy implications.

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Airbnb: Why Tourists Choose It and How They Use It

By Dr. Daniel Guttentag

August 2016



About the study

This report presents a summary of the key findings and implications from a study entitled “Why tourists choose Airbnb: A motivation-based segmentation study underpinned by innovation concepts.”

The full version of the paper on which this summary is based can be [accessed here](#).

About the author

Dr. Daniel Guttentag is an Assistant Professor in Hospitality and Tourism Management at Ryerson University (Toronto, Ontario, Canada). He possesses a Master’s degree in Tourism Policy and Planning and a Ph.D. in Recreation and Leisure Studies, both completed at the University of Waterloo (Waterloo, Ontario, Canada) where he worked under the supervision of Dr. Stephen Smith (University of Guelph).

Dr. Guttentag’s research currently focuses on Airbnb consumer behaviour and policy questions. He wrote one of the first peer-reviewed journal articles on Airbnb ([published online in 2013](#)), has a forthcoming book chapter on Airbnb’s regulatory issues, and is actively involved in a number of other Airbnb research projects. His research publications also include papers on virtual reality and tourism, volunteer tourism, and casino gambling.

Dr. Guttentag is the recipient of several prestigious awards, including a Joseph-Armand Bombardier Canada Graduate Scholarship from the Social Sciences and Humanities Research Council of Canada.

For more information about the author, please visit www.dg-research.com.

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Executive Summary

The purpose of the study was to investigate why tourists choose to stay in Airbnb accommodations instead of other options like hotels, and to explore the ways in which tourists use the service.

The study involved an online survey completed by people who had stayed in an Airbnb accommodation during the previous year. Following data screening, 844 surveys were analyzed in the final sample.

It was found that the vast majority of Airbnb guests use the service for a leisure trip, and although Airbnb is sometimes perceived as appealing to “backpacker” travellers, only a relatively small percentage of Airbnb guests describe themselves as backpackers. Also, most Airbnb guests rent an entire home, rather than staying together with a host, even though entire home rentals are somewhat divergent from classic “sharing economy” activity. Additionally, most Airbnb guests stay from two to four nights and stay with at least one other guest, most commonly a spouse/partner. Moreover, most Airbnb guests still have relatively minimal Airbnb experience and began using the service only quite recently.

Airbnb guests are most strongly attracted to Airbnb by its practical attributes (e.g., cost, location, and amenities), and somewhat less by its experiential attributes (e.g., novelty and interaction). The comparative importance of Airbnb’s practical benefits contrasts with Airbnb’s advertising, which focuses almost exclusively on authentic local experiences and interaction with locals, with no mention of cost and limited mention of other practical benefits.

The majority of Airbnb guests use it as a substitute for hotels, whereas very few use it to take a trip they would not have otherwise taken. Nonetheless, staying with Airbnb leads many guests to increase the time they spend in a destination. In other words, Airbnb does not stimulate significant additional visitation, as some figures reported by Airbnb suggest, but Airbnb may nonetheless bring benefits to local tourism economies.

Traditional word-of-mouth and electronic word-of-mouth are the primary communication channels driving Airbnb awareness and initial use.

Airbnb guests generally feel high levels of satisfaction with their stays, and likewise exhibit high levels of loyalty towards the company.

Airbnb guests also often identify strongly with the Airbnb brand, and perceive Airbnb as much “cooler” than hotel chains such as Holiday Inn or Hilton.

In the study it was found that five segments of Airbnb users could be identified based on their motivations for using the service: *Money savers*, *Home seekers*, *Collaborative consumers*, *Pragmatic novelty seekers*, and *Interactive novelty seekers*. These segments differ across a variety of profiling variables. The distinct motivations that draw different types of guests to Airbnb highlight the potential benefit for Airbnb to introduce sub-brands that could be marketed independently.

When considering various accommodation attributes, Airbnb guests generally expect their accommodations to outperform budget hotels/motels, underperform upscale hotels, and have mixed outcomes compared to mid-range hotels. These expectations highlight some areas where Airbnb would benefit from improvements, but the overall positive expectations guests have of Airbnb highlight the difficult challenge Airbnb poses for hotels – it is often cheaper, offers a unique experiential aspect, and still performs well in areas where hotels should excel.

Looking towards the future, it is likely there will be increased convergence between Airbnb and hotels as both strive to imitate some of the other's strengths. Airbnb will continue enhancing its product in order to provide a more reliable and professionalized hospitality experience, while hotels will continue working to create more unique and locally authentic environments.

Methods

The research instrument used for this study was a ten-minute online survey. In order to promote accurate responses, most questions focused on the respondent's most recent Airbnb stay, rather than Airbnb use more generally.

Data collection began in July 2015 and concluded in October 2015.

To participate, respondents needed to have stayed in an Airbnb accommodation during the previous 12 months and needed to have been significantly involved in choosing where to stay. Only one member per travel party (of the most recent Airbnb stay) could complete the survey.

Respondents were recruited online, and most of the final sample came from travel-themed Canadian Facebook groups and Mechanical Turk, an online panel run by Amazon. Two Amazon gift cards worth US \$50 each (or its international equivalent) were offered as participation incentives and were distributed in lottery draws. The Mechanical Turk respondents were compensated separately.

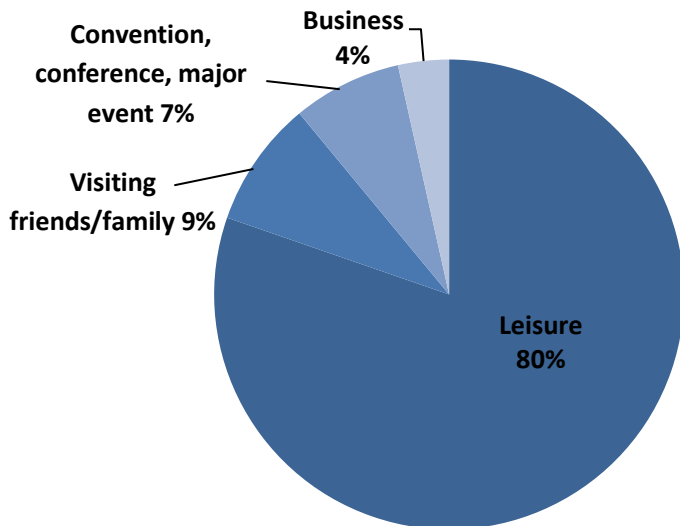
A total of 923 surveys were received. Data screening eliminated various surveys due to issues such as incompleteness and apparent carelessness, resulting in a final sample of 844 respondents.

About two-thirds of the respondents were female, and just over half were between the ages of 21 and 30. The sample also was fairly well-educated, with over 90% having at least a university or college degree, and was relatively affluent, with over 75% perceiving their household financial status as above average in their home country. Nearly three-quarters of the respondents resided in Canada, and nearly one-quarter resided in the U.S.

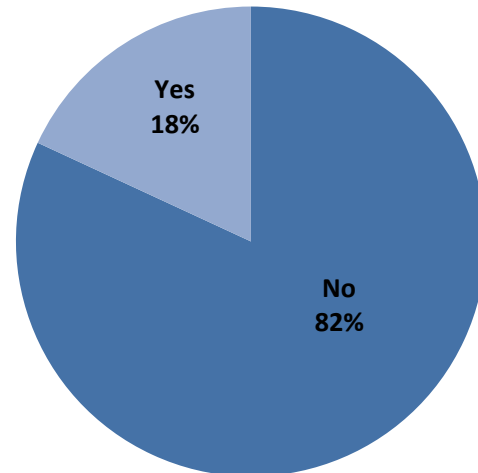
Numerous characteristics of the sample (e.g., average duration of most recent Airbnb stay) were found to be quite consistent with the Airbnb guest population, based on various destination-based economic impact reports Airbnb has published.

Trip characteristics of most recent Airbnb stay

Trip Purpose



Backpacking



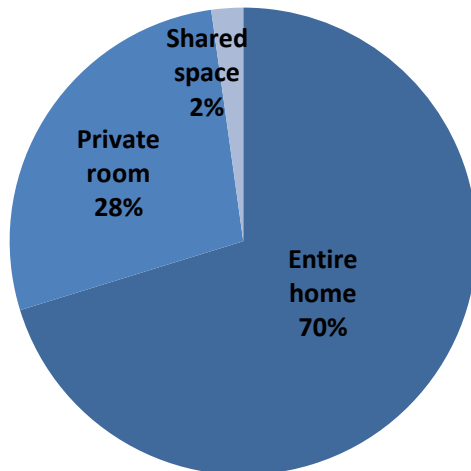
Note: "Business" refers to business trips excluding conventions, conferences, or major events.

Leisure travel currently dominates the Airbnb market. Although Airbnb originally focused specifically on attendees of conventions, conferences, and major events, these guests now represent just a small fraction of Airbnb's guests. Also, business travellers continue to constitute only a small share of Airbnb's guests, despite Airbnb's recent and increasing efforts to attract this lucrative segment. Valid or not, this limited footprint within the business travel segment is a primary reason why many hoteliers and industry analysts remain skeptical of Airbnb's threat to the hotel sector.

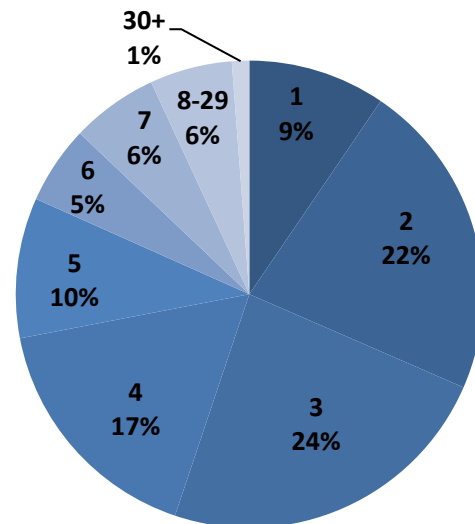
Backpackers represent only a relatively small share of Airbnb guests. This finding contradicts perceptions held by some that Airbnb guests are shoestring adventurers who resemble CouchSurfers, and it suggests that the characteristics of Airbnb guests are more similar to that of many hotel guests.

Accommodation usage characteristics of most recent Airbnb stay

Type of Accommodation



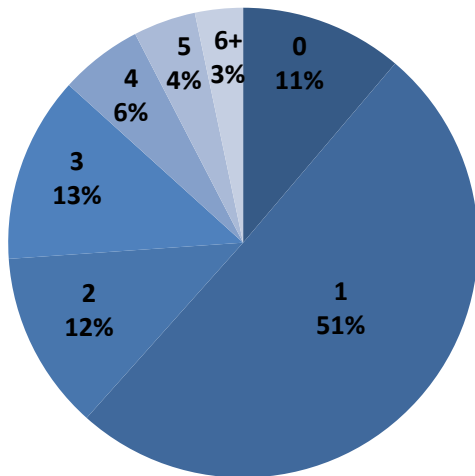
Nights



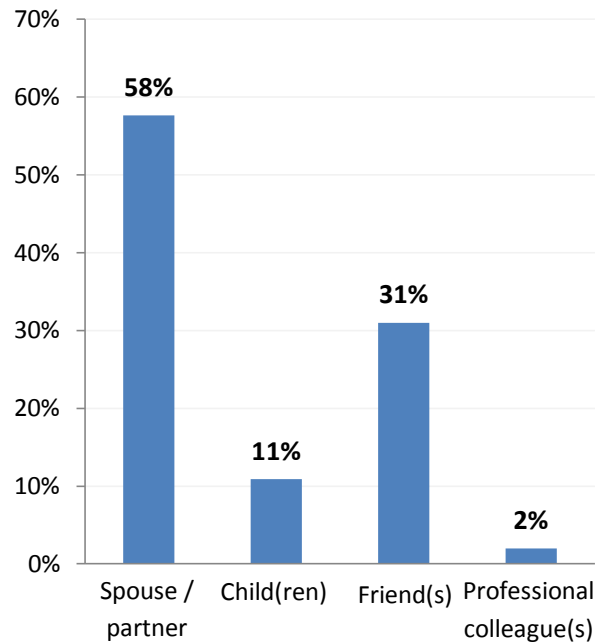
The vast majority of Airbnb guests rent an entire home, rather than staying in a residence together with the host. This breakdown is different from what some may expect when thinking about a “sharing economy” service like Airbnb. The predominance of entire home rentals suggests host-guest interaction is neither a strong motivation for much Airbnb use, nor a defining characteristic of it. Of those guests who do stay with a host, the vast majority stay in a private bedroom rather than a shared space (e.g., a futon in a living room).

A large portion of Airbnb guests are on relatively short stays of between two and four nights. Single night stays are relatively uncommon, especially in comparison with hotels. Likewise, extended stays of over one week are not especially common. In other words, Airbnb trip lengths do not seem to perfectly parallel that of hotels, but they are not radically different either. Also, the marginal percentage of Airbnb guests staying for 30 or more nights is relevant to policy discussions, as unlicensed rentals of fewer than 30 days are illegal in many jurisdictions.

Number of Accompanying Guests



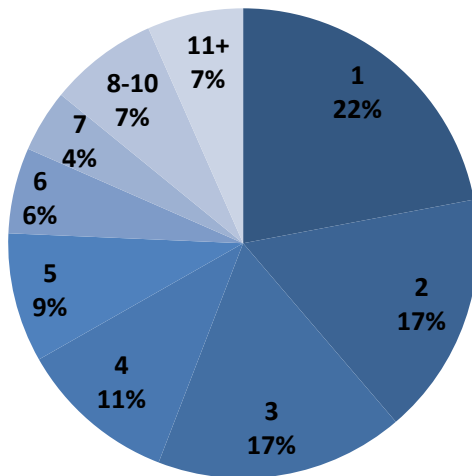
Type of Accompanying Guests



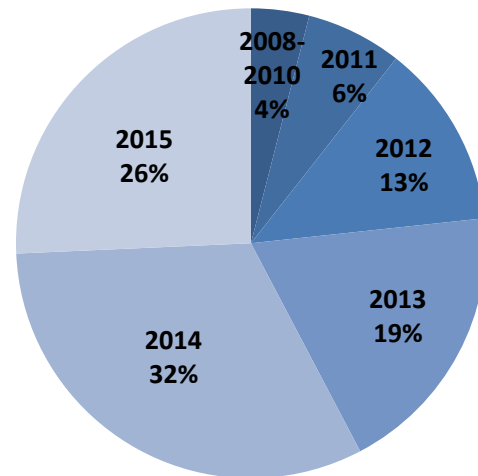
Only a small proportion of Airbnb guests are staying on their own, but most commonly they are accompanied by just one other person. Additionally, only a small proportion of the guests are in large parties of five or more people. Airbnb guests often travel with a spouse/partner or friend(s).

Airbnb usage history

Number of times used Airbnb



Year first used Airbnb

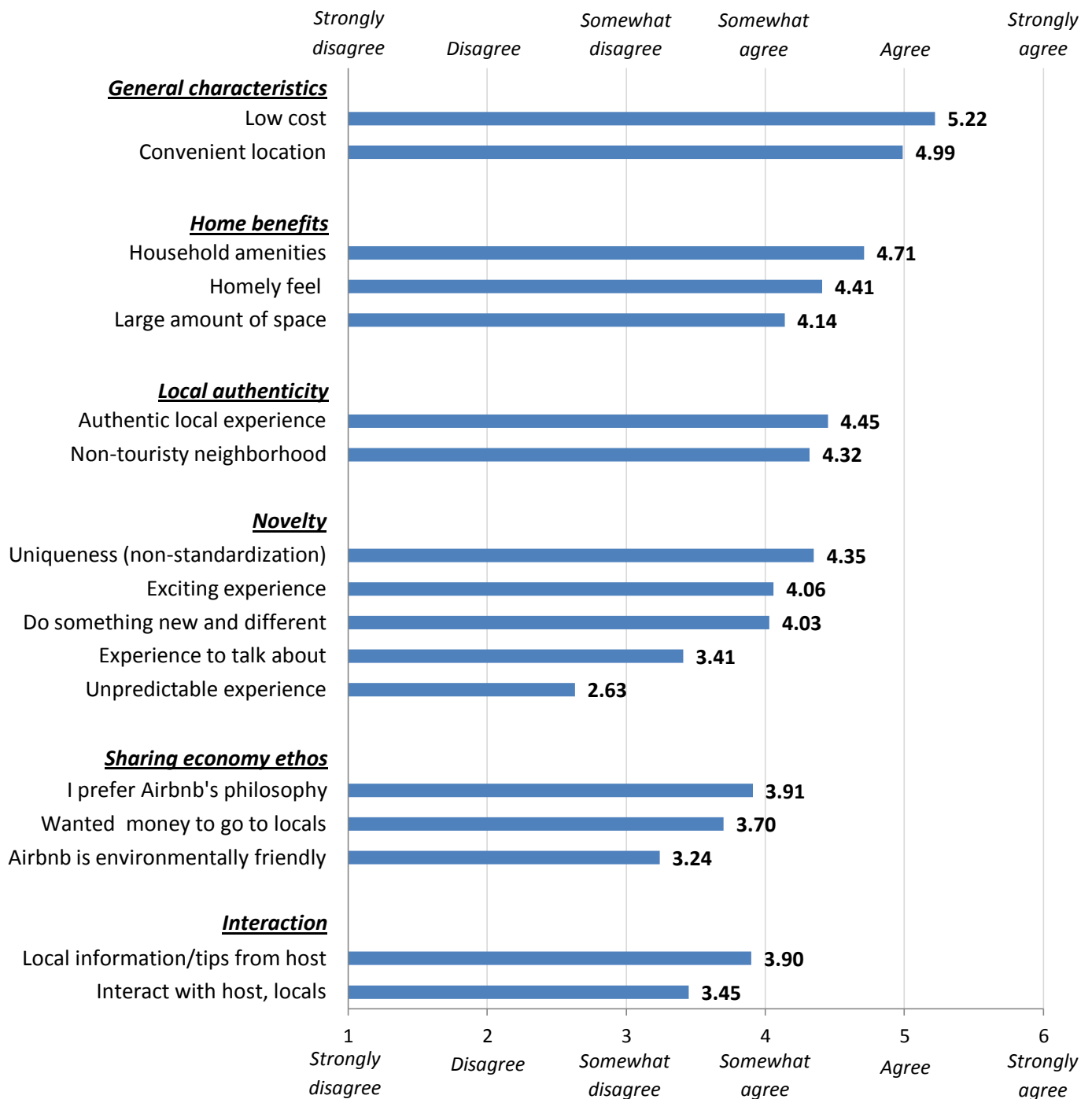


Note: Data collection took place between July and October 2015.

A relatively sizeable share of Airbnb users has used the service only once, and most have used it only a handful of times. This breakdown underscores Airbnb's recent emergence and will certainly change in the future.

Most Airbnb users have begun using the service only within the past few years. This breakdown highlights Airbnb's rapid recent growth and increasing adoption among tourists.

Motivations to choose Airbnb



Notes: Answers focused on respondents' most recent Airbnb stay. The motivation categories listed in the chart were derived from a statistical analysis (exploratory factor analysis) that examines variable interrelationships to identify underlying groups of variables (i.e., "factors"). The 'low cost' and 'convenient location' items were independent of any factors, but were combined above into a "General characteristics" category to facilitate interpretation of the chart.

A wide range of motivations attract guests to Airbnb. Nevertheless, Airbnb guests are primarily attracted by the service's practical advantages (e.g. cost, location, and amenities), whereas the experiential appeals (e.g., authenticity, novelty, and interaction) are secondary.

The principal motivation of 'low cost' demonstrates the critical importance of Airbnb's price competitiveness for many guests. Indeed, despite some recent comparative cost analyses questioning the savings that Airbnb offers (e.g., [this](#) and [this](#)), Airbnb's draw as an economical hotel alternative should not be underestimated. The importance of low cost also contradicts some of the more idealistic portrayals of the sharing economy as being largely based on values like sustainability and community connectedness.

The strong agreement with the 'convenient location' motivation is perhaps unexpected, given that Airbnb listings are often scattered in residential neighbourhoods rather than clustered like hotels in a downtown tourism core. It appears that many Airbnb guests may select the service in part because of the availability of units in geographical locations not well served by traditional hotels, such as a residential area near a friend or in the part of a city with particularly attractive characteristics (e.g., preferable shops and restaurants).

The importance of home benefits, such as household amenities and abundant space, underscores part of Airbnb's unique value proposition relative to many hotels, and suggests hotels may benefit from bringing such "extended stay" attributes into some rooms in traditional hotel properties.

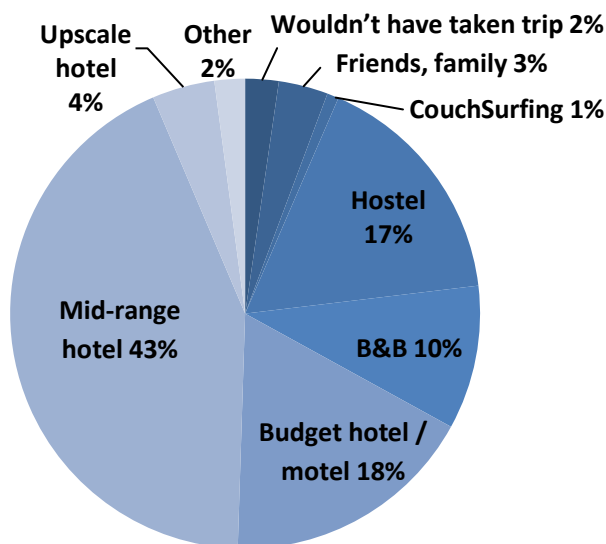
Airbnb's unique value proposition is additionally demonstrated by the relative importance of local authenticity for many of its guests. The findings show that the locally authentic experience that some guests seek is not restricted to the accommodation itself, but also is connected to the broader neighbourhood where the accommodations are located.

Airbnb's novelty, its sharing economy ethos, and the opportunity to interact with hosts/locals did not generally motivate Airbnb use to the same degree as the previously described factors.

The comparative importance of Airbnb's practical benefits versus its experiential benefits contrasts with Airbnb's advertising. Very early on, Airbnb (at the time called AirBed & Breakfast) [explicitly highlighted](#) its low cost. However, Airbnb's more recent advertising (e.g., "[Views](#)," "[Never a stranger](#)," "[Is man kind?](#)," and "[Live there](#)") focuses almost exclusively on authentic local experiences and interaction with locals, with no mention of cost and limited mention of other practical benefits. While there are many reasonable explanations for this approach (e.g., it is more effective at fostering a hip and exciting brand image, and/or it avoids a "budget" label that would be hard to shake), it is still noteworthy that host interaction seems so unimportant for many guests but is so prominently featured in Airbnb advertising.

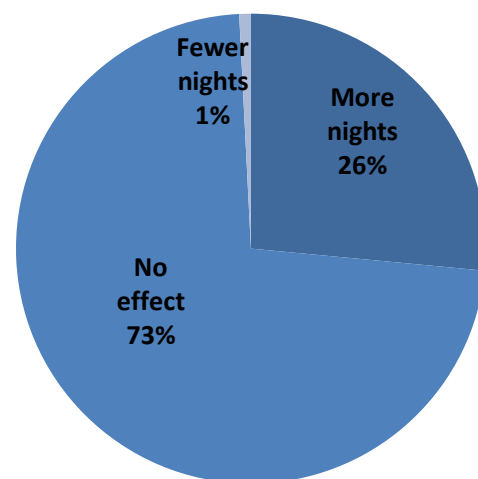
Impacts on other accommodations' guest nights and on destinations' visitor nights

Airbnb as a substitute for other forms of accommodation



Question: Thinking about your most recent Airbnb stay - If Airbnb and other similar person-to-person paid accommodation services (e.g., VRBO) did not exist, what type of accommodation would you have most likely used?

Airbnb's impact on nights in destination



Question: Thinking about your most recent Airbnb stay - How did your decision to stay with Airbnb influence the number of nights you chose to spend in your destination?

Airbnb does not generally facilitate travel that would not have otherwise occurred, nor does it generally replace unpaid forms of accommodation (e.g., staying with friends/family).

A fairly large proportion of Airbnb guests use the service as a substitute for a hostel or a traditional B&B, especially considering the limited number of hostels and B&Bs (in comparison with hotels). This scenario raises interesting questions regarding future competition, as Airbnb is siphoning guests away from hostels and B&Bs, but Airbnb also provides an economical distribution channel that some hostels and B&Bs are beginning to use.

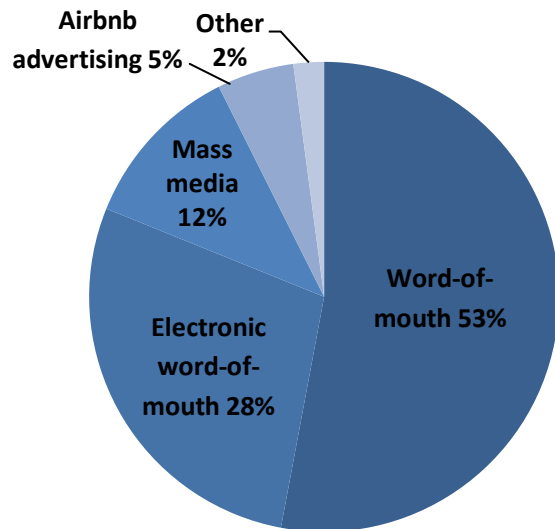
The clear majority of Airbnb's guests use the service as a substitute for hotels. In particular, Airbnb seems to commonly serve as a substitute for mid-range hotels, and to a somewhat smaller extent budget hotels and motels, whereas upscale hotels have not yet been significantly affected. These findings directly contradict claims by Airbnb (e.g., [here](#), [here](#), and [here](#)), and the belief by some hoteliers and industry analysts (e.g., [here](#), [here](#), and [here](#)), that Airbnb does not threaten hotels because it appeals to a separate travel market. The limited impact on upscale hotels may help explain why some major hoteliers feel unthreatened by Airbnb. Nonetheless, Airbnb's rapid growth, increased courting of the business travel market, and common role as a substitute for mid-range hotels demonstrates the threat Airbnb poses and the importance of looking towards future trends instead of focusing on present conditions and past history.

Although Airbnb doesn't tend to drive new visitation, it does encourage a relatively large percentage of guests to spend more nights in their destination. This finding demonstrates a noteworthy benefit that Airbnb brings to local tourism economies and many of their various stakeholders (attractions, restaurants, transportation providers, etc.).

Airbnb's local economic impact reports have frequently highlighted the company's benefits by claiming that a relatively large percentage (generally about 30%) of Airbnb guests would not have otherwise visited a destination or stayed as long (e.g., [here](#), [here](#), and [here](#)). This study's findings suggest that combining these two populations is misleading, as nearly everyone in the combined group is there due to spending extra nights in the destination, with only a very small minority who went on a trip they would not have otherwise taken.

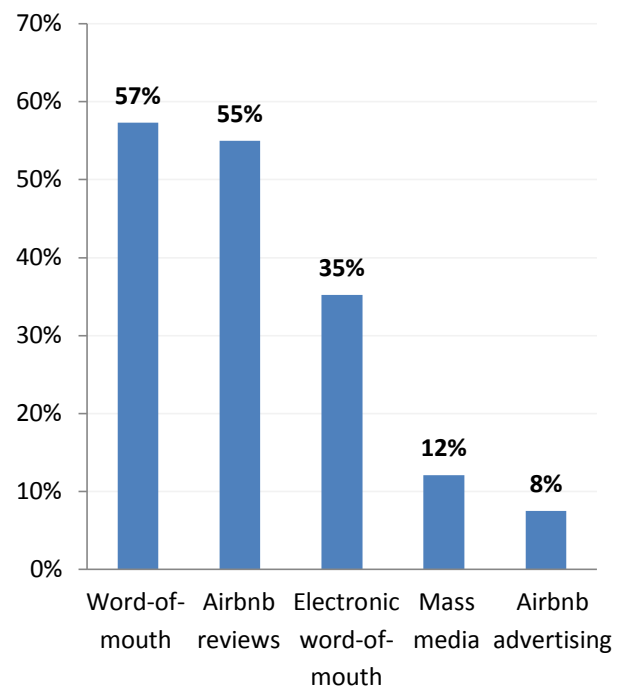
Communication channels

Initial awareness of Airbnb



Question: How did you first become aware of Airbnb?

Influenced first use of Airbnb



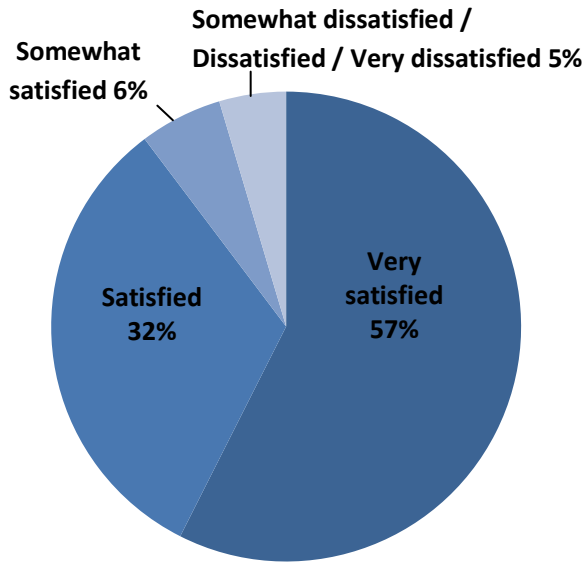
Question: Which of the following had a significant influence on your decision to use Airbnb for the first time?

Note: "Word-of-mouth" refers to comments from friends, family, other tourists, etc. "Electronic word-of-mouth" refers to Facebook, Twitter, forums, blogs, etc.

Word-of-mouth and electronic word-of-mouth play a particularly large role in driving both Airbnb awareness and initial use. The large role played by these communication channels is especially valuable for a service like Airbnb, as such communication can carry the credibility and persuasiveness that many individuals may require in order to overcome their hesitancy about trying Airbnb. However, the importance of Airbnb reviews in influencing initial Airbnb use raises some concerns due to the reviews' [overwhelmingly positive nature](#), which seems to result in part from the structure of the review system.

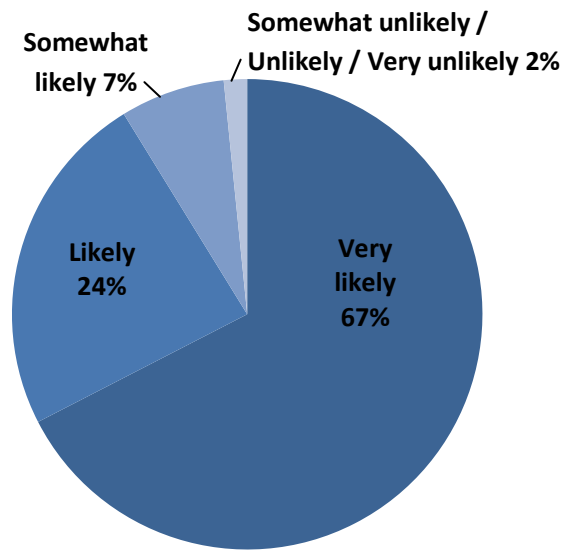
Satisfaction and loyalty

Satisfaction with last Airbnb stay

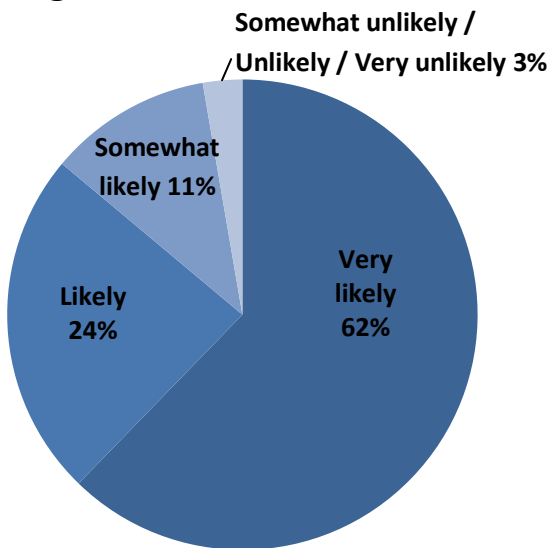


Likelihood of recommending

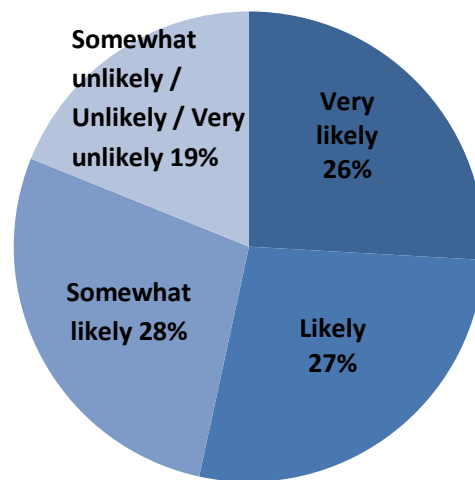
Airbnb to others



Likelihood of using Airbnb again in next 12 months



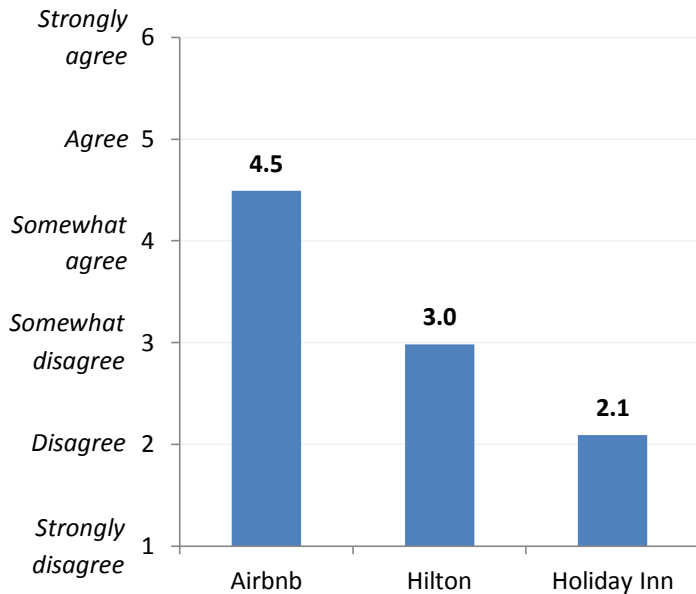
Likelihood of using a hotel in next 12 months



Airbnb guests tend to be quite satisfied with their stays. Airbnb guests are also quite likely to recommend Airbnb to others and to feel they will use the service again, both of which are very good indicators of loyalty. These high levels of satisfaction and loyalty are of course very positive indicators for Airbnb and its future growth potential, and are noteworthy given that Airbnb has limited control over the quality of guests' experiences. These findings also help explain the prevalence of word-of-mouth and electronic word-of-mouth communication in driving Airbnb awareness and adoption. While many Airbnb users expect to continue using hotels as well, expected future hotel use is far below expected future Airbnb use, which helps underscore the threat Airbnb poses to traditional accommodations as more and more people try the service.

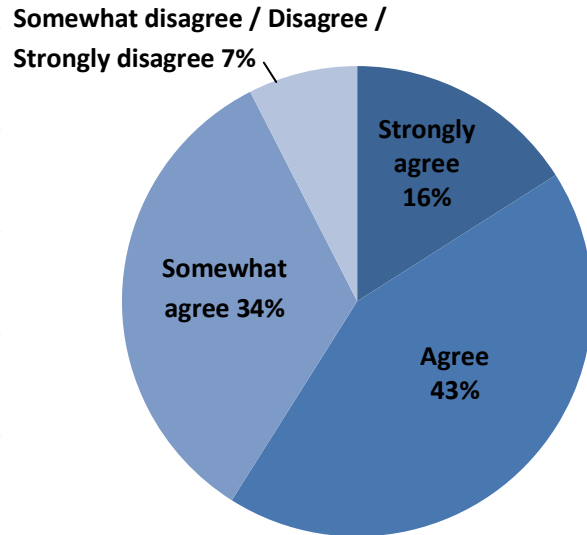
Brand perceptions

Coolness



Note: Coolness was measured with a six-item scale adapted from a pre-existing measure. The numbers above represent the average scores for each brand.

“Airbnb is consistent with how I see myself” (self-congruity)



Airbnb is perceived as significantly “cooler” than either the Hilton or Holiday Inn, which were analyzed for comparative purposes. Many Airbnb users also feel a relatively high degree of “self-congruity” with the Airbnb brand, which consumer behaviour research has shown can influence purchase intentions. Such findings demonstrate the strength of the Airbnb brand, which is likely contributing to the service’s popularity.

Market segments

| | Money savers | Home seekers | Collaborative consumers | Pragmatic novelty seekers | Interactive novelty seekers |
|--------------------------------|--------------|--------------|-------------------------|---------------------------|-----------------------------|
| <u>General characteristics</u> | | | | | |
| Low cost | 5.67 | 5.01 | 5.28 | 5.16 | 5.04 |
| Convenient location | 5.17 | 4.91 | 4.88 | 5.03 | 4.93 |
| <u>Home benefits</u> | | | | | |
| Household amenities | 4.36 | 5.52 | 4.18 | 5.04 | 4.20 |
| Homely feel | 3.13 | 5.05 | 4.66 | 4.54 | 4.51 |
| Large space | 3.64 | 5.20 | 3.53 | 4.37 | 3.64 |
| <u>Local authenticity</u> | | | | | |
| Authentic experience | 3.23 | 4.47 | 5.08 | 4.56 | 4.96 |
| Non-touristy neighborhood | 3.26 | 4.39 | 5.11 | 4.61 | 4.18 |
| <u>Novelty</u> | | | | | |
| Unique experience | 2.77 | 4.35 | 4.81 | 4.91 | 4.88 |
| Exciting | 2.88 | 3.66 | 4.17 | 4.78 | 4.89 |
| New and different | 2.86 | 3.46 | 4.23 | 4.85 | 4.86 |
| Experience to talk about | 2.43 | 2.96 | 3.47 | 4.15 | 4.08 |
| Unpredictable | 2.17 | 2.23 | 2.32 | 2.93 | 3.62 |
| <u>Sharing economy ethos</u> | | | | | |
| Philosophy of Airbnb | 3.11 | 4.17 | 4.56 | 3.87 | 3.79 |
| Money goes to locals | 2.86 | 3.76 | 4.77 | 3.58 | 3.51 |
| Environmentally friendly | 2.57 | 3.30 | 3.93 | 3.36 | 2.97 |
| <u>Interaction</u> | | | | | |
| Local information/tips | 3.09 | 3.92 | 4.88 | 3.03 | 4.78 |
| Interact with host/locals | 2.44 | 3.19 | 4.76 | 2.57 | 4.59 |

Notes: Each column represents one of the five segments. The numbers in each cell indicate the segment's level of agreement with the corresponding motivation (1="Strongly disagree" to 6="Strongly agree"). The color shading indicates deviation from the total sample for each individual motivation. In other words, green signifies that a segment agreed much more strongly than the sample average with the motivation in question.

A statistical analysis (cluster analysis) divided the respondents into five fairly equally-sized market segments based on their relative levels of agreement with the different motivations. Based on the segments' defining characteristics, they were named *Money savers*, *Home seekers*, *Collaborative consumers*, *Pragmatic novelty seekers*, and *Interactive novelty seekers*.

Money savers

Summary description

Money savers are chiefly drawn to Airbnb by its low cost. They are also attracted by location convenience and household amenities, but not to a degree that distinguishes them from the other segments. *Money savers* tend not to be influenced by other potential motivations.

Distinguishing profile characteristics

- Young (63% aged 30 or under, vs. 53% avg.)
- Unaccompanied by children (3%, vs. 10% avg.)
- Low perceived coolness of Airbnb (3.9 of 6, vs. 4.5 avg.)
- Low self-congruity with Airbnb (4.4 of 6, vs. 4.6 avg.)
- Likely to use Airbnb as a budget hotel/motel substitute (22%, vs. 18% avg.)
- Unlikely to use Airbnb as an upscale hotel substitute (1%, vs. a 4% avg.)

Implications

Although *Money savers* are predominately drawn to Airbnb by cost savings, they are much more likely than some other segments to stay in (generally more expensive) entire homes. In other words, *Money savers* are not necessarily seeking the least expensive of all possible options, they are just quite motivated by cost savings and relatively unmotivated by nearly everything else. *Money savers* will consider attributes like location and amenities, but will likely choose whatever accommodation offers the lowest price at an acceptable level of quality. Given the diversity of prices among Airbnb listings, this is a segment for which Airbnb should continue to be attractive. For Airbnb hosts, attracting *Money savers* should involve pricing one's accommodation very competitively, while also perhaps highlighting amenities and location convenience. For hotels, *Money savers* may be difficult to attract and retain at desirable room rates, and it is doubtful *Money savers* would exhibit hotel brand loyalty. Hotels may have the most success targeting this segment with promotional deals, such as weekday or offseason packages.

Home seekers

Summary description

Home seekers are particularly attracted to Airbnb by household amenities, large space, and the homely feel that Airbnb accommodations can provide. In fact, *Home seekers* agree with these motivations even more than they agree with the low cost motivation. *Home seekers* exhibit fairly typical levels of agreement with other motivations.

Distinguishing profile characteristics

- Old (24% aged 41+, vs. 17% avg.)
- Well-educated (35% graduate or professional degree, vs. 30% avg.)
- Not backpacking (10%, vs. 18% avg.)
- Rent entire homes (92%, vs. 71% avg.)
- Long stays (5.7 nights, vs. 4.2 avg.)
- Large travel parties (2.3 accompanying guests, vs. 1.8 avg.)
- Staying with a spouse/partner (65%, vs. 58% avg.)
- Staying with children (22%, vs. 10% avg.)
- Extensive past Airbnb use (5.8 times, vs. 4.6 avg.)
- Unlikely to have used Airbnb as a substitute for a hostel (12%, vs. 17% avg.)
- Likely to have used Airbnb as a substitute for a mid-range hotel (52%, vs. 44% avg.)

Implications

It is logical that *Home seekers* tend to be on relatively long trips and in relatively large travel parties, as such trip characteristics make the amenities and large space that a whole home offers particularly attractive. For Airbnb and its hosts, *Home seekers* represent an especially valuable segment because of their frequent Airbnb use, their long trip durations, and the secondary importance they place on cost. It therefore behooves Airbnb to market more directly to this segment, as *Home seekers* are not motivated by the local interactions that feature so prominently in much Airbnb marketing. *Home seekers* could be susceptible to competition, particularly from companies like HomeAway that exclusively offer entire home rentals. For Airbnb hosts to attract *Home seekers*, they should highlight their accommodations' amenities, large size, homely feel, authentic character, and family-friendliness. Traditional hotels may struggle to appeal to *Home seekers*, whereas extended stay hotels should be more attractive to this segment. However, because extended stay hotels are less widespread, their locations may be inconvenient in comparison with what *Home seekers* can find on Airbnb. Consequently, hotels would likely benefit from offering hybrid hotel properties including extended stay rooms in traditional hotel properties.

Collaborative consumers

Summary description

Collaborative consumers (so named because “collaborative consumption” is another term for the sharing economy) are especially motivated to use Airbnb by its sharing economy ethos, by the opportunity to interact with locals, and by the opportunity to have an authentic local experience. They are also motivated by low cost, location convenience, amenities, and uniqueness, although less so than some other segments.

Distinguishing profile characteristics

- Backpacking (25%, vs. 18% avg.)
- Share accommodation with host (55%, vs. 29% avg.)
- Few accompanying guests (1.3, vs. 1.8 avg.)
- Extensive past Airbnb use (5.4 times, vs. 4.6 avg.)
- High perceived coolness of Airbnb (4.8 of 6, vs. 4.5 avg.)
- High self-congruity with Airbnb (5.0 of 6, vs. 4.6 avg.)
- Likely to have used Airbnb as a substitute for a hostel (24%, vs. 17% avg.)
- Likely to have used Airbnb as a substitute for a B&B (16%, vs. 10% avg.)
- Unlikely to have used Airbnb as a substitute for a mid-range hotel (32%, vs. 44% avg.)
- High satisfaction with most recent Airbnb stay (67% very satisfied, vs. 58% avg.)
- High likelihood of recommending Airbnb to others (80% very likely, vs. 68% avg.)
- High likelihood that will use Airbnb again in next year (74% very likely, vs. 63% avg.)

Implications

Collaborative consumers perfectly embody the tourist that one imagines when watching Airbnb’s advertising, while also representing the accommodation guest that some hoteliers must think of when perceiving Airbnb users as distinct from hotel customers. Airbnb hosts hoping to attract this segment should highlight their ability to provide “back stage” and “off the beaten track” experiences, such as by offering local neighbourhood tips, providing a homemade local food dish, or directly spending time with their guests. Hosts also should expect that these guests may be eager to socialize, and therefore should make them feel welcome in common areas of the home. *Collaborative consumers* are a segment that hotels may be willing to surrender, but hostels and B&Bs should focus intently on this segment.

Pragmatic novelty seekers

Summary description

Pragmatic novelty seekers are especially drawn to the novelty of Airbnb and its accommodations, in addition to being interested in the home benefits that Airbnb accommodations can provide. Similar to other segments, they also are drawn by Airbnb accommodations' low cost and location convenience. *Pragmatic novelty seekers* are not attracted by the opportunity to interact with locals.

Distinguishing profile characteristics

- Young (9% aged 41+, vs. 17% avg.)
- Rent entire homes (90%, vs. 71% avg.)
- Limited past Airbnb use (3.7 times, vs. 4.6 avg.)
- High perceived coolness of Airbnb (4.8 of 6, vs. 4.5 avg.)
- Likely to have used Airbnb as a substitute for an upscale hotel (10%, vs. 4% avg.)

Implications

Pragmatic novelty seekers represent somewhat of a novelty-seeking variant of the *Home seekers*, although the profiles of the two segments have some important distinctions (particularly with regards to age and previous Airbnb use). Airbnb and its hosts can appeal to *Pragmatic novelty seekers* by focusing on the perceived excitement and uniqueness associated with Airbnb accommodations, in addition to their practical offerings. *Pragmatic novelty seekers* should be of particular interest to upscale hotels given the relatively high percentage who use Airbnb in place of an upscale hotel. Boutique hotels and other independently branded properties may appeal to this segment, but *Pragmatic novelty seekers*' interest in household amenities underscores a competitive weakness for many of these hotels. The profile of this segment again suggests the potential benefits of incorporating extended stay units into traditional hotels.

Interactive novelty seekers

Summary description

Like the *Pragmatic novelty seekers*, *Interactive novelty seekers* are strongly motivated by Airbnb's novelty. However, *Interactive novelty seekers* are also drawn to Airbnb by the opportunity to interact with locals, rather than the practical home benefits that attract *Pragmatic novelty seekers*. *Interactive novelty seekers* are also drawn by the opportunity for an authentic local experience and, like the other segments, are attracted by Airbnb accommodations' low cost and location convenience.

Distinguishing profile characteristics

- Backpacking (27%, vs. 18% avg.)
- Share accommodation with host (47%, vs. 29% avg.)
- Short stays (3.4 nights, vs. 4.2 avg.)
- Limited past Airbnb use (3.4 times, vs. 4.6 avg.)
- High perceived coolness of Airbnb (4.8 of 6, vs. 4.5 avg.)

Implications

Interactive novelty seekers somewhat parallel *Collaborative consumers* in the same way that *Pragmatic novelty seekers* parallel *Home seekers*. Like the *Pragmatic novelty seekers*, however, *Interactive novelty seekers* are also characterized by limited Airbnb experience. The key marketing implications associated with *Interactive novelty seekers* have been covered in the discussions of the *Collaborative consumers* and the *Pragmatic novelty seekers*.

Observations on the market segmentation

Low cost

The five segments are defined by their comparative levels of agreement with the various motivations to choose Airbnb. Nonetheless, Airbnb's low cost is still the most important motivation for nearly every segment.

Airbnb's two products

Arguably the biggest differentiator between the segments is the degree to which they are motivated to use Airbnb by the opportunity for local interaction. Such interaction is an important draw for *Collaborative consumers* and *Interactive novelty seekers*, but not as much for *Money savers*, *Home seekers*, or *Pragmatic novelty seekers*. This motivation is also closely associated with the type of accommodation used, with *Home seekers* and *Pragmatic novelty seekers* almost exclusively staying in entire homes, and *Collaborative consumers* and *Interactive novelty seekers* much more likely than average to stay with hosts. These findings suggest that Airbnb's entire homes and shared accommodations represent two fairly distinct products with separate appeals. This distinction presents a challenge for Airbnb's marketing and highlights the potential value in marketing the two products differently. Indeed, it seems very possible that Airbnb eventually will better organize its diverse inventory by launching sub-brands that will be marketed independently, such as Airbnb Explore (for shared accommodations), Airbnb Homes (for entire homes focused on space and amenities), Airbnb Pro (for rentals aimed at business travellers), Airbnb Lux (for high-end rentals), and Airbnb Exotic (for exotic accommodations like treehouses).

Performance expectations

The following tables present Airbnb guests' performance expectations when booking their most recent Airbnb, in comparison with their expectations for hypothetical nearby hotels of different classes (budget, mid-range, and upscale).

Supposed hotel strengths

(1 = Exceptionally poor, 6 =Exceptionally good)

| | | | | |
|--|-----------------|--------------------|--------------------|------------------|
| Ease of checking in/out | Airbnb (4.7) | Budget (4.7) | Mid-range (5.1) | Upscale (5.4) |
| Ease of resolving unexpected problems | Budget (3.6) | Airbnb (4.0) | Mid-range (4.6) | Upscale (5.5) |
| Security | Budget (3.3) | Airbnb (4.3) | Mid-range (4.5) | Upscale (5.5) |
| Ease of placing reservation | Budget (4.8) | Airbnb (4.9) | Mid-range (5.1) | Upscale (5.4) |
| Confidence quality would meet expectations | Budget (3.2) | Mid-range (4.2) | Airbnb (4.6) | Upscale (5.3) |
| Comfort | Budget (3.2) | Mid-range (4.3) | Airbnb (4.8) | Upscale (5.6) |
| Cleanliness | Budget (3.4) | Mid-range (4.6) | Airbnb (4.9) | Upscale (5.8) |

Supposed Airbnb strengths

(1 = Exceptionally poor, 6 =Exceptionally good)

| | | | | |
|----------------------------------|-----------------|--------------------|------------------|-----------------|
| Uniqueness (non-standardization) | Budget (2.2) | Mid-range (2.6) | Upscale (3.6) | Airbnb (5.5) |
| Local authenticity | Budget (2.7) | Mid-range (3.1) | Upscale (3.4) | Airbnb (5.5) |

Price vs. all tourism accommodation in the destination

(1 = Very low, 6 = Very high)

| | | | | |
|-------|-----------------|-----------------|--------------------|------------------|
| Price | Airbnb (2.8) | Budget (3.3) | Mid-range (4.2) | Upscale (5.2) |
|-------|-----------------|-----------------|--------------------|------------------|

Looking first at hotels' supposed strengths, Airbnb guests expect the service to generally outperform budget hotels and underperform upscale hotels, with varied expectations in comparison with mid-range hotels. Looking at Airbnb's supposed strengths, Airbnb guests expect the service to vastly outperform hotels of all classes. Finally, Airbnb is perceived as much cheaper than even budget hotels.

Hotel guests likely hold different expectations than Airbnb guests, but it is still noteworthy that Airbnb guests have such apparent confidence in the service. The finding that Airbnb guests feel their hosts can outperform both budget and mid-range hotels with regards to cleanliness, comfort, and quality assurance should be concerning for hoteliers, and it suggests hoteliers should not dismiss Airbnb due to its supposed substandard quality. Even though Airbnb struggles along certain attributes, its guests are seemingly willing to overlook such weaknesses. These findings highlight the difficult challenge Airbnb poses for hotels – it generally is cheaper, offers a unique experiential aspect, and still performs well in areas where hotels should excel.

The findings also highlight areas where Airbnb could benefit from improvements. Concerns regarding security and the ability to resolve unexpected problems underscore the challenge Airbnb faces in determining the degree to which it wishes to extend beyond being a matchmaking service and maintain involvement in guaranteeing guests' experiences. The ease of placing a reservation is another area where Airbnb could improve. The introduction of "[Instant booking](#)" is likely helping, yet Airbnb still would probably benefit from advertising that demonstrates how simple it is to use Airbnb for the first time. Finally, the ease of checking in/out was the one attribute for which Airbnb was not expected to outperform any of the hotel classes. Airbnb should explore creative ways to facilitate key exchanges, such as partnering with businesses like Starbucks and Subway, who could house security pad-enabled key boxes.

Looking towards the future, it is likely there will be increased convergence between Airbnb and hotels as both strive to imitate some of the other's strengths. While Airbnb does not want to sacrifice the authentic, personal touch that characterizes its accommodations and helps define its brand, it will continue experimenting with ways to provide a more reliable and professionalized hospitality experience, and will continue pushing further into the lucrative business travel market. Efforts to encourage a more professionalized experience relate directly to Airbnb's regulatory battles, as the (essentially commercial) full-time multi-unit operators who generate a sizeable portion of Airbnb's bookings, and are especially targeted by policymakers in numerous jurisdictions, also are arguably best equipped to offer guests a more reliable and professional experience.

On the hotel side, major hotel corporations will continue working to develop properties and launch brands that have a more unique and authentic local feel (e.g., [The Unbound Collection](#) and [Centric](#) by Hyatt, and [Red](#) by Radisson), and that provide cheaper, smaller rooms with inviting public areas for interaction (e.g., [Tru](#) by Hilton and [Moxy](#) by Marriott). Moreover, Airbnb will likely inspire hotels to disperse beyond traditional tourism areas and into more residential neighbourhoods where cheaper real estate costs will permit lower prices, and the residential environment will increase the perception of local authenticity.

Conclusion

Airbnb has quite rapidly shifted the entire tourism accommodation landscape. It has done so by introducing an innovative product that appeals to a broad range of consumer motivations, which are felt at varying levels by different guests. The sharing economy, combined with modern internet and mobile technologies, has clearly produced some incredibly practical and widely desirable products, and Airbnb's unique value proposition presents a special challenge for traditional accommodations. While the threat that Airbnb poses to traditional accommodations remains a matter of much debate, it would be short-sighted for hoteliers to dismiss Airbnb or discount its potential future impacts. Airbnb remains a young company, and its broad effects on the tourism accommodation sector will only increase as time goes on and more guests are drawn to its accommodations.

Trust in the sharing economy: the AirBnB case

Trust in the
sharing
economy

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Abstract

Purpose – The purpose of this paper is to examine sharing economy online marketplaces with the aim of understanding how trust perceptions form and get communicated through sharing economy platforms.

Design/methodology/approach – The authors build on online user comments and reviews as aggregated by independent third-party websites, and apply a qualitative analysis.

Findings – The findings show that the quantity of information and communication are important drivers towards building trust perceptions, while an overall lack of interaction between users and the marketplace provider intensifies perceived risks.

Originality/value – The authors validated the importance of trust and the authors have illustrated that the critical conditions that hinder trust formation are information asymmetry as well as the lack of interaction. What is also an interesting implication is that the impact of both of these can be exacerbated when there is a perceived lack of support among users and between them and the marketplace operator.

Keywords Trust, Information asymmetry, Sharing economy, AirBnB, Feedback mechanisms

Paper type Research paper

1. Introduction

The global economy is witnessing the emergence of the “sharing economy”, a form of electronic marketplaces where under-utilised resources and assets are re-utilised or re-combined to create value. Platforms such as AirBnB and Uber have changed the way people travel and find a place to live. What these business models have in common is the collaborative basis operations, where peers transact with unknown others. For example, in the case of AirBnB, individuals rent out part, or their entire home for short stays. In this example, engaging with the platform entails an individual placing their trust in unknown and therefore untrusted others. Furthermore, the unknown others are private individuals, rather than familiar service providers who could be potentially perceived as trustworthy due to their reputations (Lai and Tong, 2013).

Trust perceptions are critical for the success of such platforms, and their highly dynamic, self-regulating and fragile nature necessitates fresh examination of such issues. The greatest difference between sharing economy platforms and more conventional ones is that transactions are initiated online but concluded with an element of physical interaction when the online parties meet offline and face-to-face. This suggests that within this context there is a risk for a seller in terms of, for instance, the sharing of personal assets, or their personal residence location being identified, which is less intense in other contexts, and less researched by the existing literature (ter Huurne *et al.*, 2017).

This study considers the issues of perceived trust emerging from the use of sharing economy marketplaces, with a particular focus on how these are communicated through the available online review systems. Due to the emergent and salient features of the online ecosystems, research into such e-marketplaces faces new challenges. For example, the peer review system on the backbone of a distributed network of peers of any background and from anywhere is unprecedented in any business sector. Text feedback is becoming ever more popular and contains rich qualitative information about perception, preferences and



behaviour with research showing that online reviews exert significant influence on other users' buying choices (Matzat and Snijders, 2012).

Our aim is to understand how trust perceptions form within the context of the online review system of a sharing economy marketplace. This allows us to understand the factors around which existing users tend to focus their reviews, as well as identify how these get communicated to prospective users. To achieve this aim, we formed the research question:

RQ. What are the factors that drive trust perceptions and are communicated through the online review system of a sharing economy marketplace?

To address this, we draw on user reviews published in AirBnB's own online platform and an independent review site that publishes user feedback for different online and offline businesses. In this paper, we consider both the technology used, as well as the wider context within which the outcomes of communication take place, and present an interpretive case study in order to offer a rich description of how trust and risk emerge within these marketplaces (Orlikowski and Baroudi, 1991).

The paper is structured as follows. First, the existing literature is reviewed to discuss core concepts pertaining to trust. Then we present our approach for analysing our case study that leads to offering details concerning our methods. This is followed by a discussion of our findings and our concluding remarks.

2. Background literature

2.1 Antecedents of trust

Trust typically denotes a person's beliefs that others will behave as expected, socially appropriately and that they will fulfil their obligations (Fan *et al.*, 2018). In addition, trust can be seen as one's willingness to be vulnerable to another's actions based on expectations and previous behaviour (Cheng *et al.*, 2019). In our study, we consider trust as a guest's belief that the other party (specifically the AirBnB host), will behave appropriately and in a benevolent manner, with the aim to provide them with a good guest experience, based on the experiences of other guests with the same host.

Within online environments, and when compared to face-to-face environments, it is more difficult to gain one's trust and further maintain it (Chen and Cheung, 2019). Within an e-commerce environment specifically, Ratnasingam (2005) argues that trust has two different forms: trust in the technology and trust in the partner. The former relates to assurances, certifications and beliefs that the technological infrastructure and the policies can minimise the risks, whereas the latter relates to one's dispositional trust, and an evaluation of one's competence, among other things (Mayer *et al.*, 1995). As far as the antecedents of trust are concerned, McKnight *et al.* (1998) suggest that these are the institutional mechanisms (institution-based trust), dispositional trust (personality-based trust), familiarity and one's first impression of the other party (knowledge- and cognition-based trust) and a cost-benefits analysis (calculative-based trust).

Considering these one by one, "institution-based trust" may take the form of clear and binding rules and regulations (e.g. escrow) pertaining to the mode of transaction (Pavlou and Gefen, 2004). Indeed, when rules and regulations are in place, users are more confident that the other party will behave as expected, and experience a greater level of trust, assuming risks away (Gefen, 2002). "Cognition-based trust" is often addressed through the concepts of privacy and security protection, and information quality (Kim *et al.*, 2008). Privacy and security protection pertain to user's perceptions that the necessary security measures exist and that sensitive information will remain protected. Information quality, on the other hand, relates to the accuracy and the completeness of the available information, but also to the ease of locating and using it (Miranda and Saunders, 2003). Next, "knowledge-based trust" is seen as the combination of one's perceived competence, benevolence and integrity (Lin, 2011) and highlights the importance of

shared goals and understanding (Chen *et al.*, 2014). Further, knowledge-based trust feeds into expectations where the more information is offered the easier it is to predict behaviour with a likelihood outcome of trusting the other party (Matzat and Snijders, 2012). Lastly, “calculative-based trust” can be seen as a cost-benefit analysis whereby users assess the costs in relation to the benefits emanating from their collaboration (Gefen *et al.*, 2003). Generally, it has been shown that the perceived risk tends to decrease as perceived benefits increase and vice versa (Gefen *et al.*, 2002). Within this context, trust suggests balancing the rewards from maintaining a relationship with the other party to the costs from resolving it (Zhao *et al.*, 2017).

2.2 Trust in the sharing economy

Trust is pivotal to the normal conduct and survival of any online business (Subba Rao *et al.*, 2007) and is of the utmost importance for users’ continuance intentions towards a particular online service (Zhou *et al.*, 2018). For sharing economy platforms, it is even more crucial (Cheng *et al.*, 2019). Despite the value of institution-based mechanisms, particularly when transacting with someone for the very first time, the concept is also tied to social dimensions and structures, that can only produce trust when they refer to well established and stable over time institutions (Lane and Bachmann, 1996). This is not the case for sharing economy marketplaces (Laurell and Sandström, 2017), where participating parties may not be particularly familiar with the marketplace’s underlying structures and operations. Similarly, existing users may have expectations that relate more to previous experiences in similar yet different environments, such as regular e-commerce and hospitality contexts, where the brand name and the reputation of a seller can facilitate trust (ter Huurne *et al.*, 2017). Therefore, we expect that risk will relate not only to one’s past experience with the same technology or service, but also to the accumulated experience of using alternatives and similar platforms and marketplaces.

In the sharing economy, users will eventually have face-to-face interactions when making use of the underutilised resources, which can be experienced as infringement of one’s privacy (Teubner and Flath, 2019). Therefore, some assurances are necessary to meet privacy and safety expectations. This is essential since trustworthiness, fair treatment and keeping promises can lead to continuous use of the service (Pavlou and Dimoka, 2006). Information quality and availability can contribute significantly toward strengthening cognition-based trust (Otterbacher, 2011), as the relevant provision would counteract the information asymmetry that typically exists in such contexts (Yoganarasimhan, 2013). This is also relevant for facilitating knowledge-based trust perceptions, where users, most often, transact with other parties who are individual users (vs established businesses) and therefore, it is difficult to straightforwardly evaluate the reputation of another user and be confident they will behave in good faith. However, opportunistic behaviour is always possible, and the sharing economy has increased the scope for uncertainty, where peer-to-peer letting does not involve change of ownership.

Having said that, perceived risk is related to perceived benefits (Gefen *et al.*, 2003). As products and services do not get exchanged in a permanent fashion, “sharing” is not without financial gain for those involved. Instead, it is expected that all will gain something and that individual users can access more easily and for lower costs assets that they could not otherwise own or use through more traditional routes. Therefore, from a cost-benefit analysis, participants will need to weigh the perceived benefits and judge whether these outweigh the possible costs of participating (Pfeffer-Gillett, 2016).

2.3 The impact of online reviews

Existing literature highlights the importance of feedback, such as online reviews and reputation systems (Noorian and Ulieru, 2010). These approaches can be used for appreciating one’s intentions (Pavlou and Dimoka, 2006) and online reviews are treated as

“a major form of computer-mediated communication” (Singh *et al.*, 2016, p. 1112) with an important impact (Torres *et al.*, 2015). For the hospitality sector, Siering *et al.* (2018) argue that such user generated content is actively used by prospective travellers as an information source for lodgings and destinations and for making their decisions.

Today, there is increased competition among hospitality businesses to achieve the highest possible ratings from their guests (Gössling *et al.*, 2018). As travellers have access to rich information (both in quantity and quality terms), they are able to assess the offerings of accommodations (Casaló *et al.*, 2015). For two-sided review systems in particular, where both guests and host can leave reviews for each other, as in the case of AirBnB, it has been found that reviews are generally more positive (Bridges and Vásquez, 2018), but that negative reviews are often perceived as more credible and authentic (Zhang, 2019). In all cases however, online reviews in such platforms are critical because they help build trust (Bulchand-Gidumal and Melián-González, 2019).

As this study is focused around the concept of trust and how such perceptions are communicated through review systems, it is important to note that online reviews are used by users not only for making a decision, but also as a way to get insight into somebody else’s prior experience (Torres *et al.*, 2015). In other words, online reviews can be used as an information source into prior consumer experiences and for disentangling the different service features that impact on user perceptions (Siering *et al.*, 2018). Moreover, online reviews tend to be seen as more useful compared to more standardised information (such as security assurances and certifications), especially because they communicate the actual experiences of others (Cheng *et al.*, 2019).

While previous studies on trust have thoroughly examined different types on online marketplaces, particularly with respect to the sharing economy research on trust is comparatively scarce (ter Huurne *et al.*, 2017). In this study, we posit that the availability of textual information via online reviews provides numerous opportunities for both guests and hosts. Guests can use them to proceed with an informed decision making regarding their choices. Hosts can use the feedback towards understanding which services are valued most and identify specific ways towards supporting particularly their guests’ trust perceptions. In doing so, we pay attention to the fact that communication between participants happens both online and offline and we therefore focus on how trust perceptions get communicated via an online review system, acknowledging that users leave feedback aiming precisely to convey their own experiences to others, while communicating both facts and opinions (Otterbacher, 2011).

3. Case study description: AirBnB

AirBnB is a community-oriented online marketplace that enables individuals to share, for a profit, their spare space, such as rooms or flats. As this study is focused on trust perceptions communicated through the online reviews, our description of the case is primarily devoted to aspects of the user interface, the communication tools and the review system.

The most important feature for enhancing trust is AirBnB’s review system. The review system allows guests and host to provide reviews and ratings on a five-star scale. The review system underwent several modifications over the last years. In 2014, to reduce the risk of reprisal, AirBnB introduced a 14-day period during which host and guest can write a review that is only published either after both parties have completed their review or at the end of that period. The aim of this policy is to reduce the fear of retaliation in the case of bad reviews. AirBnB also introduced a separate facility to leave private feedback, enabling members to express their dissatisfaction without their feedback being made public. In August 2017, following an intervention of the Competition and Market Authority (UK), a further modification to the review system was introduced by allowing guests who either cancel their stay or leave early, because the property does not meet their expectations, to write a review.

AirBnB participation is subjected to rules and regulations set forth by AirBnB's Terms of Service. Guests can search for a lodging and rent it following the host's approval. This suggests that the host can decline any booking with no penalties. If the host does accept the request and confirms the booking, the host can still cancel the booking at a future stage; in this case, both the guest and host are subjected to penalties with the service fees of the intermediary being non-refundable and a financial penalty for the host. Prospective guests are also able to cancel a booking. Similarly, the service fee is not refunded, and the booking fees may be refunded, but at the host's discretion. Regarding payments, AirBnB requires users to make advance payments of the entire amount (including the firm's commission), which are withheld until the period of the booking, even if the booking is for a year ahead. Finally, AirBnB accepts no liability for the use of its platform, and explicitly informs users that this should adhere to local regulations and legislation (e.g. zoning, taxation).

4. Method

This study is focused on trust perceptions within the context of the sharing economy, and we use the AirBnB marketplace as our case study. Our aim is to understand how trust perceptions form within the context of the online review system of a sharing economy marketplace and how these perceptions are communicated among participants through the online review system of such platforms. The specific research question that we address is "What are the factors that drive trust perceptions and are communicated through the online review system of a sharing economy marketplace?" and our objective is to identify the features of online and offline interactions between hosts and guests that are communicated to prospective users with the aim to help them build trust perceptions.

In this study, we chose the design of a single case study around the AirBnB marketplace because we consider it to be a unique case (Yin, 2003), which has experienced extreme growth in a very short time and to date, the most popular platform within the hospitality industry. This design allows us to investigate users' trust perceptions within the real life context, and to develop an in-depth understanding without decontextualising our empirical material from its sociocultural context (Darke *et al.*, 1998). Further, this design allows us to provide a rich description of the factors driving trust perceptions and how these get communicated through the online review system, drawing from the existing literature but at the same time remaining sensitive to emerging concepts. Against this background, we adopt a bottom-up approach following the tradition of interpretivism, where data collection and analysis go hand in hand, and existing literature acts as a sensitising device (Choudrie *et al.*, 2016).

4.1 Collection and analysis of empirical material

To ensure data (time and space) triangulation, we collected primary data from Inside AirBnB (insideairbnb.com), an independent website that publishes data from the AirBnB platform. Inside AirBnB periodically collects and publishes large-scale data sets from AirBnB listings, but after verifying, cleaning and aggregating them. An independent perspective was provided by material collected from Trust Pilot (trustpilot.com), a third-party review website. AirBnB's feedback mechanism has often been questioned for its trustworthiness as it is suggested that it presents only positive reviews. To overcome this issue and to prevent any bias, we used Trust Pilot's data to capture uncensored reviews (Edelman and Luca, 2014; Zervas *et al.*, 2015).

From insideairbnb.com, we focused on and collected data from a single city; namely, Athens, Greece. We opted for choosing a single city rather than the complete collection of AirBnB comments because it would be unfeasible to examine the overall comments for all the listings from all the cities AirBnB operates in using a qualitative lens. Further, we specifically chose Athens over other destinations because Athens is a year-round, popular tourist destination, which has witnessed significant growth in AirBnB listings over the

recent years; thereby, offering a rich data set. Trustpilot.com offered a smaller data set, which led us to collect all the reviews, irrespective of the destination. From both platforms, we collected data across two periods, January–April 2016 and January–April 2017 for comparison purposes and data triangulation. We filtered reviews written in languages other than English, and we also excluded shorter reviews (less than ten words) so as to ensure data saturation (Fusch and Ness, 2015). In addition to customer reviews, data triangulation was achieved by collecting and analysing a range of secondary data sources. Such secondary data derived from market reports, and various online articles that allowed us to familiarise ourselves with the firm’s policies, interpret its Term of Services, and get corroborating evidence for any claims found within the review comments.

The data were collected and analysed laterally to understand our case study while delving deeper into it, and to realise the point of theoretical saturation after gathering enough data from the multiple sources. It is for this reason that data from a second period were included. For further validation and verification purposes of the secondary and primary data, investigator triangulation was used where two authors worked on the coding of the data. Following their coding, the team of four authors would meet and discuss the findings in order to identify possible discrepancies and arrive at a mutually agreed interpretation (Sarker *et al.*, 2001). This protocol was followed to prevent any bias as two researchers acted as the “devil’s advocate”, and questioned the emerging codes and findings, which is a strategy often adopted by researchers (Choudrie *et al.*, 2016). Table I includes a summary of our data collection and analysis, detailing the relevant stages.

During the initial stage of the analysis, we proceeded with a preliminary exploration of the data, looking for words and expressions that were viewed to convey trust perceptions. We note here that there were only two among 1,265 comments with a direct reference to trust: “don’t hesitate to trust Emmanouil for your stay!” (ID: 5952749) and “I highly recommend this flat, they are very trusted” (Comment 70149743), while we found solely three with a direct reference to risk: “AVOID at all cost! Not worth the risk” (ID: 66363507), “You won’t have the risk of what happened to us” (ID: 67152729) and “I suppose this is one of the risks when you book a private place from a website” (ID: 69462656). This shows that guests typically don’t refer to trust and trust perceptions directly. As a result, it was necessary to extract trust indirectly from the collected comments, using the existing literature on trust as our main guidance and sensitising device. Specifically, during the second stage, we extracted trust in line with the existing definitions and descriptions of trust perceptions as illustrated in McKnight *et al.*’s (1998) work on institution-based trust,

| Stage | Description of the process |
|---------------------------------------|---|
| 1. Familiarisation | Review of the empirical material by reading and rereading the collected online reviews |
| 2. Trust Extraction | Review of the empirical material, coding across the entire pool of comments around the four types of trust identified in McKnight <i>et al.</i> ’s (1998) |
| 3. Identification of codes and themes | Coding of empirical material around first-order themes (all codes emerged directly from the data, e.g., Communication, Hospitality – Table II), and second order themes, where first-order themes were grouped together into larger categories, e.g., Level of Interaction – Table II). |
| 4. Review of codes and themes | Two authors reviewed the themes, ensuring that the reflect accurately the topic of research, that they are mutually exclusive (no overlaps between codes) and that they are exhaustive (all relevant material coded into a code) (Miles and Huberman, 1994) |
| 5. Reporting Findings | Final analysis of selected quotes, development of chains of evidence (Tables II and AII), revisiting the literature and developing findings |

Table I.
Stages of data
collection and analysis

Source: Adapted from Li *et al.* (2019)

cognition-based trust, knowledge-based trust and calculative-based trust. For example, McKnight *et al.*'s (1998) note that one's perceptions regarding another's competence, benevolence and integrity feeds into their trust-related perceptions (knowledge-based trust) and that privacy perceptions feed into trust as well (cognition-based trust). As shown in Table II, we coded each guest comment along one or more types of trust. For example, Comment ID 71597530: "Nikos is a real host and a very friendly guy, easy to talk with and clear to communicate with, before and during our stay" was coded under knowledge-based trust, because the comment suggests that the guest considered their host as person who is benevolent and attentive to their guests' needs, and can therefore be trusted.

Following the extraction of trust, we moved to identifying a preliminary set of first-order themes (e.g. Communication, Hospitality and Unpleasant Interactions). These themes emerged directly from the empirical material. Next, first-order themes were merged together into tightly related concepts, while some were relabelled based on our continued comparative approach to the data and the themes. This resulted into forming our second order themes, i.e., our main categories of Level of Interaction, Information Asymmetry and Support Provision. In the next stage, two of the authors reviewed in consultation the resultant themes in order to ensure that the developed themes reflect the topic of the study, that they are mutually exclusive and that the coding scheme in its totality is exhaustive, thus further strengthening the validity and the rigour of the study (Miles and Huberman, 1994). The final stage entailed the development of the study's chains of evidence (i.e. Tables AII and II including our first and second order themes, with example narrative for each theme).

5. Findings and analysis

In this section, we contextualise the discussion around the identified themes and categories (Table II). Then, an explanation is provided of how trust perceptions are developed within the particular sharing economy marketplace and how these are communicated via user reviews among the participants.

5.1 Drivers of trust: information and interaction

Building trust is seen as a way of minimising perceived risks and their impacts, particularly when the context of interaction is somewhat impersonal (Lai and Tong, 2013). At the same time, trust relates to one's expectations about the other party's behaviour, usually along the dimensions of integrity, benevolence and competence (McCole *et al.*, 2010). With these in mind, we analysed the data with the aim of identifying the underlying conditions that lead to trust development or collapse as communicated through online reviews. While there are many different factors that can be seen as relevant to trust, such as location, room aesthetics and room description among others (Cheng *et al.*, 2019), in this study we have focused specifically on those factors that pertain to communication between guests and hosts because we are interested in identifying on the relationship between the two parties rather than the accuracy and representation matters of listings in the platform. Our analysis showed that the underlying conditions that support or obstruct trust formation and that pertain to the relationship and communication between the two parties are a combination of information asymmetry and lack of interaction between guests and hosts, exacerbated by the provision or lack of support.

5.1.1 Level of interaction. Based on our findings, users highly valued their host's promptness in responding to requests, prior to and after arrival. This was because guests viewed them as helpful gestures and evidences of hospitality (Communication, Table II). For example, a user commented that their host: "is a real host and a very friendly guy, easy to talk with and clear to communicate with, before and during our stay" (ID: 71597530). Similarly, when communication is poor or virtually non-existent, users emphasised this in their reviews ("I messaged Miglen multiple times and had no response at all until over a day later", ID: 65225788). This suggests

| Categories | First-order themes | Narratives (examples) |
|--|--|--|
| Level of Interaction | Communication | “Prior to my visit Miglen was extremely helpful. Gave me tips as well as ideas on what to do once I arrived at Athens” (ID: 65225788) <i>Cognition-based trust</i> |
| | | Nikos is a real host and a very friendly guy, easy to talk with and clear to communicate with, before and during our stay (ID: 71597530) <i>Knowledge-based trust</i> |
| | Hospitality | I told her that if she had told us we could have moved out in the morning. She said that she told us but we did not understand (ID: 69462656) <i>Cognition-based trust, knowledge-based trust</i> |
| | | I messaged Miglen multiple times and had no response at all until over a day later (ID: 65225788) <i>Cognition-based trust</i> |
| | | It is like she was hoping we weren’t there to have someone else use that apartment. (ID: 65225788) <i>Knowledge-based trust</i> |
| | | we felt immediately at home there (ID: 58398137) <i>knowledge-based trust</i> |
| | | Dorota came all the way to airport to pick us up as we had a late night flight, we were very much pleased with this gesture of hers. (ID: 71503683) <i>Knowledge-based trust</i> |
| | | Upon arrival there was a woman Agnes there to meet us she helped us out by telling us where we could and places to see (ID: 65225788) |
| | | This was my first experience with airbnb and i must say totally worth it. Panos made me feel right at home from the first min of my visit (ID: 58195630) <i>Calculative-based trust</i> |
| | | In the end I was accused of stealing a room aroma diffuser and a plastic coffee shaker both worth 7 euros (ID: 66363507) <i>Knowledge-based trust</i> |
| Property is good BUT Host and her relatives are a NIGHTMARE to deal with (ID: 66363507) <i>Calculative-based trust, knowledge-based trust</i> | | |
| Privacy and Safety | In one afternoon a guy opened the main door and came inside with a Egyptian guy who wanted to stay there in another room [...] Overall not a very good experience for us and not very safe either (ID: 71503683) <i>Cognition-based trust</i> | |
| Information asymmetry | Rule accessibility | I wonder if Airbnb states these rules somewhere, but they are hard to access (Comment 95) <i>Institution-based trust, cognition-based trust</i> |
| | Unaware of rules | A lot of the negative reviews seem to be directed at the way Airbnb refuses to give refunds when there are extenuating circumstances (like being scammed) (Comment 95) <i>Institution-based trust</i> |
| | Unreliable review | “There’s no way to give a negative review on Airbnb as the hosts can block” (Comment 145) <i>Institution-based trust</i> |
| | Accuracy of listing | The description of the apartment is perfect and what it is (ID: 71597530) <i>Knowledge-based trust, cognition-based trust</i> |
| | Condition of listing | Her flat is on 1st floor and the corridors are bit smelly and dark even during the day and you have to put the light on manually [...] But may be for this money and may be in Athens you can’t expect much more |

Table II.
Categories and themes

(continued)

| Categories | First-order themes | Narratives (examples) |
|-------------------|----------------------------|---|
| | | than this (ID: 71503683) <i>Cognition-based trust</i> |
| | Condition of neighbourhood | We arrived to Athens late at night and we were a little surprised with the way the neighbourhood looked. There is tons of graffiti and here in the USA that is usually an indicator of a bad neighbourhood (ID: 65225788) <i>Cognition-based trust</i> |
| | Importance of reviews | Having read such enthusiastic reviews of this property, we were prepared to be disappointed. Not a bit of it! (ID: 58398137) <i>Cognition-based trust</i> |
| | Impossible to review | Even though we stayed a horrible 12 days our booking was cancelled by the host, therefore we were unable to post a review warning others (Comment 145) <i>Knowledge-based trust, institution-based trust</i> |
| | Real Home | Very cosy, it is a real home and everything is very convenient and comfortable (ID: 71597530) <i>Cognition-based trust</i> |
| Support Provision | Support | "The response from Airbnb was very good when I called to say that the host became very violent and abusive when I simply asked if their baby was OK after hearing it cry non stop all day" (Comment 145) <i>Knowledge-based trust, institution-based trust</i> |
| | Helpful host | [...] but she personally was very helpful with whatever we asked. (ID: 71503683) <i>Knowledge-based trust</i> |
| | Indifferent | AirBnB have not taken down the listing even though there was another review complaining about the same noise issue (Comment 145) <i>Institution-based trust</i> |
| | Platform mediated | Was able to win the case with Airbnb. (ID: 66363507) <i>Institution-based trust</i> |

Note: The extended comments and reviews can be found in Table AII in the Appendix

Table II.

that maintaining a two-way communication channel, not only before arrival, but also during the stay is important for guests visits and for the host since the quality and the promptness of the communication serve as cues for inferring credibility and integrity (Sparks *et al.*, 2013). This holds even in those instances when guests seem not to have met their hosts: "I never met foris but it felt during our conversations that I can trust him in need. [...] Anyway I recommend Foris's apartment in many kinds" (ID: 62596224).

Next, another important theme that emerged from our analysis is hospitality (feeling unwelcome, felt at home, Table II). As trust forms when one perceives the other party as benevolent, competent and with integrity (Ridings *et al.*, 2002), being hospitable feeds into one's competency to act as a host; therefore leading to trust perceptions. Indeed, a user highlighted that their host made them feel "immediately at home there" (ID: 58398137) with our analysis showing that users quite often leave cues in their reviews about their host's efforts to make them feel welcome and their own appreciation in relation to trust perceptions:

I highly recommend you take time to visit with them as they have a lot of great insights to share about Athens and Greece. [...] I am happy to refer anyone to Stratos for an accommodation as he is very trustworthy, honest, and friendly. Would definitely stay at his place again. (ID: 69043244)

However, most frequent were the comments highlighting the quality of communication and upon arrival of the interaction between guests and hosts (unpleasant interactions, Table II). This was evident by users reflecting their host's friendliness, their pleasantness and perceptions regarding their relationship with them. For instance, one user reflected on the hosting and suggested that he "is a real host and a very friendly guy, easy to talk with and

clear to communicate with, before and during our stay” (ID: 71597530). As shown earlier, being able to communicate promptly is of paramount importance with users emphasising skills such as, the host is “easy to talk with” being important. While the extreme majority of reviews tended to praise the hospitality of the hosts, there were quite a few revealing less than ideal experiences:

The host became very violent and abusive when I simply asked if their baby was OK after hearing it cry non stop all day. [...] I feel it's very dangerous for anyone to stay at that apartment. (Comment 145)

Such reviews are primarily posted in turstpilot.com rather than in AirBnB. However, even in AirBnB's own review system, there are a few instances revealing similar experiences: “Property is good BUT Host and her relatives are a NIGHTMARE to deal with. [...] Not worth the risk” (ID: 66363507). In such instances, users considered it risky to choose a particular host, with negative interactions directly affecting trust perceptions.

Finally, for the theme of level of interaction level, emerging dimensions were privacy and safety. From our findings, it is evident that there were quite a few situations of users feeling uncomfortable, or having their privacy breached by the host:

She kept coming to the apartment almost every day when we were not there and touch our stuff. We did not expect that as we booked the whole place and it did not say in the house rules that the host was going to use the apartment. (ID: 69462656)

Similarly, another guest discussed that:

One afternoon a guy opened the main door and came inside with a Egyptian guy who wanted to stay there in another room. [...] Overall not a very good experience for us and not very safe either. (ID: 71503683)

Privacy has been shown to be a direct antecedent of risk, while safety, or security, to be a direct antecedent of trust (Chin *et al.*, 2018). Therefore, when either of these are lacking, trust perceptions are difficult to form.

5.1.2 Information asymmetry. AirBnB users typically referred to the marketplace's review system (unreliable reviews, impossible to review, Table II). They criticised the implemented policy of providing a review by the platform as unfair due to not being able to enter a negative posting: (“Even though we stayed a horrible 12 days our booking was cancelled by the host, therefore we were unable to post a review warning others”, Comment 145). They pointed out that with this system in place “There's no way to give a negative review on Airbnb as the hosts can block” (Comment 145). They explained that when a booking is cancelled, neither the host nor the guest can leave a review, regardless of why or when the cancellation occurred. In such instances, the marketplace posted an auto-generated standardised text indicating that one party cancelled the booking; however, this conceals narratives that may be viewed as negative experiences, while it frames the impact of a cancellation in a less damaging manner:

So here we are, already in Florida and trying to find a place to stay during the busiest time of the year. I can't begin to describe my level of stress. (Comment 120)

Within this context, it is worth mentioning that despite the distortion due to the policy, previous reviews were still an integral element for choosing a listing, with users referring back to these in their own reviews in order to signal their agreement or disagreement: “Having read such enthusiastic reviews of this property, we were prepared to be disappointed. Not a bit of it!” (ID: 58398137). It is also worth noting that AirBnB has been forced to change this policy by the UK Competition and Markets Authority, with effect from 31 August 2017 (Brignall, 2017).

To alleviate information asymmetry, users commented on the accuracy of the listing's provided information and its condition (accuracy of listing, condition of listing, real home, Table II). For example, a user directly noted that "The description of the apartment is perfect and what it is", further adding that "it is a real home and everything is very convenient and comfortable" (ID: 71597530). Signalling "real homes" vs "professional renting companies" is mentioned often among user reviews ("This apartment is not from a private host, but a professional renting company" ID: 71625285). This is worth noting particularly because AirBnB operates within the sharing economy, and aims to provide authentic tourist experiences, where people can experience a city just like locals and interact with local hosts who "can teach you something new about the culture" (Mildengall, 2017), which is less feasible when transacting with a business (i.e. a hotel or a professional renting company).

A third dimension related to communicating the Terms of Service and the House Rules via the platform (for each listing). Findings showed that the overall quality of the marketplace's website with regards to clarity and transparency is low that prohibited participants from accessing and appreciating the terms of service (rule accessibility, unaware of rules, Table II). A user noted that while seeking new bookings, booking cancellations, or complaints information they are faced with what is perceived to be a poorly designed website ("the website lures you in with affordable looking places that range from \$50-80 a night until you view the entire listing and it tells you there's a \$30 cleaning fee and \$20 service fee. [...] most of these problems occur because the AirBnb website is poorly functioned which can lead you to book the wrong dates and number of guests", Comment 174). This comment exhibited an unawareness of the platform's rules, due to an inability to easily access the pertinent information. Cross examining other comments, there appeared to be some consensus that it is quite difficult to locate and interpret information: ("I wonder if Airbnb states these rules somewhere, but they are hard to access. [...] I'm honestly still confused, and their legalese/terminology is hard for me to understand; and, I'm American and speak fluent American-English. The website layout is exhausting and confusing, which is the price they pay for looking flashy and trendy. [...] The rules and expectations are not made clear on the website, at least not for a first-time user; and, their terminology is non-specific and confusing", Comment 95). As a result, information asymmetry endured.

5.1.3 Provision and lack of support. While information asymmetry and lack of interaction related to guests' and hosts' encounters, the theme of support provision related to both these groups, as well users' encounters and interaction with AirBnB. If and when users experienced problems, frustration or other types of risks, and when particularly these were extreme, users typically attempted to resolve the situation by seeking support in the form of communicating with their host or directly with the marketplace provider. For example, one guest commented that following their unpleasant interaction with their host, they turned to Airbnb for intervention and support: "Luckily I had receipts of all the sheets, pillows and towels I bought the day I arrived in Athens and was able to win the case with Airbnb" (ID: 66363507). In this case, the marketplace provider acted as a mediator towards an issue's resolution. In other cases, however, the involvement of AirBnB was not as well received because the user evaluated them as being indifferent to their problem ("Airbnb have not taken down the listing even though there was another review complaining about the same noise issue", Comment 145).

Understandably, comments pertaining to the conduct and support provision from AirBnB are not published at the platform's review areas. Instead, they were all derived from the trustpilot.com website, with some posts published by hosts, rather than guests. The negative comments in this respect all concurred about the lack of support from the marketplace should any problem arise ("I have been a host on AirB&B for around a year for my beach house. [...] I now discover there is NO ONE at Air BB to talk to or get advice and

the only advice I had on their help list was go to the local authorities”, Comment160). In addition, a few of these comments directly related the lack of support to their own personal safety and the platform not being trustworthy:

Airbnb did not ban these guests or even contact them directly. [...] Airbnb only cares about protecting itself, not you. [...] I strongly advise anyone thinking of hosting to JUST SAY NO! Airbnb's host guarantee is a scam. (Comment 17)

As far as the guest-host interactions are concerned, when hosts strived to accommodate their guests, guests valued it very highly, especially in their times of need, which underlines the importance of support provision:

Our host was very, very welcoming, even when there was a slight miscommunication in our check-in time, she still took care of it and of us and provided us with comfortable accommodation without letting it be a problem!. (ID: 71377792)

In many instances, such support seems to be indispensable for trust formation, as guests find themselves in unfamiliar locations. Most users formally referred to this element when relating the level of support when interacting with one another.

6. Discussion

AirBnB is probably the most successful peer-to-peer platform in the hospitality sector. This was confirmed by the large numbers of reviews on AirBnB's platform and elsewhere, which further suggested that AirBnB is quite successful at matching travellers with hosts (Zervas *et al.*, 2015). It has therefore attracted and continues attracting the interest of worldwide travellers. By doing so, it has made a significant impact on the tourism and accommodation sector (Guttentag, 2015).

In our study, we identified two main conditions that support or inhibit trust; information asymmetry; and lack of interaction. The impact of information asymmetry surfaced as a criticism of the review system, where reviews are considered as unreliable, and where the impact and visibility of negative reviews seems to be minimised and controlled by the platform operator. While this tactic partially addresses the impact of negative reviews, which have been found to be more credible than the positive ones (Zhang, 2019), it does not tackle the impact the information asymmetry itself. However, our findings showed that its alleviation lends itself to the formulation of trust perceptions. As shown by the user comments, they do not instinctively accept the reliability of the positive reviews and approach them with scepticism. However, in all cases users actively and explicitly communicated their assessment with respect to the accuracy of the listing, their encounters with the host, the quality of the lodging and that of the neighbourhood, as well as frequently signalling whether the listing is from a renting company or a real home. In addition, on more than a few occasions there were explicit linkages between such comments and trust: “They explained everything and they were very patient. [...] I highly recommend this flat, they are very trusted” (Comment 70149743).

The above comment needs to be evaluated considering the complexity of the Terms of Service, and appreciating that users frequently don't even read them (e.g. Milne and Culnan, 2004), or simply cursory glance by them (“I clicked on something at checkout that says I agreed to this policy (despite my not even remembering seeing that)”, Comment 78), both of which further prohibit alleviating the inherent information asymmetry. Most importantly, in relation to trust formation, information asymmetry hinders significantly cognition-based and knowledge-based trust. Specifically, low quality, unavailability and inaccessibility of information as far as the provider's contact details and service fees are concerned, as well as the terms of service there are suggestions that cognition-based trust is difficult to form. Combined, it suggests that predictability in interactions with the marketplace provider and

the other parties will be low, while the insufficient and difficult to parse information will affect knowledge-based trust. This is further supported by a previous study within tourism research that showed trust perceptions relating directly with the quality of the information on travel sites, as well as its reliability (Bonsón Ponte *et al.*, 2015).

Our findings showed that the quality of interaction between guests and hosts was of paramount importance as positive perceptions could lead to future sales for the host and a better relationship between the guest and host. Generally, guests positive reviews signalled trust perceptions and their recommendations for future custom. Positive perceptions included, guests frequently referring to the promptness of hosts with regards to queries, responses by the hosts to the guests satisfactorily deal with, friendliness, and their competence as hosts. Considering that AirBnB and other sharing economy platforms operate on the basis that guests can build new friendships, this is particularly important. However, this relationship relies on the direct experiences of the guest and host rather than the platform. With regards to trust, our findings unearthed the elements that guests communicate within their reviews (“a real host and a very friendly guy, ID: 71597530; “cheerful, friendly and well organized hosts welcoming me with wine and spaghetti [...] very high standard in email communication – definitely 10 out of 10, and remains in touch for any assistance during your stay. [...] I highly recommend this modern apartment”, ID: 70744333). These elements reflect the hosts’ competency and benevolence, both of which directly relate to trust perceptions. That is, the guests consider the other party, i.e., the host acting in a benevolent manner (e.g. no misrepresentations, friendly character) and being competent enough to offer their services (hosting) (Pavlou and Gefen, 2004).

Finally, the cross analysis showed that the impacts of the aforementioned information asymmetry and perceptions with regards to level of interaction can be further exacerbated when users experience a lack of support from their hosts or the operator. This is especially true when disasters occur. Our findings suggested that support provision is not only integral for positive travel experiences, and therefore reviews; but a lack of it leads to poor interaction and intensified information asymmetry occurrences. The existence of a customer support infrastructure and the potential to successfully interact and communicate with, suggest that when seeking a resolution in adverse situations, a customer can contact their host or at least the provider, which offers assurances and support. In both cases, these aspects relate to trust building, and risk minimising. (Eid, 2011; Srinivasan *et al.*, 2002). Particularly for the sharing economy context, the ability to interact successfully with the provider and receive support from a customer service unit can act as a substitute of other, more formal support mechanisms for building institution-based trust or facilitating cognition-based and knowledge-based trust. In the case of the AirBnB platform, customer service and support are available through the firm’s corporate website and its call centre, which also operates an Emergency line support. Therefore, in extenuating circumstances or simply when additional information is sought (eg. support to contact a host, information on refund policy, among other things), users are directed to one of the aforementioned sources. Yet, as explained, their interaction with customer service is not always considered fruitful while in other cases, this may not even be possible. We consider that when support is lacking or is insufficient acts as the element that exacerbates user perceptions regarding risk and reduces trust perceptions. In other words, we consider that support acts as a cutting point, which pushes users towards evaluating the marketplace provider fairly negatively and considerations to disengage with them for future travels and business.

7. Conclusions

Trust is of the utmost importance for sharing economic platforms, as they combine both the uncertainty conditions of online marketplace, with the element of the face to face

interaction with unknown others. To date, few studies have investigated user motivation for using such platforms (Lutz and Newlands, 2018; So *et al.*, 2018), their impact on traditional sectors, such as hospitality, transportation, and others (Blal *et al.*, 2018), or for example, matters of listing accuracy, and self-representation (Schuckert *et al.*, 2018). However, studies on trust within the sharing economy are either conceptual endeavours (e.g. Etzioni, 2019; Hawlitschek *et al.*, 2018), emphasise themes, such as reputation and revenue maximisation (e.g. Abrate and Viglia, 2019; Cheng *et al.*, 2019; Tussyadiah and Park, 2018) or focus on the credibility of positive vs negative reviews (Zhang, 2019). To fill this gap, in our study we adopted a bottom-up approach based on guest online reviews towards unpacking trust perceptions and contextualising them in the case of the AirBnB platform.

In this study, we focused on AirBnB's online review system to explore how trust-related perceptions get communicated through the online comments and reviews of the platform's users. Based on our analysis, it shows that the factors that drive trust formation or collapse relate to information asymmetry and quality and quantity of interaction. Furthermore, from our findings we showed that support provision is an important driver, particularly given the absence of a face-to-face interaction. Most importantly we have unpacked three important drivers into their constituents, such as prompt communication, hospitality, and accuracy of listing among others (as shown in Table II). This study contributes to research in several ways. We illustrated that the critical conditions that hinder trust formation are information asymmetry as well as the lack of interaction. What is also an interesting implication is that the impact of both of these can be exacerbated when there is a perceived lack of support among users and between them and the marketplace operator.

This study is particularly important for practitioners and the industry. For practitioners, this study not only identifies trust being an important aspect of an online platform, but it also qualifies this by understanding the mechanisms necessary for forming trust. Trust is indeed important, but more so when it comes to the actual experience offered by the sharing economy platform. Then, the platform's Terms of Service provide important provisos, which, if not properly understood, could lead users to experience high levels of perceived risk, as for example in the case of cancelled reservations.

7.1 Lessons learned

Based on our findings, we have identified two particular lessons that can be of value for both academia and the industry. Qualitative feedback can be of direct value to practitioners and more so for existing and prospective AirBnB hosts. In our study we showed that guests comment on a number of things that go beyond the accuracy of the listing, cleanliness of the accommodation and their overall satisfaction with their experience, which is the norm with typical hospitality facilities. These may include comments regarding the provision of maps, tips for local shops, first day supplies and other gestures from their hosts that can be interpreted as a personal touch that enriches their experience. These review elements cannot be quantified and typically are not included in the metrics used by such platforms; however, they are valued by existing and prospective guests. As a result, such qualitative feedback can help hosts identify which of their actions contribute towards an improved service, and therefore decide whether there is value for money in further pursuing them.

7.2 Limitations of the research

One of the main limitations of our research is that our study is designed around a qualitative case study; therefore, our findings need to be interpreted cautiously. Our findings are not generalisable to other cases, and especially irrespective of their sociocultural context (Darke *et al.*, 1998; Yin, 2003). However, our research aim was not to offer generalisable findings nor develop theory. Instead, our aim was to offer a rich description of what are the trust-related features that get communicated through an online review system. Thus, our findings can be

indeed applicable for the understanding of other sharing economy marketplaces with similar contextual conditions (Walsham, 1995); for example, within the hospitality and tourism sector, and where a two-sided review system is in operation.

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Appendix

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| ID | Title of post | Post date | Capacity |
|-----|---|------------------|----------|
| 3 | Owner can cancel at almost any time. | 2 January 2016 | G |
| 4 | Villa from Edison(Airbnb) | 7 January 2016 | G |
| 6 | I am a host and i did get a great customer service just by calling airbnb | 7 January 2016 | H |
| 10 | They don't listen | 8 January 2016 | G |
| 12 | Extortionist refund policy - unethical at best | 12 January 2016 | G |
| 13 | Hard to reach in emergency and poor resolution | 12 January 2016 | G |
| 14 | one word: HORRIBLE | 12 January 2016 | G |
| 15 | registration/verification a nightmare & invasion | 12 January 2016 | G |
| 16 | Deceptive Marketing Practices | 13 January 2016 | H |
| 17 | Airbnb will not help with damage to home, threatening guests! | 14 January 2016 | H |
| 18 | Appalling chat rep Kat | 14 January 2016 | H |
| 19 | Good way to rent your home for short periods | 14 January 2016 | H |
| 20 | I AM A HOST/PROPERTY OWNER | 14 January 2016 | H |
| 22 | Unbelievable fraud scam - no help from this company | 15 January 2016 | G |
| 23 | Scam for booking with airbnb. The company should be avoided. | 16 January 2016 | G |
| 26 | Host Guarantee is a scam | 22 January 2016 | H |
| 27 | Customer Services Deleted my Honest Review | 23 January 2016 | G |
| 28 | PLEASE NEVER BOOK THROUGH AIRBNB | 23 January 2016 | G |
| 31 | BAD CUSTOMER SERVICES FOR HOSTS | 27 January 2016 | H |
| 32 | It's OK, but not reliable, and needs more competition | 30 January 2016 | G |
| 34 | Horrible dishonest company! STAY AWAY! BEWARE! RUN! AVOID! | 2 February 2016 | G |
| 36 | Ignored me for 4 months. | 2 February 2016 | G |
| 40 | False advertising and filthy cabin | 5 February 2016 | G |
| 41 | If everyone uses it in the right way, it's a must do! | 5 February 2016 | G |
| 44 | Lights are on NO ONE IS HOME!!! | 8 February 2016 | G |
| 48 | They shut my listings down for no reason | 11 February 2016 | H |
| 51 | No refunds | 13 February 2016 | G |
| 52 | Very, very pleased and impressed with Airbnb!! | 13 February 2016 | H |
| 53 | Fraudsters | 15 February 2016 | G |
| 56 | Airbnb customer service came through! | 17 February 2016 | G |
| 57 | Cancellations | 17 February 2016 | G |
| 59 | customer service is filled with scammers | 17 February 2016 | H |
| 61 | Not trustworthy | 17 February 2016 | H |
| 62 | Unable To Collect On AirBnB Referral Award | 19 February 2016 | G |
| 67 | Airbnb is a Fraud | 22 February 2016 | G |
| 69 | Terrible customer service - they don't care | 22 February 2016 | G |
| 71 | They love your Money. No recourse for Consumers | 22 February 2016 | G |
| 76 | I got scammed for 2000 plus missed up my vacation | 24 February 2016 | G |
| 79 | STUPID idiots in charge of IT | 26 February 2016 | G |
| 82 | No recourse when you have a bad rental | 28 February 2016 | G |
| 88 | Excellent Customer Service | 29 February 2016 | G |
| 90 | Host cancelled and I was not notified of cancellation | 1 March 2016 | G |
| 91 | Easy and honest platform for nice people :) | 1 March 2016 | H |
| 92 | No response and abusive emails | 2 March 2016 | G |
| 95 | Most of the problems seems to be the website | 3 March 2016 | G |
| 96 | Biased to Host | 4 March 2016 | G |
| 100 | I have tried renting 4 Airbnb properties and NONE WILL RENT TO ME | 6 March 2016 | G |
| 101 | I'm a fan! | 6 March 2016 | G |
| 104 | Horrible to no customer service | 7 March 2016 | G |
| 105 | I hate airbnb they screwed me over. | 7 March 2016 | H |
| 107 | Horrible offering.... | 8 March 2016 | G |
| 108 | Terrible service | 8 March 2016 | G |
| 109 | Unsatisfactory experience | 8 March 2016 | G |
| 110 | 20+ Listings Unavailable | 9 March 2016 | G |

Table AI.
Casebook of study – external review website (TrustPilot)

(continued)

IMDS
119,9

1966

| ID | Title of post | Post date | Capacity |
|-----|--|---------------|----------|
| 111 | Great concept, very wastefull website | 9 March 2016 | G |
| 112 | No problems. | 11 March 2016 | G |
| 113 | Prejudice, sexist, or racist site? Your opinion. | 11 March 2016 | G |
| 114 | Not so good.... | 11 March 2016 | H |
| 116 | Bad experience | 12 March 2016 | G |
| 118 | Bad AirBnB experience in Boulder | 14 March 2016 | G |
| 119 | Bad Booking in Santa Monica | 14 March 2016 | G |
| 120 | DONT TRUST LISTED PRICES (OR FULL REFUND) | 14 March 2016 | G |
| 121 | FABULOUS! | 14 March 2016 | G&H |
| 122 | STAY AWAY FROM AIRBNB: A COMMENT FOR PROPERTY OWNERS | 15 March 2016 | G |
| 123 | Host cancelled my room in NYC 3 days before date | 16 March 2016 | G |
| 124 | Mixed Experience | 16 March 2016 | G |
| 127 | Hosts Neither Accept Nor Decline | 17 March 2016 | G |
| 129 | Just save yourself the trouble and save up some money and book a hotel. | 18 March 2016 | G |
| 130 | Customer Service.....bad DO NOT USE AIRBNB | 19 March 2016 | G |
| 132 | Customer service is absolutely the worst | 20 March 2016 | G |
| 133 | Horrible experience | 20 March 2016 | G |
| 134 | Misleading | 20 March 2016 | G |
| 135 | They turn a simple solution into days and many phone calls of a nightmare | 20 March 2016 | G |
| 139 | Poor customer service - be aware of cancellations from hosts | 23 March 2016 | G |
| 140 | Avoid if possible | 24 March 2016 | G |
| 141 | Terrible customer service, incompetent company hired to perform background checks | 24 March 2016 | G |
| 142 | Air BNB is fuc@@@@@g website, never recommended use that stupid people | 24 March 2016 | H |
| 143 | AIRBNB is used by fraudulent HOST and they simply don't care | 25 March 2016 | G |
| 144 | Horrible service!!!! Beware! Charge and refund issues!! | 26 March 2016 | G |
| 145 | Airbnb helped us escape the very unstable host at 14 Judith St, Ashgrove, Brisbane | 27 March 2016 | G |
| 148 | BakedAirbnb | 29 March 2016 | G |
| 149 | complete fraud | 29 March 2016 | G |
| 150 | Not much help with problems | 30 March 2016 | G |
| 151 | Unhappy customer | 30 March 2016 | G |
| 153 | Good platform for hosts and travellers | 31 March 2016 | G&H |
| 156 | Host from Hell | 01 April 2016 | G |
| 157 | Airbnb does not care about the Host | 1 April 2016 | H |
| 158 | With AIRBNB your vacation plans are not safe | 3 April 2016 | G |
| 159 | AIRBNB = BIASED, UNPROFESSIONAL, INCOMPETENT. | 3 April 2016 | H |
| 160 | There is no one to help when you have a problem | 3 April 2016 | H |
| 161 | No ability to leave a review | 4 April 2016 | G |
| 163 | Unprofessional! | 4 April 2016 | H |
| 168 | No support for Guests if host cancels last minute | 8 April 2016 | G |
| 169 | they suck | 8 April 2016 | G |
| 171 | Always great | 9 April 2016 | G |
| 173 | AIRBNB NEEDS TO SCREEN THEIR HOSTS BETTER | 10 April 2016 | G |
| 174 | Horrible First Impression! | 10 April 2016 | G |
| 175 | Bar none the BEST way to stay in any city. | 11 April 2016 | G |
| 177 | No one at AirBnB gives a damn about You! | 11 April 2016 | G |
| 180 | dought is real listings and service charges excessive | 13 April 2016 | G |
| 181 | Cannot trust any of the host. | 13 April 2016 | G |
| 182 | Locked out of my account for 3 days for no real reason | 14 April 2016 | G |
| 183 | Good Experiences as Tenant and Host | 14 April 2016 | G&H |
| 184 | Not happy overall. | 14 April 2016 | H |
| 185 | High risk of scam hosts | 15 April 2016 | G |
| 186 | This is freezing company people never use this site | 15 April 2016 | H |
| 187 | Hit and miss, do your research | 17 April 2016 | G |
| 188 | NO CUSTOMER SERVICE!!! | 18 April 2016 | G |
| 189 | Hosts are not protected at all | 18 April 2016 | H |
| 190 | AIRBNB ACCOMMODATION LISTING | 19 April 2016 | H |

Table AI.

Note: G: Guest; H: Host

| First-order themes | Narrative (examples) |
|--|--|
| Communication prior arrival | Prior to my visit Miglen was extremely helpful. Gave me tips as well as ideas on what to do once I arrived at Athens |
| Condition of neighbourhood | We arrived to Athens late at night and we were a little surprised with the way the neighborhood looked. There is tons of graffiti and here in the US that is usually an indicator of a bad neighborhood, but after speaking to locals we realized it is just something kids do for fun and it is actually a pretty safe area |
| Safety | [...] Upon arrival there was a woman Agnes there to meet us she helped us out by telling us where we could and places to see [...] |
| Help upon arrival | I messaged Miglen multiple times and had no response at all until over a day later he told me he was in an accident which I understand but at the time I didn't know and it was very inconvenient |
| Unresponsiveness/Lack of communication | On our second night we receive a door bell at about 11 by Agnes because she was checking to see if we were still there. That was extremely annoying especially since we had to be up the next day at 4am to go to the airport |
| Privacy | My thought it she should know we are there if we booked 2 nights it's like she was hoping we weren't there to have someone else use that apartment (ID: 65225788) |
| Feeling unwelcome | Dorota came all the way to airport to pick us up as we had a late night flight, we were very much pleased with this gesture of hers |
| Helpful | Her flat is on 1st floor and the corridors are bit smelly and dark even during the day and you have to put the light on manually [...] The house needs bit refurbishing as many things seemed old for us. |
| Condition of listing | In one afternoon a guy opened the main door and came inside with a Egyptian guy who wanted to stay there in another room [...] Overall not a very good experience for us and not very safe either |
| Privacy and Safety | But may be for this money and may be in Athens you can't expect much more than this, but she personally was very helpful with whatever we asked |
| Value for money | Thank you very much (ID: 71503683) |
| Helpful host | "I've read several of the recent reviews, and notice they are either exaggeratedly positive or negative. While rentals would naturally vary by their location, a lot of the negative reviews seem to be directed at the way Airbnb refuses to give refunds when there are extenuating circumstances (like being scammed) |
| Unreliable reviews | However, I wonder if Airbnb states these rules somewhere, but they are hard to access [...] |
| Unaware of rules | The rules and expectations are not made clear on the website, at least not for a first-time user; and, their terminology is non-specific and confusing. I probably won't use Airbnb again; but, I wouldn't necessarily discourage others from using it" (Comment95) |
| Rule accessibility | "The response from Airbnb was very good when I called to say that the host became very violent and abusive when I simply asked if their baby was OK after hearing it cry non stop all day. [...] We got out OK but see that Airbnb have not taken down the listing even though there was another review complaining about the same noise issue |
| Unclear rules | I feel it's very dangerous for anyone to stay at that apartment as the host is clearly disturbed and will become hostile if anyone mentions the noise |
| Support | Even though we stayed a horrible 12 days our booking was cancelled by the host, therefore we were unable to post a review warning others |
| Indifferent | There's no way to give a negative review on Airbnb as the hosts can block" (Comment 145) |
| Impossible to review | [...] She said she was going to come in 3 days to change towels. [...] She kept coming to the apartment almost every day when we were not there and touch our |
| Unreliable reviews | |
| Privacy | |
| Unclear house rules | |

(continued)

Table AII.
Examples of concepts and themes

| First-order themes | Narrative (examples) |
|-------------------------------------|---|
| Condition of listing | stuff. We did not expect that as we booked the whole place and it did not say in the house rules that the host was going to use the apartment The apartment is very old and dated. There is no hot water in the kitchen. There are missing tiles in the bathroom covered with sheets of paper and no holder for the shower head |
| Privacy | [...] We thought this was very kind of her so we went sightseeing in the morning and came back at 3 pm to pack but to discover that somebody had started cleaning already and had moved our stuff. [...] I told her that if she had told us we could have moved out in the morning. She said that she told us but we did not understand |
| Poor communication | [...] She was sweeping the floor around the suitcases and moving our stuff. I wanted to change but I had no privacy |
| Privacy | [...] We had such a stressful time. We were very disappointed and we would not recommend this place (ID: 69462656) |
| Would not recommend | Property is good BUT Host and her relatives are a NIGHTMARE to deal with. The internet was left unpaid on 3 different occasions, the boiler broke down and it took them 2 weeks to replace and I was left with no hot water, the place was not professionally cleaned and the owners sister came and went as she pleased, constantly disturbing my stay |
| Unpleasant hosts | I rented the property for 4 months, i spent over EUR 10,000 and in the end I was accused of stealing a room aroma diffuser and a plastic coffee shaker both worth 7 euros.. Upon replacing them, despite the fact that I had not taken them I was accused of stealing towels. Luckily I had receipts of all the sheets, pillows and towels I bought the day I arrived in Athens and was able to win the case with Airbnb. I will be carrying this matter further however and will be suing for defamation |
| Condition of listing | [...] AVOID at all cost! Not worth the risk (ID: 66363507) |
| Privacy | The description of the apartment is perfect and what it is. [...] Very cosy, it is a real home and everything is very convenient and comfortable. [...] |
| Value for money | Nikos is a real host and a very friendly guy, easy to talk with and clear to communicate with, before and during our stay. [...] He did not only explain everything where to go, what times and how, but he even guided us through the city with us in his spare time! |
| Host accused guest | [...] For example; he texted us when he change our sheets and when we came home after there was a bottle of wine on the table with two glasses [...] |
| Platform mediated | We highly recommend this place because of all of this and the location is perfect [...] (ID: 71597530) |
| Wouldn't recommend/ Risk | Having read such enthusiastic reviews of this property, we were prepared to be disappointed. Not a bit of it! |
| Accuracy of listing | [...] The photos do not lie. Much love and care has gone into Maria's loft and we felt immediately at home there. It is also spotlessly clean. The apartment is wonderfully well situated with Plaka's multitude of restaurants and cafes at the doorstep. [...] |
| Real Home | All of Athen's main archaeological treasures, including the Acropolis [...] |
| Good communication before and after | As for Maria, she was a warm, welcoming host and couldn't have been more helpful and charming. She speaks perfect English which was very welcome when it came to ordering taxis for us (ID: 58398137) |
| Kept informed | |
| Would recommend | |
| Importance of reviews | |
| Accuracy of listing | |
| Felt at home | |
| Helpful host | |

Table AII.

Note: Comment number reflects the comment ID number in Table AI (Appendix), while ID number refers to the review ID provided by insideairbnb.com

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THE SHORT-TERM RENTAL ECONOMY IN RURAL MAINE COMMUNITIES: AN OPPORTUNITY FOR ECONOMIC GROWTH INSTEAD OF A TARGET FOR REGULATION

Nicholas Anania

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THE SHORT-TERM RENTAL ECONOMY IN RURAL MAINE COMMUNITIES: AN OPPORTUNITY FOR ECONOMIC GROWTH INSTEAD OF A TARGET FOR REGULATION

*Nicholas Anania**

ABSTRACT

State and local governments across the country are grappling with the rise of short-term housing rentals and how to enact effective regulation regarding their use. The increase of short-term rentals (STRs) is almost entirely the result of online platforms that make STRs easy, efficient, and accessible. While STRs undoubtedly have positive economic outcomes for both property owners and local economies, there are also many negative repercussions which must be effectively regulated. Regulation in this area reflects differing priorities and viewpoints of states and municipalities. Specifically, rural Maine municipalities, many of which are popular seasonal destinations, face not only the challenges of regulating the STR market, but also challenges from stagnant economic growth. By promoting the STR economy and enacting limited and balanced regulations, rural Maine municipalities can profit at the individual and municipal level from this growing economic activity.

I. INTRODUCTION

The “sharing economy” has become a dominant force in American society. The sharing economy is a phrase broadly used to identify a wide array of economic transactions in which individuals are sharing their time, resources, vehicles, and housing with others.¹ Some commentators see the innovation currently at play as a means to “save money, space, and time; make new friends; and become active citizens once again.”² Others, though, take issue with the term “sharing” because the transactions at play are becoming more and more business-driven and less about “sharing.”³ One prominent aspect of the sharing-economy is the use of short-term rentals (STRs). This is when property owners (hosts) list for rent as little as a single bedroom or as much as a whole house for use as short-term lodging

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1. See Kellen Zale, *When Everything Is Small: The Regulatory Challenge of Scale in the Sharing Economy*, 53 SAN DIEGO L. REV. 949, 951 n.3 (2016).

2. Inara Scott & Elizabeth Brown, *Redefining and Regulating the New Sharing Economy*, 19 U. PA. J. BUS. L. 553, 559 (2017) (quoting RACHEL BOTSMAN & ROO ROGERS, *WHAT’S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION* xv-xvi (2010)).

3. See Steven Greenhouse, Opinion, *The Whatchamacallit Economy*, N.Y. TIMES (Dec. 16, 2016), <http://www.nytimes.com/2016/12/16/opinion/the-whatchamacallit-economy.html> [<https://perma.cc/9T9S-NPVJ>] (commenting that it is not really “sharing” if someone is paying for a service).

accommodations.⁴ This Comment delves into the sharing economy and looks specifically at STRs primarily through the popular and internationally-used STR platform Airbnb. It applies analysis of this economic activity specifically to rural communities in Maine, many of which are currently attempting to tailor their regulatory approach to this growing activity.

Airbnb was founded in 2008 in San Francisco by two young entrepreneurs looking for innovative ways to pay their rent.⁵ The founders provided their guests with a place to sleep and breakfast in the morning.⁶ Less than ten years later, Airbnb had grown exponentially and was being used in every state and many countries around the world.⁷ On New Year's Eve in 2017, for instance, two million people used Airbnb worldwide in one night,⁸ and there were roughly 100 million stays during the course of that year.⁹

While some see the use of online sharing platforms as a detractor from more conventional lodging options, this is not always the case. Others argue that Airbnb is not taking business away from hotels, but instead adding another element to the lodging economy.¹⁰ This is due to the fact that the “pre-sharing” economy limited lodging businesses to larger entities that were able to take advantage of “economies of scale.”¹¹ However, technology has driven transaction costs down and enabled individuals to enter a market normally reserved for large corporations.¹² Communities previously less-traveled by visitors are becoming places where large amounts of short-term lodging exist.¹³ For example, the CEO of Marriott Hotels, Arne Sorenson, opined that the value of Airbnb is that it gives travelers access to neighborhoods and areas that hotels cannot.¹⁴ Therefore, it is hard to categorize STRs on a national or even state level because they have drastically different effects in different communities and contexts.

Sorenson's opinion is further reflected in the intentions of Airbnb users. A recent study found that seventy-six percent of Airbnb users wanted to “explore a specific neighborhood” during their travel and eighty-nine percent wanted to “live

4. See Elaine S. Povich, *Why Most States Are Struggling To Regulate Airbnb*, STATELINE (May 7, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/05/07/why-most-states-are-struggling-to-regulate-airbnb> [<https://perma.cc/BZB5-6VD6>].

5. See *About Us*, AIRBNB, <https://press.airbnb.com/about-us/> [<https://perma.cc/N3G3-H4M5>]; see also Dwight H. Merriam, *Peering into the Peer Economy: Short-Term Rental Regulation*, ZONING PRAC., Oct. 2015, at 3.

6. Merriam, *supra* note 5, at 3.

7. See Jared Meyer, *How To Save Airbnb From Local Governments*, FORBES (Feb. 1, 2017, 10:49 AM), <https://www.forbes.com/sites/jaredmeyer/2017/02/01/how-to-save-airbnb-from-local-governments/> [<https://perma.cc/E4LH-JSR8>].

8. *Id.*

9. Rani Molla, *Airbnb Is on Track To Rack up More Than 100 Million Stays This Year—and That's Only the Beginning of Its Threat to the Hotel Industry*, RECODE (July 19, 2017, 7:00 AM), <https://www.recode.net/2017/7/19/15949782/airbnb-100-million-stays-2017-threat-business-hotel-industry> [<https://perma.cc/363C-9VSR>].

10. See Povich, *supra* note 4.

11. Zale, *supra* note 1, at 977.

12. See *id.*

13. See Stephen R. Miller, *First Principles for Regulating the Sharing Economy*, 53 HARV. J. ON LEGIS. 147, 183 (2016).

14. *Id.*

like a local.”¹⁵ This sentiment naturally makes smaller, more rural communities appealing to the twenty-first century traveler who is looking for more “authentic” local experiences.¹⁶ In 2017 alone, Airbnb saw 3.3 million guest arrivals in rural American communities, which was an increase of 138% from the previous year.¹⁷ While the spread of Airbnb has been beneficial for travelers, in many cases, it has been more beneficial for hosts, especially in rural communities, where STR earnings comprise a large amount of household income.¹⁸

Airbnb has undoubtedly become a rising player in the lodging economy with its modern and innovative approach. Innovation and economic growth have increased demands for regulation of the marketplace. To understand the background of how positions regarding the proper regulatory approach arise, Part II looks at the positive and negative economic effects of Airbnb. Part III looks at states and municipalities around the nation that have struggled with the role of regulation in the STR market, and, ultimately, the drastically diverse approaches different governments have taken. Part IV explores Maine’s current regulatory approach to STRs, as well as the approaches of a selection of rural Maine communities to these same problems. Part V discusses the path forward for Maine and rural municipalities regarding STRs and analyzes the best practices on how to regulate this economic activity without stifling beneficial aspects of the marketplace in communities where economic growth is relatively stagnant.

II. THE SHORT-TERM RENTAL ECONOMY AND ITS EFFECT ON COMMUNITIES

Communities that offer Airbnb options are affected, both positively and negatively, by the presence of STRs. While supporters of STRs focus on the benefits to individual hosts and guests,¹⁹ opponents of STRs will focus on the adverse cumulative effects on communities.²⁰ This section takes a brief look at the overarching negative and positive effects that ultimately shape the regulatory landscape.

A. Negative Economic Effects

The adverse effects of STRs are generally directed at four entities: surrounding individuals, STR users, lodging businesses, and municipal governments. First, in regard to the effects on surrounding residents, an influx of transient visitors into otherwise residential neighborhoods is bound to create problems. Common issues

15. *Id.* (quoting David Hantman, *Airbnb Economic Impact Around the World*, AIRBNB (Mar. 25, 2014), <http://publicpolicy.airbnb.com/airbnb-economic-impact-around-the-world/> [<http://perma.cc/2DQG-CD72>]).

16. See Nancy Trejos, *Airbnb’s Popularity Grows in Rural Communities*, USA TODAY (June 27, 2017), <http://www.usatoday.com/staff/2150/nancy-trejos/> [<https://perma.cc/FV2G-4KVZ>].

17. *Id.*

18. *Id.*; AIRBNB, BEYOND CITIES: HOW AIRBNB SUPPORTS RURAL REVITALIZATION 31 (2017), <https://www.airbnbicitizen.com/beyond-cities-how-airbnb-supports-rural-revitalisation-2/> [<https://perma.cc/4J2Z-F3JY>].

19. See Stephanie J. Knightly, *Regulating Innovation: The Positive Economic Impact of Taxing Airbnb Like the Hotel Industry*, 51 SUFFOLK U. L. REV. 457, 462 (2018).

20. See Miller, *supra* note 13, at 169.

arise from noise disturbances, congestion, parking concerns, and trash disposal.²¹ Additionally, STRs contribute to the breakdown of once-residential neighborhoods composed of long-term residents.²² On a larger scale, the cumulative effect of converting long-term residences into short-term housing is the decrease in housing supply, which inevitably increases housing costs and rental prices.²³

Next, there can be adverse effects on the visitors renting STRs. Because Airbnb is simply a platform to connect producer and consumer, there are concerns in less-regulated markets about the safety of the units.²⁴ Critics question the degree of insurance, inspections, and upkeep required of STRs—standards that are mandated in more traditional forms of lodging.²⁵ Furthermore, many smaller buildings are exempt from fair housing regulations²⁶ when renting to long-term tenants.²⁷ There is uncertainty surrounding whether these exemptions also apply when renting property for short-term use. Documented discrimination by some Airbnb hosts when selecting guests would be illegal if done by traditional lodging businesses.²⁸

Additionally, some traditional lodging businesses challenge Airbnb's current practices due to unfair competition. For example, in areas where occupancy taxes are not collected and remitted to municipalities by Airbnb, rentals cost twenty-one percent less than the average hotel room in the same area.²⁹ This is in part because the Airbnb host does not need to account for taxes and fees paid out of their rental revenue.³⁰ Airbnb started as a way for individuals to rent spare rooms in their primary residence but has now become a larger commercial enterprise run by, in many cases, business entities that buy property to convert to Airbnb units.³¹ In effect, many in the STR market are able to charge less and profit more because they are not held to the same standards and requirements as traditional lodging establishments.³²

Finally, some local and state governments are affected adversely by Airbnb rentals with respect to tax revenue. In unregulated markets, STR owners are not collecting and remitting occupancy taxes as required of providers of more traditional forms of short-term lodging.³³ If the state has not reached an agreement with Airbnb

21. See Janine Pineo, *Short-term Rentals Becoming More Common in Vacationland*, ME. TOWNSMAN, June 2017, at 11, 14; Peter McGuire, *Maine Towns Pressured To Rein in Short-Term Rentals of Homes as Popularity Grows*, PORTLAND PRESS HERALD (Aug. 8, 2016), <https://www.pressherald.com/2016/08/08/maine-towns-pressured-to-rein-in-short-term-rentals-of-homes-as-popularity-grows/> [<https://perma.cc/P8DP-BRPP>].

22. See Zale, *supra* note 1, at 983-85.

23. See Miller, *supra* note 13, at 169.

24. See Pineo, *supra* note 21, at 11; Merriam, *supra* note 5, at 4.

25. Pineo, *supra* note 21, at 11.

26. The Federal Fair Housing Act prohibits discrimination on the basis of race, religion, disability, sex, family status or national origin when renting residential units. The law applies to non-owner-occupied multi-units and owner-occupied multi-units with more than four units. 42 U.S.C. §§ 3603(b)(2), 3604 (2012).

27. See Povich, *supra* note 4.

28. Stephen R. Miller, *Decentralized, Disruptive, and on Demand: Opportunities for Local Government in the Sharing Economy*, 77 OHIO L.J. 47, 52 (2016).

29. Miller, *supra* note 13, at 176-77.

30. *Id.*

31. See Scott & Brown, *supra* note 2, at 567.

32. See Miller, *supra* note 13, at 177-78.

33. See Merriam, *supra* note 5, at 4.

regarding the remittance of occupancy taxes, then money garnered from visitors to pay for additional municipal services used by the visitors (police, roads, transportation, etc.) is not realized.³⁴

B. Positive Economic Effects

Conversely, there are many positive economic effects of Airbnb and STRs to local economies. First, there potentially are enormous financial benefits for hosts willing to rent their additional or unused space.³⁵ The reason Airbnb is so appealing to potential hosts is because it is a relatively low-cost, low-risk venture.³⁶ While a portion of STRs undoubtedly are driven by business-like entities, there are numerous individual hosts who report the added income allows them to pay their mortgage and remain in their house.³⁷ Airbnb statistics show fifty-three percent of their hosts nationwide reported that the income earned from hosting helped them keep their home.³⁸ Additionally, almost half of respondents of the same survey reported that the income made through Airbnb was directly spent on household expenses.³⁹

Wider impacts come from the effects that an influx of visitors has on communities regularly untraveled.⁴⁰ Because Airbnb provides lodging options in areas where traditional options may not exist, the concept is that these visitors boost local economies by shopping in their stores, eating in their restaurants, and drinking in their bars.⁴¹ Some commentators contend that the presence of Airbnbs and their positive economic impact on communities far outweigh the negative impact on the rental market and housing prices.⁴² Airbnb alleges that such an overwhelmingly positive effect is because Airbnb guests stay over two times longer and spend over two times more than average visitors.⁴³ Airbnb has also led to the creation of new local businesses that specifically provide services to Airbnb hosts, such as property management, housekeeping, and landscaping services.⁴⁴

34. See Zale, *supra* note 1, at 987-88. As discussed more below, Airbnb has proactively engaged with forty-four states in order to establish agreements that detail collection and remittance of occupancy taxes by Airbnb to the proper state entities. See *In What Area 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/EN9T-XR3H>].

35. Knightly, *supra* note 19, at 462.

36. See *id.* (discussing the relative ease for hosts to offer and profit from their unused space).

37. See Merriam, *supra* note 5, at 4; Emily A. Reyes, *L.A. Officials Want To Keep Airbnb-type Rentals from Being "Rogue Hotels,"* L.A. TIMES (Aug. 25, 2015), <http://www.latimes.com/local/lanow/la-me-ln-airbnb-rental-regulations-20150825-story.html> [<https://perma.cc/CV59-Z3TC>].

38. *The Economic Impacts of Home Sharing in Cities Around the World*, AIRBNB <https://www.airbnb.com/economic-impact> [<https://perma.cc/QK2U-LV7A>].

39. *Id.*

40. See Miller, *supra* note 13, at 157.

41. See Povich, *supra* note 4.

42. See Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 YALE L. & POL'Y REV. 215, 259 (2016).

43. *The Economic Impacts of Home Sharing in Cities Around the World*, *supra* note 38. In addition to the longer stays and more money spent while visiting, Airbnb also claims that forty-two percent of guest spending occurs in the communities where the guests are staying. *Id.*

44. See Andrew Bender, *New Regulations To Wipe Out 80% of Airbnb Rentals in California's Santa Monica*, FORBES (Jun. 15, 2015), <https://www.forbes.com/sites/andrewbender/2015/06/15/new->

Supporters of STRs believe they are also beneficial to local governments. By permitting STRs, local governments allow different lodging offerings that may be more intriguing to potential visitors.⁴⁵ Furthermore, in cities that have maximized lodging growth and have limited useable land, STRs provide for economic growth using existing property resources.⁴⁶ Supporters of Airbnb also counter the argument that municipalities are losing out on valuable occupancy taxes by showing that forty-four states have successfully negotiated with Airbnb for the collection and remittance of occupancy taxes by Airbnb.⁴⁷

These positive effects are particularly apparent in rural communities. In rural American areas, where median incomes are lower than in urban areas, the average host is earning more from Airbnb than the average urban host.⁴⁸ These earnings represent a much larger percentage of household income than in urban households as well.⁴⁹ Additionally, rural economies have rebounded at a much slower pace than urban areas following the economic recession of 2008—revenue from people staying in STRs and spending money in rural areas is a boost for both the host and the local area.⁵⁰ Finally, rural STRs provide lodging options that otherwise may not exist, which allows for an influx of visitors who will likely spend their money within that community.⁵¹

The effects of the positive and negative aspects of STRs are highly contested. These positive and negative factors drive the regulatory approach of municipalities. While an unregulated market is unlikely and potentially problematic, there is an argument that the positive economic effects arising from Airbnb and other STR platforms should not be unduly restricted or over-regulated.

III. REGULATORY RESPONSES TO THE SHORT-TERM RENTAL ECONOMY: BALANCING THE POSITIVES AND NEGATIVES

A. *Competing Visions of the Appropriate State-Level Response*

Land use and zoning regulations are primarily dictated by municipalities.

regulations-to-wipe-out-80-of-airbnb-rentals-in-californias-santa-monica/#577bfe1e169a [https://perma.cc/LC7P-NF92]; Niki Cervantes, *Santa Monica Gets Even Tougher on Short-Term Vacation Rental “Hosts,”* SANTA MONICA LOOKOUT (Jan. 12, 2017), https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/January-2017/01_12_2017_Santa_Monica_Gets_Even_Tougher_on_Short_Term_Vacation_Rental_Hosts.html [https://perma.cc/56QQ-WXG4].

45. See Miller, *supra* note 13, at 159.

46. See *id.* at 157-58.

47. See *In What Area Is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 34; see also Zale, *supra* note 1, at 987.

48. See Lisa Fu, *Airbnb Is Bringing Money to Rural America*, FORTUNE (June 29, 2017), <http://fortune.com/2017/06/29/airbnb-money-rural/> [https://perma.cc/TW5N-TV2G]; see also *Beyond Cities: How Airbnb Supports Rural Revitalization*, *supra* note 18.

49. See *Beyond Cities: How Airbnb Supports Rural Revitalization*, *supra* note 18 (noting that Airbnb earnings in rural communities represented five to twenty percent of household income).

50. *Id.*; see also Fu, *supra* note 48.

51. See *Beyond Cities: How Airbnb Supports Rural Revitalization*, *supra* note 18 (noting that there are almost six percent more active Airbnb listings in rural areas than hotel rooms available in those same areas).

However, regulation of STRs has been difficult due to Airbnb's rapid growth and irregular structure.⁵² In some cases, states have stepped in and created state-wide approaches to regulating STRs.⁵³ Where municipalities have banned STRs or regulated them so heavily that the market is nonexistent,⁵⁴ some states have created laws banning the prohibition of Airbnb.⁵⁵ However, in other cases, where state governments believe STRs are damaging to local communities, bans have been placed on STRs at the state level.⁵⁶ This section looks at examples of the regulatory approaches of state governments that have set statewide limits on both the use of STRs and the allowable amount of municipal prohibition of STRs.

1. The "Pro-STR" Approach

As Airbnb usage continued to scale-up nationwide, Arizona established itself as a supporter of the STR economy.⁵⁷ As opposed to the hands-off approach many states were taking, Arizona enacted legislation that prevents municipalities from banning STRs based solely on "classification, use, or occupancy."⁵⁸ Effectively, municipalities are only permitted to regulate STRs for purposes of health and public safety; by enacting zoning or residential uses that are applied to all residences equally; or by forbidding the use of STRs for certain "immoral" activities or to house potentially dangerous people.⁵⁹

Supporters of this law believe that it accomplishes many goals and alleviates regulatory burdens on municipalities. First, the law requires Airbnb to collect and remit occupancy taxes to the State of Arizona, which then distributes them to the proper municipalities.⁶⁰ Additionally, the law eliminates "patchwork" municipality legislation that makes it difficult for hosts and visitors to interpret and understand different laws in different cities.⁶¹ Finally, officials in Arizona believed a ban on Airbnb and STRs generally would send hosts "underground" and prevent the state from collecting the proper taxes.⁶²

Similarly, Idaho passed legislation that prevented an all-out ban on Airbnb but allowed their municipalities slightly more leeway with STRs in their jurisdictions.⁶³

52. See Zale, *supra* note 1, at 991-92 (commenting on regulatory challenges of a three-sided economy where there is a producer, a consumer, and platform that enables the transaction).

53. See Meyer, *supra* note 7; N.Y. MULT. DWELL. LAW § 280 (McKinney 2019).

54. See Meyer, *supra* note 7.

55. See *id.*

56. See N.Y. MULT. DWELL. LAW §§ 3(1), 4(8)(a)(1).

57. See Macaela J. Bennett, *Is Airbnb Good for Arizona?*, AZCENTRAL (July 28, 2016), <https://www.azcentral.com/story/news/politics/legislature/2016/07/27/airbnb-arizona-benefits/86314492/> [<https://perma.cc/4C3L-HEPC>].

58. Meyer, *supra* note 7.

59. ARIZ. REV. STAT. ANN. § 9-500.39 (2018).

60. Bennett, *supra* note 57.

61. *Id.*; see also Ducey Signs Bill Barring Cities from Banning Short-term Rentals, MOHAVE VALLEY DAILY NEWS (May 13, 2016), http://www.mohavedailynews.com/news/ducey-signs-bill-barring-cities-from-banning-short-term-rentals/article_8ffe0f3e-18dd-11e6-ad7b-c7e8ba175b54.html [<https://perma.cc/TB7W-2Y3Q>].

62. Ducey Signs Bill Barring Cities from Banning Short-term Rentals, *supra* note 61.

63. See Betsy Z. Russell, *New Idaho Law on Vacation Rentals Seeks Middle Ground*, THE SPOKESMAN-REVIEW (Apr. 30, 2017), <http://www.spokesman.com/stories/2017/apr/30/new-idaho-law-on-vacation-rentals-seeks-middle-gro/> [<https://perma.cc/2FPJ-4T5B>].

Municipalities are permitted to regulate Airbnb with regard to “public health, safety, and general welfare in order to protect the integrity of residential neighborhoods.”⁶⁴ However, the law requires municipalities to recognize STRs as a residential use for zoning purposes.⁶⁵

With the exception of a few states, like Arizona, that have expressly prohibited municipalities from banning STRs, the lack of state-wide legislation pertaining to STRs implies that most states have taken a “hands-off” approach and allow municipalities to regulate STRs as they deem appropriate.

2. *The Restrictive Approach*

The State of New York offers a unique example of statewide regulation that effectively bans STRs.⁶⁶ New York prohibits residential houses and apartments in municipalities with populations over 325,000 from being occupied for less than thirty days if the unit’s permanent resident is not present while the guest is there.⁶⁷ This is technically a ban on non-owner/tenant occupied units dating back before STRs were widespread and accessible on the internet. The reason that it has not, until recently, been an issue is because there was no way for the state or its municipalities to enforce the law since exact addresses of listings are not viewable on STR platforms.⁶⁸ However, New York City, and other municipalities, used the state regulation to specifically target Airbnb and other platforms by creating regulations that force STR platforms to disclose units that are being listed.⁶⁹ So, while the state did not create STR regulation by specifically targeting these growing web-based platforms, the long-standing law bolstered municipalities attempting to regulate in their own jurisdictions.

B. Competing Visions of the Appropriate Municipal Response

As noted above, Airbnb usage, at the individual level, is a small-scale event with minor effects on the surrounding community. One person renting out a spare bedroom or even a second house to a small group of people is unlikely to change the makeup of a neighborhood, unduly burden a city, or shortchange a municipality’s tax revenue stream. However, as Airbnb usage has increased drastically over the last decade, municipalities have become increasingly concerned that the small-scale activity in the aggregate is having a significant effect and that such activity is no longer something that can go unregulated.⁷⁰ Justifications for past leniency by municipalities in this sphere range from concerns about violating property-owner privacy, costs of enforcement, and the de minimis nature of the activity.⁷¹

64. IDAHO CODE § 67-6539(1) (2018).

65. *Id.*

66. N.Y. MULT. DWELL. LAW §§ 3(1), 4(8)(a)(1) (McKinney 2019).

67. See Aaron Gordon, *Will New York’s New Airbnb Law Stop Illegal Listings?*, VILLAGE VOICE (Aug. 8, 2018), <https://www.villagevoice.com/2018/08/08/will-new-yorks-new-airbnb-law-stop-illegal-listings/> [<https://perma.cc/U9WU-5XR3>].

68. *See id.*

69. *See id.*

70. *See* Zale, *supra* note 1, at 956-57.

71. *See id.* at 954.

Furthermore, in many cases, the act of renting one's property is a private transaction, but because it is becoming more and more businesslike, the once private transaction is looking increasingly public, which supports arguments for municipal involvement.⁷²

In addition to their economic concerns, municipalities are rightfully worried about myriad issues involving STRs including the altering of the city landscape, burden on infrastructure and public services, and discrimination by hosts.⁷³ Furthermore, lodging in general is an activity that has strong policy reasons for regulation. With the growing commercial usage of Airbnb, private activities in the home once immune from intrusive regulation are now areas that arguably should be regulated.⁷⁴ Nonetheless, many cities are attempting to regulate these negative externalities without stifling the market.⁷⁵ Municipalities will, generally speaking, be in a better financial position by providing more options for a larger pool of visitors.⁷⁶ While some states are picking and choosing their regulatory path in regard to STRs, municipalities are on the front lines and are facing difficult decisions affecting a broad range of people.

How should municipalities balance the pros and cons of the STR market when enacting legislation? Municipalities have approached this problem with a wide range of solutions. There are outright bans, use limits, inspections, licensing requirements, amendments to existing regulations, and so on.⁷⁷ However, the most pragmatic approach for municipalities is to decide where the STR market fits in the broader long-term growth of the local economy, rather than focusing on the short-term effects.⁷⁸ Following are brief illustrations of municipal regulatory approaches that have both heavily restricted STRs and not restricted them at all.

1. The "Pro-STR" Approach

While some communities in Texas such as Austin, Houston, and Fort Worth have enacted legislation that highly regulates the use of STRs, Dallas's approach has been limited.⁷⁹ Traditionally, Dallas had lagged behind some of the other large Texas cities in STR usage.⁸⁰ However, 2017 saw its largest STR growth to date.⁸¹ Airbnb usage increased by thirty-four percent from the prior year and average rental rates

72. See Scott & Brown, *supra* note 2, at 573.

73. *Id.* at 579-81.

74. See Zale, *supra* note 1, at 994-98.

75. See generally Davidson & Infranca, *supra* note 42, at 278-79.

76. See Miller, *supra* note 13, at 170.

77. See *id.* at 168, 184-88.

78. See Davidson & Infranca, *supra* note 42, at 276.

79. See Andrew Moylan, *Roomscore 2016: Short-Term Rental Regulation in U.S. Cities*, R STREET POLICY STUDY, Mar. 2016, at 10, <https://2o9ub0417chl21g6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/RSTREET55-1.pdf> [<https://perma.cc/6Y TZ-SSEM>] (In a March 2016 comprehensive survey that analyzed the severity of municipal STR-type regulations in 59 U.S. cities, Dallas received an "A-" score while Austin and Houston both received a "D" and Fort Worth received an "F"); see also Shawn Shinneman, *Exclusive: Airbnb Saw Major Growth in Dallas Last Year*, DALL. BUS. JOURNAL (Jan. 22, 2018), <https://www.bizjournals.com/dallas/news/2018/01/22/exclusiveairbnb-saw-major-growth-in-dallas-last.html> [<https://perma.cc/252U-2GGR>].

80. Shinneman, *supra* note 79.

81. *Id.*

and host income have become competitive with the other large Texas cities.⁸² Any negative effects of STRs in Dallas remain unclear. However, while other more regulated Texas STR markets have started to slow, Dallas has seen a staggering increase in STR-related tourism and usage,⁸³ and that may be attributed to the lack of regulatory challenges that Dallas hosts face.

2. *The Restrictive Approach*

The City of Santa Monica, California, has taken some one of the most restrictive approaches to STRs in the nation. City government officials believed that the rise of STR platforms was causing an influx of business entities that were purchasing residential properties for use as STRs.⁸⁴ This influx of STR-type businesses was, in their opinion, driving up housing costs and decreasing the availability of rental property.⁸⁵ The enacted legislation to combat these problems requires hosts to live on-site while their unit is being rented, obtain business licensing, remit the city's fourteen percent occupancy tax, register their property with the city, and pay applicable fees.⁸⁶ Failure to abide by these regulations could result in misdemeanor charges with fines as high as \$500 or even jail time.⁸⁷

These regulations are similar to the steps that many municipalities around the country have taken. However, what makes Santa Monica's regulation so restrictive is that it forces hosts to be present at the rented property while the property is being rented. This effectively precludes all business entities from operating STRs. Additionally, individuals who are renting out second homes, or even primary homes, are prohibited from earning income while they are away. Because many hosts were not registered with the city prior to legislation, it is difficult to know the exact numbers, but one estimate is that Santa Monica's Home Sharing Ordinance caused the closure of eighty percent of the City's STRs.⁸⁸ Additionally, local businesses that earned income by providing services to STR hosts have noticed a huge decline in their own operations as a result of the ordinance, some even going out of business.⁸⁹

IV. THE CURRENT MAINE APPROACH WITH A FOCUS ON RURAL COMMUNITIES

A. *State-Level Regulatory Response to the Short-Term Rental Economy*

Maine has long been known as a summer retreat for individuals and families who rent beach houses and cabins throughout the state.⁹⁰ That reputation has contributed to Maine's motto as "Vacationland." In a general sense, the presence of

82. *Id.*

83. *Id.*

84. See Bender, *supra* note 44; Cervantes, *supra* note 44.

85. See Bender, *supra* note 44; Cervantes, *supra* note 44.

86. SANTA MONICA, CAL. MUN. CODE §§ 6.20.020–090 (2017).

87. *Id.* § 6.20.100.

88. See Bender, *supra* note 44; Cervantes, *supra* note 44.

89. See Cervantes, *supra* note 44 (providing an example of a person that started a cleaning business to cater to Airbnb hosts in Santa Monica who went out of a business as a result of decreased numbers of STRs in the aftermath of the ordinance).

90. See McGuire, *supra* note 21.

Airbnb and other STR platforms has made this practice increasingly easy and more accessible for property owners and visitors alike.⁹¹

In 2017, 282,000 Maine visitors used Airbnb, a sixty-two percent increase from the previous year.⁹² Furthermore, the combined revenue from visits in 2017 was forty-three million dollars, or upwards of \$6,900 per host.⁹³ Of particular note, seventy percent of Maine Airbnb rentals occurred in rural communities.⁹⁴ The top four Airbnb “wish-list” properties in Maine were rural cottages in small towns and unincorporated townships.⁹⁵ Additionally, Maine has the oldest average host age in the country with one-third of hosts sixty years of age or older.⁹⁶

Due to the drastic increase of Airbnb and other STR platforms in Maine, many people have called for a state-level policy regarding this emerging economic activity.⁹⁷ In 2015, a proposed bill in the Maine legislature would have required STR hosts to license their properties with the state.⁹⁸ The bill would have also set minimum rental periods of seven days.⁹⁹ The bill was rejected and there is currently no state-wide STR regulation in Maine.¹⁰⁰ The state’s approach is to let municipalities decide what regulations should be enacted. Despite a lack of state-wide legislation, Airbnb voluntarily agreed to collect and remit local and state taxes on behalf of its hosts to the Maine Revenue Services.¹⁰¹ The following sections offer an analysis on both sides of the regulatory spectrum among Maine rural communities.

B. *The Regulatory Response of Rural Communities to the Short-Term Rental Economy*

1. *The “Pro-STR” Approach*

Ellsworth, Maine is a small town located in rural Hancock County, near Acadia

91. See Knightly, *supra* note 19, at 462.

92. Peter McGuire, *As Airbnb Rentals Skyrocket, Maine Communities Grapple with Impact*, PORTLAND PRESS HERALD (Jan. 29, 2018), <https://www.pressherald.com/2018/01/29/short-term-rentals-through-airbnb-surge-in-maine-as-communities-pass-new-rules/> [<https://perma.cc/LD5D-EU9A>].

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. McGuire, *supra* note 21.

98. L.D. 436 (127th Legis. 2015); see also McGuire, *supra* note 21.

99. L.D. 436 (127th Legis. 2015).

100. McGuire, *supra* note 21.

101. See Kate Cough, *Airbnb Revenues and Rentals Up in Hancock County*, ELLSWORTH AM. (Sept. 5, 2018), <https://www.ellsworthamerican.com/maine-news/airbnb-revenues-and-rentals-up-in-hancock-county/> [<https://perma.cc/4LM8-TQYR>]; *In What Area Is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 34; see also Peter McGuire, *Airbnb Agrees To Automatically Collect Maine Lodging Tax from Short-term Renters*, PORTLAND PRESS HERALD (Feb. 28, 2017), <https://www.pressherald.com/2017/02/28/airbnb-agrees-to-automatically-collect-maine-lodging-tax/> [<https://perma.cc/LV3J-2F8Q>]. In 2017, Airbnb remitted over five million dollars of collected occupancy taxes to Maine Revenue Services. See Peter McGuire, *Airbnb Paid Maine \$5.3 Million in Taxes Last Year*, PORTLAND PRESS HERALD (June 5, 2018), <https://www.pressherald.com/2018/06/05/airbnb-paid-maine-5-3-million-in-taxes-last-year/> [<https://perma.cc/A8JG-9KW8>].

National Park off the Atlantic coast.¹⁰² In 2017, the town was listed in the top five most popular Maine Airbnb destinations.¹⁰³ There appears to be more room for growth in the Ellsworth STR market as well, with a twenty-seven percent increase in host listings during 2018.¹⁰⁴ Most impressively, the average Ellsworth host's revenue is on par with host averages in Portland, Maine, the state's urban and economic hub.¹⁰⁵

Despite the STR growth in Ellsworth, there are currently no regulations specifically targeting STRs and it does not appear that any are planned.¹⁰⁶ Ellsworth has seen many of the positive effects of a more accessible STR economy such as more residential development, increases in home values, growth of businesses that provide services for STR hosts, and growth of tourism and recreational businesses.¹⁰⁷ Furthermore, in many cases, STRs present the opportunity for an important use of under-utilized residential property.¹⁰⁸ Ellsworth's town management has not experienced many of the negative aspects of STRs, hence the reluctance to create regulations. The town, however, realizes it may reach a point where it must create specifically tailored regulations to ensure guest safety.¹⁰⁹ Aside from that, STRs seem to be a welcomed aspect of the local economy.

Similarly situated is Bethel, in rural Oxford County.¹¹⁰ Home to Sunday River Ski Resort, Bethel is a popular Maine winter retreat, and there are currently no regulations or zoning ordinances specifically targeting STRs.¹¹¹ In the absence of current complaints regarding STRs, the town does not intend on imposing restrictions.¹¹² Most Maine towns have taken the approach of Ellsworth and Bethel because the negative aspects have yet to outweigh the benefits that a more accessible STR market brings to these communities.

2. *The Restrictive Approach*

On the opposite end of the spectrum is Rockland, in rural Knox County.¹¹³ With the exception of the urban centers of Portland and South Portland, Rockland is one

102. See *Urban and Rural Classification*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html> [https://perma.cc/5UGQ-63F7] (classifying Hancock County as composed of 90.1% rural area).

103. Cough, *supra* note 101.

104. *Id.* (showing the growth of Airbnb hosts in Ellsworth from 110 in 2017 to 140 in 2018).

105. See Samuel Shepherd, *Airbnb Hosts Draw Violations*, MOUNT DESERT ISLANDER (July 13, 2018), <https://www.mdislander.com/uncategorized/airbnb-hosts-draw-violations> [https://perma.cc/7DN7-VZ56].

106. See Cough, *supra* note 101 (quoting Ellsworth Town Manager, David Cole, saying, "I don't get the sense that [STRs have] been a big issue [in Ellsworth].").

107. Phone conversation on October 26, 2018, with David Cole, Ellsworth Town Manager.

108. *Id.*

109. *Id.* (commenting that the town has received complaints about STRs from permanent residents long before the creation of Airbnb; in his opinion, Airbnb is just another medium for a long-established use of property).

110. See *Urban and Rural Classification*, *supra* note 102 (classifying Oxford County as composed of 83.1% rural area).

111. McGuire, *supra* note 21.

112. See *id.*

113. See *Urban and Rural Classification*, *supra* note 102 (classifying Knox County as composed of 67.9% rural area).

of the few Maine towns to consider stringent STR regulations. Rockland, a coastal destination in Maine, became concerned with the increase in Airbnb rentals in the town. The primary concerns were that rental properties were out of compliance with local codes and therefore unsafe for visitors,¹¹⁴ as well as increased traffic, parking, and noise in residential areas.¹¹⁵ Additionally, Rockland was concerned about the number of outside investors buying residential properties to convert to STRs.¹¹⁶

As a result of these concerns, the town enacted a very stringent STR ordinance that set regulations on STRs classified in three categories.¹¹⁷ First, an “STR-1” is an owner-occupied single-family residence renting out a single bedroom, or a two-unit building in which the owner lives in one unit and is renting out the other.¹¹⁸ Next, an “STR-2” is a non-owner-occupied single-family residence or a non-owner-occupied two-unit building in which one unit is being rented.¹¹⁹ Finally, an “STR-3” is a non-owner-occupied building with three or more units, at least one of which is an STR.¹²⁰ In order to receive an STR permit in a residential zone, an STR-1 needs approval from the Code Enforcement Office whereas STR-2 and -3 need approval from the Planning Board. Additionally, an STR-3 receives a more stringent “review level” and the town requires that the buildings abide by the building and fire code that traditional lodging establishments must follow.¹²¹

The approval process to receive a permit presents a high hurdle. To apply, a person must be the owner of the entire space being rented and must live, or have a management company, in Rockland or one of several designated surrounding towns.¹²² The host must pay a fee, insure the space as an STR, provide off-street parking, and allow town inspections.¹²³ Hosts are prohibited from serving any food to their guests without a food license.¹²⁴ Finally, if approved, there can be only one set of renters in any seven-day period, regardless of how long the visitor stays.¹²⁵

Rockland’s ordinance also provides language to curb future growth of the STR market. For example, owners of condominium units built after October 2015 are not eligible to apply for STR permits.¹²⁶ Additionally, the total number of non-owner occupied units is capped at forty-five and because that number of units is currently registered, new permits will only be issued if one of the existing unit-owners decides not to register in following years.¹²⁷ Finally, individuals found to be listing STR

114. See McGuire, *supra* note 21 (in an interview with a Rockland Code Enforcement officer, he opined that one of the main reasons for the ordinance was because, due to the limited enforcement available, it became impossible to monitor the number of properties that were not in compliance with safety codes).

115. Rockland, Me., Zoning Ordinance § 11-210(2)(A) (June 13, 2018).

116. McGuire, *supra* note 21.

117. Rockland, Me., Zoning Ordinance § 11-210(2)(B)(4)(a)-(c) (June 13, 2018).

118. *Id.* § 11-210(2)(B)(4)(a).

119. *Id.* § 11-210(2)(B)(4)(b).

120. *Id.* § 11-210(2)(B)(4)(c).

121. *Id.* § 11-210(2)(G) (the commercial fire code includes sprinklers, fire walls, and proper exits throughout the building).

122. *Id.* § 11-210(2)(D)(1)-(4).

123. *Id.* § 11-210(2)(G).

124. *Id.* § 11-210(2)(H)(15).

125. *Id.* § 11-210(2)(B)(2); see also Pincio, *supra* note 21, at 12.

126. Rockland, Me., Zoning Ordinance § 11-210(2)(H)(4) (June 13, 2018).

127. *Id.* § 11-210(2)(H)(16).

units without a permit will receive fines of up to \$1,000.¹²⁸

Rockland's STR regulations are without a doubt the most stringent among smaller, more rural Maine communities, if not throughout the entire state.¹²⁹ The regulations, in effect, cap STRs at their current rate and allow almost no opportunity for long-term growth.

V. DISCUSSION: THE REGULATORY PATH FORWARD FOR MAINE AND RURAL MUNICIPALITIES

Maine's economy, while improving, has been slow to recover from the economic recession of 2008 and from years of economic decline that pre-dated the recession.¹³⁰ Compared to relatively steady regional and national growth, at the close of 2017, Maine had still not surpassed pre-recession gross domestic product levels.¹³¹ In Maine's rural areas, the economic downturn and the effect of the recession has been even more dire. Economic growth in rural Maine fell for seven consecutive years between 2006 and 2013.¹³² Additionally, middle-wage jobs, which have slightly increased between 2001 and 2016 in Southern Maine's metropolitan areas, by contrast have fallen significantly in rural areas during that same period.¹³³ In generalized terms, Maine's rural economy is stagnant.

As discussed in Part II, Airbnb has had a positive economic effect on rural hosts and communities throughout the country. Although Airbnb will not cure Maine's stagnant rural economy, municipalities should not so heavily regulate STRs as to deter people from entering the market. Instead, Maine and rural municipalities should adopt common-sense regulatory measures that promote STRs and the value they bring to individuals and communities, as well as set long-term regulatory goals that build on the STR economy while still protecting communities from the negative impacts.¹³⁴

128. *Id.* § 11-210(3)(A).

129. The more urban municipality of South Portland, Maine, published STR regulatory measures on June 5, 2018, that were approved by voters on November 6, 2018. The regulations ban STRs in all residential zones where hosts are not present. Additionally, where hosts reside on the property being listed, STRs are limited to four-unit buildings and smaller. For permitted STRs, there are no limits on the amount of days eligible to be rented, but no more than one set of renters is allowed in a non-owner-occupied unit in any seven-day period. Lastly, hosts are required to show proof that the property is insured for use as an STR with minimum liability coverage of one million dollars. *See* South Portland, Me., Short-term Rental Ordinance §§ 14-801-14-805; *see also* Kelley Bouchard, *South Portland Voters Uphold Contested Short-Term Rental Rules*, PORTLAND PRESS HERALD (Nov. 6, 2018), <https://www.pressherald.com/2018/11/06/south-portland-voters-uphold-contested-short-term-rental-rules/> [<https://perma.cc/ST8V-3BV7>].

130. *See* ME. CTR. FOR ECON. POLICY, STATE OF WORKING MAINE 2 (2017), <https://www.mecep.org/wp-content/uploads/2017/09/MECEP-State-of-Working-Maine-2017.pdf> [<https://perma.cc/S4CE-37AE>].

131. *Id.*

132. *See id.* at 3.

133. *See id.* at 9 (middle and high-wage jobs fell by almost 42,000 in rural Maine communities between 2001 and 2016).

134. Scott & Brown, *supra* note 2, at 594.

A. Maine: How Should the State Promote or Restrict the Short-Term Rental Economy?

Currently, Maine does not regulate STRs at the state-level.¹³⁵ Maine has, however, reached an agreement with Airbnb which holds Airbnb—the company—responsible for collecting and remitting occupancy taxes.¹³⁶ This is a hugely beneficial practice because it guarantees that Maine receives valuable and necessary revenue from its visitors without burdening Airbnb hosts with calculating and remitting their own taxes. Moreover, the data shows that there is low compliance in states where hosts are required to collect and remit occupancy taxes on their own.¹³⁷

Maine’s current approach allows municipalities to decide the level of regulation for the STR market. Generally speaking, this is a “pro-STR” approach, but there is room for regulation. Banning Airbnb at the state-level is not the answer and would be a blunt one-size-fits-all approach to STRs statewide.¹³⁸ Conversely, having no statewide regulation potentially allows rural (and other) communities to heavily regulate the STR market based on short-term concerns while missing opportunities for economic growth that rural communities desperately need.¹³⁹

While tight regulation or even an outright ban may be appropriate for Portland and other urban communities, the valuable economic activity created by STRs may benefit rural communities. Therefore, Maine should consider the approach adopted in Idaho. Idaho’s STR law prohibits municipalities from expressly or practically prohibiting STRs.¹⁴⁰ The law allows municipalities flexibility in adopting regulations for certain purposes and relies on existing noise and zoning ordinances to ensure protection of residents.¹⁴¹

B. Rural Municipalities: An Approach That Maximizes Economic Benefits by Focusing on Limited Regulation

As stated, the STR market has great potential as a provider of economic growth.¹⁴² Additionally, this Comment has noted the negative consequences that an unregulated STR market can have on municipalities. With a state plan that prohibits the outright ban of STRs but still provides flexibility, municipalities would be able to create regulatory measures that enable economic growth while protecting their constituents and communities.

The four common goals in regulating the STR economy in municipalities throughout the country are (1) providing safety, (2) maintaining the residential integrity of neighborhoods, (3) preventing an influx of business-like entities from buying up large amounts of property to rent as STRs, and (4) avoiding unfair competition with traditional lodging establishments. Common-sense solutions to

135. See Cough, *supra* note 101.

136. See *In What Area is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 34.

137. Russell, *supra* note 63.

138. See Povich, *supra* note 4; see also Scott & Brown, *supra* note 2.

139. See Davidson & Infranca, *supra* note 42.

140. See IDAHO CODE § 67-6539 (2018).

141. See Russell, *supra* note 63.

142. See Zale, *supra* note 1, at 1016.

these issues are examined in turn.

1. Safety

One of the primary goals in municipal STR regulation is safety. Hotels and other lodging establishments are heavily regulated in terms of safety.¹⁴³ Some municipalities believe that STRs should be regulated in the same way. In many cases, this is impossible from an enforcement standpoint. To overcome this, some municipalities regulate so heavily that property owners are deterred from even attempting to list their residences as STRs.¹⁴⁴ One solution to this problem is an insurance requirement. First, homeowner's insurance policies could protect guests in owner-occupied units. Second, a municipality could require hosts of non-owner-occupied STR's to purchase the host insurance offered by Airbnb¹⁴⁵ or from another source that specifically identifies the property as a rental unit. The insurance provider would then be responsible for providing insurance adequate for rental property and, if necessary, inspecting the unit and ensuring that it is safe for residential purposes and STRs. A similar alternative used in South Portland requires hosts, regardless of the type of STR, to provide insurance with a liability policy of one million dollars. This prevents the issuance of STR insurance with inadequate liability coverage.

By requiring adequate STR-specific liability insurance, municipalities would have less need to spend valuable time and resources to inspect units. As a further incentive to insure, rural communities could require registration and proof of insurance, but waive any permitting fee. A fee waiver would likely cause more people to come forward and register their units. For those who still refuse to license their units, penalties would be appropriate.

2. Neighborhood Integrity

Next, there is a concern that as the popularity of Airbnb grows there will be a shift in neighborhood communities from almost entirely long-term residential use to short-term visitor occupancies. This concern is not as significant in rural communities where the size and density of neighborhoods is less than in urban areas. However, because neighborhoods tend to be smaller in rural areas, every additional STR has a larger impact on the long-term identity of a community than in an urban setting. Rockland's approach to owner-occupied STRs is positive because it addresses the concerns regarding the breakdown of neighborhoods while not limiting property owners, who are present during the rental period, from listing their unused space. In effect, there is no limitation to the number of owner-occupied rentals allowed in the city,¹⁴⁶ presumably because the other concerns are lessened if the residence is being used and occupied by the owner.

143. See Pineo, *supra* note 21, at 11; Merriam, *supra* note 5, at 4.

144. See Knightly, *supra* note 19, at 472 (opining that New York City imposes a \$7,500 fine for listing STRs because people do not understand the regulations surrounding them and enforcement is too difficult).

145. See McGuire, *supra* note 21 (Airbnb offers host liability insurance of up to one million dollars through its platform).

146. Rockland, Me., Zoning Ordinance § 11-210(2)(H)(16) (June 13, 2018).

However, Rockland's approach to non-owner-occupied STRs is highly restrictive. It automatically bars additional growth without considering long-term changes in the community. Effectively, Rockland is making long-term economic decisions for its community and population based on short-term concerns. A more common-sense approach would be to allow for differential treatment in various neighborhoods, such as developing limitations based on a percentage of households within a specific zone or sector of the town.¹⁴⁷ This would allow for more granular and customized regulations to enable the STR economy to grow consistently with the growth of the town. By connecting STR growth to the growth of certain zones or sectors of a municipality, the municipality can ensure that long-term residential communities are not at risk of becoming overpopulated with short-term housing.

3. *Business Intrusion*

There is a concern about business entities intruding into municipalities, buying residential property, and converting the units to STRs. To prevent this type of action, municipalities could establish limits on the number of non-owner-occupied units an individual or entity can list as STRs. A single-digit limitation would deter larger business entities from buying property in rural communities. If a business entity was restricted to only being able to list one, two, or three units in a town, the risk would likely not be worth the reward.

4. *Unfair Competition*

Finally, regulatory measures, in some cases, are used to offset the unfair competition between STRs and more traditional lodging establishments. As noted above, the concern of unfair competition is not as prevalent in rural communities because fewer large lodging establishments exist in these communities. However, where there is unfair competition, Maine and its municipalities can enact limited regulation to equalize the playing field.

First, Airbnb already collects and remits occupancy taxes from host revenue. Therefore, the unfair advantage in rental pricing, displayed by STRs in communities where taxes are not collected, is not at play in Maine. Next, with limited insurance, registration, and permitting requirements, STR owners are required to invest in the safety, upkeep, and maintenance of their property. These limited, financially-based requirements mimic, on a much smaller scale, the financial requirements of traditional lodging establishments. Therefore, the lower number of traditional lodging establishments in rural communities, the already-existing occupancy taxes in Maine, and the enactment of limited regulation with associated transaction costs all lessen the likelihood of unfair competition between STRs and traditional lodging establishments.

VI. CONCLUSION

As popularity of STRs continues to increase, more and more municipalities will need to take steps to ensure the best regulatory approach for their community. There

147. See *Zale*, *supra* note 1, at 1013 (discussing a scaled-approach to regulation).

is no doubt that STRs offer both positive and negative economic effects. There will continue to be municipalities that do not see STRs as harmful and enact little or no regulation. Other municipalities will see STRs as highly detrimental and will heavily regulate or even ban their use.

What approach makes sense for rural Maine communities that do not face the large-scale negative economic repercussions of STRs, but instead could benefit, as individuals and as communities, from an increase of these transactions? The suggestion here is that those communities should take a balanced approach—enact regulations that protect hosts and guests, but that also do not prohibit or restrict individuals from entering the market.

Rural communities should measure the level of regulation using a long-term vision that factors in the positive economic effects and allows those effects to come to fruition: (1) limited regulation that acts to ensure safety by requiring proof of adequate liability insurance; (2) protection of neighborhoods by providing flexible STR limitations based on population density; (3) deterring a commercial-STR influx by controlling the number of non-owner-occupied units allowed per person or entity within a municipality; and (4) prevention of unfair competition by ensuring hosts are following the applicable laws. However, regulations should not be applied as a blanket, one-size fits all approach that prevents the positive effects of STRs.

Taking any regulatory approach is challenging in the STR context because not only are rural and urban municipalities vastly different, but rural municipalities compared with each other are vastly different. These communities must make decisions based on a plethora of factors unique to their specific situations. In stagnant rural Maine communities, the STR economy can be a factor that propels economic growth by providing much needed income to hosts, bringing visitors and money into local economies, and enabling the creation of a secondary market for businesses that provide services to STRs. Rather than enacting more restrictive approaches found in urban communities, Maine's rural municipalities should consider how they can tailor STR regulation to their particular context and needs and contribute to responsible long-term growth.



Newberg Public Works

500

407

Forker

City Trucks Park Here

Littau

W FIFTH ST

W FIFTH ST

W FIFTH ST

RV

Cole/
Albertson

Hines/Neff

Umfleet

Peterson



OREGON VACATION RENTAL POLICYMAKERS WEBINAR





TOPICS TO DISCUSS

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Creating Context Around Short-Term Rentals:

Economic Impact, Housing Implications & Tax

Revenue- Jon Hockenyos

Insurance & Claims- Darren Pettyjohn

Noise Audits & Noise Monitoring-Andrew Schulz

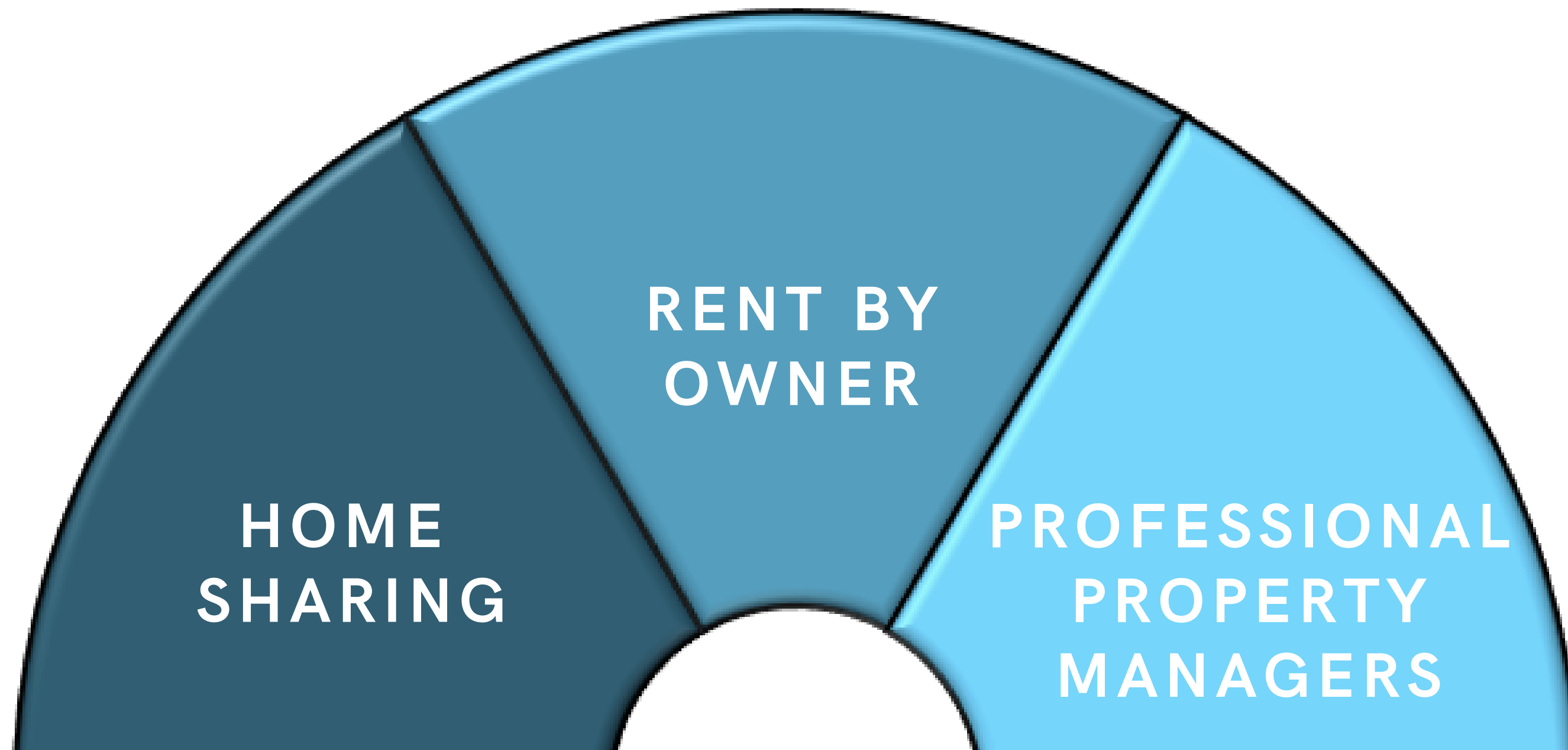
Q&A Discussion

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A BRIEF BACKGROUND BY SMART CITY POLICY GROUP



SHORT-TERM VACATION RENTALS





JON HOCKENYOS

Economist & Founder, TXP



August 2020

Creating Context Around Short-Term Rentals:

Economic Impact, Housing Implications & Tax Revenue
State of Georgia & Hood River, OR



TXP, Inc.

(512) 328-8300 phone

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About TXP

- Founded in 1987 to do economic analysis and public policy consulting
- Work on a wide variety of issues for a range of clients across the nation
- Retained by on an ongoing basis by a diverse range of local governments for strategy, analysis, and policy development
 - Incentive policy/negotiations
 - Industry-specific economic development strategy
 - Revenue forecasting
- Have worked on STR impacts since 2013 – analysis, policy, & strategy.
 - Economic impact
 - Housing Implications
 - Tax Revenues



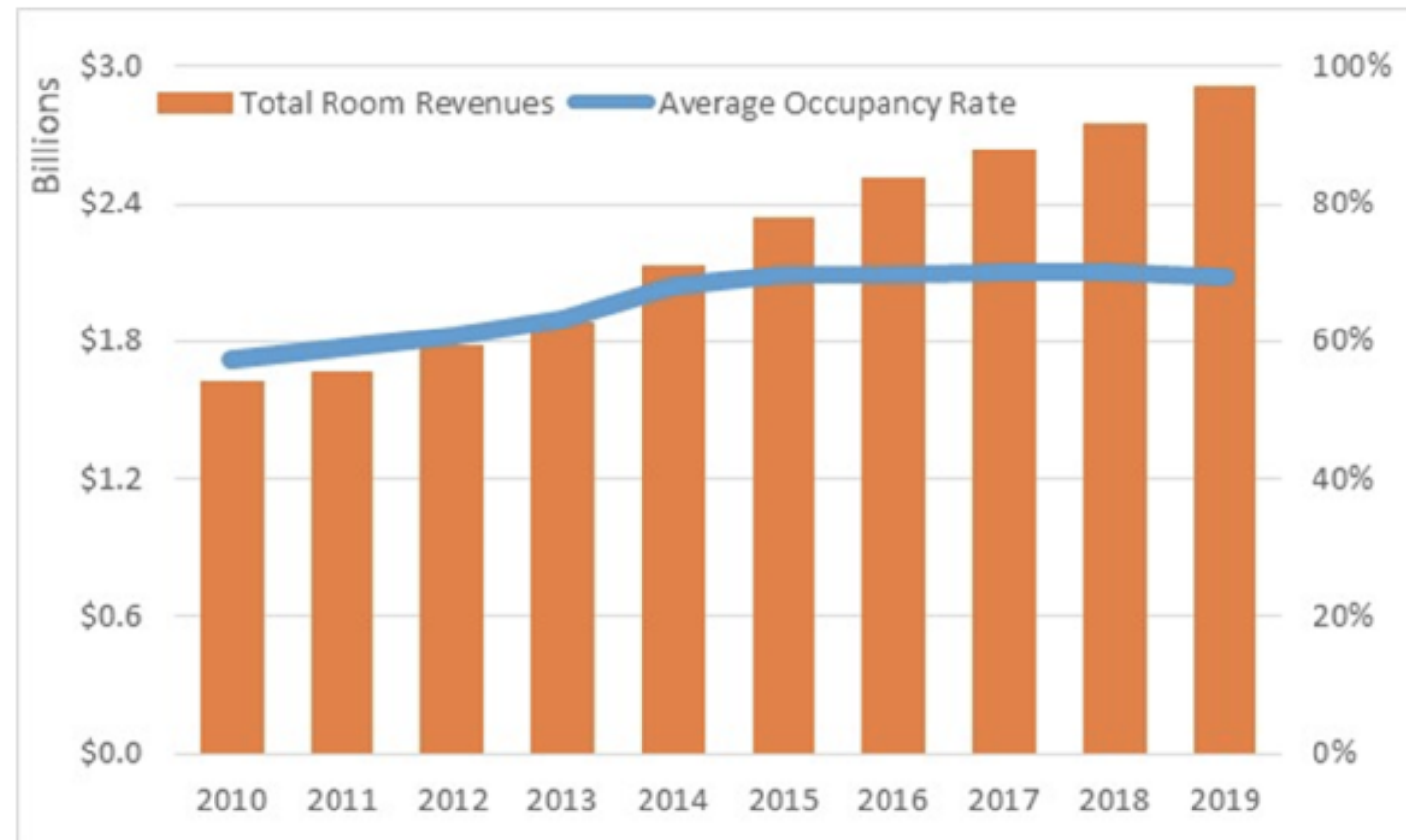
Typical Study Overview

- Studies typically are designed to present information about the impact of local STR industry, set into context.
 - Some discussion of overall local economy, followed by review of local tourism activity
 - Housing if appropriate
- Economic impact studies are normally driven by estimates of direct STR lodging “footprint,” derived from surveys and/or third-party data providers.
 - How many annual room-nights and average revenue per room-night
- This information enables calculation of total direct spending, which in turn is used to estimate total economic impact.
- Direct lodging tax revenues and local tax revenue generated from STR economic impact then calculated.
- Policy considerations then follow.



Local Economy

Hotel Industry Revenue and Average Occupancy in Georgia



- Steady growth overall (pre-pandemic)
- Occupancy evens out at a fairly balanced level – indicates a market where supply and demand are roughly in balance



Local Economy

Total Visitor Spending in Georgia and Sub-Markets

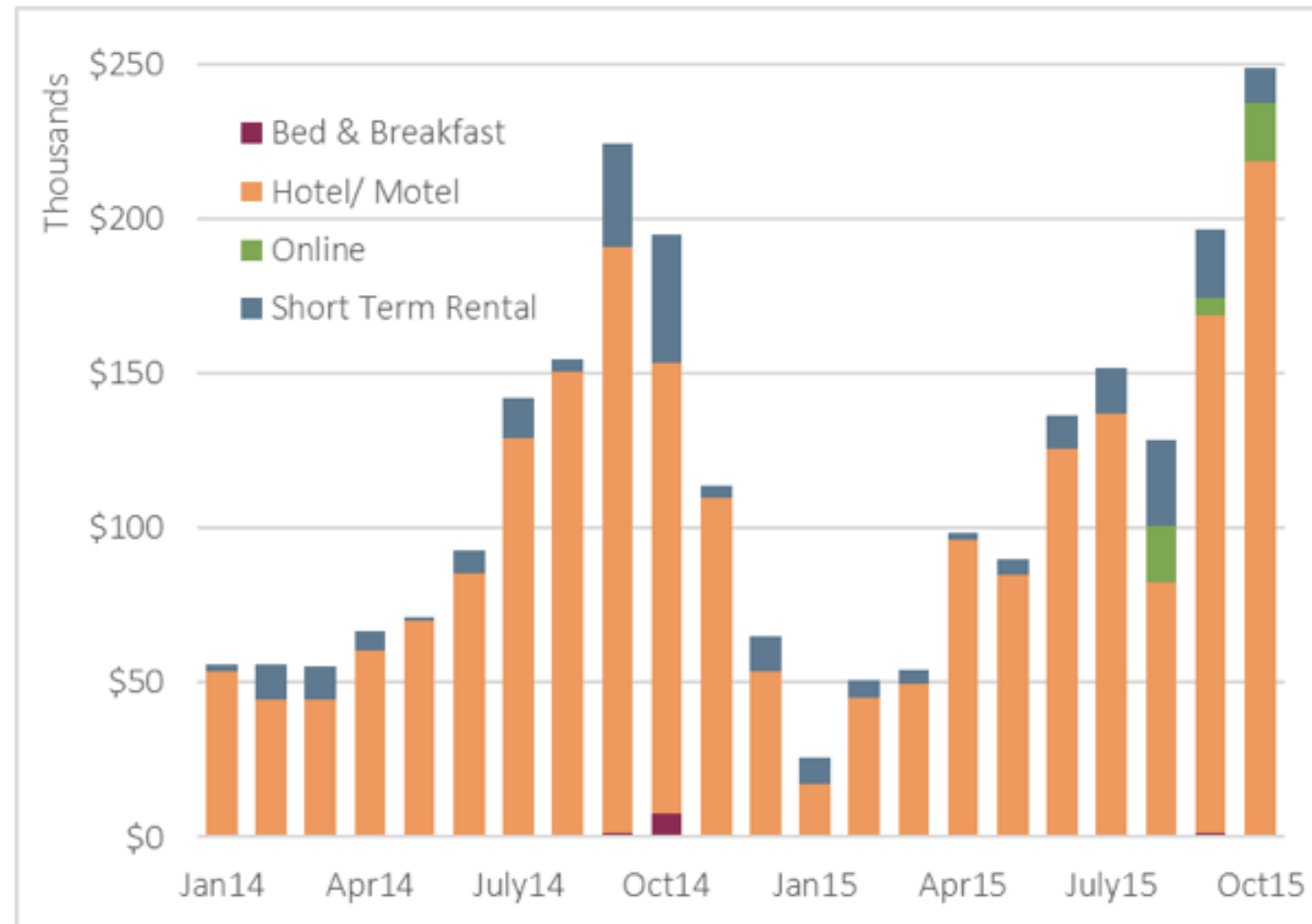
| | (\$Billions) | | | (\$Millions) | |
|------|--------------|---------|------------------|--------------|--------------------|
| | Statewide | Atlanta | Tybee & Savannah | Blue Ridge | Jekyll & St. Simon |
| 2012 | \$21.5 | \$7.4 | \$1.3 | \$88.4 | \$345.5 |
| 2013 | \$22.4 | \$7.8 | \$1.3 | \$91.1 | \$354.6 |
| 2014 | \$23.7 | \$8.3 | \$1.4 | \$97.2 | \$378.1 |
| 2015 | \$24.5 | \$8.6 | \$1.5 | \$99.1 | \$408.3 |
| 2016 | \$25.2 | \$8.9 | \$1.5 | \$102.2 | \$437.3 |
| 2017 | \$26.5 | \$9.2 | \$1.6 | \$104.4 | \$443.6 |
| 2018 | \$27.9 | \$9.7 | \$1.7 | \$109.8 | \$471.6 |
| CAGR | 4.4% | 5.0% | 4.5% | 3.7% | 5.3% |

- Major urban areas grow faster than the
- Negative Factors: travel/tourism, employment center, entertainment center, oil & gas, destination commerce (Border)



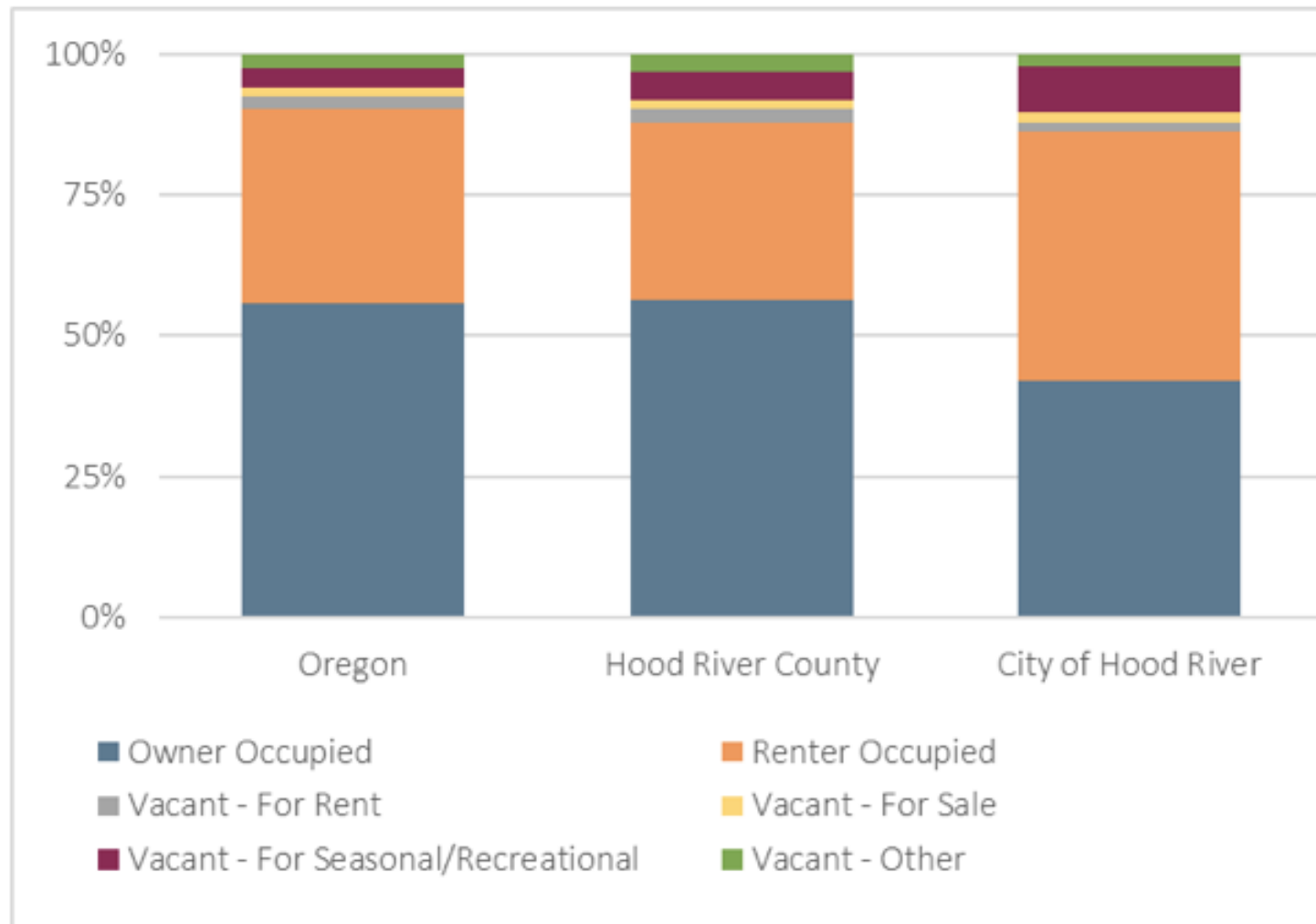
Local Economy/Tourism

Transient Room Tax Collected by the City of Hood River



- Data reflects highly seasonal nature of local tourism market
- STR/Online beginning to make presence felt – undoubtedly has accelerated in the past five years

Relative Proportion of Housing Unit Types in the City, County, and State



- Hood River (City and County) are more tourism-driven than Oregon as a whole, which translates into greater share of housing market for rent, especially for transient rent
- Even in City of Hood River, non-transient use likely is the majority of rental



Economic Impact

2015 Total Direct STR Visitor Spending in the City of Hood River (\$millions)

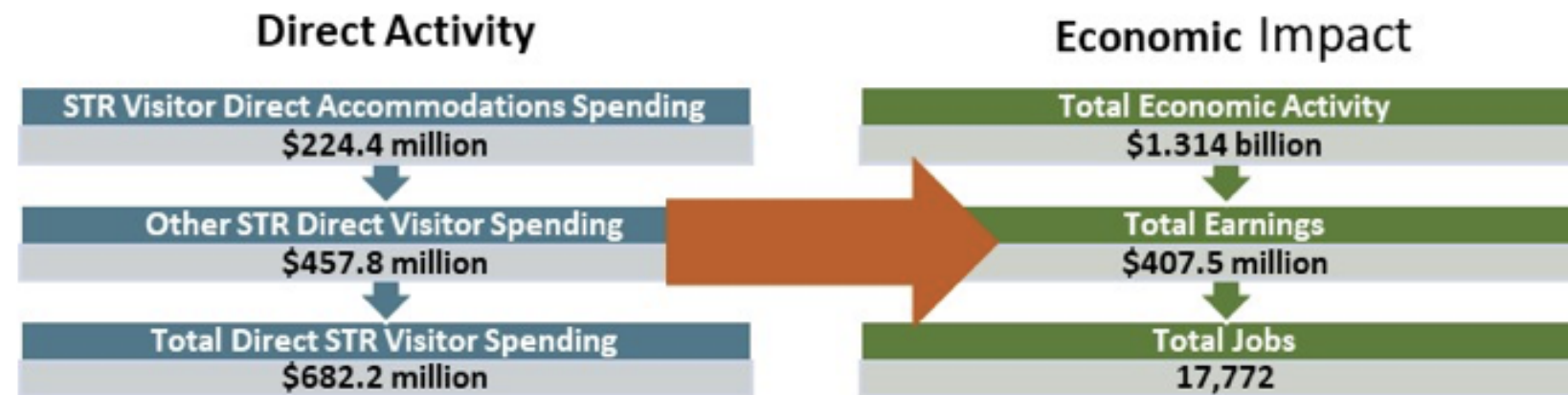


- Using a combination of data provided by local STR property managers and vacation rental websites, the aggregate direct spending on lodging by STR guests in the City of Hood River totaled \$5.4 million in 2015.
- Secondary sources allow estimate of other spending as a function of lodging.
- As a result, the 2015 total direct spending by STR visitors to the City of Hood River is estimated at **\$20.3 million.**



Economic Impact

State of Georgia Economic Impacts



- Similar to the previous slide, \$224.4 million in Accommodations spending leads to additional STR visitor spending of \$457.8 million on shopping, entertainment, food & drink, etc. Total direct STR visitor spending, therefore, is \$682.2 million
- RIMS 2 Model of Georgia economy maintained by BEA used for secondary impacts.
- \$682.2 million leads to total spending of \$1.31 billion, total earnings of \$407.5 million, and over 17,750 jobs. These are the ripple effects.



Economic Impact

State of Georgia and Sub-Market Economic Impacts

| | Direct Spend (\$M) | Output (\$M) | Value-Add (\$M) | Earnings (\$M) | Jobs |
|------------------|--------------------|--------------|-----------------|----------------|--------|
| Tybee/Savannah | \$207.2 | \$284.6 | \$163.9 | \$87.1 | 3,482 |
| Blue Ridge | \$126.6 | \$147.2 | \$109.0 | \$40.2 | 1,808 |
| Atlanta | \$189.2 | \$352.2 | \$256.6 | \$109.1 | 4,803 |
| Jekyll/St. Simon | \$113.2 | \$140.9 | \$103.2 | \$42.2 | 2,130 |
| Statewide | \$682.8 | \$1,314.1 | \$947.7 | \$407.5 | 17,772 |

- Same process and information as on the previous slide, as the statewide figures lineup. Atlanta and the coast are the main drivers of STR tourism in Georgia, but important contribution across all markets.
- Note: Greater direct spending on the coast than in Atlanta, but Atlanta has larger overall impact
 - “Leakage” is the concept economists use to describe that demand that cannot be filled by local suppliers, meaning that some products/services must be procured from elsewhere
 - Translation: more money stays locally in Atlanta, meaning higher multipliers.



Economic Impact

| | Output (\$M) | Value-Added (\$M) | Earnings (\$M) | Jobs |
|---------------------------------|------------------|-------------------|----------------|---------------|
| Agriculture, etc. | \$7.4 | \$3.9 | \$1.6 | 67 |
| Mining | \$0.4 | \$0.2 | \$0.1 | 1 |
| Utilities | \$30.3 | \$10.7 | \$9.6 | 54 |
| Construction | \$8.4 | \$8.4 | \$2.4 | 86 |
| Durable Manufacturing | \$20.7 | \$9.6 | \$4.2 | 95 |
| Non-Durable Manufacturing | \$62.2 | \$24.2 | \$9.9 | 246 |
| Wholesale Trade | \$52.9 | \$31.4 | \$17.3 | 214 |
| Retail Trade | \$180.4 | \$149.9 | \$62.2 | 2,911 |
| Transportation & Warehousing | \$110.6 | \$84.9 | \$24.1 | 2,459 |
| Information | \$48.8 | \$24.0 | \$14.0 | 156 |
| Finance & Insurance | \$85.2 | \$52.1 | \$25.7 | 449 |
| Real Estate | \$154.3 | \$56.1 | \$60.9 | 1,612 |
| Professional Services | \$55.2 | \$61.7 | \$19.9 | 468 |
| Management of Firms | \$30.1 | \$31.2 | \$10.3 | 162 |
| Administrative & Waste Services | \$33.6 | \$37.5 | \$11.6 | 643 |
| Educational Services | \$13.2 | \$14.1 | \$5.0 | 232 |
| Health Services | \$81.6 | \$85.7 | \$27.0 | 892 |
| Arts/Entertainment/Recreation | \$129.2 | \$102.7 | \$41.1 | 2,772 |
| Accommodation | \$6.8 | \$4.4 | \$2.2 | 90 |
| Food Services | \$175.2 | \$126.8 | \$49.7 | 3,621 |
| Other Services | \$27.5 | \$26.4 | \$8.2 | 455 |
| Households | N.A. | \$1.7 | \$0.4 | 87 |
| Total Annual | \$1,314.1 | \$947.7 | \$407.5 | 17,772 |

- Detailed breakdown by industry of the GA statewide impact numbers reported on previous slides
- Note that the bulk of the activity is concentrated in retail trade, arts/entertainment/rec, food services, etc, - the direct impact sectors. However, every industry sees some benefit.
- Accommodation typically sees large impact from tourism, but STRs are by definition housing – run through Household sector.



Conclusions

- STRs are an important and growing part of the Georgia's tourism industry, especially in smaller markets that cater to leisure travelers.
- It is increasingly clear that in Georgia, as in other areas of the country, STR activity is serving to expand the lodging market by providing a complementary good: as STR revenues have climbed dramatically in the past few years, hotel occupancy rates and revenues have also continued to increase in the vast majority of local markets in Georgia and across the nation.
- STRs serve a specific market - the casual leisure traveler. This traveler typically is interested in lodging options with amenities and geographic locations not fully satisfied by more traditional choices.
- As a result, a region's overall travel and tourism industry activity, and the resulting local economic impact, is increased by including STRs in the available lodging options.

August 2020

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Noiseaware



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Founder, Smart City
Policy Group

Q&A DISCUSSION

RESIDENTIAL RENTALS

The Housing Market, Regulations, and Property Rights

PREPARED FOR

The National Association of Realtors[®]

OCTOBER 14, 2015

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PREFACE

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

In 2011, Robinson & Cole prepared a white paper entitled *Short-Term Rental Housing Restrictions*. During the four year period since NAR's publication of that paper, there has been a dramatic increase in local government initiatives around the country designed to regulate short term rentals. This new white paper, *Residential Rentals – The Housing Market, Regulations, and Property Rights*, contains both an update of the research in the prior white paper and an expanded scope of analysis of issues, including the critical issue of how these regulatory initiatives affect property rights.

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

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Robinson & Cole LLP
October, 2015

RESIDENTIAL RENTALS

The Housing Market, Regulations, and Property Rights

SECTION 1. INTRODUCTION

1.1 Purpose of Paper

This paper was prepared at the request of the National Association of REALTORS[®] (NAR). The purpose of this paper is to (1) provide an overview of the residential rental housing market; (2) explain the problem of rental housing restrictions; (3) categorize and describe the different approaches taken by local governments to regulate residential rental housing, including short-term rentals, in their communities; (4) analyze the issues raised by these different regulatory approaches; (5) provide Realtors[®] with strategies for addressing these issues; and (6) outline “best practices” approaches to rental housing regulations that Realtors[®] can use in discussing the issue with local government officials.

1.2 Scope of Paper

This paper addresses the regulation of both long-term and short-term rental housing. The term “**short-term rental housing**” typically means a **dwelling unit**¹ that is rented for a period of less than thirty (30) consecutive days. However, as discussed in Section 2.4, the term can also mean the short-term rental (generally for a period of less than 30 consecutive days) of less than an entire dwelling unit, such as a spare bedroom or other space within a home. In some communities, short-term rental housing may be referred to as vacation rentals,² transient rentals,³ or transient vacation rental units.⁴

In general, short-term rental housing differs from bed & breakfasts, hotels, motels, and other types of temporary “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although a bed & breakfast often is similar in appearance and location to many short-term rentals, it is distinguishable by the presence of the owner/operator on-site.⁵ A boarding house differs from a short-term rental by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants.⁶ Boarding houses also tend to be less transient than short-term rentals.⁷ Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office.⁸

¹ The International Building Code (“IBC”) defines “dwelling unit” to mean: “A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.” IBC § 202 (2012).

² See, e.g., Sonoma County, CA Code of Ordinances § 02-140; Municipal Code of Chicago, Ch. 4-207; City of Islamorada, FL Code of Ordinances § 30-1292.

³ See, e.g., City of Coronado, CA Municipal Code § 86.78.030; City of Key West, FL Municipal Code § 122-1371.

⁴ See, e.g., Maui County, HI Code § 19.37; Kauai County, HI Code § 8.17.

⁵ See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

⁶ See APA Report at 5.

⁷ See APA Report at 5.

⁸ See APA Report at 5.

1.3 Special Features of Paper

Jurisdictions with residential rental restrictions that are cited in this paper are listed in *Appendix A, List of Jurisdictions Cited*. Key terms used in this paper are defined or explained in the context of the discussion. In order to assist the reader in locating and referencing these terms, they are **bolded** in the text and also listed in *Appendix B, Index of Key Terms*.

RESIDENTIAL RENTALS

The Housing Market, Regulations, and Property Rights

SECTION 2. RENTALS AND THE HOUSING MARKET

2.1 Residential Real Estate and the Economy

The residential real estate industry historically has played a significant role in the United States economy. In a healthy market, residential real estate can account for approximately 20% of the nation's Gross Domestic Product (GDP).¹ Housing-related activities contribute to the GDP in two ways: (1) through residential fixed investment (RFI), which generally includes the construction of single-family and multifamily structures, residential remodeling, the production of manufactured homes, and brokers' fees; and (2) consumer spending on housing services, which includes gross rents (including utilities) paid by renters, as well as owners' imputed rent (i.e., an estimate of how much it would cost to rent owner-occupied units) and utility payments.² Historically, RFI has averaged approximately 5% of the GDP, while housing services have averaged between 12% and 13%, for a combined 17% to 18% of GDP.³

Analyses by the National Association of Home Builders (NAHB) indicate that the homebuilding and remodeling industry has a broad impact on the U.S. economy:

Probably the most obvious impacts of new construction are the jobs generated for construction workers. But, at the national level, the impact is broad-based, as jobs are generated in the industries that produce lumber, concrete, lighting fixtures, heating equipment, and other products that go into a home or remodeling project. Other jobs are generated in the process of transporting, storing and selling these projects. Still others are generated for professionals such as architects, engineers, real estate agents, lawyers, and accountants who provide services to home builders, home buyers, and remodelers.⁴

¹ See Mark Sprague, "Why housing is important to the economy," *Independence Title* (Aug. 1, 2014) (available online at <http://independencetitle.com/why-housing-is-important-to-the-economy/>) (last visited June 4, 2015).

² See Robert Dietz, "Housing's Share of GDP: 15.5% for the Second Quarter," *NAHB Eye on Housing* (Sept. 26, 2014) (available online at <http://eyeonhousing.org/2014/09/housings-share-of-gdp-15-5-for-the-second-quarter/>) (last visited June 4, 2015).

³ See *id.* See also *The State of the Nation's Housing 2014* at 8 (Joint Center for Housing Studies of Harvard University, 2014) (available online at http://www.jchs.harvard.edu/research/state_nations_housing) (stating that "RFI made up just 3.1 percent of GDP in 2013, well below its historical average share of 4.7 percent"); Ray Valadez, "The housing bubble and the GDP: a correlation perspective," *Journal of Case Research in Business and Economics* (June 2010) (available online at <http://www.aabri.com/manuscripts/10490.pdf>) (stating, in relevant part: Traditionally, the line entry "Residential Fixed Investment" in the [U.S Department of Commerce, Bureau of Economic Analysis] tables has been used to measure the portion of the GDP dedicated to residential fixed investment. It normally runs approximately 5 percent of Real GDP in the U.S.... In combining the Residential Fixed Investment and Housing Services, they contribute to approximately 18 percent of the Real GDP in the U.S.).

⁴ Paul Emrath, "Impact of Home Building and Remodeling on the U.S. Economy," NAHB (Economics and Housing Policy Special Studies, May 1, 2014) (available online at <http://www.nahb.org/en/research/housing-economics/housings-economic-impact/impact-of-home-building-and-remodeling-on-the-u-s--economy.aspx>) (last visited June 4, 2015).

While all residential construction contributes to the economy, NAHB's analysis indicates that, on a per-unit basis, single-family construction has a significantly greater impact on the economy. For example, NAHB's national estimates for 2014 on the impact that residential construction had on the U.S. economy are as follows:

- Building an average single-family home: 2.97 jobs, \$110,957 in taxes
- Building an average rental apartment: 1.13 jobs, \$42,383 in taxes
- \$100,000 spent on remodeling: 0.89 jobs, \$29,779 in taxes⁵

Residential construction statistics reported by the U.S. Department of Housing and Urban Development (HUD) show that RFI made up approximately 3.1% of the GDP for the first quarter of 2015, well below the average of about five percent over the past fifty years.⁶

2.2 Rental Housing Market

According to U.S. Census Bureau estimates for the first quarter of 2015, the total housing inventory for the United States was approximately 133,575,000 housing units, with an overall occupancy rate of approximately 87 percent and an overall vacancy rate of approximately 13 percent.⁷ A breakdown of occupied housing units reveals that approximately 74,018,000 units (63.7%) were *owner-occupied*, while the remaining 42,222,000 units (36.3%) were *renter-occupied*. Between 2005 and 2015, the national trend in residential occupancies has shifted away from homeownership and toward rental occupancies. Nationwide, the homeownership rate peaked at 69.1 percent in 2005, but has steadily declined every year since then.⁸ The flip side to this decade-long decline in homeownership is the steady increase in the residential rental occupancy, which has risen from 30.9 percent of the total housing inventory in 2005 to 36.3 percent in 2015.⁹

A 2013 report on rental housing in the U.S. prepared by the Joint Center for Housing Studies of Harvard University (JCHS) described a confluence of factors that contributed to the recent upward trend in rental housing:

The enormous wave of foreclosures that swept the nation after 2008 certainly played a role, displacing millions of homeowners. The economic upheaval of the Great Recession also contributed, with high rates of sustained unemployment straining household budgets and preventing would-be buyers from purchasing homes. Meanwhile, the experience of the last few years highlighted the many risks of homeownership, including the potential loss of wealth from falling home values, the high costs of relocating, and the financial and personal havoc caused by foreclosure. All in all, recent conditions have brought

⁵ *Id.* at 1. For these estimates, the data on jobs created is shown in full-time jobs, while the term "taxes" represents all revenue paid to all levels of government (e.g., federal, state, local, and school district). The tax estimates also include various fees and charges, such as residential permit and impact fees. *See id.*

⁶ Ruth Mantell, "At last a tailwind for U.S. economy: housing," *Market Watch* (May 19, 2015) (citing New Residential Construction in April 2015, U.S. Census Bureau News - Joint Release - U.S. Department of Housing and Urban Development (May 19, 2015)).

⁷ "Residential Vacancies and Homeownership in the First Quarter 2015," U.S. Census Bureau News (April 28, 2015) (available online at <http://www.census.gov/housing/hvs/files/qtr115/currenthvspress.pdf>).

⁸ *See id.* at 5, Table 4, Homeownership Rates for the United States: 1995 to 2015.

⁹ *See id.*

renewed appreciation for the benefits of renting, including the greater ease of moving, the ability to choose housing that better fits the family budget, and the freedom from responsibility for home maintenance.¹⁰

Unlike owner-occupied housing, which is comprised predominantly of single-family homes, rental housing comes in a variety of configurations. Contrary to popular perceptions, most rental units are not located in large apartment buildings. Rather, according to the American Housing Survey, about 39 percent of rental properties are single-family homes and another 19 percent are located in small buildings with just two to four units.¹¹ Large apartment buildings (i.e., those containing ten or more units) account for approximately 29 percent of all rental housing units nationwide.¹²

(a) Urban Rental Housing

While rental housing is available in communities across the country, it is considerably more prevalent in central cities, where land prices tend to be high and low-income households generally are more concentrated.¹³ According to a JCHS tabulation of 2011 American Housing Survey data, approximately 43 percent of all occupied rental units are located in central cities, compared with 29 percent of all households.¹⁴ The concentration of rental housing rates in urban areas is highest in cities of the Northeast, where more than 60 percent of households rent compared with 45–50 percent in other regions.¹⁵

(b) Suburban Rental Housing

At approximately 40 percent, the share of rental housing units located in suburban areas is slightly lower than in urban areas of the county.¹⁶ The remaining 17 percent of rental homes are located in “non-metro” areas.¹⁷

(c) Tourist Communities – Short-Term Rental Housing

According to a market study of vacation rentals in the U.S., travelers spent \$23 billion on vacation rentals in 2012, nearly one-fifth of the total U.S. lodging market.¹⁸ Though the \$23 billion figure represents a decline in vacation rental revenue from pre-recession levels, the

¹⁰ *America's Rental Housing: Evolving Markets and Needs* at 1 (Joint Center for Housing Studies of Harvard University, 2013) (hereinafter “*America's Rental Housing*”) (available online at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_americas_rental_housing_2013_1_0.pdf).

¹¹ *America's Rental Housing* at 15.

¹² *America's Rental Housing* at 15.

¹³ *America's Rental Housing* at 11.

¹⁴ *America's Rental Housing* at 16.

¹⁵ *America's Rental Housing* at 16.

¹⁶ *America's Rental Housing* at 16.

¹⁷ *America's Rental Housing* at 16. In *America's Rental Housing*, the geographic areas are divided into three categories: central city, suburban, and non-metropolitan areas. Non-metropolitan appears to be a catch-all category of all areas other than central city and suburban.

¹⁸ See Dennis Schaal, “Vacation Rentals in the U.S. Are Now a \$23 Billion Industry,” *Skift* (Oct. 23, 2013) (available online at <http://skift.com/2013/10/25/vacation-rentals-in-the-u-s-are-now-a-23-billion-industry/>) (citing the PhoCusWright study “U.S. Vacation Rentals 2009-2014: A Market Reinvented”).

percentage of vacation rentals that were booked online reportedly doubled from 12% in 2007 to 24% in 2012.¹⁹

The short-term rental market can have a significant economic impact on the economy of a state or a local community. The 2014 study “Economic Impact: Florida’s Vacation Rental Industry”²⁰ of the economic impact of approximately 11,000 vacation rental units²¹ in Florida provides an illustration of the state-wide impact. The study estimated that in 2013 the state had a total of 17,017,768 vacation rental visitors. Using survey data and visitor spending estimates provided by Florida’s official tourism marketing corporation, the study calculated the economic impact of vacation rentals in terms of employment, visitor spending, and the overall state economy. It concluded:

- Florida’s vacation rental market has a total impact on economic output of \$31.1 billion.
- Florida’s vacation rental industry directly or indirectly supports a total of 322,032 jobs in Florida annually.
- The total labor income generated by those 322,032 jobs is approximately \$12.64 billion per year.
- The total estimated spending by visitors staying in vacation rental units is \$13.43 billion.
- Total owner-management spending across all licensed rental units in Florida is \$3.3 billion.²²

Studies also show that the vacation rental industry can have a significant impact on a local economy. A 2013 study of private home rentals by the University of New Orleans Hospitality Research Center described the economic impact of private home vacation rentals on the New Orleans metro area economy as follows:

In 2013, approximately 100,000 visitors to the New Orleans area stayed in private home rentals. These visitors made a substantial contribution to the New Orleans metro area economy. They generated a total economic impact of \$174.8 million, comprised of \$99.8 million in direct spending and \$74.9 million in secondary spending. Visitor spending also resulted in the creation or support of nearly 2,200 full-and part-time jobs. These jobs

¹⁹ See *id.*

²⁰ *Economic Impact: Florida’s Vacation Rental Industry* (2014, prepared by Thinkspot for the Florida Vacation Rental Managers Association) (hereinafter “*Florida Vacation Rental Study*”) (available online at http://gometeoric.com/wp-content/uploads/2014/03/FVRMAEconImpactReport_FINAL.pdf).

²¹ Consistent with Florida’s statutory definition, the *Florida Vacation Rental Study* defined “vacation rental” to mean “any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family or four-family house or dwelling that is also a transient public lodging establishment. *Florida Vacation Rental Study* at 3 (citing Florida Stat. § 509.242(1)(c)). Florida statute defines “transient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Florida Stat. § 509.013(4)(a)(1).

²² *Florida Vacation Rental Study* at 1.

are expected to create a total of \$56.1 million in additional earnings for residents of the New Orleans area.

Visitor spending is also estimated to generate a total of \$10.8 million in tax revenue for state and local governments. Of that total, roughly \$6.1 million will go to the State of Louisiana, and \$4.7 million will be claimed by local governments in the New Orleans area.²³

Studies of the local impact of short-term rentals in the Myrtle Beach Area of South Carolina²⁴ and Coachella Valley, California²⁵ reached similar conclusions. The Coachella Valley study, for example, concluded that short-term rentals spending was an important part of the tourism industry, “ultimately creating thousands of jobs and millions of dollars of earnings and tax revenue for the community each year.”²⁶

(d) College Community – Rental Housing Market

Communities that are home to a college or university also face a unique challenge in rental housing, namely the conversion of single-family homes to student rentals. The City of Saint Paul, Minnesota, for example, is home to nine colleges and universities.²⁷ Though each institution provides some degree of housing on campus, the limited supply of on-campus housing—and the preference of some students to reside off-campus—results in strong demand for housing in the surrounding neighborhoods.²⁸ According to a 2012 study of student housing under Saint Paul zoning regulations, more than half (3,002 of 5,715) of full-time undergraduate students at the University of Saint Thomas’s lived off-campus.²⁹ The study found that about two-thirds of the students who live off-campus reside in residential neighborhoods located within a mile of the UST campus, including 426 single- and two-family homes that were identified in UST records as student houses.³⁰

The popularity of off-campus housing in college towns has created a market for investors to buy single-family homes to hold as a long-term investment or to “fix and flip” for short-term profit. The website *Investopedia* describes the appeal of college-town housing as a possible investment opportunity:

Every year, millions of college students flood into college cities and towns. Those students, along with the faculty and staff at their schools, have one common need:

²³ Private Home Rentals: Visitor Survey Results and Economic Impact Analysis 2013 (July 2014, prepared by The University of New Orleans Hospitality Research Center for the Alliance for Neighborhood Prosperity) (available online at <http://neworleanscitybusiness.com/files/2014/09/Private-Home-Rentals-2013.pdf>).

²⁴ See *The Local Impact of Participating Short Term Rentals in the Myrtle Beach Area* (Spring 2014, TXP Inc.) (available online at <http://www.stradvocacy.org/media/TXP-STRAC-Impact-Report-Myrtle-Beach.pdf>).

²⁵ See *The Local Impact of Participating Coachella Valley Short Term Rentals* (Spring 2014, TXP Inc.) (available online at <http://www.stradvocacy.org/media/TXP-STRAC-Impact-Report-Coachella-0312141.pdf>).

²⁶ *Id.* at 7.

²⁷ *Student Housing Zoning Study: Report and Recommendations* (Saint Paul Planning Commission, May 2012) (available online at <http://www.stpaul.gov/documentcenter/home/view/20436>) (hereinafter the “*Saint Paul Student Housing Report*”).

²⁸ See *id.*

²⁹ See *id.*

³⁰ See *id.*

housing. Consistent demand for housing makes college and university communities attractive to people interested in real estate investing....

Whereas housing demand may fluctuate in other areas, college towns boast a steady flow of students, professors and staff, and a percentage of those will always require off-campus housing. Most colleges and universities do not have enough on-campus housing to satisfy demand, and when school budgets are tight, maintaining and upgrading housing can take a back seat to other financial priorities. Properties that are well-maintained, well-marketed, competitively priced and close to amenities can attract buyers and renters alike.

Baby boomers are beginning to realize the multiple benefits of investing in real estate in these communities. Many parents are viewing off-campus housing options as something that could not only provide a home for their child, but also be an investment that could appreciate in value for resale after graduation or provide a place for their own future retirement.³¹

The investment potential of college town rental housing has led to the publication of “Top Ten” lists that annually rank the best college towns for investing in residential properties for rental or flipping purposes. *RealtyTrac*, for example, “ranked the top 10 college towns for buying rental properties, and the top 10 college towns for flipping in 2014,” noting that:

College towns are often insulated from the real estate and economic storms that buffet other local housing markets, providing real estate investors a somewhat protected environment in which to either buy and hold rental properties for long-term cash flow or fix and flip homes for a short-term profit.³²

For the parents of college-aged children, college-town real estate can provide multiple benefits. Buying a house in their child’s college town can be a safe and more cost-effective alternative to spending money on rent or dorm fees.³³ In addition, off-campus housing is also an investment that could appreciate in value for resale after graduation or provide a place for their own future retirement.³⁴

(e) **Bed and Breakfast Inns**

A **bed and breakfast inn** (i.e., “B&B”) is similar to a short-term rental in that it provides temporary sleeping accommodations for guests and is often located in a single-family dwelling in a residential neighborhood. Although B&Bs often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator on-site

³¹ Katie Adams, “Real Estate Speculation in College Towns,” *Investopedia* (available online at <http://www.investopedia.com/articles/mortgages-real-estate/08/real-estate-speculation.asp>).

³² *College Towns: The Best for Real Estate Profiting* (RealtyTrac LLC, 2014) (available online at <http://www.realtytrac.com/content/news-and-opinion/best-college-towns-for-buying-rentals-flipping-in-2014-8156>).

³³ Lara Hertel, “Parents Head to College Towns to Buy Real Estate,” *Resort Life Blog* (available online at <http://resortlife.blogs.realtor.org/2010/11/18/parents-head-to-college-towns-to-buy-real-estate/>).

³⁴ Katie Adams, “Real Estate Speculation in College Towns,” *Investopedia* (available online at <http://www.investopedia.com/articles/mortgages-real-estate/08/real-estate-speculation.asp>).

and the breakfast service that they provide to guests.³⁵ For example, the Town of Jamestown, North Carolina, defines “bed and breakfast (B&B) inn” to mean “a private residence that offers sleeping accommodations to lodgers in 14 or fewer rooms for rent, is the innkeepers principal residence while renting rooms, and serves breakfast at no extra cost.” Communities typically regulate B&Bs through their zoning regulations. Maui County, Hawaii, for example, allows B&Bs by right in certain residential zoning districts, subject to certain licensing requirements and operational standards.³⁶ For example, Maui County requires that the owner/proprietor reside on the same lot as the B&B, limits B&Bs to a maximum of six bedrooms, and requires that breakfast be made available to onsite guests but prohibits the operation of a B&B as a restaurant.³⁷

The Professional Association of Innkeepers International (PAII) estimates that there are 17,000 B&Bs in the United States.³⁸ The number of bed and breakfast inns in the U.S. peaked at about 20,000 between 200 and 2005, but has since declined as a generation of innkeepers retired and the economic downturn made it more difficult for aspiring new owners to secure financing.³⁹ According to PAII estimates, the B&B industry is worth approximately \$3.4 billion, including the value of the inns themselves and the products and services needed to run a B&B, real estate, finance, insurance, food and beverage, cleaning, and more.⁴⁰

2.3 Rental Housing and Affordability

There is no universally accepted definition of “**affordable housing**.” U.S. Department of Housing and Urban Development (HUD) defines “affordable housing” to mean “housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities.”⁴¹

Local governments, on the other hand, tend to define “affordable housing” by applying the HUD “30 percent rule” to specific income groups. Portland, Oregon, for example, uses the following definition of “affordable housing”:

The term “affordable housing,” “affordable rental housing” or “housing affordable to rental households” means that the rent is structured so that the targeted tenant population pays no more than 30 percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to 80 percent of area median family income.⁴²

³⁵ See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association).

³⁶ See Maui County (HI) Code § 19.64.020 (available online at <http://www.co.maui.hi.us/DocumentCenter/Home/View/8581>).

³⁷ See *id.* § 19.64.030.

³⁸ See “The B&B Industry,” *Professional Association of Innkeepers International* (available online at https://innkeeping.site-ym.com/?The_Industry) (last visited June 10, 2015).

³⁹ See Alyssa Abkowitz, “A New Crop of Bed and Breakfasts,” *The Wall Street Journal* (Nov. 27, 2013).

⁴⁰ See The B&B Industry.

⁴¹ HUD User Glossary (available online at http://www.huduser.org/portal/glossary/glossary_a.html).

⁴² Portland, OR City Code § 30.01.030.A.

While affordable housing includes both owner-occupied homes and rental housing, quality affordable rental housing is the best option for serving the needs of lower-income families.⁴³ Realistically, rental housing is the only option for a significant majority of low- and very low-income families nationwide.⁴⁴ Housing Virginia observes that, in addition to being the most financially realistic option for low- and moderate- income families and families who have recently lost a home to foreclosure, rental housing fulfills the needs of other individuals and families:

Other people rent because they prefer the lifestyle of renting and may still be as socially invested in their community as homeowners typically are. Among their ranks are both former homeowners who are empty- nesters and lifelong renters who don't want to worry about lawns, gutters, and home repairs. Still others rent because they expect to move frequently. Finally, for some families, affordable rental housing is an important stepping stone that allows them to accumulate savings and prepare for homeownership.⁴⁵

In the post-Recession years, the growing demand for rental housing has resulted in a shortage of affordable housing nationwide. According to initial estimates from the American Community Survey, the number of cost-burdened renters (i.e., those paying more than 30 percent of household income for housing) reached approximately 21.1 million in 2012, more than half of all rental households.⁴⁶ The report *America's Rental Housing—Evolving Markets and Needs* explains that the widespread incidence of cost-burdened rental housing “reflects the gap between what lower-income households can afford to pay in rent and what housing costs to build and operate across the nation.”⁴⁷ The report states:

An analysis by the National Low Income Housing Coalition (NLIHC) compares the rent for a modest two-bedroom home in each state in 2013 to the average hourly wage that full-time workers would have to earn to afford that housing. In the highest-cost states, the estimated wage is more than \$20 an hour—well above the earnings of a typical renter. But even in the lowest-cost states, the wage needed to rent a modest home is at least \$12 an hour, considerably more than the federal minimum wage of \$7.25. In no state did the mean hourly wage of renters exceed what was needed to afford a modest home.

While growth in the number of low-income renters is an important factor driving the spread of cost burdens, the difficulty of supplying housing at rents these households can afford is also a problem. As a result, the gap between the demand for and supply of affordable rentals continues to widen.⁴⁸

As discussed in Section 6 of this paper, there is a growing sentiment among local governments that short-term and vacation rentals also contribute to the shortage of rental housing, as more rental units that could be rented out as long-term housing are set aside for use as short-term.

⁴³ TIM IGLESIAS & ROCHELLE E. LENTO, *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT* at 489 (2nd ed., 2011 American Bar Association).

⁴⁴ *See id.*

⁴⁵ *Why is affordable housing important? Is rental housing or homeownership more important?*, Housing Virginia (available online at <http://www.housingvirginia.org/Why-is-affordable-housing-important.aspx>).

⁴⁶ *America's Rental Housing* at 28.

⁴⁷ *America's Rental Housing* at 30.

⁴⁸ *America's Rental Housing* at 32.

2.4 Short-Term Rentals and the Sharing Economy

(a) The Sharing Economy

Like “affordable housing,” the term “**sharing economy**” has many definitions. *Investopedia* defines it as an “economic model in which individuals are able to borrow or rent assets owned by someone else. The sharing economy model is most likely to be used when the price of a particular asset is high and the asset is not fully utilized all the time.”⁴⁹ The blog *PeopleWhoShare* states that the sharing economy “is a socio-economic ecosystem built around the sharing of human and physical resources. It includes the shared creation, production, distribution, trade and consumption of goods and services by different people and organizations.”⁵⁰

However the term is defined, the sharing economy is growing at a rate that has outpaced governmental regulation and arguably has affected human behavior. The tech magazine *Wired* described this phenomenon in the 2014 article *How Airbnb and Lyft Finally Got Americans to Trust Each Other*:

The sharing economy has come on so quickly and powerfully that regulators and economists are still grappling to understand its impact. But one consequence is already clear: Many of these companies have us engaging in behaviors that would have seemed unthinkable as recently as five years ago. We are hopping into strangers’ cars (Lyft, Sidecar, Uber), welcoming them into our spare rooms (Airbnb), dropping our dogs off at their houses (DogVacay, Rover), and eating food in their dining rooms (Feastly). We are letting them rent our cars (RelayRides, Getaround), our boats (Boatbound), our houses (HomeAway), and our power tools (Zilok). We are entrusting complete strangers with our most valuable possessions, our personal experiences—and our very lives. In the process, we are entering a new era of Internet-enabled intimacy.

This is not just an economic breakthrough. It is a cultural one, enabled by a sophisticated series of mechanisms, algorithms, and finely calibrated systems of rewards and punishments. It’s a radical next step for the person-to-person marketplace pioneered by eBay: a set of digital tools that enable and encourage us to trust our fellow human beings.⁵¹

The idea of homeowners renting out their property to short-term renters is not a new one. The company VRBO—short for Vacation Rental By Owner—was established in 1995 for the purpose of facilitating short-term rentals of properties by their owners over the internet. However, a more recent entrant into the sharing economy—Airbnb—has revolutionized how the short-term rental market operates.

⁴⁹ See <http://www.investopedia.com/terms/s/sharing-economy.asp>.

⁵⁰ See <http://www.thepeoplewhoshare.com/blog/what-is-the-sharing-economy/>.

⁵¹ Jason Tanz, “How Airbnb and Lyft Finally Got Americans to Trust Each Other,” *Wired* (April 23, 2014) (available online at <http://www.wired.com/2014/04/trust-in-the-share-economy/>).

(b) Airbnb

Airbnb was founded in 2007 by a pair of San Francisco roommates who rented three air mattresses on their living room floor and cooked breakfast for their guests. From those humble beginnings Airbnb has grown into a company that in October 2014 was valued at \$13 billion, more than the Wyndham Worldwide or Hyatt hotel chains.⁵² As of September 2015, Airbnb's website touts more than 1,500,000 listings in more than 34,000 cities and 190 countries worldwide.⁵³ Since its inception, Airbnb reportedly has booked accommodations for more than 40,000,000 guests worldwide.⁵⁴

Airbnb works by providing an online marketplace for "hosts" to rent out spare rooms or properties, and guests to book them. Hosts can specify the type of accommodation (shared or private) and booking periods being offered, set "house rules," and upload photos.⁵⁵ The Airbnb website is fairly easy to use and intuitive for both hosts and guests, with multiple search criteria and results that are displayed with an adjacent map view and picture-based listings.⁵⁶ Hosts can either allow instant booking or require that a request be submitted first.⁵⁷ Airbnb makes money by charging a 6-12% "guest service fee" and a 3% host service fee every time a reservation is booked on its online platform.⁵⁸

Studies commissioned by Airbnb suggest that the company's contribution to the local economy can be significant. A *Los Angeles Times* article summarized the findings of Airbnb's Los Angeles study as follows:

The tech firm—which typically keeps its data close to its vest—says that it has just under 4,500 "hosts" in the city of Los Angeles and that they earned a combined \$43.1 million through the service from May 2013 through April 2014.

After tracking spending by guests and hosts and projecting the effect that money has filtering through the region's economy, Airbnb estimates a total economic impact of \$312 million, enough to support about 2,600 local jobs.⁵⁹

A similar study commissioned by Airbnb for the New York City market concluded that Airbnb "generated \$632 million in economic activity in New York in one year and supported 4,580 jobs throughout all five boroughs."⁶⁰ The New York City study also asserted that Airbnb guests spend more time and money in the city than typical tourists:

⁵² See "Airbnb's valuation could soar with new funding raise," *San Francisco Business Times* (Mar. 2, 2015) (available online at <http://www.bizjournals.com/sanfrancisco/blog/techflash/2015/03/airbnb-seeks-20-billion-valuation-in-new-funding.html>).

⁵³ See <https://www.airbnb.com/about/about-us>.

⁵⁴ See *id.*

⁵⁵ Lizzie Porter, "Airbnb: do the bargains come at a price?," *The Telegraph* (Aug. 8, 2014) (available online at <http://www.telegraph.co.uk/travel/travelnews/11020812/Airbnb-do-the-bargains-come-at-a-price.html>).

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See <https://www.airbnb.com/support/article/63>.

⁵⁹ Tim Logan, "As L.A. weighs regulation, Airbnb touts its economic impact in city," *Los Angeles Times* (December 4, 2014) (available online at <http://touch.latimes.com/#section/-1/article/p2p-82176472/>).

- Airbnb visitors stay on average 6.4 nights (compared to 3.9 for hotel guests) and spend \$880 at NYC businesses (compared to \$690 for average New York visitors).
- Airbnb brings visitors to neighborhoods that traditionally have not benefited from tourism. 82% of Airbnb listings in New York are outside of the main tourist hotel area of midtown Manhattan and the average Airbnb guest spends \$740 in the neighborhood where that guest stays.⁶¹

Airbnb also asserts that nearly 75% of its hosts use the money they earn to stay in their homes and about 30% of all hosts say hosting helped them to start a new business.⁶²

The rapid growth of Airbnb has led to concerns that the conversion of long-term rental properties into short-term rentals is having a negative impact on the available supply of long-term rental housing in some markets. An October 2014 report by the New York State Attorney General found that in 2013, more than 4,600 residential units in New York City were dedicated primarily or exclusively to short-term rentals.⁶³ The report, entitled “Airbnb in the City,” noted that most of the buildings converted to short-term rentals were located in popular neighborhoods in Brooklyn and Manhattan, and observed that:

A dozen buildings in those same neighborhoods had 60 percent or more of their units used at least half the year as private short-term rentals, suggesting that the buildings were operating as de facto hotels.⁶⁴

Similar concerns have been raised in other communities where Airbnb has grown in popularity. In the City of Boulder, Colorado, for example, the City Council directed staff to draft a short-term rental ordinance out of concern that investors were buying property for use as short-term rentals, thereby reducing the supply of long-term and affordable housing for residents.⁶⁵

⁶⁰ Caroline Moss, “Airbnb Says It Generated \$632 Million in Economic Activity in New York,” *Business Insider* (Oct. 23, 2014) (available online at <http://www.businessinsider.com/airbnb-632-million-economic-activity-new-york-2013-10>).

⁶¹ *Id.*

⁶² Tim Logan, “As L.A. weighs regulation, Airbnb touts its economic impact in city,” *Los Angeles Times* (December 4, 2014) (available online at <http://touch.latimes.com/#section/-1/article/p2p-82176472/>).

⁶³ *Airbnb in the City* (Oct. 2014, New York State office of the Attorney General) (available online at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>).

⁶⁴ *Id.* at 12.

⁶⁵ See Erica Meltzer, “Boulder council: Preserving housing for residents will guide short-term rental regulations,” *Daily Camera* (June 2, 2015) (available online at http://www.dailycamera.com/news/boulder/ci_28240692/boulder-short-term-rental-owners-plea-flexibility).

RESIDENTIAL RENTALS
The Housing Market, Regulations, and Property Rights

SECTION 3. LOCAL GOVERNMENT REGULATIONS

3.1 Regulatory Objectives

Many communities around the country, from major cities to rural towns and tourist destination communities, have adopted some form of rental housing regulation. The growing trend toward local regulation of residential rentals is evidenced by the rising number of requests that NAR has received for review of proposed rental regulations under the Land Use Initiative program. From 2003 to 2008, NAR received a total of eight such requests, for an average of 1.5 requests per year. By contrast, from 2009 to 2014, NAR received 26 requests for review of rental regulations, for an average of 4.3 per year. In 2015, the trend grew more sharply, with twelve requests received by NAR by the end of September.

Below is an overview of the most common reasons cited by communities for regulating rental housing.

(a) Protection of Neighborhood Character

New York City's City Environmental Quality Review (CEQR) Technical Manual describes the concept of "**neighborhood character**" as follows:

Neighborhood character is an amalgam of various elements that give neighborhoods their distinct "personality." These elements may include a neighborhood's land use, socioeconomic conditions, open space, historic and cultural resources, urban design, visual resources, shadows, transportation, and/or noise.¹

Generally speaking, neighborhoods tend to have at least two defining characteristics: (1) the physical character, such as the architecture of buildings and the layout of streets and open spaces; and (2) the non-physical character, such as the combination of land uses and density that affect the "quality of life" or "livability" of a neighborhood.

The protection of the character of existing *residential* neighborhoods is the most commonly cited municipal purpose for regulating rental housing. The need to protect the residential character is frequently cited by communities in support of a proposed vacation rental ordinance or a restriction on single-family home rentals. Often these communities are responding to complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic, and other activities that disrupt the residential character.

¹ *CEQR Technical Manual* at 21-1 (2014 ed., NYC Mayor's Office of Environmental Coordination) (available online at http://www.nyc.gov/html/oec/html/ceqr/technical_manual_2014.shtml).

(i) Neighborhood Character: Protection of Neighborhood Livability

For tourist communities, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being good neighbors. This rationale is evident in the City of Venice, Florida’s “resort dwellings” ordinance, which prohibits new resort dwellings from being established in certain single-family zoning districts:

[The] City council finds that resort dwelling rental activities in single-family neighborhoods affects the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship. The intent of these regulations is to prevent the use of single-family residences for transient purposes in order to preserve the residential character of single-family neighborhoods.²

In college communities, the rationale is largely the same. In 2011 the City of Saint Paul, Minnesota adopted a one-year moratorium on the conversion of owner-occupied homes to rentals in order to temporarily halt the proliferation of new college/university student rental housing in neighborhoods of predominantly single-family and duplex housing. While college students might consider single-family home rentals a better option than dormitory housing, and investors view them as an investment opportunity, permanent residents of college towns tend to see them in a much different light. A study of student housing and zoning in Saint Paul prepared by the Saint Paul Planning Commission (the “Saint Paul Student Housing Study”) summarized the impacts that rental housing were believed to have on residential neighborhoods as follows:

The conversion of housing to student occupancy, particularly the conversion of previously owner-occupied single-family and duplex housing, has substantially affected the character of the neighborhoods in and around the moratorium area and has had a negative impact on quality of life for many residents. Students tend to live at higher concentrations of adult residents as compared to rental housing as a whole. As a result, traffic and parking impacts tend to be greater than for rental housing in general. In addition, students as a population have a different lifestyle than the population as a whole, and in particular in comparison to families with young children. Students also are a transient population with respect to the neighborhoods they inhabit, and so have less connection to the long-term well-being of that neighborhood than more permanent residents may. As a result, noise can be an issue, and inattention to things like litter or property appearance can lead to negative associations with students and student housing for other residents. Finally, poor student behavior, exacerbated by alcohol use and abuse, can have a dramatic, negative impact on neighborhood livability. In general, these negative impacts associated with student housing are felt more acutely in lower density neighborhoods, as the conversion of even a single unit measurably changes the make-up of the neighborhood.³

Concerns about the protection of neighborhood character are not limited to tourist communities and college towns. Major cities including Los Angeles and San Francisco have adopted measures for the purpose of protecting neighborhood character. In June 2015, two members of

² City of Venice, FL Land Development Code § 86-151.

³ *Student Housing Zoning Study: Report and Recommendations* at 2 (Saint Paul Planning Commission, May 2012) (available online at <http://www.stpaul.gov/documentcenter/home/view/20436>).

the Los Angeles City Council proposed an ordinance that would ban people from renting out their home or apartment for short-term stays unless the property being rented out is their primary residence. After the measure was introduced, one of the sponsors was quoted as saying: “We cannot tolerate how a growing number of speculators are eliminating rental housing and threatening the character of our neighborhoods.”⁴ When in July 2015, the City of San Francisco announced the formation of a new agency—the Office of Short-Term Rental Administration and Enforcement—to oversee short-term rentals in the city, the mayor cited the need “to protect our housing supply and neighborhood character.”⁵

(ii) Neighborhood Character: Protection of Physical Characteristics

Some communities also cite the need to protect the physical characteristics of their residential neighborhoods. The underlying rationale is that rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. In theory, absentee property owners are presumed to be less diligent about the types of regular and routine maintenance tasks typically associated with home ownership, such as lawn maintenance, tree and shrub pruning, and exterior painting. This perspective is evident in the Saint Paul Student Housing Study, which asserted that some of the negative impacts of student housing can be attributed to the fact that student housing “tends to be almost exclusively rental with absentee ownership” and that the owners of student housing “may not observe the same standards of property maintenance as residents of owner-occupied properties expect.”⁶

In 2009, the City of Frisco, Texas cited inadequate property maintenance by absentee owners as justification for requiring the owners of single-family rental properties to register with the city. In particular, the “whereas” clauses of Frisco’s single-family rental ordinance stated that the city council “had investigated and determined that some absentee owners of single-family residential properties do not have firsthand knowledge of the condition of their properties” and that the registration requirement would “prevent the growth of unmaintained properties and ... preserve and enhance residential neighborhoods and property values.”⁷

The City of Clinton, Mississippi’s “Rental Housing Ordinance” webpage states that the city “adopted a Rental Property Ordinance in order to insure the health, safety and welfare of the community.”⁸ In response to the question “Why Does The City Have A Rental Inspection Program?,” the Rental Housing Ordinance webpage explains:

For years the City responded to complaints from tenants, other nearby rental property owners, and residents about the lack of property maintenance on many rental properties.

⁴ “L.A. proposal would block Airbnb hosts from creating ‘rogue hotels,’” *Los Angeles Times* (June 2, 2015) (available online at <http://touch.latimes.com/#section/-1/article/p2p-83685019/>).

⁵ See “San Francisco creates short-term rental agency,” *Business Insider* (July 2, 2015) (available online at <http://www.businessinsider.com/r-san-francisco-creates-short-term-rental-agency-2015-7>).

⁶ *Saint Paul Student Housing Study* at 9.

⁷ City of Frisco, Texas, Rental Ordinance – Single-Family Dwelling at 1 (available online at <http://www.ci.frisco.tx.us/departments/planningDevelopment/codeEnforcement/Documents/Rental%20Ordinance.pdf>). The Frisco Rental Ordinance is codified as Article VIII (Reporting Requirements) of the City of Frisco Code of Ordinances). See <http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=friscoset>.

⁸ City of Clinton, MS – Rental Housing Ordinance (available online at <https://www.clintonms.org/departments/community-development/rental/>).

Nearby property owners complained that as a result of poor property maintenance on rental properties, their property values were being adversely affected. This same complaint was echoed by other rental property owners who believed that their ability to rent, and even their ability to increase rents, was being adversely affected by other errant rental property owners in their neighborhoods.⁹

The City of Waconia, Minnesota’s “Housing Ordinance for Rental Property” is another example of an ordinance targeting the physical characteristics of rental property—the stated purpose of the ordinance is to “provide minimum standards to safeguard life or limb, health and public welfare by regulating and controlling the use and occupancy, maintenance and repair of all buildings and structures within the City used as rental housing.”¹⁰

(b) Revenue

For many communities, particularly those with a robust tourist industry, short-term rentals represent a potentially significant source of tax revenue. In Texas, for example, the state’s Hotel Occupancy Tax statute defines the term “hotel” to include any building that offers sleeping accommodations for consideration, including a “tourist home” or “tourist house,” and imposes a six percent tax on the price paid for such accommodations.¹¹ In addition, the Municipal Hotel Occupancy Tax statute authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.¹² The potential revenue available to municipalities with authority to tax short-term rentals is evidenced by a 2011 study prepared by the city auditor for Austin, Texas, which estimated that the city could gain \$100,000 to \$300,000 annually by collecting taxes on short-term rental properties.¹³ Communities that desire to collect such taxes often impose registration or licensing requirements as a means of identifying properties that are being used for short-term rentals and are therefore subject to taxation.

At least one local jurisdiction—Pima County, Arizona—has begun reclassifying properties that are used for short-term rental purposes from residential use to commercial use. These reclassifications are done unilaterally by the Office of the County Assessor, resulting in a substantial increases in property taxes for affected property owners.¹⁴ According to the Pima County Assessor, the reclassification is justified because “state law defines transient lodging establishments as those that rent for less than 30 days at a time” and short-term rentals meet this

⁹ *Id.*

¹⁰ City of Waconia, MN – Housing Ordinance for Rental Property § 541.01, Subd. 1 (available online at <http://www.waconia.org/DocumentCenter/Home/View/158>).

¹¹ See Texas Code §§ 156.001, 156.052. Accommodations of “at least 30 consecutive days, so long as there is no interruption of payment for the period,” are exempt from the tax. *Id.* § 156.101.

¹² See Texas Code § 351.003.

¹³ See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011). Austin’s short-term rental regulations were adopted in September 2013 as Ordinance No. 20130926-144 (available online at <http://www.austintexas.gov/edims/document.cfm?id=199458>).

¹⁴ See “Pima County Airbnb owners surprised by new taxes,” *Arizona Daily Star*, August 22, 2015 (available online at http://tucson.com/news/local/govt-and-politics/changes-put-bite-on-short-term-landlords/article_b3efb530-237f-5533-8cce-03a7dec4eb63.html).

criteria.¹⁵ In 2015, Pima County reportedly reclassified 235 residential properties to commercial, thereby causing the property tax rate on these properties to rise from the residential rate of 10 percent to the commercial rate of 18 percent.¹⁶

In June 2015 the State of Rhode Island adopted a budget bill that extended the state's 7 percent sales tax and 1 percent local hotel tax to house and room rentals of 30 days or less.¹⁷ It also imposed a total of 13 percent in taxes on "room resellers" such as Airbnb and Expedia, including the 7 percent sales tax, a 5 percent statewide hotel tax, and a 1 percent local hotel tax.¹⁸

A bill introduced in the Massachusetts General Assembly in January 2015 likewise proposes to tax short-term rentals at both the state and local levels. Bill H.2618 would require that all short-term rental properties be registered with the state and would impose a 5 percent state excise tax on all short-term residential rentals.¹⁹ Bill H.2618 would also authorize Massachusetts cities and towns to impose a local excise tax of up to 6 percent on short-term residential rentals.²⁰

In a 2014 report, the Attorney General of the State of New York estimated that, based on the city's hotel room occupancy tax rate of 5.875 percent, private short-term rentals in New York City would have incurred more than \$33 million in hotel tax liability from 2010 through June 2014.²¹

(c) Fairer Competition with Licensed Lodging

Short-term rental restrictions may also be viewed as a means of leveling the playing field between short-term rentals and more traditional types of overnight lodging that may be specifically regulated under state or local law, such as hotels and bed and breakfasts. In 2015, the American Hotel & Lodging Association (AH&LA) reportedly increased its lobbying efforts in a push for stronger regulation of short-term rentals listed on websites such as Airbnb.²² In an effort to "ensure that short-term rental hosts are held to the same standards as hoteliers," the AH&LA reportedly began working with governments and local hotel associations to address subjects such as occupancy tax payment and American with Disabilities Act (ADA) compliance.²³

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See "New taxes take effect in R.I.," Providence Journal (July 2, 2015); see Article 11 of the Rhode Island Fiscal Year 2016 Budget (H 5900 Sub A) (available online at <http://www.budget.ri.gov/Documents/CurrentFY/FY%202016%20Appropriations%20Act%20Final.pdf>).

¹⁸ See *id.*

¹⁹ See Massachusetts Bill H.2618, § 2 (2015) (available online at <https://malegislature.gov/Bills/189/House/H2618>). H.2618 was referred to the Joint Committee on Revenue in January 2015. As of October 14, 2015, H.2618 has not been reported out of committee.

²⁰ See *id.* § 3.

²¹ *Airbnb in the City* at 9 (Oct. 2014, New York State office of the Attorney General) (available online at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>).

²² See Danny King, "Hotels group seeks more regulation of short-term rentals," *Travel Weekly* (May 5, 2015) (available online at <http://www.travelweekly.com/Travel-News/Hotel-News/Hotels-group-seeks-more-regulation-of-short-term-rentals/>).

²³ See *id.* (quoting Vanessa Sindors, AH&LA's senior vice president of governmental affairs).

In 2015 the California Hotel & Lodging Association (CH&LA) came out in support of Senate Bill 593, which proposed to assist cities and counties in collecting Transient Occupancy Taxes by requiring online services that facilitate short-term residential rentals (e.g., Airbnb, VHBO, and FlipKey) to report the location of the units, the number of days rented, and the amounts paid.²⁴ CH&LA explained that it supports the bill because its “members simply want a level playing field” and that many short-term rental hosts “simply don’t pay the required taxes.”²⁵

In some cases, the hotel industry has lobbied for the adoption of short-term rental regulations on the grounds that short-term rentals are functionally the same as hotel units and therefore should either be taxed and regulated like hotels, or prohibited. For example, at a June 2011 meeting of the Planning Board of Buncombe County, North Carolina, several hoteliers cited unfair competition in arguing against the potential repeal of a ban on vacation rentals in the county’s more restrictive residential zoning districts. One industry representative testified that hotels “spend many, many hours and many, many dollars abiding by all the regulations that [hotels] are require to abide by and that many do not apply to short-term rentals.”²⁶

(d) Protection of Renter Safety

Protecting the health, safety, and welfare of residential renters is often cited as justification for the adoption of an ordinance requiring the registration and inspection of residential rental properties. For example, the City of Gary, Indiana has a rental registration and inspection program that requires all rental properties in the city to be registered annually and allows anyone who resides within 300 feet of a rental unit to file a complaint and cause the unit to be inspected.²⁷ The protection of renter safety is among the stated purposes of the Gary’s rental registration and inspection program, which states that the intent of the program is to “prevent unsafe living conditions, overcrowding and violations of laws and ordinance in residential housing units; [and] to correct and prevent housing conditions that adversely affect the safety, welfare and health of the persons occupying residential rental housing units.”²⁸

The protection of renter safety is also sometimes cited as the reason for the adoption of short-term rental restrictions. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units. For example, the City of Big Bear Lake, California has a “transient private home rentals” ordinance that is intended, in part, “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”²⁹

²⁴ CH&LA Legislative Action Summit Issues Summary (March 18, 2015) (available online at http://www.calodging.com/images/uploads/general/2015_Leg%20Issue_brief.pdf).

²⁵ *Id.*

²⁶ “Buncombe planners wade into Asheville-area vacation rental issue again; County debates relaxing the rules,” *The Asheville Citizen-Times*, June 6, 2011.

²⁷ See City of Gary, IN Rental Registration/Inspection Program Fact Sheet (available online at http://www.gary.in.us/gary-building-department/pdf/Rental_Registration_Fact_Sheet.pdf).

²⁸ *Id.*

²⁹ City of Bear Lake, CA Municipal Code § 17.03.310(A).

(e) Greater Compliance with Maintenance, Building and Nuisance Codes

Achieving greater compliance with property maintenance, building, and public nuisance codes is also cited as a reason for the adoption of an ordinance requiring the registration and inspection of residential rental properties. For example, the City of Gary, Indiana’s rental registration and inspection ordinance states that one of its purposes is to “facilitate enforcement of minimum standards for the maintenance of existing residential buildings and thereby prevent slums and blight.”³⁰

Some communities have also sought to improve the level of code compliance in rental properties by requiring that all residential rental agreements contain provisions that expressly require tenants to comply with all applicable laws. In 2015 the Town of Kure Beach, North Carolina, for example, considered an ordinance that would have required all vacation rental permit holders to include in their rental agreements a statement that:

tenants shall not violate federal, state, or local laws, ordinances, rules, or regulations; engage in disorderly or illegal conduct; engage in activities or conduct creating or resulting in unreasonable noise, disturbances, and public nuisances; allow an unreasonable amount of garbage, refuse, and rubbish to accumulate on the property; illegally park vehicles in conjunction with their use of the vacation home; and overcrowd the vacation home premises.³¹

The proposed ordinance, which was tabled by the Kure Beach Planning and Zoning Commission,³² also would have required all rental agreements to contain a statement that a “material breach” of above-quoted provision would result in a termination of the rental agreement.³³ The rationale is that, if the law itself is not sufficient to deter renters from engaging in unlawful conduct, the knowledge that the rental agreement could be terminated—for example, for having a party that results in a call to the police—might make renters think twice about their behavior.

As discussed in the subsection (f) below, rental regulations may also seek to achieve greater code compliance by holding landlords accountable for violations, regardless of whether they are directly responsible.

(f) Increased Landlord Accountability

Increased landlord accountability is also cited as a reason for the adoption of rental regulations. The City of Minneapolis, Minnesota makes no attempt to hide its intent to hold landlords responsible for the condition of their properties and to hold them accountable for compliance

³⁰ See City of Gary, IN Rental Registration/Inspection Program Fact Sheet.

³¹ Town of Kure Beach, NC: Proposed Vacation Rental Ordinance § 9(c) (available online at <http://townofkurebeach.org/Data/Sites/1/media/government/planning-zoning/proposed-vacation-rental-ordinance-version-four-final-2-5-15.pdf>).

³² See <http://www.wect.com/story/28694632/kure-beach-officials-decide-against-using-proposed-rental-property-ordinance>.

³³ Town of Kure Beach, NC: Proposed Vacation Rental Ordinance § 9(d).

with applicable laws. The Department of Housing Inspections Services maintains a webpage entitled “Holding Property Owners Accountable,” which states, in relevant part:

The City of Minneapolis does not tolerate landlords who violate rental licensing standards. We hold property owners responsible for the condition of their properties and hold owners responsible to proactively plan for, address and respond to issues of tenant behavior. Landlords are required by law to comply with the conditions of their rental license and must be responsive to problems on their properties. Maintaining a rental license in the City of Minneapolis is a privilege.

Unfortunately, the City of Minneapolis has not been able to convince all property owners to comply with our laws. As a result, properties have been condemned for maintenance, licenses have been revoked and in some instances, properties have been demolished.³⁴

The City of New Braunfels, Texas is another community in which rental property owners are held accountable for violations of the short-term rental regulations, even if the violation is committed by a tenant. Section 144-5.17-7(b) (Enforcement/Penalty) of New Braunfels’s short-term rental ordinance states: “Violations of any subsection of this [ordinance] may revoke the short term rental permit in accordance with subsection 144-5.17-8, Revocation.”³⁵ Notably, this provision does not distinguish between violations that are committed by a tenant (e.g., excessive noise or a parking violation) rather than by the owner.

3.2 Moratoria

(a) Generally

A governmental **moratorium** is a suspension by government of a particular activity within its jurisdiction. In the land use regulatory context, it is a type of interim zoning control that either prohibits all development or certain types of development for a defined period of time.³⁶

Moratoria are used by local governments to preserve the status quo or to limit the amount of change that can occur during a planning process or while new regulations are being drafted. A leading zoning and land use law treatise explains the rationale for development moratoria as follows:

A moratorium on development activity protects the planning process by preventing the establishment of uses that, though legal when established, would or might be inconsistent with needs ultimately identified by planning studies; uses, structures or lots established while new plans or regulations are being drafted may turn out to be “nonconforming” with the new regulations, a status that creates legal and practical problems for both the public and private sector. Public knowledge that the government has made, or is about to make, studies to alter existing land use controls frequently triggers development activity that may frustrate planning efforts. Developers race to beat the imposition of new controls which, they fear, will be more restrictive.... Successful [moratoria] should

³⁴ City of Minneapolis, MN: Housing Inspections Services – Holding Property Owners Accountable (available online at http://www.ci.minneapolis.mn.us/inspections/inspections_accountable).

³⁵ New Braunfels, TX Code § 144-5.17-7(b) (available online at https://www.municode.com/library/#!/tx/new_braunfels/codes/code_of_ordinances).

³⁶ See NAR GROWTH MANAGEMENT FACT BOOK § 3.01 (4th ed., 2015).

preclude the establishment of vested rights in new uses that are likely to become nonconforming under new regulations.³⁷

(b) Application to Rental Housing Problems

As applied to long- or short-term rental issues, moratoria have been adopted by communities in order to preserve the status quo while perceived problems are studied and/or new rental regulations are prepared. In 2013, the City of La Crosse, Wisconsin adopted a six-month moratorium on the “conversion, change, transfer, establishment or registration of any one family dwelling into a rental dwelling” in certain residential zoning districts.³⁸ The city reportedly adopted the moratorium in response to concerns that the conversion of single-family homes from owner-occupied dwellings to rental dwellings was having a negative impact on neighboring properties, such as a decrease in property values and a decline in the quality of life.³⁹ La Crosse reportedly used the six-month moratorium period to “study the impact of the conversion of [owner-occupied] dwellings to rental dwellings” and to determine whether it was necessary to amend the city’s Code of Ordinances in order to properly address those impacts.⁴⁰

Another example is the City of Cedar Falls, Iowa, which in 2014 adopted a six-month moratorium on the issuance of “minimum rental housing occupancy permits” in certain single-family zoning districts in order to “protect the status quo, . . . to study and review the existing Cedar Falls Code of Ordinances, and to consider a revised ordinance or ordinances to deal with the competing interests involved.”⁴¹ The Cedar Falls moratorium directed staff “to make recommendations to the City Council that will resolve the legitimate concerns related to [the conversion of single-family owner-occupied or non-rented residential dwellings into rental dwellings], and that City staff develop a recommendation for one or more proposed ordinances to address such matters.”⁴²

In September 2015, the City of Anaheim, California adopted a 45-day moratorium on new short-term rental applications “to give staff time to consider long-term fixes.”⁴³

³⁷ ZONING AND LAND USE CONTROLS, Ch. 22, Moratoria and Interim Development Controls § 22.01 (LexisNexis Matthew Bender 2015).

³⁸ La Crosse, WI Municipal Code, § 8.07(I); *see also* Betsy Bloom, “City Oks 6-month ban on rental conversions,” *La Crosse Tribune* (July 12, 2013) (available online at http://lacossetribune.com/news/local/city-oks--month-ban-on-rental-conversions/article_face5252-ea9f-11e2-8792-0019bb2963f4.html).

³⁹ Lewis Kuhlman, *Moratorium on Granting New Rental Registration for Single-Family Homes in the R-1 District, Issue brief explaining the need for a moratorium to study rental conversion’s effect on single-family homes and their neighborhoods* (hereinafter, “*Moratorium on Granting New Rental Registration*”), City of La Crosse, Planning & Development, at 1 (June 7, 2013).

⁴⁰ *Id.*

⁴¹ *See* Cedar Falls, IA, Resolution No. 19,183 at 2, ¶ 1.

⁴² *Id.* at 2, ¶¶ 5, 6.

⁴³ *See* “Anaheim imposes moratorium on new short-term rentals,” *Los Angeles Times*, September 16, 2015 (available online at <http://www.latimes.com/business/la-fi-anaheim-airbnb-20150916-story.html>).

3.3 Regulations Directed at Residential Rentals

(a) Prohibition

From the perspective of a short-term rental property owner, the most severe form of restriction is an outright ban on short-term rentals. A short-term rental prohibition may be limited to specific neighborhoods or zoning districts, or may be community-wide. In June 2015, the City of Manhattan Beach, California adopted a citywide ban on residential rentals of less than thirty days.⁴⁴ Also in 2015, the City of Santa Monica, California adopted a citywide ban on “vacation rentals” in which a guest has “exclusive private use of the unit” for less than thirty days.⁴⁵ Santa Monica’s ordinance does, however, permit “home-sharing,”⁴⁶ in which the primary resident of the property lives “on-site during the visitor’s stay,” provided that the owner obtains a business license and pays a 14% hotel tax on all home sharing stays.⁴⁷ As discussed in Section 6.1, the concern that rental property owners are converting long-term rentals to short-term rentals, thereby causing a decline in the inventory of available rental housing units, has led some communities—e.g., Santa Monica—to prohibit short-term rentals unless the unit is occupied by a long-term tenant for a minimum number of days annually and during the short-term rental period.

In Miami Beach, Florida, short-term rentals are subject to two types of bans: a district-specific ban and a citywide ban. First, Miami Beach’s short-term rental regulation prohibits the rental of any apartment unit or townhome for a period of six months or less in certain residential districts.⁴⁸ Miami Beach is also an example of a citywide ban, as its land development regulations prohibit the rental of any single-family dwelling anywhere in the city (i.e., citywide) for a period of six months or less.⁴⁹

(b) Amortization

Amortization is a type of regulation that enables a community to gradually eliminate nonconforming uses by giving the user of the nonconforming use a “designated grace period to continue and amortize an investment, after which the nonconforming use must be

⁴⁴ See “Manhattan Beach bans short-term rentals,” *The Beach Reporter*, June 23, 2015 (available online at http://tbrnews.com/news/manhattan_beach/manhattan-beach-bans-short-term-rentals/article_d88ef560-19dd-11e5-a467-53ec06713eb7.html).

⁴⁵ See generally Santa Monica, CA Ordinance No. CSS (available online at <http://www.smgov.net/departments/council/agendas/2015/20150512/s2015051207-A-1.htm>); see also Sam Sanders, “Santa Monica Cracks Down on Airbnb, Bans ‘Vacation Rentals’ Under a Month,” NPR (May 13, 2015) (available online at <http://www.npr.org/sections/thetwo-way/2015/05/13/406587575/santa-monica-cracks-down-on-airbnb-bans-vacation-rentals-under-a-month>).

⁴⁶ The Santa Monica ordinance defines “home-sharing” to mean: “An activity whereby the residents host visitors in their homes, for compensation, for periods of 30 consecutive days or less, while at least one of the dwelling unit’s primary residents lives on-site, in the dwelling unit, throughout the visitors’ stay.” *Id.* § 6.20.010(a).

⁴⁷ *Id.*

⁴⁸ See Miami Beach, FL Code of Ordinances § 142-1111(a) (Short-term rental of apartment units or townhomes) (available online at https://www.municode.com/library/#!/fl/miami_beach/codes/code_of_ordinances?nodeId=13097).

⁴⁹ See *id.* § 142-1111(a)(1); see also the City of Miami Beach’s “Vacation/Short-Term Rentals” webpage at <http://www.miamibeachfl.gov/planning/scroll.aspx?id=69472>.

discontinued.”⁵⁰ Amortization laws are based on the principle that “the property owner should be given time to recoup his investment in land before being forced to discontinue the use without compensation.”⁵¹

The City of Cannon Beach, Oregon provides a good example of an amortization provision in a rental ordinance. In 1992 the Cannon Beach City Council adopted a transient rental ordinance that included a provision requiring that “short-term rentals” (defined as a rental period of less than two weeks) be discontinued by February 1995, effectively creating a five-year amortization period for short-term rentals.⁵² The Cannon Beach City Council extended the amortization period to January 2005.⁵³

Calaveras County, California’s short-term rental regulations for the Lake Tulloch area provide another example. In general, the Lake Tulloch Short-Term Vacation Rental Regulations allow short-term vacation rentals, provided that the an administrative use permit (“AUP”) is obtained and certain “conditions of operation” are met.⁵⁴ The conditions of operation include restrictions on the number of occupants allowed to stay overnight, compliance with off-street parking requirements, and noise control standards.⁵⁵ In order to eliminate nonconforming short-term vacation rentals in the Lake Tulloch area, the Lake Tulloch Short-Term Vacation Rental Regulations contain the following amortization provision:

Section 20.20.102 - Amortization.

There is established a phased amortization period following the effective date of the adoption of this chapter, for any property rendered nonconforming by its provisions, wherein to attain full compliance with the provisions of this article according to the following schedule:

- A. Within three months of the effective date, all property owners of nonconforming short term vacation rentals shall submit an application for an initial AUP to the planning department for processing. Section 20.20.040 Development Standards, Subsection B (maximum occupancy) and Subsection E (off-street parking) shall not be limited as part of the first year (twelve months from county approval of the initial AUP) for any nonconforming use. Upon renewal of the initial AUP, Subsection B

⁵⁰ ZONING AND LAND USE CONTROLS § 41.04[1].

⁵¹ *Id.* As discussed in 8.2(c)(iii), an amortization law can constitute a taking under the Fifth Amendment to the U.S. Constitution if the amortization period is insufficient to allow affected property owners to recoup their investment.

⁵² See City of Cannon Beach, CA – Short Term Rental of Dwelling Units Proposed Ordinance (stating, in relevant part):

In January of 1992, the City Council adopted Ordinance 92-01. This ordinance established regulations for the transient rental of dwelling units, including a provision that the short-term rental of dwelling units would be discontinued on February 6, 1997 (this was referred to as the amortization period.) The ordinance defined the transient rental of a dwelling as a rental period of less than two weeks. Since 1992, the City Council has extended the amortization period twice, most recently to January 1, 2005.

⁵³ See *id.*

⁵⁴ See Calaveras County, CA Code of Ordinances, Ch. 20.20, Lake Tulloch Short Term Vacation Rentals at § 20.20.30.A (available online at https://www.municode.com/library/#!/ca/calaveras_county/codes/code_of_ordinances?searchRequest=%7B%22searchText%22:%22tot%22,%22pageNum%22:1,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentType%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=16236).

⁵⁵ *Id.* § 20.20.050.

- (maximum occupancy) and Subsection E (off-street parking) shall be in full compliance with the provisions of this chapter.
- B. Any application filed after three months of the effective date shall be in compliance with the provisions of this chapter.
 - C. A property owner may demonstrate a short term vacation rental qualifies for nonconforming status by providing evidence of legal contracts executed prior to the effective date of the ordinance that provide for short term rental of the property for dates that are after the ordinance comes into effect; or provide evidence that the property owner has paid TOT tax within one year of the date prior to the ordinance coming into effect.⁵⁶

In effect, Section 20.20.102 creates a “phased” amortization schedule for existing short-term vacation rental properties. In the first phase, short-term vacation rental property owners are allowed to continue without filing an accessory use permit application for a period of three months. In the second phase, short-term rental vacation properties are not required to comply with the maximum occupancy and off-street parking requirements for a period of one year. After the one-year amortization period, all short-term vacation rental properties are required to be “in full compliance” with Lake Tulloch’s Short-Term Vacation Rental Regulations.

The City of Newport Beach, California has an “amortization and amnesty period” provision in its Short Term Lodging Permit ordinance that allows the owners of short term lodgings who did not obtain a transient occupancy registration certificate prior to the effective date of the ordinance to do so without penalty, provided that an application for the certificate is filed not less than sixty days after the effective date of the ordinance.⁵⁷

(c) Geographically-Based Regulations

Communities that choose to allow short-term rentals often use their zoning authority to regulate the use on a geographic basis. For example, Venice, Florida regulates short-term rental properties (referred to locally as “resort dwellings”) only in the city’s Residential Estate (RE) and Residential Single Family (RSF) zoning districts.⁵⁸ In June 2015, the City of South Lake Tahoe, California considered amending its Vacation Home Rental Code in order to create a two-tiered districting scheme in which vacation home rentals would be permitted by-right in areas where “Tourist Accommodation Uses” were allowed by-right or with a special use permit, but would require a special use permit in areas of the city where Tourist Accommodation Uses were not authorized.⁵⁹

⁵⁶ *Id.* § 20.20.102.

⁵⁷ See Newport Beach, CA Municipal Code § 5.95.090 (available online at <http://www.codepublishing.com/ca/newportbeach/html/NewportBeach05/NewportBeach0595.html>).

⁵⁸ See generally Venice, FL Land Development Code § 86-151 (available online at https://www.municode.com/library/#!/fl/venice/codes/code_of_ordinances?nodeId=SPBLADERE_CH86LADECO_ARTVUSRE_DIV9SPUSRE_S86-151REDW).

⁵⁹ See http://slt.granicus.com/GeneratedAgendaViewer.php?view_id=6&event_id=218. The proposed vacation home rental ordinances appear on the “New Business” portion of the South Lake Tahoe City Council agenda as items (a) and (b) respectively. “Tourist Accommodation Uses” include bed and breakfasts, commercial transient lodging establishment (e.g., hotels, motels, and tourist cabins), and timeshares. See “Tourist Accommodation Project Information Packet and Checklist,” Tahoe Regional Planning Agency (available online at http://www.trpa.org/wp-content/uploads/Tourist_Accommodation_Project_Application.pdf).

(d) Quantitative Restrictions

Rather than regulating *where* short-term rentals may be located, some communities have chosen to regulate *how many* short-term rentals are allowed to exist at any given time. This quantitative approach represents a compromise between short-term rental owners who argue that they have the right to rent their properties on a short-term basis, and opponents who argue that short-term rentals should be prohibited as an unlawful commercial use in a residential neighborhood.⁶⁰

(i) Numerical Cap. Quantitative restrictions may take the form of a fixed limit on the total *number* of short-term rental permits that may be issued at any given time. For example, the City of Santa Fe, New Mexico authorizes the issuance of “up to 350 short term rental permits” for residential properties that do not otherwise qualify for permits as an accessory dwelling unit, owner-occupied unit, or unit located within a “development containing resort facilities.”⁶¹ Similarly, Maui County, Hawaii limits the number of short-term rental permits that may be issued by imposing the following restriction through its Short-Term Rental Homes code:

The County shall be restricted in approving the number of permits for short-term rental homes as distributed per the following community plan areas and as further restricted by the applicable community plan:

1. Hana: 48.
2. Kihei-Makena: 100; provided that, there are no more than five permitted short-term rental homes in the subdivision commonly known as Maui Meadows.
3. Makawao-Pukalani-Kula: 40.
4. Paia-Haiku: 88.
5. Wailuku-Kahului: 36.
6. West Maui: 88.⁶²

⁶⁰ The question whether governments have the authority to prohibit property owners from renting out their property is addressed in Section 8.2.

⁶¹ See Santa Fe, NM City Code § 14-6.2(A)(5)(b)(v) (available online at <http://clerkshq.com/default.ashx?clientsite=Santafe-nm>).

⁶² See Maui County, HA County Code § 19.65.030.R (available online at https://www.municode.com/library/#!/hi/maui_county/codes/code_of_ordinances?nodeId=TIT19ZO_ARTIVREMI_AR_CH19.65SHRMREHO).

(ii) Numerical Ratio. Another type of quantitative restriction that can be used to limit the number of short-term rentals within a community is a ratio. Specifically, a community may establish a maximum *ratio* of short-term rentals to residential dwelling units that cannot be exceeded. A good example of this approach is the Mendocino County, California zoning ordinance, which requires that the county maintain a ratio of “thirteen (13) long-term residential dwelling units to one (1) single unit rental or vacation home rental.”⁶³ An advantage to this approach is that, unlike a hard cap, the maximum number of short-term rentals permitted in Mendocino County will increase as the number of long-term residential dwelling units in the county increases—specifically, for every thirteen long-term residential dwelling units created, the county will allow one additional short-term rental permit to be issued.

(e) Proximity Restrictions

An alternative to restricting the quantity of short-term rental permits that can be issued by a numerical cap or ratio is a proximity restriction, which prohibits a short-term rental property from being located within a certain distance of another short-term rental property. For example, although it has since been revised to eliminate the proximity restriction, the “Residential Vacation Rentals” ordinance of San Luis Obispo County, California, previously contained the following provision:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.⁶⁴

(f) Registration/Licensing Requirements

Owners who intend to offer their property for rent may be required to register their property with the local government. For example, Garrett County, Maryland requires owners to register their property with the Office of Licensing and Enforcement Management and to pay a one-time fee as condition precedent to receiving a “transient vacation rental unit license.”⁶⁵ Short-term rental licenses often are valid only for a one- or two-year period, requiring property owners to renew the licenses—and to pay associated fees—on a regular basis. In the City of Marco Island, Florida, for example, a short-term rental registration must be renewed every year.⁶⁶

Many communities require short-term rental properties to pass certain inspections prior to the issuance of a permit, license, or renewal. For example, as a condition to the issuance of a short-term rental permit, Tillamook County, Oregon requires property owners to obtain a certification

⁶³ Mendocino County, CA Code § 20.748.020(A) (available online at https://www.municode.com/library/#/ca/mendocino_county/codes/code_of_ordinances?nodeId=MECOCO_TIT20_ZOOR_DIVIIIMETOZOCO_CH20.748SIUNREVAHORE).

⁶⁴ San Luis Obispo County, CA Code § 23.08.165(c).

⁶⁵ See Garrett County, MD Code of Ordinances § 160.03(A) (available online at [http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettc_md/garrettcoumarylandcodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:garrettc_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettc/md/garrettcoumarylandcodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:garrettc_md)).

⁶⁶ See Marco Island, FL Code of Ordinances § 8-101(d).

from a building inspector evidencing compliance with all applicable operational standards, including minimum fire extinguisher and smoke detector requirements, emergency escape and rescue standards, and structural requirements.⁶⁷

The issuance of a rental registration or permit may also be conditioned on the property owner, manager, or designated agent⁶⁸ satisfying a mandatory training requirement. Completion of a Landlord Training Program is mandatory for all residential rental license holders in the City of Elgin, Illinois.⁶⁹ The Landlord Training Program is taught by police officers from the Crime-Free Housing Unit and covers multiple topics including criminal and civil tenant screening, crime-free lease addenda, civil evictions, and legal issues in rental housing.⁷⁰

(g) Operational Restrictions

Communities that permit long-term or short-term residential rentals often impose performance-type standards on the operation of rental properties. The rationale for this approach is that, rather than banning residential rentals, communities can mitigate the negative impacts often attributed to rental occupancies (e.g., overcrowding and disruptive conduct) by establishing a set of rules governing the occupation and operation of rental properties. Operational restrictions typically are found in rental regulations that contain a registration or permit requirement. In some cases, a violation of an operational regulation can result in the suspension or revocation of a rental permit, penalties that ostensibly give rental property owners a strong incentive to judiciously screen tenants and to operate the rental in conformance with applicable regulations. Below are examples of types of operational restrictions that are frequently incorporated into rental regulations:

(i) Maximum Occupancy Limits

This type of restriction limits the maximum overnight occupancy of a rental property based on the number of bedrooms in the home and/or on the septic capacity of the property. For example, the Isle of Palms, South Carolina limits the overnight occupancy of short-term rentals to two persons per bedroom plus an additional two persons.⁷¹ In Sonoma County, California, the maximum occupancy of a vacation rental home on a conditional septic system is set as the amount “equal to the design load of the septic system.”⁷²

⁶⁷ See Tillamook County (OR) Short Term Rental Ordinances, Sections 6 (Standards) and 9.A.b (Short Term Rental Permit Application Requirements).

⁶⁸ For a discussion of designated agent or designated representative requirements, see Section 3.3(g) of this paper.

⁶⁹ See City of Elgin, IL Landlord Training Program (available online at <http://www.cityofelgin.org/index.aspx?nid=1194>).

⁷⁰ See *id.*

⁷¹ See Isle of Palms, SC City Code § 5-4-202(1) (available online at https://www.municode.com/library/#!/sc/isle_of_palms/codes/code_of_ordinances?nodeId=COOR_TIT5PLDE_CH4ZO_ART9SHRMRE_S5-4-202MAOVOC).

⁷² See Sonoma County, CA Code of Ordinances § 26-88-120(f)(2) (available online at https://www.municode.com/library/#!/ca/sonoma_county/codes/code_of_ordinances?nodeId=CH26SOCOZORE_ART88GEUSBUEXUILI_S26-88-120VARE).

(ii) Rental Period

This restriction places a limit on the number of times a property may be rented for short-term occupancy. For example, the City of Santa Fe, New Mexico limits short-term rental units to a maximum of 17 rental periods per calendar year and permits no more than one rental within a seven consecutive day period.⁷³

(iii) Parking Requirements

This operational restriction may require that the short-term rented property provide more off-street parking than comparable properties that are occupied by owners or long-term tenants. For example, Coconino County, Arizona's vacation home rental ordinance requires that all vacation home rentals have one on-site parking space per bedroom, that all on-site parking spaces have "improved surfaces," and that all vehicles be parked on-site in the improved parking spaces.⁷⁴ By contrast, the Coconino County Zoning Ordinance requires that a single-family home in a residential district have two off-street parking spaces, regardless of the number of bedrooms.⁷⁵

(iv) Noise Levels

This operational restriction applies specific noise level limitations to activities associated with short-term rental properties. Sonoma County's vacation rental ordinance, for example, contains an "Hourly Noise Metric" table that imposes specific quantitative noise level limits on vacation rentals during "activity hours" (9:00 a.m. to 10:00 a.m.) and "quiet hours" (10:00 p.m. to 9:00 a.m.).⁷⁶ Other communities impose a significantly less precise noise limits on vacation rentals. The "Noise and Disturbance" provision of Coconino County's vacation home rental ordinance, for example, simply states that a vacation rental "shall not be utilized in any manner that produces excessive noise ... or any disturbances that disturb the peace and quiet enjoyment of neighboring residences."⁷⁷

(v) Posting

This requires owners to prominently display a copy of the operational restrictions and contact information for the owner, manager, or other representative of the rental property. The short-term rental regulations adopted by the City of New Braunfels, Texas, for example, contain the following "tenant indoor notification" requirement:

The operator shall post in a conspicuous location of the dwelling the following minimum information:

- (1) Maximum number of occupants.
- (2) Location of required off-street parking, other available parking and prohibition of parking on landscaped areas.

⁷³ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii) (available online at <http://clerkshq.com/default.ashx?clientsite=Santafe-nm>).

⁷⁴ See Coconino County, AZ, Vacation Home Rental Ordinance § 24.12(F)(6) (available online at <http://www.coconino.az.gov/DocumentCenter/View/9775>).

⁷⁵ See generally Coconino County, AZ, Zoning Ordinance § 19.2.

⁷⁶ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(6).

⁷⁷ See Coconino County, AZ, Vacation Home Rental Ordinance § 24.12(F)(4).

- (3) Quiet hours and noise restrictions.
- (4) Restrictions of outdoor facilities.
- (5) 24-hour contact person and phone number.
- (6) Property cleanliness requirements.
- (7) Trash pick-up requirements, including location of trash cans.
- (8) Flooding hazards and evacuation routes. Including information on the emergency siren system.
- (9) Emergency numbers.
- (10) Notice that failure to conform to the occupancy and parking requirements is a violation of the City Code and occupant or visitor can be cited.
- (11) Other useful information about the community.⁷⁸

The City of Marco Island, Florida similarly requires that a notice containing 24-hour contact information, occupancy and parking limits for the unit, trash and recycling pick-up days, and a summary of the city’s noise ordinance be “conspicuously posted” in each rental dwelling.⁷⁹

(vi) Mandatory Lease Provisions

Some communities also require rental property owners to incorporate the operational restrictions into all rental agreements. For example, in addition to requiring that the performance standards established for vacation rentals be posted in a prominent place within the unit, Sonoma County expressly requires that the owner “include them as part of all rental agreements.”⁸⁰

(vii) Emergency Access Requirements

If located behind a locked gate or within a gated community, short-term rental units may be required to provide a gate code or lockbox with keys to local police, fire, or emergency services departments.⁸¹

(viii) Designated Representatives

This operational requirement mandates that that the rental property owner provide a current 24-hour working phone number of the owner, manager, or other designated representative to local officials and, in some cases, to property owners within a certain distance of the rental unit. For example, Marco Island, Florida requires that a designated contact be named on each short-term rental registration application and that the designated contact be “available for contact by the City for each hour or each day, seven days per week.”⁸² Some communities also specifically

⁷⁸ New Braunfels, TX Code § 144-5.17-4(g).

⁷⁹ See Marco Island, FL Code of Ordinances § 8-103 (available online at https://www.municode.com/library/#/fl/marco_island/codes/code_of_ordinances?searchRequest=%7B%22searchText%22:%22rental%22,%22pageNum%22:1,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentType%22:%5B%22CODES%22%5D,%22productIds%22:%5B%22%7D&nodeId=14000).

⁸⁰ Sonoma County, CA Code of Ordinances § 26-88-120(f)(15).

⁸¹ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(14).

⁸² Marco Island, FL Code of Ordinances § 8-102(1).

require that the designated representative be available during all rental periods within a certain distance (e.g., a one-hour drive) of the rental property.⁸³

(ix) Trash and Recycling Facility Storage

This operational restriction requires that trash and recycling bins be stored in a location that is not visible from public rights-of-way. Section 5.25.070 of the City of Palm Springs, California vacation rental ordinance, for example, states: “Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the collectors and between the hours of five a.m. and eight p.m. on scheduled trash collection days.”⁸⁴

(h) Special Permit Requirement/Conditions of Approval

Rentals are sometimes classified as a special use or a conditional use in a community’s land use regulations. Under the Sonoma County Zoning Regulations, a vacation rental may be allowed by right or as a special use, depending on whether the application satisfies the applicable standards. Section 26-88-120(c) of the Sonoma County Zoning Regulations (Permit Requirements) states:

Vacation rentals that meet the standards outlined in this section shall be allowed as provided by the underlying zoning district, subject to issuance of a zoning permit. Vacation rentals that exceed the standards in this section may be permitted, subject to the granting of a use permit.⁸⁵

Where a special use or conditional use permit is required for a rental use, the permit granting authority typically has the authority to impose conditions of approval on the permit in order to mitigate any potential negative impacts of the use on neighboring properties or the community. The “use permit” provisions of the Sonoma County Zoning Regulations, for example, expressly authorize the board of adjustment to “designate such conditions in accordance with the use permit, as it deems necessary to secure the purposes of this chapter and may require such guarantees and evidence that such conditions are being or will be complied with.”⁸⁶

(i) Remedial Action Requirements

Some rental regulations require that the property owner or its agent take action in response to a complaint or to remedy a known violation. In Marco Island, Florida, a designated contact person—who must be available for contact 24-hours a day, 7-days a week—must respond to a complaint within one hour of receiving a call from the city.⁸⁷ Section 8-102(1) of the Marco Island Code further requires that the designated contact take steps to address the complaint and report back to the city:

⁸³ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(13).

⁸⁴ Palm Springs, CA Municipal Code § 5.25.070(i).

⁸⁵ Sonoma County, CA Code of Ordinances § 26-88-120(c). Under the Sonoma County Code, a “use permit” is a discretionary permit issued by the board of zoning adjustments for use a specific site for a particular purpose. *Id.* § 26-92-070.

⁸⁶ Sonoma County, CA Code of Ordinances § 26-92-080(a).

⁸⁷ Marco Island, FL Code of Ordinances § 8-102(1).

The designated contact shall promptly make at least three (3) attempts following the receipt of a complaint from the City to contact the tenants and resolve the complaint. The designated contact person is also responsible for documenting the complaint; the date and time of receipt of the complaint from the city; the date and time of attempts to contact the tenant(s) and the result of the contact; the nature of the response by the tenant(s); and forwarding that documentation to the City Manager within one (1) hour of their response to the initial complaint.⁸⁸

The Residential Rental Registration and Remedial Action Program adopted by the City of Charlotte, North Carolina requires the owner of any residential rental property that reaches a certain level of “disorder activity” (e.g., reported violent crimes) to meet with police officials and to prepare a Remedial Action Plan to address the problem.⁸⁹ The Remedial Action Plan is a “written plan agreed upon and signed by both the Police Official and Owner whereby the Owner agrees to implement redial measures on a residential rental property” and is based on the procedures and practices set forth in the Charlotte-Mecklenburg Police Department guidebook *Remedial Action Plan Manual: A Guide to Managing Rental Properties to Prevent Crime*.⁹⁰

(j) Restriction on Number of Unrelated Individuals Residing in a Dwelling Unit

In order to address overcrowding and rentals by large groups of students or vacationers, many communities restrict the number of unrelated individuals that can reside together in a dwelling unit. This type restriction is typically found in a land use or zoning regulation. For example, the Coconino County Zoning Ordinance defines “family” to mean “any number of individuals related by blood, marriage, affinity or legal adoption/guardianship, or a group of not more than five (5) unrelated persons living together as a single housekeeping unit in a single dwelling unit sharing common cooking facilities.”⁹¹ The five unrelated persons maximum is made applicable to vacation rentals by expressly limiting the overnight occupancy of a vacation rental unit to a “family.”⁹²

The same approach is sometimes used by communities—often college towns—to address perceived problems caused by the conversion of owner-occupied single-family homes to rental housing for students. In 2015 the City of Cedar Falls, Iowa amended its rental housing code to reduce the number of unrelated persons who can rent housing together from four to either two or three in certain residential zoning districts.⁹³ The reduced unrelated persons occupancy restriction was one of several approaches that Cedar Falls considered as a means of addressing perceived problems caused by groups of college students renting single-family homes in residential neighborhoods.

⁸⁸ *Id.*

⁸⁹ Charlotte, NC Residential Rental Registration and Remedial Action Program §§ 6-584, 585.

⁹⁰ *See id.* § 6-856(d). The *Remedial Action Plan Manual: A Guide to Managing Rental Properties to Prevent Crime* (CMPD, Nov. 2009) is available online at <http://charmeck.org/city/charlotte/CMPD/resources/Ordinances/Documents/RemedialActionPlan2010.pdf>.

⁹¹ Coconino County Zoning Ord. § 17(s).

⁹² Coconino County Zoning Ord. § 24.12(D)(2).

⁹³ *See* Cedar Falls, IA, Ordinance No. 2836 (available online at <http://www.cedarfalls.com/DocumentCenter/View/3715>).

As discussed in Sections 8.2(c) and 8.2(d) of this paper, laws that restrict the number of unrelated persons permitted to reside together can raise issues under the Equal Protection Clause of the 14th Amendment and the federal Fair Housing Amendments Act.

(k) Neighborhood Conservation Districts

Another approach that has been used by communities to address perceived problems with the conversion of owner-occupied single-family homes to rental units is the neighborhood conservation district. In general, a **neighborhood conservation district** is an “area that has a clear and consistent character defined by geographical boundaries” and is “established with the specific intention of conserving the neighborhood character of the designated district.”⁹⁴ In 2014 the City of Steubenville, Ohio adopted an ordinance enabling property owners in certain single-family zoning districts to petition the Planning and Zoning Commission and the City Council to establish district use regulations in their residential neighborhoods in order to restrict rental use of single-family detached dwellings.⁹⁵ The stated intent of the neighborhood conservation districts was to “preserve the attractiveness, desirability and privacy of residential neighborhoods by precluding all or certain types of rental properties, thereby precluding the deleterious effect rental properties can have on a neighborhood such as property deterioration, increased density, congestion, and noise and traffic levels leading to the reduction of property values.”⁹⁶

The neighborhood conservation district approach was also considered by the City of Galveston, Texas, where a member of the city council proposed an ordinance that would allow property owners to “zone out” short-term rental housing by petitioning for a rezone.⁹⁷ Under the proposal, in order to submit a petition for a rezoning to a “short-term-rental-banning R-0 Single Family Residential Zoning District,” the request must come from an area where 75 percent of dwellings are single family owner-occupied, of which 75 percent of these homeowners must sign a petition agreeing to a ban on short-term rentals and commercial uses.⁹⁸ The proposal reportedly was based on a neighborhood conservation district zoning category previously adopted by the city.⁹⁹

(l) Business Licensing Requirement

Another type of requirement that is sometimes imposed on rental property owners is a business license. For example, Section 6.26.020 of Provo, Utah’s Rental Dwellings code states: “It is unlawful for any person to keep, conduct, operate or maintain a rental dwelling or a short-term rental dwelling within the City without a business license for such dwelling.”¹⁰⁰ Unlike zoning permits, which generally run with the land, business licenses typically are personal to the license

⁹⁴ City of Seattle, Neighborhood Conservation Districts, Overview (available online at <http://www.seattle.gov/council/rasmussen/ncd.htm>).

⁹⁵ See Steubenville, OH, Neighborhood Conservation District Ordinance § 1175.02.

⁹⁶ *Id.*

⁹⁷ “Councilwoman: Use petitions for rezoning: Residential neighborhoods could ask to restrict short-term rentals,” *Galveston News* (Feb. 19, 2015) (available online at http://www.stroag.org/20150219_galvnews.html).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Provo (UT) City Code § 6.26.020(1) (available online at <http://www.codepublishing.com/ut/provo/?provo06/Provo0626.html>).

holder and are not transferrable. Provo's Rental Dwelling code follows this approach, stating that a "business license for a rental dwelling or a short-term rental dwelling is not transferable between persons or structures."¹⁰¹ Consequently, the buyer of a rental property in Provo must obtain a new rental dwelling or short-term rental business permit before renting out the property.

Other cities that require a business license for operation of a short-term rental include Newport Beach, California;¹⁰² Telluride, Colorado;¹⁰³ and Las Vegas, Nevada.¹⁰⁴

(m) Taxation of Short-Term Rentals

As discussed in Section 3.1(b) above, short-term rentals can be a significant source of tax revenue for communities with a robust tourist industry. In order to capture that tax revenue, some states classify short-term rentals as a hotel or tourist accommodation in their tax codes. Texas's Hotel Occupancy Tax statute, for example defines the term "hotel" to include any building that offers sleeping accommodations for consideration, including a "tourist home" or "tourist house," and imposes a six percent tax on the price paid for such accommodations.¹⁰⁵ Texas also authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.¹⁰⁶

A bill introduced in the Massachusetts General Assembly in January 2015 would likewise tax short-term rentals at both the state and local level. Bill H.2618 would require that all short-term rental properties be registered with the state, would impose a 5 percent state excise tax on all short-term residential rentals, and would also authorize Massachusetts cities and towns to impose a local excise tax of up to 6 percent.¹⁰⁷

(n) Crime Free Housing Program

Some communities have implemented a crime free housing program aimed at improving the safety of multi-family rental housing by taking steps to reduce criminal activity. One such program is the Crime Free Multi-Housing Program, which has been adopted by nearly 2,000 cities in the United States.¹⁰⁸ The Crime Free Multi-Housing Program was developed by the

¹⁰¹ *Id.* § 6.26.020(2).

¹⁰² *See* City of Newport Beach, CA – Short Term Rentals (available online at

<http://www.newportbeachca.gov/government/departments/finance/revenue-division/short-term-rentals>).

¹⁰³ *See* Town of Telluride, CO – Short Term Rental Restrictions in the Residential Zone Districts (stating: "All short term rentals are subject to sales tax, excise tax and business licensing requirements.") (available online at <http://www.telluride-co.gov/DocumentCenter/View/260>).

¹⁰⁴ *See* City of Las Vegas, NV – Short Term Residential Rental (requiring a business license for short-term residential businesses) (available online at

[http://www5.lasvegasnevada.gov/LCAT/Bus_Lic_Instructions.aspx?Category=S01&CategoryName=Short%20Term%20Residential%20Rental%20\(PM\)](http://www5.lasvegasnevada.gov/LCAT/Bus_Lic_Instructions.aspx?Category=S01&CategoryName=Short%20Term%20Residential%20Rental%20(PM))).

¹⁰⁵ *See* Texas Code §§ 156.001, 156.052. Accommodations of "at least 30 consecutive days, so long as there is no interruption of payment for the period," are exempt from the tax. *Id.* § 156.101.

¹⁰⁶ *See* Texas Code § 351.003 (Municipal Hotel Occupancy Tax).

¹⁰⁷ *See* Massachusetts Bill H.2618, §§ 2, 3 (2015).

¹⁰⁸ *See* Crime Free Multi-Housing Program (available online at <http://www.crime-free-association.org/multi-housing.htm>).

Mesa, Arizona Police Department in 1992 and is designed to reduce crime, drugs, and gangs on apartment properties.¹⁰⁹

The Crime Free Multi-Housing Program generally consists of the following three phases, each of which must be completed under the supervision of the local police department:

Phase I - Management Training (8-Hours) Taught by the Police

- Crime Prevention Theory
- CPTED¹¹⁰ Theory (Physical Security)
- Benefits of Resident Screening
- Lease Agreements and Eviction Issues
- Crime Free Lease Addendum
- Key Control and Master Key Use
- On-Going Security Management Monitoring and Responding to Criminal Activity
- Gangs, Drugs Activity, and Crime Prevention
- Legal Warnings, Notices & Evictions Working Smarter With the Police Fire and Life Safety Training Community Awareness

Phase II - CPTED - Survey by the Police

- Crime Prevention Through Environmental Design Survey (CPTED)
- Minimum door, window, and lock standards compliance inspection
- Minimum exterior lighting standards evaluation
- Key Control procedures evaluation
- Landscape maintenance standards compliance

Phase III - Community Awareness Training

- Annual crime prevention social taught by property management and police
- Community awareness and continuous participation is encouraged
- Full certification (gold certificate) permits the right to post the Crime Free Multi-Housing Program sign and advertise membership in the Crime Free Multi-Housing Program in the print media using the official logo. This certificate expires every year unless renewed following compliance with Phases I & II.¹¹¹

Property managers can become individually certified after completing training in each phase and the property becomes certified upon successful completion of all three phases.¹¹² The anticipated benefits of the Crime Free Multi-Housing Program are reduced police calls for service, a more stable resident base, and reduced exposure to civil liability.¹¹³

In most communities, rental property owner participation a crime free housing program is voluntary. However, some communities have made participation mandatory for rental properties that exceed an established threshold for criminal activity. For example, in the City of Hagerstown, North Carolina, participation in the police department sponsored Crime Free

¹⁰⁹ See *id.*

¹¹⁰ CPTED is an acronym for “Crime Prevention Through Environmental Design.”

¹¹¹ See <http://www.hagerstownmd.org/index.aspx?nid=505>; see also <http://www.crime-free-association.org/multi-housing.htm>.

¹¹² See *id.*

¹¹³ See *id.*

Housing Seminar for landlords generally is voluntary.¹¹⁴ However, if a landlord receives notice of more than one “qualifying call” to the police department or one qualifying call that involves a felony, then the landlord is required to attend a four-hour program as a condition on the issuance of a rental facility license.¹¹⁵

(o) New Strategies to Address Airbnb and other Sharing Economy Models

The rapid growth of Airbnb—an online platform that enables a “host” to rent out a spare room or an entire home to a guest—has led some communities to develop new strategies to address the perceived negative impacts of the practice. From the local government perspective, a key concern is that the potential profit from short-term rentals has created an incentive for rental property owners and investors to convert long-term rental properties into short-term rentals, thereby reducing the available supply of long-term rentals and driving up rental prices in the local market. To counter this trend, some communities have adopted short-term rental regulations that expressly require that the owner or “host” reside in the dwelling unit for a minimum number of days each calendar year. For example, San Francisco’s short-term residential rental ordinance requires that a “permanent resident” occupy a short-term rental unit for at least 275 days per calendar year and that the permanent resident maintain records demonstrating compliance with the requirement for a period of two years.¹¹⁶ Portland, Oregon’s Accessory Short-Term Rentals ordinance contains a similar requirement, which states:

A Type A accessory short-term rental must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and unless allowed by Paragraph .040.B.2 or .040.B.3, the bedrooms rented to overnight guests must be within the dwelling unit that the resident occupies.¹¹⁷

Another concern is that online hosting platforms make it easier for an owner to use their home as a short-term rental without obtaining the necessary governmental permits or paying required lodging or use taxes. One way communities have addressed this issue is by requiring that the online hosting platform notify potential hosts that listing their property for rent is subject to local regulation. An example of this approach is San Francisco’s “Requirements for Hosting Platforms” provision, which states, in relevant part:

All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the City and County of San Francisco through the Hosting Platform’s service. The notice shall be provided prior to the user listing the Residential Unit and shall include the following information: that Administrative Code Chapters 37 and 41A regulate Short-Term Rental of Residential Units; the requirements

¹¹⁴ See Hagerstown, NC Rental Facilities Code § 197-7(A) (available online at <http://www.hagerstownmd.org/DocumentCenter/View/2317>).

¹¹⁵ See *id.* § 197-7(B).

¹¹⁶ San Francisco Code § 41A.5(g)(1) (available online at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0218-14.pdf>).

¹¹⁷ Portland, OR Code § 33.207.040(A)(1) (available online at <http://www.portlandonline.com/auditor/index.cfm?c=28197&a=501886>).

for Permanent Residency and registration of the unit with the [Planning Department]; and the transient occupancy tax obligations to the City.¹¹⁸

A bill introduced in the California State Legislature in 2015 proposed that online hosting platforms be required to notify potential hosts that listing their residence for rent on the platform might constitute a violation of their lease and could result in legal action by the landlord, possibly including eviction.¹¹⁹

Some communities have also addressed the taxation issue by requiring that the online hosting platform remit the required tax payment. San Francisco imposes such a requirement:

A Hosting Platform shall comply with the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability related to an occupant's, resident's, or Business entity's failure to comply with the requirements of the Business and Tax Regulations Code.¹²⁰

Other cities that require online hosting platforms to collect taxes on behalf of a resident/host include Washington, D.C.; Portland, Oregon; San Jose, California; and Chicago.¹²¹

Communities have also attempted to address host and tenant liability by requiring that the short-term rental host maintain a minimum amount of liability insurance. In San Francisco, for example, short-term rental owners are required to maintain liability insurance in an amount of not less than \$500,000 and any tenants must be named as additional insured.¹²² Other cities that short-term rental hosts to carry liability insurance include Nashville, Tennessee;¹²³ Lincoln City, Oregon;¹²⁴ and Chicago.¹²⁵

3.4 Regulations that Indirectly Affect Residential Rentals

¹¹⁸ San Francisco Code § 41A.5(g)(4)(A).

¹¹⁹ See SB 761 (amended May 19, 2015) (available online at http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_761&sess=CUR).

¹²⁰ San Francisco Code § 41A.5(g)(4)(B).

¹²¹ See "Airbnb is about to start collecting hotel taxes in more major cities, including Washington," *The Washington Post* (January 29, 2015) (available online at <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/01/29/airbnb-is-about-to-start-collecting-hotel-taxes-in-more-major-cities-including-washington/>).

¹²² San Francisco Code § 41A.5(g)(1)(D).

¹²³ See "Nashville is About to Regulate Airbnb, But Enforcement is Another Story," *Nashville Public Radio* (February 17, 2015) (available online at <http://nashvillepublicradio.org/post/nashville-about-regulate-airbnb-enforcement-another-story>).

¹²⁴ See Lincoln City, OR – Vacation Rental Dwelling License Code § 5.14.060.B.7 (requiring that an applicant for a vacation rental dwelling license carry "liability insurance which expressly covers the vacation rental operations on the subject property in the amount of at least \$500,000, combined single limit.") (available online at <http://www.codepublishing.com/OR/LincolnCity/html/lincolncity05/lincolncity0514.html>).

¹²⁵ See "Vacation Rental Fact Sheet," (City of Chicago, Dept. of Business Affairs & Consumer Protection) (stating that vacation rental license applicants must provide to the city a "certificate of insurance evidencing homeowner's fire, hazard and liability insurance, and general commercial liability insurance with limits of not less than \$1,000,000 per occurrence") (available online at <http://chicago47.org/wp-content/uploads/Vacation-rental-factsheet.pdf>).

(a) Residential Zoning Districts that Prohibit Multifamily Development

As noted in Section 2.1 of this paper, a substantial percentage of the residential rental units in the United States are located in multifamily buildings. According to the American Housing Survey, about 19 percent of rental properties are located in small buildings with just two to four units, while large apartment buildings (i.e., those containing ten or more units) account for approximately 29 percent of all rental housing units nationwide.¹²⁶ Given the importance of multifamily apartment buildings in the rental market, zoning regulations that prohibit multifamily development in residential zoning districts can have a substantial impact on residential rentals.

The American Planning Association report *Zoning as a Barrier to Multifamily Housing Development* found zoning to be a significant barrier to multifamily development in the Boston, Massachusetts area:

In the Boston study area, where housing prices and rents are high and rising, there was clear evidence of barriers to multifamily housing. Although a significant share of the existing housing stock is multifamily, many communities have little or no land zoned for multifamily use, and multifamily housing starts have fallen precipitously. Analyses of local zoning codes and regulations also support the conclusion that there exist regulatory barriers to multifamily development.¹²⁷

By contrast, the report found that in Portland, Oregon, “significant quantities of land are zoned for multifamily use throughout the metropolitan area, and ... rents remain below many other metropolitan areas.”¹²⁸

(b) Minimum House Size Requirements

Residential rentals can also be indirectly affected by a regulation that imposes a minimum floor area requirement on single-family homes. For example, in the City of Arcadia, California, the zoning regulations for the R-O First One-Family Zone require that a single-family home “contain not less than one thousand two hundred (1,200) square feet of floor area, exclusive of porches, garages, entries, patios and basements.”¹²⁹ It can reasonably be argued that a minimum house size requirement forces developers to build larger, more expensive homes that are more likely to be owner-occupied than rental housing.

¹²⁶ *America’s Rental Housing* at 12.

¹²⁷ *Zoning as a Barrier to Multifamily Housing Development* at 66 (American Planning Association, Planning Advisory Service Report No. 548, 2007) (available online at http://www.huduser.gov/portal/Publications/pdf/zoning_MultifmlyDev.pdf).

¹²⁸ *See id.*

¹²⁹ Arcadia (CA) Zoning Regulations § 9251.1.1 (available online at https://www.municode.com/library/ca/arcadia/codes/code_of_ordinances?nodeId=ARTIXDIUSLA_CH2ZORE_PT5REZO_DIV130000220001500012500FIOMIZO).

3.5 Regulation by Private Property Associations and Covenants

In addition to governmental regulation, rentals may also be subject to private regulation. These private controls typically are found in the covenants, conditions, and restrictions (CC&Rs) adopted by a homeowners association (HOA). CC&Rs can control virtually any aspect of a residential community, such as the use of property, the exterior color of a home, pets, or landscaping. CC&Rs can also be written to prohibit property owners from renting their homes.

Note: In most states, the requirements for the creation of an HOA and the adoption of CC&Rs are governed by state statute. For example, in Florida HOAs are governed by Chapter 720 (Homeowners' Associations) of the Florida Statutes. Another example is the state of Washington, where homeowners' associations are governed by Chapter 64.38 of the Revised Code of Washington.¹³⁰

Because the vacation rental concept is a relatively new one (the company Vacation Rentals by Owner, better known as VRBO, was established in 1995), the CC&Rs adopted by HOAs that were established long ago may not address vacation rentals. Without an explicit prohibition in the CC&Rs, it may be difficult for an HOA to prevent a property owner from renting out a home. For example, in one case in the state of Washington, a planned residential community had adopted CC&Rs that restricted the use of lots to single family residences and prohibited the use of any lot for commercial purposes.¹³¹ Although the covenants generally were silent on the subject of rentals, the HOA argued that vacation rentals were a commercial use that was expressly prohibited by the CC&Rs.¹³² The Washington Supreme Court, however, rejected the HOA's argument, ruling that rentals, no matter how long the term, are a residential use because the renter uses the home for the same purpose as the owner, namely "eating, sleeping, and other residential purposes."¹³³ It also rejected the argument that the payment of business and occupation taxes detracted from the residential character of the rental use.¹³⁴

3.6 Enforcement and Penalties

Communities typically enforce their rental regulations (a) in accordance with a generally applicable enforcement provision contained in the code of ordinances or zoning ordinance, or (b) through a specific enforcement provision incorporated into the rental regulations. Article 9 of the Isle of Palms, South Carolina Code of Ordinances is one example of a short-term rental ordinance that contains no specific enforcement provision, but is enforced under a generally applicable penalty provision.¹³⁵ Under the Isle of Palms Code of Ordinances, violation of the short-term rental ordinance is subject to the same penalties and procedures as a violation of any

¹³⁰ Other examples of state HOA statutes are: the Texas Residential Property Owners Protection Act (Title 11, Chapter 209, of the Texas Property Code); the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes); and the Minnesota Common Interest Ownership Act (Chapter 515B of the Minnesota Statutes).

¹³¹ *Wilkinson v. Chiwawa Communities Association*, 327 P.3d 614, 617 (Wash. 2014).

¹³² *Id.* at 618-19.

¹³³ *Id.* at 620.

¹³⁴ *Id.*

¹³⁵ See generally Isle of Palms, SC City Code §§ 5-4-201 to -206 (Short-Term Rentals) and § 5-4-7 (Violations and Penalties).

other provision the zoning code. Potential penalties for a violation are established under Section 5-4-7 of the Code of Ordinances, which states:

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

Any person violating any of the provisions of this chapter shall be deemed guilty of a *misdemeanor* and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. Each day that a violation continues shall constitute a separate offense.¹³⁶

By contrast, the short-term rental ordinances of Sonoma County, California and Santa Fe, New Mexico contain specifically applicable enforcement provisions. Under Section 26-88-120(g) of the Sonoma County vacation rental ordinance, individuals who register an initial complaint about a vacation rental property are directed to the contact person identified in the zoning permit or use permit issued for the property. Subsequent complaints are addressed to code enforcement officials who are responsible for conducting an investigation to determine whether there was a violation of a zoning or use permit condition. Code enforcement may accept neighbor documentation consisting of photos, sound recordings and video as proof of an alleged violation. If code enforcement verifies that a violation has occurred, then a notice of violation is issued and a penalty may be imposed in accordance with Chapter 1 of the Sonoma County Code. In addition, under Section 26-88-120(g)(1), code enforcement officers are also given the discretion to schedule a revocation hearing with the board of zoning adjustment. If a vacation rental permit is revoked, then a new zoning or use permit for a vacation rental may not be reapplied for or issued for a period of at least one year.¹³⁷ Santa Fe's short term rental unit ordinance includes a specific provision that authorizes the city to revoke a short term rental permit upon conviction for a third violation of the ordinance.¹³⁸

Communities can also address many of the negative impacts often attributed to rental properties (e.g., excessive noise, late night parties, and insufficient property maintenance) by enforcing existing provisions of their code of ordinances or zoning ordinance. Below are some examples.

(a) Abatement of Nuisances

The term “**nuisance**” is generally defined as “a condition, activity, or situation (such as a loud noise or a foul odor) that interferes with the use or enjoyment of property.”¹³⁹ A nuisance can either be “private,” meaning it affects a private right not common to the public or causes a specific injury to one or a small number of people, or “public,” meaning it unreasonably interferes with a right common to the general public.¹⁴⁰

¹³⁶ Isle of Palms, SC City Code § 5-4-7 (Emphasis added).

¹³⁷ See generally Sonoma County, CA Code of Ordinances § 26-88-120(g).

¹³⁸ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(iv).

¹³⁹ BLACK'S LAW DICTIONARY at 1233 (10th ed., Thomson Reuters).

¹⁴⁰ See *id.* at 1235 (defining “private nuisance” and “public nuisance”).

Local governments generally have the power to regulate and abate public nuisances but not private nuisances.¹⁴¹ For example, the Marco Island City Code defines “**public nuisance**” to mean:

the commission or omission of any act, by any person, or the keeping, maintaining, propagation, existence or permitting of anything, by any person, by which the life, health, safety, or welfare of any person may be threatened or impaired. Additionally, permitted uses and conditional uses in any residentially zoned area which create smoke, dust, noise, odor, vibration, or glare which by themselves or in combination may be harmful or injurious to human health or welfare or which unreasonably interfere with the customary use and enjoyment of life or property are a public nuisance.¹⁴²

In addition, Section 18-36(4) of the City Code provides that: “No owner, lessee, occupant, guest, or agent for the owner shall allow the keeping of a public nuisance on any property, developed or undeveloped.” Marco Island’s public nuisance ordinance also requires that the “owners, lessees, occupants or agents for the owner of developed and undeveloped lots shall control all excessive growth of grasses or weeds within the right-of-way adjacent to their property by cutting or removing the grasses and weeds, and shall maintain the right-of-way free from any accumulation of abandoned property, litter, pollution, or other matter.”¹⁴³ Under Section 18-37 (Abatement of nuisances) Marco Island has the authority to levy fines and to order the abatement of public nuisances.

The City of Raleigh, North Carolina’s public nuisance code likewise makes it unlawful to make, maintain, or fail to abate a public nuisance.¹⁴⁴ If a public nuisance is not abated within ten days after written notice is given by the city, then the city can abate the conditions constituting the public nuisance and place a lien on the property to recover the cost of abatement plus a \$175 administrative fee.¹⁴⁵

(b) Enforcement of Building and Maintenance Codes

In addition to their building codes, many communities have adopted property maintenance codes that all property owners must satisfy. Rather than drafting their own property maintenance code, communities often adopt (sometimes with amendments) the International Property Maintenance Code (IPMC), which contains a comprehensive set of interior and exterior property maintenance requirements.¹⁴⁶ According to the International Code Council (ICC), as of February 2015, the

¹⁴¹ EUGENE MCQUILLIN, 6A THE LAW OF MUNICIPAL CORPORATIONS § 24:62 (3d. ed., 2015).

¹⁴² Marco Island, FL City Code § 18-32.

¹⁴³ Marco Island, FL City Code § 18-36(5)

¹⁴⁴ See City of Raleigh, NC – Health, Sanitation and Public Nuisances Code § 12-6002 (available online at https://www.municode.com/library/#!/nc/raleigh/codes/code_of_ordinances?searchRequest=%7B%22searchText%22%22%5C%22public%20nuisance%5C%22%22,%22pageNum%22:1,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentType%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=DIVIICOGGEOR_PT12LIRE_CH6HESAPUNU_S12-6004NUPRENABGRPR).

¹⁴⁵ See id. § 12-6003.

¹⁴⁶ See generally International Property Maintenance Code, 2012 ed. (International Code Council) (available online at <http://publicecodes.cyberregs.com/icod/ipmc/index.htm>).

IPMC has been adopted, with or without limitations, by hundreds of local jurisdictions in 38 states and the District of Columbia.¹⁴⁷

(c) Penalties

(i) Revocation or Suspension of Rental License

In some communities that impose licensing or permit requirements on residential rentals, the violation of the rental regulation can result in the suspension or revocation of a rental license or permit. For example, Sonoma County’s vacation home rental code authorizes the code enforcement officer to schedule a revocation hearing with the board of zoning adjustments upon determination that a violation has occurred.¹⁴⁸ If the vacation rental permit is revoked, then it cannot be reapplied for or re-issued for a period of at least one year.¹⁴⁹

Another example is Minneapolis, Minnesota’s “Rental Dwelling License” code, which authorizes the city council to “deny, refuse to renew, revoke, or suspend” a rental dwelling license for any dwelling that fails to comply with applicable licensing standards.¹⁵⁰ The Minneapolis City Council apparently is not shy about using the revocation penalty—the Minneapolis Housing Inspections Services website states: “We have increased our license revocations in the past few years for owners who have violated one or more rental license standards. Since 2005, the City of Minneapolis has increased the number of rental license revocations by over 500%.”¹⁵¹

Minneapolis also makes it difficult for an owner whose rental dwelling license has been revoked to become relicensed. Pursuant to Section 244.1910 (Licensing Standards) of the Rental Dwelling License code, any person who has had a license revoked is prohibited from obtaining any new rental dwelling licenses for a period of three years.¹⁵² In addition, any person who has had two or more licenses revoked or canceled is ineligible to hold a rental dwelling license for a period of five years.¹⁵³

(ii) Fines

The most common form of penalty for violation of a rental code is a monetary fine. The maximum fine amount for violation of a local ordinance or regulation in many cases is set by state statute. For example, in Illinois the maximum fine for violation of a municipal ordinance,

¹⁴⁷ See International Codes—Adoption by State (Feb. 2015) (available online at <http://www.iccsafe.org/gr/Documents/stateadoptions.pdf>); see also International Codes—Adoption by Jurisdiction (Feb. 2015) (available online at <http://www.iccsafe.org/gr/Documents/jurisdictionadoptions.pdf>).

¹⁴⁸ Sonoma County Code § 26-88-120(g)(1).

¹⁴⁹ *Id.*

¹⁵⁰ See City of Minneapolis, MN – Rental Dwellings License Code § 244.1940 (available online at https://www.municode.com/library/#!/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT12HO_CH24_4MACO_ARTXVIREDWLI).

¹⁵¹ See City of Minneapolis, MN – Housing Inspections Services – Holding Property Owners Accountable (available online at http://www.ci.minneapolis.mn.us/inspections/inspections_accountable).

¹⁵² See City of Minneapolis, MN – Rental Dwellings License Code § 244.1910(a)(13).

¹⁵³ See City of Minneapolis, MN – Rental Dwellings License Code § 244.1910(a)(13).

with limited exceptions, is \$750 for any one violation.¹⁵⁴ Other examples are the state of Montana, which limits the maximum fine for violation of a local ordinance to \$500,¹⁵⁵ and Minnesota, which has a statutory limit of a \$1,000 fine for violation an ordinance.¹⁵⁶

Under many local regulations each day of a continuing violation (e.g., repeatedly renting a dwelling unit without a required permit) is considered a separate offense. An example of this approach is the enforcement provision of Marco Island’s short-term rental ordinance, which states, in relevant part: “Any violation of the provisions of this Article may be prosecuted and shall be punishable as provided in section 1-14, or chapter 14, of the City of Marco Island Code of Ordinances, including but not limited to: (1) a fine of up to \$500 per violation, per day of continuing repeating violations.”¹⁵⁷ In Maui County, Hawaii, the penalty for operating an illegal transient vacation rental (i.e., without a permit) is an initial fine of \$1,000 plus a daily fine of up to \$1,000 per day.¹⁵⁸

¹⁵⁴ See 65 ILCS 5/1-2-1.

¹⁵⁵ See Montana Code § 7-5-109.

¹⁵⁶ See Minnesota Stat. Ann. § 609.034.

¹⁵⁷ Marco Island, FL Code of Ordinances § 8-104(b).

¹⁵⁸ See Maui County, HA – Transient Vacation Rentals webpage (available online at <http://www.mauicounty.gov/faq.aspx?TID=82>).

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SECTION 4. IMPACTS OF RENTAL REGULATIONS ON RENTAL PROPERTY OWNERS

4.1 Rental Income

For some residential rental property owners, the adoption of rental regulations may result in the loss of rental income altogether. The most obvious example is an owner of property located in a zoning district where short-term rentals are no longer allowed under a local ordinance.¹ In areas where rentals are allowed, other property owners might face the loss of rental income due to their inability, for financial or other reasons, to satisfy the requirements for obtaining a permit, such as minimum off-street parking or structural requirements. As discussed in Section 10.4(f) below, some rental regulations might also cause an owner to lose all rental income because of suspension or revocation of a rental permit, even if the reason for suspension or revocation is beyond the owner's control (e.g., tenant behavior).

There are several ways in which a rental regulation might also result in a decrease in rental income. An ordinance that restricts the number of times a short-term rental property may be rented per year could have a significant impact on the property's income potential. Santa Fe, New Mexico, for example, limits short-term rentals to 17 rental periods per year.² A maximum overnight occupancy provision could also negatively affect the income potential of a rental property by reducing the number of guests to whom a home may be rented. Maximum occupancy restrictions are often included in local land use regulations³ and are a common element of short-term rental restrictions.⁴

Rental restrictions can also cause a reduction in rental income where they have the effect of narrowing the field of potential tenants or discouraging vacationers from renting a home. For example, an ordinance that prohibits short-term occupants from parking a recreational vehicle on site or on the street might deter families who travel by RV from renting a home in Santa Fe.⁵

¹ As discussed in Section 4.4, if a zoning amendment changes residential rentals from a permitted use to a prohibited use, a rental use that was lawfully established prior to the adoption of the zoning amendment may be allowed continue as a nonconforming use under state and local zoning laws.

² See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii)(B).

³ See, e.g., Minneapolis, MN Zoning Code § 546.30 (limiting the occupancy of dwelling units in certain residential zoning districts to "one (1) family plus up to two (2) unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five (5) persons").

⁴ See, e.g., Sonoma County's vacation rental ordinance, which generally limits the overnight occupancy of vacation rentals to "a maximum of two (2) persons per sleeping room or guestroom, plus two (2) additional persons per property, up to a maximum of twelve (12) persons, excluding children under three (3) years of age." Sonoma County, CA Code of Ordinances § 26-88-120(f)(2) (available online at https://www.municode.com/library/#!/ca/sonoma_county/codes/code_of_ordinances?nodeId=CH26SOCOZORE_ART88GEUSBUEXUILI_S26-88-120VARE).

⁵ Section 14-6.2(A)(6)(a)(ii)(E) of the Santa Fe Short Term Rental Ordinance states: "Occupants shall not park recreational vehicles on site or on the street."

4.2 Property Values

Rental regulations can affect the value of an affected property in different ways, depending on whether the property was used as a rental prior to the adoption of the regulation.

(a) Value of Existing Rental Properties

In general, the value of a home that was used as a rental prior to the adoption of restrictions, but is either prohibited or restricted from future use as a rental, can be expected to *decrease*. That is particularly true in vacation destination communities, where homeowners often purchase second homes as investment properties.⁶ These potential buyers often plan to use the second home as a short-term rental property until they retire or otherwise become able to maintain the property as their full-time residence.⁷ Such buyers would tend to be less interested in purchasing in an area where the short-term rental market is highly uncertain or is constrained by burdensome regulations.

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

(b) Value of Properties Not Previously Used as a Rental

The impact of rental restrictions on the value of properties that were not used as rentals prior to adoption of the restrictions will also vary. The value of a property that becomes licensed as a rental for the first time under a new ordinance conceivably could *increase* if the quantity of rental properties on the market falls as a result of the ordinance. It is conceivable that a rental regulation could also have a positive effect on the value of homes that are not licensed or used as a rental. For example, in residential neighborhoods where the existence of short-term rentals is considered a negative, an ordinance that prohibits future short-term rental activity in those neighborhoods could positively affect the value of homes in these locations.

Despite the popular notion that rentals have a negative impact on the value of neighboring single-family homes, there appears to be little empirical evidence to support or quantify that conclusion.⁸ A 2007 report on opposition to multifamily rental housing, the Harvard University

⁶ See Anne Miller, “Next Investment: Vacation Home or Income Property?,” *Realtor.com* (April 23, 2014) (available online at <http://www.realtor.com/advice/whats-best-option-next-investment-vacation-home-income-producing-rentals/>) (discussing the investment strategy of purchasing and holding a “vacation home or second home for many years with the goal of vacationing there, perhaps renting it out to others and retiring there, or selling the property when its market value has increased”).

⁷ See *id.*

⁸ See Michael Estrin, “Do rentals decrease nearby home values?,” *Bankrate.com* (available online at <http://www.bankrate.com/finance/real-estate/do-rentals-decrease-home-values.aspx>) (quoting William Rohe, Director of the Center for Urban and Regional Studies at the University of North Carolina at Chapel Hill: “I think

Joint Center for Housing Studies (JCHS) described how residents' concerns about property values often prompt local regulations:

Concerns that multifamily rental housing will lower the value of their single-family houses has driven many residents to oppose new apartment developments in or near their neighborhoods. Proposals for low-income apartments are especially likely to trigger property value concerns, but even market rate rental housing can give rise to arguments that apartments lower property values and damage the community's reputation. Local officials often echo these property value claims, either because they believe lower property values will injure their communities tax base or reputation or because they want to sound responsive to constituent concerns.⁹

The JCHS report found that most of the research done on the subject concluded that "in general, neither multifamily rental housing, nor low-income housing, causes neighboring property values to decline."¹⁰

(c) Resale Value

Regulations that permit short-term rentals but require the owner to obtain a nontransferable license or permit may have a negative impact on the resale value of affected property. A potential second home buyer who plans to periodically rent out the property in order to offset their purchase and operation and maintenance costs would tend to be less interested in purchasing in an area where the right to use a property as a short-term rental market is highly uncertain. The lack of certainty as to whether a home could be used a short-term rental might also make it more difficult for buyers to secure financing for a second home, because the potential purchaser would not be able to give the lender assurances that there will be a contingent stream of income to offset the carrying costs of the property, if necessary.

4.3 Operational Costs

Rental regulations tend to increase the cost of owning and operating a rental property in a number of ways. The regulations typically require owners to pay an up-front registration or permit fee and may also require payment of additional licensing fees on an annual or other recurring basis. In Marathon, Florida, for example, short-term rentals are subject to an initial licensing fee of \$750 and subsequent renewal fees of \$500 per year.¹¹ Inspection requirements can also add to the cost of operating a residential or short-term rental since, in most cases, the inspections are performed at the owner's expense. In Minneapolis, Minnesota, the conversion of

there is a stigma about renters, but the research just isn't there to say for certain that a given amount of rental properties in a neighborhood brings values down by a specific amount.").

⁹ Mark Obrinsky & Debra Stein, *Overcoming Opposition to Multifamily Rental Housing* at 10 (March 2007, Joint Center for Housing Studies, Harvard University) (available online at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/rr07-14_obrinsky_stein.pdf).

¹⁰ *Id.*

¹¹ See City of Marathon, Florida Vacation Rental License Application Form (available online at <http://www.ci.marathon.fl.us/download/download.php?id=824>).

an owner-occupied home to a rental property requires that the property be inspected for compliance with the Housing Maintenance Code.¹² The fee for this inspection is \$1,000.¹³

Performance standards may also require an owner to undertake costly improvements in order to obtain a rental permit. An owner may be required to expand or pave an existing driveway in order to satisfy a minimum parking requirement or to upgrade electrical or sewer systems in order to qualify for a permit. Seattle's Rental Registration and Inspection Ordinance, for example, requires that all rental housing be inspected for compliance with the city's Housing and Building Maintenance Code and receive a certificate of compliance before a rental housing registration will be issued.¹⁴

In addition, a rental property owner who resides out of state may have to hire a property manager in order to satisfy a requirement that a designated representative be available at all times and within a certain proximity of the unit during any rental period. The City of Prior Lake, Minnesota requires that a "local agent" be designated for all short-term rentals. Section 315.407 of Prior Lake's Short-Term Rental Code states, in relevant part:

No short-term rental permit shall be issued without the designation of a local agent. The agent must live and work within 30 miles of the dwelling unit. The Agent may, but is not required to be, the owner. One person may be the agent for multiple dwelling units. At all times, the agent shall have on file with the Code Enforcement Officer a primary and a secondary phone number as well as a current address. The agent or a representative of the agent shall be available 24 hours a day during all times that the dwelling unit is being rented at the primary or secondary phone number to respond immediately to complaints and contacts relating to the dwelling unit. The Code Enforcement Officer shall be notified in writing within two (2) business days of any change of agent. The agent shall be responsible for the activities of the tenants and maintenance and upkeep of the dwelling unit and shall be authorized and empowered to receive service of notice of violation of the provisions of City ordinances and state law, to receive orders, and to institute remedial action to effect such orders, and to accept all service of process pursuant to law.¹⁵

Depending on location, property management fees for a vacation rental home can run anywhere from 10 percent to 30 percent of the rental fees.¹⁶

¹² See City of Minneapolis, MN Rental License Fees (available online at http://www.ci.minneapolis.mn.us/inspections/rental/inspections_rentlicensefee).

¹³ See *id.*

¹⁴ See generally Seattle, WA Housing Code, Ch. 22.214 (Rental Registration and Inspection Ordinance) (available online at https://www.municode.com/library/#!/wa/seattle/codes/municipal_code?nodeId=TIT22BUCOCO_SUBTITLE_III_OCO_CH22.214REREINOR).

¹⁵ City of Prior Lake, MN Short-Term Rental Code § 315.407 (available online at <http://www.cityofpriorlake.com/documents/STRentalLicense.pdf>).

¹⁶ See Dan Weisman, "How to Manage Your Vacation Property When You're Out of Town," *Rentals.com Company Blog* (available online at <http://blog.rentals.com/how-to-manage-your-vacation-property-when-you%E2%80%99re-out-of-town/>).

Operational costs may also be increased by a rental regulation that requires the property owner to carry a minimum amount of liability insurance. In San Francisco, for example, short-term rental owners are required to maintain liability insurance in an amount of not less than \$500,000.¹⁷

4.4 Nonconforming Use Status

A property that was used as a rental prior to the adoption of an ordinance that no longer allows rentals may become a **nonconforming** use under state and local zoning laws. Although state and local laws zoning laws typically allow nonconforming uses to continue, the right to alter or expand a nonconforming use is usually limited and often requires the issuance of a special permit, or an equivalent form of zoning relief, from the local planning commission or board of appeals. The nonconforming use provisions of the City of Bend, Oregon’s Development Code are a good example of this type of restriction:

Where, at the time of adoption of this code, a use of land exists that would not be permitted by the regulations imposed by this code and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:

A. Expansion Prohibited. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land.

B. Location. No such nonconforming use shall be moved in whole or in part to any portion of its lot, or any other lot, other than that occupied by such use at the effective date of adoption or amendment of this code, unless such move would bring the use into conformance with this code.¹⁸

In addition, a nonconforming use that is discontinued for a specific period of time (typically one or two years) may be deemed abandoned, and thereafter prohibited from resuming at a future date.¹⁹

4.5 Owner Liability for Action of Tenant

Under some rental regulations, the property owner can be held liable and penalized for a violation that was committed by the tenant. Section 24.12(H)(2) of the Coconino County Vacation Rental Ordinance, for example, states: “the property owner ... shall be the party responsible for compliance with all provisions of this section and all applicable laws.”²⁰ On its face, this provision appears to make the property owner responsible (and subject to penalty, potentially including the revocation of the vacation rental permit) for any violation that occurs on

¹⁷ San Francisco Code § 41A.5(g)(1)(D).

¹⁸ City of Bend, OR Development Code § 5.2.100 (available online at <http://www.codepublishing.com/OR/bend/>).

¹⁹ See, e.g., City of Bend, OR Development Code § 5.2.100(C) (stating: “If the [nonconforming] use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of the land shall conform to the applicable standards and criteria specified by this code for the land use district in which such land is located.”).

²⁰ See Coconino County, AZ , Vacation Home Rental Ordinance § 24.12(H)(2) (available online at <http://www.coconino.az.gov/DocumentCenter/View/9775>).

a rental property, regardless of whether the violation was committed by a tenant or by the owner himself.²¹

²¹ See Coconino County, AZ , Vacation Home Rental Ordinance §§ 24.12(H)(2), 24.12(I)(c).

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SECTION 5. IMPACTS OF RENTAL REGULATIONS ON RENTERS

5.1 Rental Fees

As discussed in Section 4.3, the adoption of rental regulations can increase the cost of owning and operating a rental property in many ways. A rental property owner might have to pay registration, permit, and inspection fees. He may also have to undertake costly improvements, such as paving an existing driveway to satisfy a minimum parking requirement, or incur the expense of hiring a local property manager in order to satisfy a requirement that a designated representative requirement.

To the extent that local market conditions will allow, rental property owners are likely to increase rental rates as a means of recovering these added costs. If regulations expose a property owner to the risk of incurring a fine or having the owner's rental license suspended or revoked, then the owner may also increase the minimum security deposit as a means of deterring tenants from engaging in behavior that might violate the rental regulations.

5.2 Inventory of Rental Units

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

Some communities have argued that the growing popularity of short-term rentals—predominantly through Airbnb and other online platforms—has had a negative effect on the inventory of available long-term rental properties. A 2014 report by the New York State Attorney General, for example found that in 2013 more than 4,600 residential units in New York City were dedicated primarily or exclusively to short-term rentals.¹ The report, noted that most of the buildings converted to short-term rentals were located in popular neighborhoods in Brooklyn and Manhattan, and observed that:

A dozen buildings in those same neighborhoods had 60 percent or more of their units used at least half the year as private short-term rentals, suggesting that the buildings were operating as de facto hotels.²

¹ *Airbnb in the City* (Oct. 2014, New York State office of the Attorney General) (available online at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>).

² *Id.* at 12.

Similar concerns have been raised in other communities where Airbnb has grown in popularity. In the City of Boulder, Colorado, for example, the City Council directed staff to draft a short-term rental ordinance out of concern that investors were buying property for use as short-term rentals, thereby reducing the supply of long-term and affordable housing for residents.³

5.3 Intrusive Inspection Requirements

Rental regulations often require that a rental unit be inspected for compliance with applicable building and fire codes and other local regulations prior to the issuance of a rental license or permit. Some also require that rental units be inspected on a regular basis (e.g., annually) or upon any change in tenancy or ownership. These inspections normally are performed by a local building inspector or other code enforcement personnel and may require that both the exterior and the interior of the building be inspected. In Marco Island, Florida, for example, short-term rentals are subject to “an initial inspection to ensure compliance with the applicable Florida Building Code, and Fire Prevention Code provisions” and annual re-inspections thereafter.⁴

From the tenant’s perspective, a mandatory rental unit inspection can be intrusive and burdensome.⁵ Depending on the scope of the required inspection, the tenant may have to allow inspector to enter the rental unit and provide access to bedrooms, bathrooms, and other areas of the unit where a person’s expectation of privacy is greatest.

As discussed in Section 8.2(c), rental inspection requirements can raise serious concerns under the Fourth Amendment of the U.S. Constitution, which safeguards the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁶ For example, rental regulations that contain an inspection requirement typically do not contain a provision that expressly requires the inspector to have a warrant to inspect a rental property. An ordinance may also be unclear as to what notice, if any, must be given to the owner and tenants of a rental property before an inspection is conducted.

In addition, a rental regulation may not adequately define the parameters of the required inspection. For example, it is not clear whether the inspections required by Marco Island’s short-term rental ordinance are limited to the exterior of the building, or if the building interior is also subject to inspection.

³ See Erica Meltzer, “Boulder council: Preserving housing for residents will guide short-term rental regulations,” Daily Camera (June 2, 2015) (available online at http://www.dailycamera.com/news/boulder/ci_28240692/boulder-short-term-rental-owners-plea-flexibility).

⁴ Marco Island, FL Code § 8-101(c). A limited exception to the annual re-inspection requirement is carved out for short-term rental dwellings that were permitted after March 1, 2002—those rentals are subject to biennial re-inspections through 2025, and annual re-inspections thereafter. *See id.*

⁵ In a case involving municipal code inspections, the U.S. Supreme Court declared that “administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment.”⁵ *See Camara v. Municipal Court of City & Cty. of San Francisco*, 387 U.S. 523, 534 (1967) (citing *Frank v. State of Maryland*, 359 U.S. 360, 79 S. Ct. 804 (1959)).

⁶ U.S. Const., amend. IV. Any government action that intrudes on a person’s “reasonable expectation of privacy” violates the Fourth Amendment, and “[h]omes and other residences are virtually always areas in which a person residing has a reasonable expectation of privacy.” William E. Ringel, *Searches and Seizures Arrests and Confessions* § 2:2 (2011).

5.4 Mandatory Lease Provisions

Rental regulations can also affect tenants by requiring that residential rental agreements contain certain provisions that otherwise might not be included. In 2015 the Town of Kure Beach, North Carolina, for example, considered an ordinance that would have required all vacation rental permit holders to include in their rental agreements a statement that:

tenants shall not violate federal, state, or local laws, ordinances, rules, or regulations; engage in disorderly or illegal conduct; engage in activities or conduct creating or resulting in unreasonable noise, disturbances, and public nuisances; allow an unreasonable amount of garbage, refuse, and rubbish to accumulate on the property; illegally park vehicles in conjunction with their use of the vacation home; and overcrowd the vacation home premises.⁷

The proposed ordinance, which was tabled by the Kure Beach Planning and Zoning Commission,⁸ also would have required all rental agreements to contain a statement that a “material breach” of above-quoted provision would result in a termination of the rental agreement.⁹

By requiring that these provisions be included in every rental agreement, a rental regulation like the one proposed in Kure Beach would, in effect, make any violation of the rental regulation or any other applicable law a breach of the rental agreement, thereby placing the tenant at risk of eviction or other action by the landlord, in addition to any enforcement action taken by the government. Absent such a regulatory mandate, it is unlikely that a residential rental agreement or short-term rental lease would include these type of provisions.

⁷ Town of Kure Beach, NC: Proposed Vacation Rental Ordinance § 9(c) (available online at <http://townofkurebeach.org/Data/Sites/1/media/government/planning-zoning/proposed-vacation-rental-ordinance-version-four-final-2-5-15.pdf>).

⁸ See <http://www.wect.com/story/28694632/kure-beach-officials-decide-against-using-proposed-rental-property-ordinance>.

⁹ Town of Kure Beach, NC: Proposed Vacation Rental Ordinance § 9(d).

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SECTION 6. COMMUNITY IMPACTS OF RENTAL REGULATIONS

6.1 Local Real Estate Market

In vacation destination communities, many property owners depend on the income gained from short-term rentals to afford the cost of living or to pay their mortgages, real estate taxes, association dues, and other expenses.¹ If that income is taken away or severely reduced by short-term rental restrictions, the only alternative for those homeowners might be to sell their homes immediately in order to avoid foreclosure or a distressed sale. A widespread ban on short-term rentals that results in a substantial number of homes being sold or foreclosed upon may flood the market, causing property values to fall and remain depressed for a period of time.

Some communities believe that short-term rental regulations are necessary to protect the supply of available long-term rental housing units. The report *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles* used a 21-unit apartment building to describe how Airbnb creates an incentive for rental property owners to convert long-term rental housing to short-term rental units:

Located one block from the Venice Boardwalk, the 21 units in the Morrison [Apartments in Venice Beach] are covered by the City of Los Angeles Rent Stabilization Ordinance. Coldwell Banker Commercial (CBC) recently listed the Morrison for sale. In an Exclusive Offering Memorandum obtained by a member of the Venice Neighborhood Council, CBC presents the conversion of the Morrison to AirBnB units as the prudent financial choice for prospective owners.

CBC estimates that a landlord could expect about \$200,000 in net annual income by renting these rent-controlled units out on the open market. If the new landlord converts the building into AirBnB units, CBC estimates they could expect to bring in more than \$477,000 per year, assuming a 67 percent occupancy rate. The projected rate of return under the Morrison’s residential configuration is estimated to be 5.6 percent, while the projected rate of return for configuring the Morrison as an AirBnB building is 13 percent.²

The Los Angeles report used data on “whole apartments” listed on Airbnb to describe how short-term rentals affect the supply of available long-term housing:

Whether a market is digital or physical, basic economic principles of supply and demand are still operative. Traditionally, the rental housing market and the hospitality industry do not intersect. However, AirBnB has created a platform that allows landlords to pit

¹ According to an Airbnb survey of its users, 62% noted that income generated via Airbnb helped them to stay in their homes. See *Short-Term Rentals and Impacts on the Apartment Market* at 4 (Rosen Consulting Group, Oct. 2013) (available online at <http://publicpolicy.airbnb.com/wp-content/uploads/2014/04/Short-TermRentalsandImpactonApartmentMarketNY1.pdf>).

² *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles* at 16 (LAANE, March 2015) (available online at <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>).

tourist dollars against renter dollars. Landlords can potentially earn significantly more money by converting traditional rental stock into AirBnB units, as many appear to have done.

Los Angeles cannot afford to lose housing units. The Los Angeles Department of City Planning's Housing Needs Assessment shows that the city needs an additional 5,300 units of affordable housing each year to keep up with demand. However, Los Angeles developers have only averaged about 1,100 units of affordable housing per year since 2006. The 7,316 whole apartments currently listed on AirBnB represents nearly seven years' of affordable housing construction at the current rate of housing development.³

A May 2015 report by the San Francisco Budget and Legislative Analyst's Office on the impact of short-term rentals on housing in the city (the "San Francisco BLA Report") also concluded that short-term rentals have a negative impact on the supply of housing available for the long-term rental market.⁴ The San Francisco BLA Report divided Airbnb users into two categories: (1) "**casual hosts**," defined as hosts who occasionally make their residences available for short-term rentals for supplemental income; and (2) "**commercial hosts**," defined as those who probably do not live or could not live in their short-term rental unit and therefore rent it out as a means of generating income.⁵ To assess the impact of short-term rentals on the city's available housing stock, the San Francisco BLA Report focused solely on commercial host data, since casual hosts presumably reside in their units full-time.⁶ The report estimated that 1,251 entire homes or apartments were listed by commercial hosts on Airbnb and assessed the impact of those listings as follows:

At 0.3 percent, the estimated 1,251 entire units being rented out by commercial Airbnb hosts is relatively small compared to the entire 376,083 units of housing in San Francisco, but larger when compared to the number of units available for rent at any one time, which was reported to be 8,438 in 2013 by the American Community Survey conducted by the U.S. Census Bureau. *From this perspective, entire homes listed by commercial hosts take away an estimated 14.8 percent of the total rental housing available for rent Citywide, and private and shared rooms that might otherwise be occupied by roommates take even more units off the rental market.*⁷

The 2014 report "Airbnb in the City" by the New York Attorney General (the "NY AG Report") reached a similar conclusion in its analysis of "commercial users" of Airbnb.⁸ It stated:

Thousands of residential units in New York City were dedicated primarily or exclusively to private short-term rentals. In 2013, over 4,600 unique units were each booked as

³ *Id.* at 16.

⁴ Policy Analysis Report: Analysis of the Impact of Short-Term Rentals on Housing (San Francisco Budget and Legislative Analyst, May 13, 2015) (available online at 's Office

⁵ See San Francisco BLA Report at 2.

⁶ See San Francisco BLA Report at 11.

⁷ See San Francisco BLA Report at 11 (emphasis added).

⁸ *Airbnb in the City* (Oct. 2014, New York State office of the Attorney General) (available online at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>). The NY AG Report defined "commercial user" as a small group of hosts (6%) who "dominated the platform during [the study] period, offering up to hundreds of unique units, accepting 36 percent of private short-term bookings, and receiving \$168 million, 37 percent of all host revenue." *Id.* at 2.

private short-term rentals for three months of the year or more. Of these, nearly 2,000 units were each booked as private short-term rentals on Airbnb for at least 182 days—or half the year. While generating \$72.4 million in revenue for hosts, this rendered the units largely unavailable for use by long-term residents. Notably, more than half of these units had also been booked through Airbnb for at least half of the prior year (2012).⁹

By contrast, a 2013 report by the Rosen Consulting Group (the “RCG Report”) concluded that the number of housing units made available for short-term rental use is too small to have a meaningful impact on the overall housing market in New York City:

The impact of short-term rentals on supply/demand forces in urban housing markets are minimal, but admittedly difficult to quantify. RCG believes that the New York housing market is driven by local economic fundamentals, including job creation and demographic trends. The moderate pace of hiring in the region combined with a large demographic wave of young adults within the prime renter-age cohort provided a strong level of housing demand. With short-term rentals in particular, while the number of listings increased substantially in recent months, the number of housing units relative to the overall size of the residential stock is too small to impact housing trends.¹⁰

The RCG Report concludes: “While short-term rental activity is on the rise throughout the world, facilitated by technology and firms such as Airbnb, it is not having a meaningful impact on rental housing markets.”¹¹

6.2 Property Values

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

6.3 Tourism

Short-term rental restrictions may negatively impact local tourism in several ways. First, they can have a negative impact on the occupancy rates of vacation rentals by increasing the per-person cost of short-term rentals. Local regulations can increase the per-person cost of a rental by limiting the maximum occupancy of a short-term rental unit. Short-term rental restrictions may also cause rental property owners to increase their rental rates and minimum security deposits in order to cover the increased cost of operating a short-term rental and the risk of

⁹ *Id.* at 12.

¹⁰ *Short-Term Rentals and the Impact on the Apartment Market* at 3 (Rosen Consulting Group, Oct. 2013) (available online at <http://publicpolicy.airbnb.com/wp-content/uploads/2014/04/Short-TermRentalsandImpactonApartmentMarketNY1.pdf>).

¹¹ *Id.* at 5.

incurring a fine or having their rental licenses revoked or suspended. All else being equal, the higher rental rates paid by smaller groups of tenants, increase the per-person cost of short-term rentals in communities with short-term rental ordinances.

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

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

Throughout the world, some travelers prefer private dwellings to hotels. For instance, those traveling as a family or group of friends often want spacious accommodations and kitchens. This market segment will not substitute conventional lodging if vacation rentals are not provided, they will simply go elsewhere. Thus, by eliminating vacation rentals, Napa County would deter a substantial number of visitors who currently spend on restaurants, wine, attractions and services and who would instead spend for leisure outside our County.¹²

The 2008 study “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County”¹³ commissioned by the Realtors[®] Association of Maui (the “Maui TVR Study”) reached a similar conclusion. Acknowledging that “the TVR industry is concerned about . . . the potential enactment of legislation meant to marginalize [the TVR] industry, and the potential economic consequences of such policies,” the Maui TVR Study concluded:

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

Based on the increasing market share of TVRs on Maui from 2000 to 2006 relative to other accommodation types one can reasonably surmise that the modern visitor

¹² Napa Valley Vacation Rental Alliance (NVVRA): A Coalition of Napa County Stakeholders (prepared for Napa County by Napa Valley Vacation Rental Alliance (NVVRA), Jan. 2010) (available on-line at <http://www.white.com/nvvra/media/WHY%20CODIFYING%20VACATION%20RENTALS%20NOW%20IS%20GOOD%20PUBLIC%20POLICY.pdf>).

¹³ “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County,” prepared by Dr. Thomas Loudat & Dr. Prahlad Kasturi for the Realtors[®] Association of Maui (Jan. 8, 2008) (hereinafter the “Maui TVR Study”).

increasingly prefers a TVR or its equivalent experience. Thus, even though elimination of Maui TVRs may not result in the loss of all TVR visitors who may substitute an alternative Maui County accommodation type yet available, we would still expect a significantly negative economic impact in Maui County if TVRs are eliminated or significantly reduced.¹⁴

Recent studies show that short-term rentals account for a significant portion of the lodging market. A market study of vacation rentals in the U.S. found that travelers spent \$23 billion on vacation rentals in 2012, nearly one-fifth of the total U.S. lodging market.¹⁵

The 2014 study “Economic Impact: Florida’s Vacation Rental Industry”¹⁶ used survey data and visitor spending estimates provided by Florida’s official tourism marketing corporation to calculate the economic impact of vacation rentals in terms of employment, visitor spending, and the overall state economy. It concluded:

- Florida’s vacation rental market has a total impact on economic output of \$31.1 billion.
- Florida’s vacation rental industry directly or indirectly supports a total of 322,032 jobs in Florida annually.
- The total labor income generated by those 322,032 jobs is approximately \$12.64 billion per year.
- The total estimated spending by visitors staying in vacation rental units is \$13.43 billion.
- Total owner-management spending across all licensed rental units in Florida is \$3.3 billion.¹⁷

As discussed in Section 6.4, the vacation rental industry can also have a significant impact on local economies.

6.4 Local Economy

Local economies that depend heavily on the tourist economy are more susceptible to the potential impacts of short-term rental restrictions. Even a slight impact on tourism in these communities can have a significant negative effect on the viability and success of restaurants, retail establishments, and other local businesses that provide services to tourists. The potential dollar impacts of a reduction in visitor numbers due to a short-term rental restriction is illustrated by the daily spending calculations of the Maui TVR Study, which calculated that transient vacation rental visitors spent an average of \$159.16 per day in Maui County.¹⁸ Based on 2006 transient vacation rental visitor data (105,967) and a 6.85 day average length of stay, the study

¹⁴ Maui TVR Study at 1-2.

¹⁵ See Dennis Schaal, “Vacation Rentals in the U.S. Are Now a \$23 Billion Industry,” *Skift* (Oct. 23, 2013) (available online at <http://skift.com/2013/10/25/vacation-rentals-in-the-u-s-are-now-a-23-billion-industry/>) (citing the PhoCusWright study “U.S. Vacation Rentals 2009-2014: A Market Reinvented”).

¹⁶ *Economic Impact: Florida’s Vacation Rental Industry* (2014, prepared by Thinkspot for the Florida Vacation Rental Managers Association) (hereinafter “*Florida Vacation Rental Study*”) (available online at http://gometeoric.com/wp-content/uploads/2014/03/FVRMAEconImpactReport_FINAL.pdf).

¹⁷ *Florida Vacation Rental Study* at 1.

¹⁸ See Maui TVR Study at 16.

concluded that transient vacation rentals produced more than \$115 million in total revenue from lodging, food and beverage, entertainment, shopping, and other county businesses and services.¹⁹

Studies also demonstrate the significant impact that the vacation rental industry can have on local economies. A 2013 study of private home rentals by the University of New Orleans Hospitality Research Center described the impact of private home vacation rentals on the New Orleans metro area economy as follows:

In 2013, approximately 100,000 visitors to the New Orleans area stayed in private home rentals. These visitors made a substantial contribution to the New Orleans metro area economy. They generated a total economic impact of \$174.8 million, comprised of \$99.8 million in direct spending and \$74.9 million in secondary spending. Visitor spending also resulted in the creation or support of nearly 2,200 full-and part-time jobs. These jobs are expected to create a total of \$56.1 million in additional earnings for residents of the New Orleans area.

Visitor spending is also estimated to generate a total of \$10.8 million in tax revenue for state and local governments. Of that total, roughly \$6.1 million will go to the State of Louisiana, and \$4.7 million will be claimed by local governments in the New Orleans area.²⁰

Studies on the local impact of short-term rentals in the Myrtle Beach Area of South Carolina²¹ and Coachella Valley, California²² reached similar conclusions. The Coachella Valley study, for example, concluded that short-term rentals spending was an important part of the tourism industry, “ultimately creating thousands of jobs and millions of dollars of earnings and tax revenue for the community each year.”²³

6.5 Source of Tax Revenue

Short-term rental restrictions can be a significant source of tax revenue in communities that are authorized by state law to impose and collect a tax on short-term rentals. For example, in 2014 the City of Newport Beach, California reportedly collected approximately \$1.95 million in short-term rental tax revenue.²⁴ The City of San Clemente, California, reportedly collects about \$280,000 per year on just 300 registered short-term rental properties.²⁵

Airbnb has used the lure of significant tax revenue in its attempts to legitimize its presence in jurisdictions where the short-term rental of a home is unlawful. For example, on April 15, 2015

¹⁹ See Maui TVR Study at 16-17

²⁰ Private Home Rentals: Visitor Survey Results and Economic Impact Analysis 2013 (July 2014, prepared by The University of New Orleans Hospitality Research Center for the Alliance for Neighborhood Prosperity) (available online at <http://neworleanscitybusiness.com/files/2014/09/Private-Home-Rentals-2013.pdf>).

²¹ See *The Local Impact of Participating Short Term Rentals in the Myrtle Beach Area* (Spring 2014, TXP Inc.) (available online at <http://www.stradvocacy.org/media/TXP-STRAC-Impact-Report-Myrtle-Beach.pdf>).

²² See *The Local Impact of Participating Coachella Valley Short Term Rentals* (Spring 2014, TXP Inc.) (available online at <http://www.stradvocacy.org/media/TXP-STRAC-Impact-Report-Coachella-0312141.pdf>).

²³ *Id.* at 7.

²⁴ “Rental properties: Beach cities balancing potential revenue with parties, loud music, disrespect,” *Orange County Register*, May 26, 2015) (available online at <http://www.ocregister.com/articles/beach-663028-rentals-short.html>).

²⁵ *Id.*

(Tax Day) the company sent a letter to the New York State Legislature stating that it would like to pay tens of millions of dollars in hotel and tourist taxes to the state.²⁶ The letter read:

Dear Members of the New York State Senate and Assembly,

As New York families finish their taxes, we write to once again renew our request to work with you to ensure the Airbnb community can contribute even more tax revenue to the State.

While other companies frequently attempt to avoid paying taxes, Airbnb has been working with governments around the world to help collect more tax revenue. We provide 1099 forms to help our hosts pay income taxes on the money they earn while sharing their space. We have also begun collecting and remitting hotel and tourist taxes in San Francisco, Portland, San Jose, Chicago, Washington, D.C., and Amsterdam and will expand this initiative to include other jurisdictions in the coming weeks and months.

We would like to implement a similar program in New York, but current State and New York City tax rules do not allow Airbnb to help collect and remit hotel and tourist taxes on behalf of our hosts and guests.

We were hopeful that New York State would address this matter in this year's budget. Unfortunately, one of the casualties of this year's budget negotiations was a provision governing taxes in online marketplace transactions that could have generated millions of dollars of vital revenue for New Yorkers.

The tax on electronic commerce would have required certain websites (or marketplace providers) to collect New York sales tax on sales made by remote sellers. It would have also enabled Airbnb to help collect and remit tens of millions of dollars in hotel and tourist taxes to the State of New York on behalf of our hosts and guests, the benefits of which would have been felt in every corner of our state.

We continue to urge State and City leaders to let our community contribute more tax revenue to New York. We urge members of the New York State Senate and Assembly to pass at least the portion of this legislation that would allow Airbnb to collect and remit taxes as quickly as possible.

Thank you for your consideration.

Sincerely,
David Hantman
Airbnb²⁷

Airbnb has estimated that it could produce as much as \$65 million annually in hotel occupancy taxes in New York state alone.²⁸

²⁶ "Why Airbnb just wrote a letter to New York legislators begging to pay more taxes," *Business Insider* (April 15, 2015) (available online at <http://www.businessinsider.com/airbnb-sends-letter-to-ny-state-legislature-2015-4>).

²⁷ *Id.*

²⁸ See "As It Seeks New Regulations in NY, Airbnb Estimates It Would Collect \$65 Million in Taxes There," *Techcrunch* (Jan. 16, 2015) (available online at <http://techcrunch.com/2015/01/16/airbnb-65-million-in-ny/>).

In Massachusetts, the General Assembly is deliberating a bill that would impose a 5 percent state excise tax on short-term residential rentals and authorize cities and towns to impose a local excise tax of up to 6 percent.²⁹ A 2014 report commissioned by the Island Housing Trust concluded that somewhere between 20 and 25 percent of homes on Martha’s Vineyard are rented at some point in the year.³⁰ Using a 5 percent tax rate, the report estimated a local tax on short-term rentals could yield a revenue stream of \$3.4 million for summer rentals alone, and nearly double that amount (\$6.3 million) including offseason rentals.³¹

6.6 Affordable Housing

(a) Impact of Short-Term Rentals

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.³² As discussed in Section 6.1, an analysis of Airbnb rentals in Los Angeles described how short-term rentals can affect the supply of affordable housing:

The Los Angeles Department of City Planning’s Housing Needs Assessment shows that the city needs an additional 5,300 units of affordable housing each year to keep up with demand. However, Los Angeles developers have only averaged about 1,100 units of affordable housing per year since 2006. The 7,316 whole apartments currently listed on AirBnB represents nearly seven years’ of affordable housing construction at the current rate of housing development.³³

In vacation destination communities, where land prices tend to be inflated and second homes are prevalent, long-term rental housing often is in short supply. A study of affordable housing in the Rocky Mountain communities observed that the supply of affordable housing is especially problematic in resort communities:

In most Rockies resort communities there simply are not enough affordable housing units, forcing locals to commute hours to work while second-homes sit vacant; in these areas affordable housing is a crisis. Second, third, or even fourth-home owners flooding Rocky Mountain resort towns transform small, inexpensive communities surrounding resort destinations into towns resembling Gucci-fringed Aspen and faux-cowboy Jackson

²⁹ See Massachusetts Bill H.2618 §§ 2, 3 (2015).

³⁰ See “Senator Wolf backs legislation to allow towns to tax vacation rentals,” MV Times (June 10, 2015) (available online at <http://www.mvtimes.com/2015/06/10/senator-wolf-backs-legislation-to-allow-towns-to-tax-vacation-rentals/>).

³¹ See *id.*

³² See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

³³ *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles* at 16.

Hole. Finding affordable housing for locals and service workers in these communities is difficult when the median house price is far from affordable, given their annual income.³⁴

The Town of Breckenridge, Colorado, home to the Breckenridge Ski Resort and within close proximity to three other ski resorts in Summit County, exemplifies the problem. A 2014 case study of affordable housing in Breckenridge explained how the high-end second home market has effectively priced local residents out of the real estate market.

As of 2010, Breckenridge had a population of 4,540 persons. Residents resided in only 28% of the 6,911 housing units in town—meaning about 1,946 housing units were occupied by year-round residents, with the remaining 4,965 units occupied by temporary visitors and owned by second homeowners.

Home prices far exceed what local can afford to pay for housing. The average sale price of residences in ... Breckenridge was \$585,509 (\$382 per square foot). These are affordable for households earning ... \$135,000 per year. In comparison, the median household income in 2012 was ... \$70,000 in Breckenridge. The average wage paid in the County was only \$33,000.

Because the cost of construction in the area and the premium that housing marketed to second homeowners can demand, much of the private market builds to meet visitor demands. This means that even attached condominium product that may otherwise be affordable for locals are typically high-amenity with high homeowner association fees that make them unaffordable.³⁵

Beach communities likewise can suffer from a shortage of long-term rental housing. On the Island of Martha's Vineyard, only 44 percent of houses are occupied year-round.³⁶ With a strong market demand for seasonal homes, the median home price of \$650,000 would require a purchaser to have an income of \$132,000, more than twice the Vineyard's median income of \$57,553.³⁷ Year-round rental housing, the most affordable option on the Vineyard, has been described as "virtually nonexistent."³⁸

(b) Speculative Buying and Investment in Short-Term Rentals

In some cases, allowing short-term rentals may fuel speculation in rising housing markets by allowing investors to cover the carrying costs of a house for a period of time while the property

³⁴ Wiley Rogers, "Affordable Housing in the Rockies: Housing a Region in Transition at ___ (2008 Colorado College State of the Rockies Report Card) (available online at <https://www.coloradocollege.edu/dotAsset/293cae6f-8a9e-4a33-bff0-d37f17197b3b.pdf>).

³⁵ *The Impact of Affordable Workforce Housing on Community Demographics, Economies, and Housing Prices and Options—Case Study: The Town of Breckenridge, Colorado* at 4-5 (WSW Associates, Jan. 2014) (hereinafter "Breckenridge Case Study") (available online at <http://www.affordableownership.org/wp-content/uploads/2015/03/Impacts-of-Workforce-Housing.pdf>).

³⁶ Martha's Vineyard Island Plan – Section 8, Housing at 8-2 (Martha's Vineyard Commission, 2009) (available online at <http://www.islandplan.org/doc.php/Island%20Plan%20-%20208.%20Housing.pdf?id=2654>).

³⁷ *Id.* at 8-2.

³⁸ Barry Stringfellow, "Martha's Vineyard housing shortage reaches critical mass," *MV Times* (Feb. 18, 2015) (available online at <http://www.mvtimes.com/2015/02/18/marthas-vineyard-housing-shortage-reaches-critical-mass/>).

appreciates in value and then sell it for a profit.³⁹ This concern was voiced by the City Council of Boulder, Colorado in June 2015, then it directed staff to prepare a short-term rental ordinance in order to address the problem of investors buying so much property for use as short-term rentals that they were “displacing housing for residents.”⁴⁰

6.7 Governmental Administrative Costs

Rental regulations tend to create additional administrative burdens on local government, including the processing of permit, licensing and registration applications. In addition, local building officials are likely to be faced with an increased volume of required inspections. Code enforcement personnel and the police officers may be required to assume additional enforcement duties under a rental ordinance. For example, when the City of Milwaukee, Wisconsin expanded its Residential Rental Inspection Program in January 2010, it published a “Frequently Asked Questions” webpage that addressed the a question about fees by explaining that the fees were necessary to “offset the cost of additional staff needed” to implement the program.⁴¹

In the City of Lancaster, California, a fiscal analysis of a proposed Rental Housing Business License and Preservation Program detailed the following impacts to the city:

Increase permanent staff by adding three Code Enforcement Officers and one administrative clerk in the Code Enforcement Division of the Housing & Neighborhood Revitalization Department to implement the Rental Inspection Program and the Group Home Ordinance. Hiring of additional staff will require an ongoing annual increase to the budget as follows: \$273,000 salaries and fringe benefit, \$9,000 vehicle fuel, \$1,350.00 for uniforms and one time increase of \$17,000 for office equipment, furniture and supplies and \$60,000 to purchase vehicles. The budget amend above reflects salary costs and rental inspection revenues for 6 months.⁴²

In a vacation-destination community, the financial burden of administering a short-term rental ordinance may be substantial, particularly where a high volume of short-term rental properties causes the local government to hire additional staff or pay increased overtime costs to current staff in order to implement the short-term rental program. When the City of Santa Monica, California passed an ordinance that prohibits residents from renting out their home when they’re not present, the city determined that it would need to hire additional staff in order to enforce the measure.⁴³ In April 2015, Santa Monica’s acting chief administrative officer for code

³⁹ See *id.*

⁴⁰ See Erica Meltzer, “Boulder council: Preserving housing for residents will guide short-term rental regulations,” Daily Camera (June 2, 2015) (available online at http://www.dailycamera.com/news/boulder/ci_28240692/boulder-short-term-rental-owners-plea-flexibility).

⁴¹ City of Milwaukee, WI - Frequently asked Questions for Residential Rental Inspection (RRI) Program (available online at <http://city.milwaukee.gov/DNS/RRI>).

⁴² City of Lancaster, CA – Staff Report on Proposed Ordinance for Rental Housing Business License and Preservation Inspection Program (Jan. 9, 2007) (available online at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=12&ved=0CCMQFjABOAO&url=http%3A%2F%2Fwww.cityoflanasterca.org%2FModules%2FShowDocument.aspx%3Fdocumentid%3D1479&ei=C9WeVbWRCcurNunkurgK&usq=AFQjCNGThK8KZla0-L6N1Dzwl6gH7jrtUA>).

⁴³ “Santa Monica council unanimously approves Airbnb regulations; hosts to pay tax,” 89.3 KPCC (May 13, 2015) (available online at <http://www.scpr.org/news/2015/05/12/51625/airbnb-says-santa-monica-proposed-legislation-is-u/>).

enforcement determined that, due to the “proliferation of Airbnb,” the city needed to hire two additional code enforcement officers and one administrative staff person in order to crack down on the problem of illegal short-term rentals.⁴⁴

In the City of Boulder, Colorado, a staff report on a proposal to expand the city’s rental licensing code to expressly permit short-term rentals stated that the regulation of short-term rentals “will require the expenditure of city funds for which there is no budget” and “will require additional staff.”⁴⁵

⁴⁴ “Santa Monica Officials Look to Crack Down on Illegal Short Term Rentals,” *Santa Monica Lookout*, April 24, 2015 (available online at http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2015/April-2015/04_24_2015_Santa_Monica_Officials_Look_To_Crack_Down_on_Illegal_Short_Term_Rentals.html).

⁴⁵ City of Boulder, CO – City Council Agenda Staff Report (June 2, 2015) (available online at <https://www-static.bouldercolorado.gov/docs/short-term-rentals-city-council-1-201506021017.pdf>).

RESIDENTIAL RENTALS

The Housing Market, Regulations, and Property Rights

SECTION 7. UNINTENDED CONSEQUENCES OF RENTAL REGULATIONS

7.1 “Underground Market” for Rental Units

Regulations that prohibit or impose high permit and licensing fees, onerous inspection requirements, and performance standards that are difficult or costly for owners to satisfy might have the unintended effect of creating an underground market for short-term rentals, in which owners continue to rent their properties without obtaining the requisite permits.¹ For example, in 2013—a year before the City of Portland, Oregon passed an ordinance legalizing, but regulating, short-term rentals—as many as 1,000 Portland residents reportedly were renting out a home or a room in their home through online rental platforms such as Airbnb and VRBO.² In the City of Santa Monica, California, city officials believed that as many as 1,700 illegal short-term vacation rentals were operating in the city, triggering a need for the city to hire additional code enforcement and administrative personnel to address the problem.³

According to the article “How to Safely Make Money on Short-Term Rentals,” short-term rentals are often used as a way to avoid foreclosure and can cover a substantial portion of the mortgage on a vacation home:

According to vacation rental website HomeAway, about 21% of its customers listed a property in 2009 after a recent job loss, the inability to sell a home or foreclosure risk. It makes sense: 48% of customers with financed properties can cover 75% of their mortgage by renting it short-term.⁴

Owners who depend on rental income to pay their mortgages to pay the maintenance costs of a second home may be willing to risk incurring fines and other penalties if an ordinance creates obstacles that cannot be overcome or that may make it economically infeasible to obtain a rental permit.⁵

¹ See “Short-Term Rental Apartments Face Rising Calls for Regulation,” *The New York Times*, July 17, 2014 (available online at <http://www.nytimes.com/2014/07/18/greathomesanddestinations/short-term-rental-apartments-face-rising-calls-for-regulation.html>) (quoting Homeaway’s chief strategy officer as saying that “Overly restrictive laws or bans are akin to the U.S.’s Prohibition era in the 1930s. They are ineffective and drive the activity underground, which is clearly detrimental to all.”).

² See “House rentals hide in shadows: Web short-term vacation rooms proliferate while avoiding hotel taxes and oversight,” *Portland Tribune*, Jan. 3, 2013 (available online at <http://portlandtribune.com/pt/9-news/125888-house-rentals-hide-in-shadows>).

³ “Santa Monica Officials Look to Crack Down on Illegal Short Term Rentals,” *Santa Monica Lookout*, April 24, 2015 (available online at http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2015/April-2015/04_24_2015_Santa_Monica_Officials_Look_To_Crack_Down_on_Illegal_Short_Term_Rentals.html).

⁴ “How to Safely Make Money on Short-Term Rentals,” *Fox Business*, Sept. 14, 2011 (available online at <http://www.foxbusiness.com/personal-finance/2011/09/14/how-to-safely-make-money-on-short-term-rentals/>).

⁵ See “Renting rooms one way to avoid foreclosure,” *Seattle Times*, July 23, 2010 (available online at <http://www.seattletimes.com/business/real-estate/renting-rooms-one-way-to-avoid-foreclosure/>); see also “More destinations shut the door on vacation rentals,” *USA Today*, August 6, 2010 (commenting that the ban on short-term rentals in New York City apartments, most of which are already prohibited under many condominium and co-op bylaws, “will simply go further underground”).

7.2 Uncertainty in the Rental Housing Market

A rental regulation that makes a required rental permit non-transferrable can introduce a degree of uncertainty into to rental market. For example, under the City of Anaheim, California’s short-term rental program short-term rentals permits are non-transferable—any change in ownership requires that a new rental permit application be submitted and a new registration fee paid.⁶ The non-transferability of a short-term rental creates uncertainty about whether a buyer will be allowed to rent out a home in order to offset the purchase and maintenance costs, which could have a negative impact on the market for second homes. In a community with a strong second-home market, the result could be that houses will decrease in value because they will appeal only to the limited market of buyers who have no interest in making the property available to short-term renters. The lack of certainty as to whether a home could be used a vacation rental might also make it more difficult for buyers to secure financing for a second home in those areas, because the potential purchaser will not be able to give the lender assurances that there will be a contingent stream of income to offset the carrying costs of the property, if necessary.

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

7.3 Potential Liability for Realtors®

Rental regulations have the potential to expose Realtors® to liabilities and penalties for a violation. For example, in 2014 the City of Fairlawn, Ohio considered adopting an amendment to its landlord licensing code that contained the following provision:

Landlord License Required. Any owner, agent, person or entity desiring to receive income from the rental of an apartment, house or other residential dwelling unit must possess a Landlord License before receiving rental income.⁷

This language could be interpreted to require that a Realtor® have a landlord license if he or she collects rent from a tenant. This concern might arise, for example, if the Realtor® serves a management function for a landlord who resides elsewhere, or even, possibly, if the Realtor®

⁶ See City of Anaheim, CA – Short-Term Rental Program (available online at <http://www.anaheim.net/articlenew2222.asp?id=5284>).

⁷ See City of Fairlawn, OH – Proposed Ordinance 2014-073 § 1504.05(a) (available online at <http://www.cityoffairlawn.com/DocumentCenter/View/3426>).

marketing the property for lease needs to collect a deposit of first month's rent with the signing of a new lease.

The proposed Fairlawn ordinance also contained a provision that forbid an “owner, *agent* or person in charge” of a residential unit from renting or leasing it for residential occupancy unless the owner obtained a certificate of inspection for the rental unit in question. This provision can be read as imposing an affirmative duty on an agent—e.g., a Realtor[®] who is brokering a residential property for lease or rent—to ensure that the property owner has a current inspection certificate before having a prospective tenant enter into a lease agreement. A violation of either of these provisions would subject a Realtor[®] to potential administrative and/or criminal penalties under Chapter 1520 of the Fairlawn City Code.

7.4 Unnecessary Duplication of Existing Codes

As discussed in Section 3.1, communities often adopt rental regulations for the purpose of protecting the residential neighborhoods from the negative impacts that often are associated with rental housing, such as excessive noise, late night parties, trespassing, increased traffic, and other activities that disrupt the neighborhood character. In order to address these perceived negative impacts, communities often include performance-type standards in their rental regulations, such as maximum occupancy restrictions, noise limitations, and minimum parking requirements. To the extent that the conditions addressed by these performance standards (i.e., overcrowding, excessive noise, and off-street parking) are attributable to rental properties, the adoption of performance standards generally makes sense. However, these types of performance standards can unnecessarily duplicate existing provisions of a community's building, nuisance, and other codes. Generally speaking, such duplication will result in regulatory provisions that are either redundant or inconsistent.

For example, the rental regulations that were proposed for the City of Marco Island, Florida in 2014 were intended to “insure [that] property owners adjacent to rental units are not being adversely impacted by unruly renters (noise, trash, vehicle parking).”⁸ To address those concerns, the proposed rental regulations included provisions that banned noise disturbances after 10:00 pm, required trash to be stored in covered containers, and established minimum off-street parking requirements for rental properties.⁹ While these provisions arguably made sense, the Marco Island City Code already contained generally applicable provisions that addressed noise (Article IV – Noise Control), trash (Article II – Nuisance, Litter, Weed, Plant, and Right-of-Way Control Ordinance), and parking (Article II, Stopping, Standing and Parking).

A similar duplication of existing code provisions arose with respect to the vacation rental ordinance proposed for Sonoma County, California in 2010. The proposed ordinance contained a set of “Performance Standards” that were intended to “ensure that vacation rentals are compatible with and do not adversely impact surrounding residential and agricultural uses.” The proposed “Performance Standards,” which included noise limits and trash and recycling

⁸ See City of Marco Island, FL - Proposed Rental Regulations and Planning Board Memorandum, August 6, 2014 (available online at <http://www.cityofmarcoisland.com/modules/showdocument.aspx?documentid=15739>).

⁹ See *id.*

requirements, likewise duplicated generally applicable provisions of existing Sonoma County codes.

7.5 Shifting Rentals to Areas Where They Currently Are Not a Problem

As discussed in Sections 3.3(a) and (c), communities sometimes respond to concerns about short-term rentals by banning them in certain neighborhoods or zoning districts. For example, a community might ban short-term rentals from all or some of its designated single-family zoning districts. In 2015, the resort town of Ocean City, Maryland debated the creation of a new zoning district that would ban residential rentals for a term of less than a year.¹⁰ The proposed R-1A single-family residential district was substantially similar in all respects to the R-1 single-family residential district that already existed under the Ocean City Zoning Ordinance, with the exception that the proposed R-1A district would prohibit short-term rentals, while the existing R-1 district did allow short-term rentals.

The proposal to establish the R-1A district is reportedly was driven by the residents of a particular neighborhood known as the Mallard Island subdivision. A newspaper article reported that nearly 80 percent of the property owners in the Mallard Island subdivision signed a petition requesting that the neighborhood be rezoned to R-1A, even though the district does not currently exist.¹¹ The City Zoning Administrator explained the proposal as follows:

What is being requested by the Mallard Island subdivision is they will like a hybrid single family residential district ... an R-1A single family district will prohibit short-term rentals and allow only year-round rentals where you cannot rent less than 12 months. It would protect single family neighborhoods from not having transient rentals.¹²

If established by the City Council of Ocean City,¹³ the proposed R-1A district presumably would benefit Mallard Island (which reportedly generates most of the complaints received by Ocean City about short-term rentals) and other neighborhoods that are opposed to short-term rentals. However, the R-1A district could have the effect of shifting short-term rentals away from Mallard Island and into other Ocean City neighborhoods where they currently are not a problem.

¹⁰ See “Ocean City returns to question of vacation rentals,” *The Baltimore Sun*, July 7, 2015 (available online at <http://touch.baltimoresun.com/#section/-1/article/p2p-83943420/>).

¹¹ “OC Weighing New Housing District That Would Prohibit Short-Term Rentals in Certain Areas,” *The Dispatch* (May 7, 2015).

¹² *Id.*

¹³ As of July 2015, the city council was still debating the proposal. See “Ocean City returns to question of vacation rentals,” *The Baltimore Sun*, July 7, 2015.

RESIDENTIAL RENTALS

The Housing Market, Regulations, and Property Rights

SECTION 8. RENTAL REGULATIONS AND PROPERTY RIGHTS

8.1 The Bundle of Property Rights

Property ownership in the United States is commonly expressed metaphorically as a “bundle of rights” or a “bundle of sticks.”¹ The concept of property ownership as a bundle of rights “is an abstract notion that analytically describes property as a collection of rights vis-à-vis others, rather than rights to a ‘thing,’ like a house or a piece of land.”² The bundle of rights pertaining to ownership includes the rights to possess and use the property, the right to exclude others from the property, and the right to gain income from the property by “foregoing personal use . . . and allowing others to use it.”³ At the same time, zoning and environmental regulations impose limitations on the “absolute” nature of property ownership. Today, it is commonly understood and generally accepted that some degree of such regulation is a condition of owning property under our American system.

8.2 The Right to Rent Private Property

Among the core rights that a property owner typically has, and that an owner does not expect to be deprived of by regulation, is the right to lease or rent the property on a temporary basis to another party. That party temporarily acquires, in exchange for payment of rent, one of the “sticks” in the bundle of property rights—the right to use and occupy the property for the agreed upon rental period to the exclusion of all others.⁴

In a 2001 decision that invalidated a variance condition prohibiting a home from being used for rental purposes, the Supreme Court of Connecticut recognized the bundle of rights view of property ownership and identified the “right of rent” as one of the sticks in that bundle. The Court stated:

[It] is undisputable that the right of property owners to rent their real estate is one of the bundle of rights that, taken together, constitute the essence of ownership of property.... The question that the present case poses, therefore, is whether, under the facts of this case, the continued maintenance of the no rental condition serves “a legal and useful purpose.” We conclude that it does not.

Owners of a single-family residence can do one of three economically productive things with the residence: (1) live in it; (2) rent it; or (3) sell it. Thus, if the owners of a single-family residence do not choose, for reasons of family size or other valid reasons, to live

¹ See Denise R. Johnson, *Reflections on the Bundle of Rights*, 32 VERMONT L. REV. 247 (2007) (hereinafter “Johnson”).

² Johnson at 247.

³ Johnson at 253.

⁴ See J.E. Penner, *The “Bundle of Rights” Picture of Property*, 43 UCLA L. REV. 711 (1996) (noting that conventional “bundle of rights” formulation and various views of the “bundle of rights”).

in the house they own, their only viable options are to rent it or to divest themselves entirely of their ownership by selling it.⁵

In invalidating the variance condition, the court observed:

Stripping the plaintiffs of essentially one-third of their bundle of economically productive rights constituting ownership is a very significant restriction on their right of ownership. In addition, when the variance was granted in 1986, the no rental condition deprived the plaintiffs only of the right to rent their property on a seasonal basis. With the change in the zoning regulations, however, the plaintiffs now also have lost the more significant right to rent their property on a year-round basis, resulting in a total loss of the right to rent.⁶

Though the *Gangemi* decision pertained to a variance condition prohibiting a home from being used for rental purposes, the reasoning of the Supreme Court of Connecticut can be applied to the general context of residential rental regulations.

8.3 Local Government Authority to Regulate

An ordinance that outright prohibits property owners from renting their homes, or restricts their right to rent by subjecting residential rentals to a discretionary permit requirement, clearly impairs the fundamental right of private property owners to rent their properties by stripping them of “one-third of their bundle of economically productive rights” that constitute ownership. The question is the degree to which this significant governmental restriction of a productive property right has been held to be valid, and under what circumstances.

In general, rental regulations are adopted under the general police power delegated to local governments by the state constitution or by statute, or pursuant to the zoning authority granted to local governments by a state zoning enabling statute. These sources of local regulatory authority are discussed below.

(a) Police Power

The concept of “**police power**” is generally understood to mean “the exercise of the sovereign right of a government to promote order, safety, health, morals and the general welfare of society within constitutional limits.”⁷ The police power is an inherent attribute of sovereignty that does not depend on a constitutional reservation.⁸ Because the police power resides in the states, it is generally held that local governments have no police power unless it has been delegated to them

⁵ *Gangemi v. Zoning Bd. of Appeals of the Town of Fairfield*, 763 A.2d 1011, 1015-16 (Conn. 2001) (citing J. DUKEMINIER & J. KRIER, PROPERTY at 86 (3d ed. 1993) (stating (“[property] consists of a number of disparate rights, a ‘bundle’ of them: the right to possess, the right to use, the right to exclude, the right to transfer”). (Emphasis added)

⁶ *Id.* at 1016. (Emphasis added)

⁷ See 6 ROHAN: ZONING AND LAND USE CONTROLS, Ch. 35, Sources of Zoning Power, § 35.03[1] (LexisNexis Matthew Bender) (hereinafter “ROHAN”).

⁸ EUGENE MCQUILLIN, 6A THE LAW OF MUNICIPAL CORPORATIONS § 24:2 (3d. ed., 2015) (hereinafter “MCQUILLIN”).

by the state constitution or by enabling legislation.⁹ For example, in Ohio the police power is delegated to municipalities by Article 18, Section 3 of the Constitution of the State of Ohio, which states:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.¹⁰

Article XI, Section 7 of the California Constitution contains a similarly broad grant of authority: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”¹¹

(b) Zoning Power

The zoning power—generally defined as the governmental right to control the use of real property—is a form of the police power.¹² The power to zone is exercised primarily by local government. However, as noted above, local governments have no inherent police powers and therefore have no inherent power to zone. Consequently, before a local government can legally exercise the zoning power, it must receive a delegation of that power from the sovereign that inherently possesses it, namely, the state.

In the landmark decision *Village of Euclid v. Amber Realty Co.*,¹³ the U.S. Supreme Court made clear that the police power was the source of local zoning power. In validating the zoning ordinance adopted by the Village of Euclid, Ohio, the Court stated:

The ordinance now under review and all similar laws and regulations must find their jurisdiction in some aspect of the police power, asserted for the public welfare. The line in which this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to grate cities, might clear be invalid as applied to rural communities.... Thus the question whether the power exists to forbid the erection of a building of a particular kind or of a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and locality.¹⁴

Today, the vast majority of states have authorized local governments to enact zoning regulations through enabling legislation.¹⁵ Many of these enabling laws were modeled in whole or in part after the Standard Zoning Enabling Act, a model act prepared by the Commerce Department in 1924 that provided for a general delegation of power from the state to a municipality to regulate the basic power to zone.

⁹ *See id.*

¹⁰ Ohio Const. Art. 18 § 3.

¹¹ California Const. Art. XI § 7.

¹² MCQUILLIN § 35.01.

¹³ *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926)

¹⁴ *Id.* at 388.

¹⁵ *See* ROHAN § 35.03[2][b] (citing the zoning enabling statutes enacted by 45 states).

8.4 Authority to Regulate Residential Rentals

(a) Regulation of Residential Rentals Under General Police Power Authority

Communities that have adopted a rental ordinance often cite the general police power as the source of their authority to regulate residential rentals. The adopted ordinances typically begin with a series of “whereas” clauses (i.e., findings) that describe the alleged adverse impacts that rentals have on neighboring properties or the community, followed by a finding that the regulation of such rental properties is necessary to promote the public health, safety and welfare.

One example of this approach is the vacation rental ordinance adopted by the Village of Bal Harbour, Florida in May, 2011.¹⁶ Several “whereas” clauses of the Bal Harbour ordinance describe the negative impacts of vacation rentals on residential neighborhoods, stating in relevant part that:

[Vacation rentals] can result in incompatible adverse impacts on neighborhoods, including, but not limited to, increased noise, garbage, litter and traffic, changes to the private residential character of the neighborhood ... increase[d] demands on water and wastewater and on the Village’s code enforcement, police, fire and emergency services beyond those demands created by residential dwelling units ... [and that] short-term vacation rental use and longer term residential use are generally incompatible due to the rapid turnover associated with short-term vacation rental use and its disruptive effect on the peaceful use and enjoyment of residential areas¹⁷

The “whereas” clauses conclude that the “regulation of vacation rentals is *necessary to protect the public health, safety, and welfare* of the Village, its residents and its visitors” and that “the adoption of [the vacation rental ordinance] is in the best interest and welfare of the residents of the Village.”¹⁸ The Bal Harbour ordinance also expressly cites Article VII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, which “provide municipalities with the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance thereof.”¹⁹

Another example is the vacation rental licensing ordinance adopted by the City of Evanston, Illinois, which cites Article VII, Section (6)a of the Illinois Constitution as the source of its authority to “exercise any power and perform any function pertaining to its government and affairs” and to “adopt ordinances ... and regulations that protect the public health, safety, and welfare of its residents.”²⁰ Section 5-9-1 of the Evanston ordinance states: “The purpose of this

¹⁶ Bal Harbour Village, FL – Ordinance No. 2011-549, Providing for Vacation Rental Use Regulations (available online at <http://www.balharbourgov.com/static/sitefiles/events/BHV20120919075459.pdf>).

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 2-3 (emphasis added).

¹⁹ *Id.* at 2.

²⁰ Evanston (IL) Ordinance No. 50-O-13 (Enacting a New Title 5, Chapter 9 of the City Code to Require the Licensing of Vacation Rentals) (available online at <https://www.cityofevanston.org/assets/50-O-13%20Licensing%20of%20Vacation%20Rentals%20Ordinance.pdf>).

Chapter is to promote the *public health, safety, and welfare* by licensing the operation of Vacation Rentals within the City of Evanston.”²¹

(b) Regulation of Residential Rentals Under the Zoning Power

As discussed in Section 8.3(b), the zoning power of local government is a form of the police power. Consequently, state zoning enabling statutes generally contain the same “public health, safety and welfare” language contained in constitutional or statutory provisions delegating the police power to local government. For example, the general grant of zoning authority in Michigan’s zoning enabling statute states, in relevant part:

A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of one or more districts within its zoning jurisdiction which regulate the use of land and structures ... *to promote public health, safety, and welfare.*²²

Communities that choose to regulate short-term rentals as a land use—e.g., by designating short-term rentals a special use or conditional use and requiring a discretionary permit—typically do so through an amendment to their zoning regulations. For example, the City of Venice, Florida adopted its “resort dwellings” ordinance—which prohibits new resort dwelling units in the RE and RSF single-family zoning districts—as Section 86-151 of the city’s Land Development Code.²³ Miami Beach, Florida, which bans short-term rentals in certain residential districts, also adopted its short-term rental regulations as an amendment to its zoning code.²⁴

8.5 Limitations on Government Authority to Regulate Rental Housing

(a) General Principle

A key characteristic of the *police power* is that it is a “reasonable preference of public over private interests.”²⁵ The lawful exercise of the police power necessarily interferes in some respects with the rights of individuals, but “is justified on the ground and only to the extent that it is required in order to protect the personal and property rights of others, and advance the best interests of society.”²⁶ Court decisions have established that property owners are entitled to use and enjoy their property subject only to the reasonable exercise of the police power. A law or regulation that deprives an owner of a property right “cannot be sustained under the police power unless due regard for the public health, safety, comfort, or welfare requires it.”²⁷

²¹ Evanston (IL) City Code § 5-9-1.

²² Michigan Zoning Enabling Act § 125.3201(1) (emphasis added).

²³ City of Venice, FL Land Development Code § 86-151 (Resort Dwellings).

²⁴ The Miami Beach, FL short-term rental regulations are codified in various sections of Chapter 142 (Zoning Districts and Regulations) of the Miami Beach Code of Ordinances.

²⁵ MCQUILLIN § 24.5 (citing *City of West Covina v. Perkins*, 525 U.S. 234 (1999), *Miller v. Schoene*, 276 U.S. 272 (1928)).

²⁶ MCQUILLIN § 24.5.

²⁷ MCQUILLIN § 24.22 (citations omitted).

(b) Constitutional Limits on the Police Power

Local government regulations can raise federal constitutional questions based on federal constitutional provisions that are drawn from the **Bill of Rights**²⁸ and the **supremacy clause**²⁹ which, together, establish the “floor” of federally protected rights, below which states and local governments may not go in imposing regulations. But the constitutions of the states and related court decisions can *expand* (i.e., give greater protection) on these rights.

(i) Due Process

The right to due process exists under both federal constitutional law and state constitutional law. The Fourteenth Amendment to the U.S. Constitution prohibits any governmental action that deprives “any person of ... liberty or property, without **due process** of law.” This clause imposes both substantive and procedural requirements.³⁰ The *substantive component* of the federal due process clause, known as “substantive due process,” tests the governmental purposes implemented by land use regulations. To satisfy substantive due process, a regulation must advance a legitimate governmental purpose.³¹ In general, a local land use ordinance will survive a federal substantive due process challenge if there exists a “rational relationship” between the provisions of the ordinance and a legitimate governmental interest.³² A local ordinance may be challenged on federal substantive due process grounds either on its face, or as applied to a particular case. When a landowner makes a *facial* challenge to a zoning ordinance, “he or she argues that *any* application of the ordinance is unconstitutional.”³³ On the other hand, when a landowner makes an *as applied* challenge, he or she attacks “only the specific decision that applied the ordinance to his or her property, not the ordinance in general.”³⁴ The federal constitutional claim is that the ordinance or provision, on its face or as applied, violates substantive due process because there is no rational relationship between the provision or ordinance in question and a legitimate governmental purpose.

The corollary to this federal substantive due process requirement is the requirement under state constitutions that every local enactment “bear a rational relationship to a legitimate governmental purpose and be free from arbitrary and capricious governmental actions.”³⁵ The state constitutional claim is that the ordinance or provision, on its face or as applied, bears no rational relationship to a legitimate governmental purpose and therefore is arbitrary and capricious.

²⁸ The first ten amendments to the U.S. Constitution.

²⁹ This clause, found in the second paragraph of Article VI of the federal constitution, states that there are certain minimum constitutional requirements that the states must observe.

³⁰ Generally speaking, the principle of procedural due process is that when the state or federal government acts in such a way that denies a citizen of a life, liberty, or property interest, the person must first be given notice and the opportunity to be heard.

³¹ See SALKIN § 15:2.

³² See *id.*

³³ *WMX Technologies, Inc. v. Gasconade County*, 105 F.3d 1195, 1198-99 n.1 (8th Cir. 1997) (emphasis added).

³⁴ See SALKIN § 15:2.

³⁵ MCQUILLIN § 24.29.

(ii) Equal Protection

Equal protection guarantees also are found under both federal constitutional law and state constitutional law. The federal Equal Protection Clause of the Fourteenth Amendment commands that no state shall “deny to any person within its jurisdiction the equal protection of the laws,” which states the basic principle that all persons similarly situated should be treated alike.³⁶ The general rule is that a state or local law is presumed to be valid and will be sustained if the classification drawn by the law is rationally related to a legitimate state interest.³⁷ If a local or state law does not involve a suspect classification (e.g., one that treats persons differently on the basis of race, alienage, or national origin) or a fundamental right (e.g., the right to vote, the right to interstate travel), then an equal protection challenge is analyzed under the rational basis test. The **rational basis test** is a deferential test, under which an ordinance generally will be upheld by a court if there is any “reasonably conceivable state of facts that could provide a rational basis for the classification.”³⁸ Moreover, under the rational basis test a legislative body is not required to articulate its reasons for enacting an ordinance, because “[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”³⁹ This means that a court may find a rational basis for a law or ordinance, even if it is one that was not articulated by the legislative body.

A 2009 law review article observed that state equal protection principles are similar to but, in some cases, extend beyond the scope of federal equal protection:

Similar wording on state and local governmental duties are repeated in many American state constitutions. In South Carolina, Illinois, Louisiana, Maine, North Carolina, Nebraska, Georgia, and Montana, no person is to be “denied the equal protection of the laws.” In Texas and Massachusetts, constitutional equalities are more specific as it is declared that equality under law “shall not be denied or abridged because of sex, race, color, creed, or national origin.” Equal protection sometimes is an affirmative duty, rather than a constraint, as in Kansas where governments “are instituted for th[e] equal protection and benefit” of “the people.” “While the federal conception of equality has become relatively static, its state counterpart is dynamic ... [so that c]onstitutional equality is now a joint federal and state enterprise.”⁴⁰

Since 2000, as a result of the U.S. Supreme Court decision in *Village of Willowbrook v. Olech*,⁴¹ “selective enforcement” claims in land use cases may also be brought under the Equal Protection clause. Selective enforcement claims generally assert that a municipality arbitrarily applied its land use ordinance to a conditional use permit or other land use approval, or that enforcement of the ordinance was arbitrarily selective.⁴² In *Olech*, the village refused to supply water to the

³⁶ See generally *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

³⁷ See generally *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

³⁸ *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, (1980).

³⁹ *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096 (1993).

⁴⁰ Jeffery A. Parness, *American State Constitutional Equalities*, 45 GONZAGA L. REV. 773, 780 (2009/10).

⁴¹ *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073 (2000).

⁴² BRIAN W. BLAESSER & ALAN C. WEINSTEIN, *FEDERAL LAND USE LAW & LITIGATION* § 1:20 (Thomson-Reuters/West: 2015) (hereinafter “BLAESSER & WEINSTEIN”).

plaintiffs unless they granted the village an easement that it had not required of other property owners. It was alleged that the village did so to retaliate for the plaintiffs having brought an earlier, unrelated suit against the village. The question before the Supreme Court was whether an individual who does not have a suspect classification or fundamental interest claim can nevertheless establish a “class of one” equal protection violation when vindictiveness motivated the disparate treatment. The Court held:

Our cases have recognized successful equal protection claims brought by a “class of one,” where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that “the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.”⁴³

From a plaintiff’s perspective, the difficult part of the *Olech* decision is its requirement that selective enforcement claims involve intentional treatment. Moreover, it is unclear whether the intentional treatment rule requires merely an intent to do an act or, more specifically, the intent to harm or punish an individual for the exercise of lawful rights.⁴⁴ Since *Olech*, most cases involving “class of one” equal protection claims that assert selective enforcement have not been successful.⁴⁵

(iii) Takings

It is well established that a land use regulation that is excessively restrictive may constitute a “**taking**” of property for which compensation must be paid under the state constitution and the Fifth and Fourteenth Amendments to the United States Constitution.⁴⁶ 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*,⁴⁷ 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).⁴⁸

⁴³ *Olech*, 528 U.S. at 564 (citations omitted).

⁴⁴ See BLAESSER & WEINSTEIN § 1:20.

⁴⁵ See generally BLAESSER & WEINSTEIN § 1:20, fn. 7.

⁴⁶ PATRICIA E. SALKIN, 2 AMERICAN LAW OF ZONING § 16:1 (5th ed. 2008) (hereinafter “SALKIN”).

⁴⁷ *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

⁴⁸ SALKIN § 16:9 (citing *Penn Central*, 438 U.S. at 124).

As discussed in Section 8.3(d)(ii) of this paper, some states have adopted private property rights protection laws that generally require a state or local government to pay compensation to a landowner when a land use regulation causes any decrease in the value of affected property. The less demanding standard of these statutes (i.e., any decrease in property value versus the loss of all economically viable use) makes them more likely to succeed than a takings claim.

(iv) Unreasonable Search and Seizure

From the perspective of affected property owners and tenants, a rental regulation—and in particular, its inspection requirements—can raise serious concerns under the Fourth Amendment of the U.S. Constitution, which safeguards the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁴⁹ In *Camara v. Municipal Court of City & County of San Francisco*,⁵⁰ the U.S. Supreme Court held that the Fourth Amendment applies to civil searches (e.g., municipal code inspections) as well as criminal searches.⁵¹

(c) Statutory Limitations

(i) Statutes Limiting Local Authority to Regulate Residential Rentals

States generally have not enacted legislation that specifically addresses the authority of local governments to regulate short-term rentals. An exception to this general rule is the state of Florida, which in 2011 enacted legislation that specifically limited the authority of local governments to regulate or prohibit short-term rentals. Section 509.032(7) of the Florida Lodging Statute (entitled “**Preemption**⁵² Authority”) stated, in relevant part:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.⁵³

However, in 2014 the Florida State Legislature amended Section 509.032(7) in a manner that expanded the authority of local governments to regulate vacation rentals.⁵⁴ Where the 2011 statute prohibited Florida municipalities from regulating vacation rentals “based solely on their

⁴⁹ U.S. Const., amend. IV. Any government action that intrudes on a person’s “reasonable expectation of privacy” violates the Fourth Amendment, and “[h]omes and other residences are virtually always areas in which a person residing has a reasonable expectation of privacy.” William E. Ringel, *Searches and Seizures Arrests and Confessions* § 2:2 (2011).

⁵⁰ *Camara v. Municipal Court of City & Cty. of San Francisco*, 387 U.S. 523 (1967).

⁵¹ *See Camara*, 387 U.S. at 534.

⁵² “Preemption” is a doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such national, as opposed to local, character that federal laws preempt or take precedence over state laws on such matters. As such, a state may not pass a law inconsistent with the federal law. The doctrine of *state law* preemption holds that a state law displaces a local law or regulation that is in the same field and is in conflict or inconsistent with the state law. Article VI, Section 2, of the U.S. Constitution, commonly referred to as the “Supremacy Clause,” provides that the “Constitution, and the Laws of the United States ... shall be the supreme Law of the Land.”

⁵³ Fla. Stat. § 509.032(7)(b) (2011).

⁵⁴ *See* Ch. 2014-71, Laws of Florida.

classification, use, or occupancy, the 2014 amendment now only prohibits municipalities from regulating the “duration or frequency of vacation rentals.” As revised, Section 509.032(7) now states, in relevant part:

- (b) *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.*
- (c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.⁵⁵

After the 2014 amendment went into effect, the Florida Attorney General was asked whether Section 509.032(7)(b) permitted cities to regulate the location of vacation rentals through zoning. In Opinion No. 2014-09, the Attorney General responded:

Section 509.032(7)(b), Florida Statutes, as amended by Chapter 2014-71, Laws of Florida, allows a local government to regulate vacation rentals, but continues to preclude any local law, ordinance or regulation which would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. It would appear therefore, that zoning may not be used to prohibit vacation rentals in a particular area where residential use is otherwise allowed.⁵⁶

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

(ii) Fair Housing Laws

In 1968, Congress enacted the comprehensive federal **Fair Housing Act** (the “FHA”) as Title VIII of the Civil Rights Act of 1968.⁵⁷ The FHA initially prohibited discrimination on the basis of “race, color, religion, or national origin” and was amended in 1974 to prohibit discrimination based on “gender.”⁵⁸ The FHA was further amended in 1988 by the enactment of the Fair Housing Amendments Act (the “FHAA”), which added to its prohibitions discrimination based on handicap or familial status (i.e., families with children).⁵⁹

⁵⁵ Fla. Stat. § 509.032(7).

⁵⁶ See Florida AGO 2014-09 (available online at <http://www.myfloridalegal.com/ago.nsf/Opinions/5DFB7F27FB483C4685257D900050D65E>).

⁵⁷ Fair Housing Act of 1968, 42 U.S.C. §§ 3591 et seq.

⁵⁸ Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633, 729 (1974).

⁵⁹ Fair Housing Amendments Act of 1988, 42 U.S.C. § 3604. The FHA, as amended by the Fair Housing Amendments Act of 1988, is hereinafter referred to as the FHAA.

The FHAA prohibits discrimination in the sale, rental, and financing of housing based on race, color, religion, sex, national origin, familial status, or a disability.⁶⁰ Under the FHAA, it is 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.”⁶¹ It is likewise unlawful to refuse to make “reasonable accommodations” to facilitate occupancy by handicapped persons.⁶²

Under the FHAA, “handicap” is broadly defined to include any person: (1) with a physical or mental impairment which substantially limits one or more of such person’s major life activities; (2) with a record of having such an impairment; or (3) regarded as having such an impairment.⁶³ The FHAA applies not just to direct providers of housing, such as landlords and real estate companies, but also to municipalities, as well as banks and other lending institutions.⁶⁴ The FHAA provides that any state or local regulation “that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.”⁶⁵

Of relevance to the OHI Amendments, the FHAA applies to local zoning restrictions that result in housing discrimination against people with handicapped status.⁶⁶ A zoning ordinance could violate the FHAA either by discriminating against people with handicapped status on its face or in its implementation. In particular, local zoning restrictions and decisions may violate the FHAA provisions prohibiting acts that “otherwise make unavailable or deny”⁶⁷ a dwelling because of handicap and that make unlawful the “refusal to make *reasonable accommodations*”⁶⁸ to afford the handicapped equal housing opportunity.

The FHAA definition of discrimination against handicapped persons includes the “refusal to make *reasonable accommodations* in rules, policies, practices or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling.”⁶⁹ The courts have applied this “reasonable accommodations” duty in the context of local governmental land use and zoning regulation.⁷⁰ In determining whether a proposed “accommodation” is reasonable and required by the FHAA in this regulatory context, the courts generally apply a “balancing of interests” standard, including consideration of:

⁶⁰ U.S. Department of Housing and Urban Development, *Title VIII: Fair Housing and Equal Opportunity* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/progdsc/title8 (last visited April 30, 2015); 42 U.S.C. § 3604(a).

⁶¹ 42 U.S.C. § 3604(a) (emphasis added).

⁶² 42 U.S.C. § 3604(f)(3)(B).

⁶³ RATHKOPF’S THE LAW OF ZONING AND PLANNING § 25:9 (4th ed.) (hereinafter “RATHKOPF”) (citing 42 U.S.C. § 3602(h)).

⁶⁴ U.S. Department of Justice, The Fair Housing Act, http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited April 30, 2015).

⁶⁵ 42 U.S.C. § 3615.

⁶⁶ See RATHKOPF § 25:8.

⁶⁷ 42 U.S.C. § 3604(f)(1).

⁶⁸ 42 U.S.C. § 3604(f)(3)(B) (emphasis added).

⁶⁹ 42 U.S.C. § 3604(f)(3)(B) (emphasis added).

⁷⁰ See RATHKOPF § 25:10.

- (1) whether the accommodation proposed is necessary to provide an equal opportunity for housing;
- (2) the degree of the fiscal or administrative burdens imposed on the governmental defendant by the proposed accommodation; and
- (3) the extent to which the proposed accommodation will adversely impact legislative goals or policies.⁷¹

A leading treatise on zoning law provides the following examples of “reasonable accommodations” that have been required in cases involving local zoning regulations:

In the context of zoning restrictions, waiver of a specific restriction may be required unless to do so imposes undue fiscal or administrative burdens on the municipality or significantly undermines the basic zoning policy furthered by the restriction. As a practical matter, courts have been inclined to require the waiver of minor violations or unduly burdensome restrictions. In particular cases, courts may require the waiver of zoning district allowed use restrictions, yard and setback restrictions, unduly burdensome safety requirements, distancing requirements, and restrictions on the number of unrelated or allowed occupants. Permit conditions imposed must be related to the actual needs and abilities of the group home residents.⁷²

Zoning ordinances often restrict the number of unrelated occupants who may reside together in a single-family zoning district. The FHAA specifically exempts from its scope “reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.”⁷³ The circuit courts initially were divided as to whether this exemption extended to zoning restrictions based on the number of unrelated occupants. The U.S. Supreme Court settled the dispute in the 1995 case of *City of Edmonds v. Oxford House, Inc.*, which held that the exemption does not apply to limitations on unrelated occupants.⁷⁴ The following excerpt from a leading treatise on planning and zoning law summarizes the key points of the *City of Edmonds* decision:

In *City of Edmonds*, the ordinance defined “family” as “an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage.” Only a family, as defined, could reside in a single-family zone. The city took the position that its single-family restrictions were covered by the exception and were therefore outside the reach of the Fair Housing Act. Oxford House argued that the exemption should apply only when a maximum occupancy restriction exists for all occupants, not just unrelated occupants. In the Supreme Court’s 6-3 decision, Justice Ginsburg, in ruling that the city’s restriction was not exempt under the Fair Housing Act, stated:

The defining provision at issue describes who may compose a family unit; it does not prescribe “the maximum number of occupants” a dwelling unit may house. We hold that ... [the Fair Housing Act] does not exempt prescriptions of the family-defining kind, i.e., provisions designed to foster the family character of a

⁷¹ RATHKOPF §§ 25:10, 25:15 (citations omitted).

⁷² RATHKOPF § 25:15.

⁷³ 42 U.S.C. § 3607(b)(1).

⁷⁴ *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 115 S. Ct. 1776 (1995).

neighborhood. Instead, ... [the] absolute exemption removes from the FHA's scope only total occupancy limits, i.e., numerical ceilings that serve to protect overcrowding in living quarters.

Throughout the opinion, the Supreme Court contrasted the city's family-defining restrictions with true maximum occupancy restrictions, which "cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms." In a passage that should give municipal officials clear guidance about the kind of restrictions that are not exempt from the Fair Housing Act, the Court observed:

But Edmonds' family composition rule surely does not answer the question: "What is the maximum number of occupants permitted to occupy a house?" So long as they are related "by genetics, adoption, or marriage," any number of people can live in a house. Ten siblings, their parents and grandparents, for example could dwell in a house in Edmonds' single-family residential zone without offending Edmonds' family composition rule.⁷⁵

Notably, *City of Edmonds* did not hold that a limitation on the number of unrelated occupants per se violates the FHAA, only that such restrictions do not qualify for the statutory exemption and therefore are subject to a discrimination and reasonable accommodation analysis. The lower courts have disagreed about whether such occupancy restrictions violate the FHAA where they are facially neutral (i.e., applicable to all unrelated persons, not just to the handicapped).⁷⁶

A rental regulation that limits the number of unrelated persons who can rent a home arguably raise the same issues as an ordinance that restricts the number of unrelated persons allowed to reside in a single-family home.

(iii) Private Property Rights Protection Acts

As discussed in Section 8.3(c)(iii) of this paper, it is very difficult for a landowner to succeed on a takings challenge to a land use regulation due to the need to show that no economically viable use of the land remains. However, some states have adopted statutes that protect private property rights by requiring state and local governments to pay compensation where a land use regulation inordinately burdens, restricts, or limits private property without amounting to an unconstitutional taking.

One example is the *Bert J. Harris, Jr. Private Property Rights Protection Act*, (the "Bert Harris Act") adopted by the Florida Legislature in 1995. The Bert Harris Act states, in relevant part:

When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government.⁷⁷

⁷⁵ RATHKOPF § 25:16 (quoting *City of Edmonds*, 115 S. Ct. at 1779, 1782) (emphasis added).

⁷⁶ RATHKOPF § 25:16 (citations omitted).

⁷⁷ Fla. Stat. § 70.001(2).

Another example is Arizona’s Private Property Rights Protection Act⁷⁸ (the “Arizona Private Property Rights Protection Act” or “Act”), which was passed by the voters in November 2006 as Proposition 207. The Arizona Private Property Rights Protection Act requires the state and local governments to pay compensation to the landowner when a land use regulation results in any decrease in the value of a property.⁷⁹ Section 12-1134 of the Act (Diminution in value; just compensation) states:

If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.⁸⁰

As discussed in Section 8.6(e) of this paper, at least one Arizona city has already been forced to defend a short-term rental ordinance against a claim for just compensation under the Act.

8.6 Regulation of Residential Rentals Under the General Police Power

(a) Findings from NAR Land Use Initiative Program

As noted in Section 8.4(a), communities that have residential rental regulations often adopt them under their general police power authority (which is delegated to local governments by the state constitution or statute) to promote the public health, safety, and welfare. An analysis of proposed rental regulations reviewed by Robinson & Cole under the *NAR Land Use Initiative Program* reveals that 67% of the rental regulations reviewed were proposed for adoption under the general police power. An analysis of these proposed police power (i.e., non-zoning) regulations further revealed that the regulatory techniques most frequently used in these non-zoning rental regulations were: *registration or licensing requirements*, which were included in 86% of all non-zoning proposals; *inspection requirements*, which were included in 54% of all non-zoning proposals; and *maximum occupancy restrictions, noise limits, and geographic restrictions*, each of which appeared in 25% of all non-zoning rental regulations reviewed.

These common types of rental restrictions—and any other restriction that is adopted under the general police power—are subject to the constitutional and statutory limitations on the police power discussed in Section 8.5(b) of this paper. Below are examples of how these constitutional and statutory limitations have been applied by the courts to rental regulations.

(b) Substantive Due Process Applied to Rental Regulations

In a 1991,⁸¹ the California Court of Appeals upheld the City of Carmel-by-the-Sea’s transient rental ordinance on both substantive due process and equal grounds.⁸² In rejecting these claims, the court found that the ordinance was “rationally related” to the goals and policies set forth in

⁷⁸ Arizona Rev. Stat. §§ 12-1131 through 12-1138.

⁷⁹ See Ariz. Rev. Stat. Ann. § 12-1131 et seq.; see also Jeffrey L. Sparks, *Land Use Regulation in Arizona After the Private Property Rights Protection Act*, 51 ARIZ. L. REV. 211 (2009).

⁸⁰ *Id.* (quoting Ariz. Rev. Stat. Ann. § 12-1134(A)).

⁸¹ *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6th Dist. Cal. 1991).

⁸² *Id.* at 1596.

the city’s general plan, as well as the stated purpose of the R-1 district.⁸³ In support of its conclusion, the court explained that short-term rentals were inconsistent with the residential character of the community:

It stands to reason that the “residential character” of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or even 29 days. Whether or not transient rentals have the other “unmitigatable, adverse impacts” cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.⁸⁴

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

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal.⁸⁵

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

(c) Equal Protection Applied to Rental Restrictions

As noted above, the plaintiffs in the case *Ewing v. City of Carmel-by-the-Sea* also challenged the city’s transient rental ordinance on equal protection grounds. Because the California Court of Appeals found that Carmel-by-the-Sea’s transient rental ordinance did not involve a suspect classification or a fundamental right, it likewise rejected the plaintiff’s equal protection claim under the same deferential rational basis test discussed above in connection with substantive due process claims.⁸⁶

⁸³ See *id.* at 1589.

⁸⁴ *Id.* at 1591.

⁸⁵ *Id.* at 1596.

⁸⁶ See *id.* (applying the rational basis test in upholding the city’s transient rental ordinance on equal protection grounds).

In an Arkansas case,⁸⁷ the plaintiffs asserted an equal protection claim against a City of Norfolk ordinance that restricted short-term rentals to the BI Commercial Business Central District. The plaintiff argued that the ordinance treated them arbitrarily and differently than others regarding the rental of residential property.⁸⁸ After finding that there was a legitimate purpose for the short-term rental ordinance (namely that it addressed concerns brought by residents about the short-term rental use of a home in a residential neighborhood), the court summarily denied the equal protection claim on the ground that that the ordinance “bears a rational relationship to the city’s purpose for enacting the ordinance.”⁸⁹

(d) Takings Claims Asserted Against Rental Regulations

In a 1993 case, the Oregon Supreme Court upheld the short-term rental ordinance adopted by the City of Cannon Beach.⁹⁰ The Cannon Beach ordinance (Ordinance 92-1) prohibited the creation of new transient occupancy uses and required existing transient occupancy uses to end by 1997. The petitioners, a group of rental property owners, claimed that Ordinance 92-1 constituted a taking of property without just compensation under the Fifth and Fourteenth Amendments.⁹¹ The Supreme Court of Oregon, however, upheld the ordinance, 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.⁹²

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.

Nevertheless, in 2015 a Texas appellate court upheld the issuance of a temporary injunction prohibiting the Village of Tiki Island, Texas from implementing an ordinance that banned short-term rentals, despite evidence that the ordinance reduced the value of the plaintiff’s property by less than ten percent.⁹³ In affirming the temporary injunction, the court observed that the ordinance “had an economic impact on [plaintiff’s] property, that she had a reasonable, investment-backed expectation that she could engage in short-term rentals ... [and that the] allegations, taken as true and construed liberally in her favor, establish a viable taking claim.”⁹⁴

⁸⁷ *Aamodt v. City of Norfolk*, 2011 WL 4499364 (W.D. Ark).

⁸⁸ *Id.* at *3.

⁸⁹ *Id.* at *3.

⁹⁰ *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

⁹¹ *See id.* at 1084.

⁹² *Id.* at 1086-87 (internal citations omitted).

⁹³ *See Village of Tiki Island v. Ronquille*, 2015 WL 1120915 (Tex. App. Houston (1st Dist.)).

⁹⁴ *Id.* at *16.

(e) Protection Against Unreasonable Search and Seizure in Mandatory Inspection Provisions

As of the date of this paper, it does not appear that an unreasonable search and seizure claim against an inspection provision contained in a rental regulation has been decided by the appellate courts. However, such claims have been decided in the context of a mandatory inspection requirement under a municipal building code.

The case of *Camara v. City of San Francisco* involved a San Francisco ordinance that gave city inspectors the right to enter any building at reasonable times “so far as may be necessary for the performance of their duties.”⁹⁵ After refusing on three occasions to give inspectors access to his apartment without a search warrant, a tenant was prosecuted under another ordinance that made it a crime to refuse to comply with the inspectors’ requests.⁹⁶ The tenant argued that the warrantless search requested by the building inspectors violated his Fourth Amendment rights.⁹⁷ The Court agreed, stating:

In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual, and that the reasons put forth in *Frank v. State of Maryland* and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the Fourth Amendment’s protections.⁹⁸

In 1984, and again in 2002, the Florida Attorney General issued advisory opinions that addressed the question whether a local government inspector had the authority to enter onto private premises to conduct an inspection or assure compliance with local codes without (a) the consent of the owner or occupant, or (b) a warrant.⁹⁹ Following substantially the same discussion of the Fourth Amendment protection against unreasonable searches and seizures—and its counterpart under the Florida Constitution, Article I, section 12—both opinions reach the same conclusion, stating, in the same words:

[I]t is my opinion that a municipal code inspector is *without authority* to enter onto any ... residential property to assure compliance with or to enforce the various technical codes of the municipality or to conduct any administrative inspections or searches without the consent of the owner ... or occupant of such premises, or without a duly issued search or administrative inspection warrant.¹⁰⁰

⁹⁵ *Camara v. Municipal Court of City & Cty. of San Francisco*, 387 U.S. 523, 526 (1967).

⁹⁶ *Camara*, 387 U.S. at 527.

⁹⁷ *Camara*, 387 U.S. at 527.

⁹⁸ *Camara*, 387 U.S. at 534 (citing *Frank v. State of Maryland*, 359 U.S. 360, 79 S. Ct. 804 (1959)).

⁹⁹ See Attorney General Opinion 84-32 (available online at <http://www.myfloridalegal.com/ago.nsf/Opinions/486093F9C929D04A85256583006C8F9C>); see also Attorney General Opinion 2002-27 (available online at <http://www.myfloridalegal.com/ago.nsf/printview/830A105DC73A104D85256B910071CDD4>).

¹⁰⁰ AGO 2002-27.

A rental regulation that authorizes municipal inspectors to enter upon a rental property of the purpose of conducting a mandatory inspection but does not explicitly require that the inspector obtain the consent of the owner or occupant or a duly issued search or administrative inspection warrant are vulnerable to claims that the regulation does not conform to the requirements of the Fourth Amendment to the U.S. Constitution.

(f) Private Property Rights Protection Acts

As noted in Section 8.4(c)(iii), the Arizona Private Property Rights Protection Act (the “Act”) requires that state and local governments pay compensation to the landowner when a land use regulation results in any decrease in the value of a property.¹⁰¹ Section 12-1134 of the Act (Diminution in value; just compensation) states:

If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.¹⁰²

In the case *Sedona Grand, LLC. v. City of Sedona*, the plaintiff, a residential property owner, filed a claim under the Act asserting that Sedona’s short-term rental ordinance (which effectively banned vacation rentals) caused the plaintiff “to suffer losses as a result of the reduction of its previously existing rights to use, lease and sell” its property.¹⁰³ As an initial matter, the court ruled that the Sedona ordinance “regulates transactions involving the possession of real property, and is therefore a land use law within the meaning of [the Act].”¹⁰⁴ The city argued that the short-term rental ordinance was exempt under Section 12-1134(B)(1) of the Act, which provides an exemption for land use laws that are enacted for “the protection of the public’s health and safety.”¹⁰⁵ In particular, Sedona argued that the stated purpose of the ordinance was to “to safeguard the peace, safety and general welfare of the residents of Sedona and their visitors and guests.”¹⁰⁶ But the court rejected Sedona’s argument, stating:

We hold that a mere declaration of purpose is insufficient to invoke the exemption, and that a government entity seeking to avoid paying compensation must present evidence that its *principal purpose* in passing a land use law is one that qualifies for exemption under the Act.¹⁰⁷

The court further explained that under the Act a local government “must establish by a preponderance of the evidence that the law was enacted for the *principal purpose of protecting*

¹⁰¹ See Ariz. Rev. Stat. Ann. § 12-1131 et seq.; see also Jeffrey L. Sparks, *Land Use Regulation in Arizona After the Private Property Rights Protection Act*, 51 ARIZ. L. REV. 211 (2009).

¹⁰² *Id.* (quoting Ariz. Rev. Stat. Ann. § 12-1134(A)).

¹⁰³ *Sedona Grand, LLC. v. City of Sedona*, 229 Ariz. 37, 39, 270 P.3d 864, 866 (Ariz. Ct. App. 2012).

¹⁰⁴ *City of Sedona*, 229 Ariz. at 40.

¹⁰⁵ *City of Sedona*, 229 Ariz. at 41 (quoting A.R.S. § 12-1134(B)(1)).

¹⁰⁶ *City of Sedona*, 229 Ariz. at 42 (quoting Sedona Code § 8-4-2 (Statement of Purpose)).

¹⁰⁷ *City of Sedona*, 229 Ariz. at 38.

the public's health and safety before the exemption can apply.”¹⁰⁸ The court found that Sedona failed to satisfy this burden and explained its reasoning as follows:

Here, the nexus between prohibition of short-term occupancy and public health is not self-evident, and the governing body must do more than incant the language of a statutory exception to demonstrate that it is grounded in actual fact. Indeed, the Ordinance’s own text suggests that its purpose is to protect the character of neighborhoods. This may be a desirable goal to policy makers, but neighborhood character and public health are entirely distinct concepts. To invoke the exception, the City must provide evidence beyond mere “legislative assertion” to carry the burden that the Act assigns to it.¹⁰⁹

Consequently, the court ruled that Sedona’s short-term rental ordinance was not exempt from the Act and remanded the matter to the trial court for further determinations.

8.7 Regulation of Residential Rentals Through Zoning

(a) Findings from NAR Land Use Initiative Program

As noted in Section 8.4(b), local governments also regulate residential rental regulations through zoning—one third (33%) of the proposed rental regulations reviewed by Robinson & Cole under the *NAR Land Use Initiative Program* were proposed for adoption as an amendment to the community’s zoning ordinance. An analysis of these proposed zoning regulations further revealed that the regulatory techniques most frequently used in zoning rental regulations were: *registration or licensing requirements*, which were included in 79% of all zoning proposals; *geographic restrictions*, which appeared in 64% of all zoning proposals; *maximum occupancy restrictions*, which appeared in 43% of all zoning proposals reviewed; *noise limits*, which appeared in 21% of all zoning proposals; and *quantitative restrictions* and *inspection requirements*, each of which appeared in 14% of all zoning-based rental regulations reviewed.

It is evident from this analysis of *Land Use Initiative* requests that rental regulations that are adopted through zoning often incorporate many of the same types of provisions that police power-based rental regulations typically would contain. Because zoning is a form of the police power, the incorporation of police power-type provisions (e.g., registration or licensing requirements, maximum occupancy restrictions, noise limits, and inspection requirements) in zoning-based rental restrictions is not surprising.

Because zoning is a form of the police power, any rental regulation adopted by local government through zoning is subject to the same constitutional and statutory limitations on the police power discussed in Sections 8.5(b) and 8.6 of this paper. In addition, rental regulations adopted through zoning are subject to limitations applicable to the zoning power.

¹⁰⁸ *City of Sedona*, 229 Ariz. at 42 (emphasis added).

¹⁰⁹ *City of Sedona*, 229 Ariz. at 43.

(b) Regulation of the “Use” Not the “User”

A key characteristic of local *zoning power* is the well-recognized principle is that “zoning deals with land use, not the owner, operator, or occupant of the land.”¹¹⁰ Zoning inherently pertains to land rather than to the landowner—it “deals basically with land use and not with the person who owns or occupies it.”¹¹¹ The purpose of zoning is to separate

incompatible land uses, and to provide for an orderly and comprehensive scheme of land development within the community that facilitates the adequate provision of infrastructure resources and the overall comfort, convenience, and welfare of the community.¹¹²

Neither the form of one’s interest in property (i.e., owner or renter) nor the duration of the occupancy (e.g., short-term vs. long-term) is relevant to the issue of use. Courts have consistently interpreted “residential use” to mean the use of property “for living purposes, as a dwelling, or as a place of abode.”¹¹³ The transitory or temporary nature of a rental use does not defeat its residential status.¹¹⁴

In a 2006 case decided by the Court of Appeals of Maryland, the question before the court was whether a restrictive covenant that restricted the use of lots to “single family residential purposes only” prohibited the owners of affected lots from renting their homes on a short-term basis.¹¹⁵ The court observed that “the crux of the [plaintiff’s] argument is that a homeowner’s use of his or her home ‘primarily to make money’ by renting it does not constitute a ‘residential use,’ even though the tenant uses the home as a residence for a short term.”¹¹⁶ The court rejected the plaintiff’s argument, stating”

While the owner may be receiving rental income, the use of the property is unquestionably “residential.” The fact that the owner receives rental income is not, in any way, inconsistent with the property being used as a residence. The [plaintiffs], by focusing entirely upon the owner’s receipt of rental income, ignore the residential use by the tenant.¹¹⁷

The Court of Appeals of Maryland further explained that:

“Residential use,” without more, has been consistently interpreted as meaning that the use of the property is for living purposes, or a dwelling, or a place of abode. The word “residential” has been applied to apartment buildings, fraternity houses, hotels, and bed

¹¹⁰ RATHKOPF’S THE LAW OF ZONING AND PLANNING § 2:16 (Zoning regulates the use of land—Identity or status of land users) (hereinafter “RATHKOPF”) (citing cases in Connecticut, Iowa, Louisiana, Maryland, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, and Washington). (Emphasis added)

¹¹¹ See *FGL & L Prop. Corp. v. City of Rye*, 485 N.E. 986, 989 (N.Y. 1985).

¹¹² RATHKOPF § 1:12.

¹¹³ *Lowden v. Bosley*, 909 A.2d 261, 267 (Md. 2006).

¹¹⁴ See *id.* See also *In re Toor*, 59 A.3d 722, 727 (Vt. 2012); *Estates at Desert Ridge Trails Home Owners’ Association v. Vazquez*, 300 P.3d 736 (N.M. Ct. App. 2013).

¹¹⁵ *Lowden v. Bosley*, 909 A.2d 261 (Md. 2006).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

and breakfasts, because such structures are used for habitation. The transitory or temporary nature of such use does not defeat the residential status.

The [plaintiffs], as well as some out-of-state case on which they rely, seem to view the owner's receipt of income from a residential tenant as inconsistent with "residential" use. There is no inconsistency. The owner's receipt of rental income in no way detracts from the use of the properties as residences by the tenants. There are many residential uses of property which also provide a commercial benefit to certain persons. Both in Maryland and in a great majority of other states, over 30 percent of homes are rented rather than owned by the families residing therein, thus providing much rental income to landlords. In addition to conventional rentals, a commercial benefit may be realized from residential property by persons holding ground rents, mortgages, or deeds of trust. When a property is used for a residence, there simply is no tension between such use and a commercial benefit accruing to someone else.¹¹⁸

In a 2014 case, the Washington Supreme Court likewise ruled that residential rentals, no matter how long the term, are a residential use because the renter uses the home for the same purpose as the owner, namely "eating, sleeping, and other residential purposes."¹¹⁹ State courts in Indiana¹²⁰ and Alabama¹²¹ have also ruled that short-term rentals are a residential use.

At least one court has also ruled that the payment of business and occupation taxes did not detract from the residential character of the rental use.¹²²

Consistent with these principles, zoning restrictions that limit the use of land based on the identity or status of the *users* of the land generally will be held invalid by the courts.¹²³ A zoning regulation that "limits the use of land based on the race, economic status, age, blood relationship, or identity of the user or owner may be held invalid on either due process or equal protection grounds as a restriction by classification that is unrelated to any legitimate public purpose."¹²⁴ Such restrictions also may be held *ultra vires*, that is, as beyond the scope of authority delegated by a zoning enabling act.¹²⁵ A controlling rationale in such cases is that while zoning authorizes regulation of the use of land, it may not be exercised as an *ad hominem* privilege to control the landowner or occupant.¹²⁶

¹¹⁸ *Id.* (Emphasis added)

¹¹⁹ *Wilkinson v. Chiwawa Communities Association*, 327 P.3d 614, 620 (Wash. 2014).

¹²⁰ See RATHKOPF'S THE LAW OF ZONING AND PLANNING § 81:11 (4th ed.) (hereinafter "RATHKOPF") (citing *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825 (Ind. 2011) (holding that homeowners' short-term rental of their home was a violation of town's ordinance prohibiting commercial use of property)).

¹²¹ See *id.* (citing *Slaby v. Mountain River Estates Residential Ass'n, Inc.*, 2011 WL 4790638 (Ala. Civ. App. 2011) (holding that cabin owners' short-term rental of their property did not violate the terms of the restrictive covenant limiting the use of the property to single-family residential purposes because they rented their property to groups who used the cabin for residential purposes only)).

¹²² *Wilkinson v. Chiwawa Communities Association*, 327 P.3d at 620.

¹²³ RATHKOPF § 1:12.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ 5 RATHKOPF'S LAW OF ZONING AND PLANNING § 81:4 (4th ed. 2010) (emphasis added) (internal citations omitted).

8.8 Limits on Outright Ban or Amortization of Residential Rentals

An ordinance that outright prohibits property owners from renting their homes, either on a citywide basis or within certain residential zoning districts, clearly impairs the fundamental right of private property owners to rent their properties by stripping them of “one-third of their bundle of economically productive rights” that constitute ownership. Consequently, an outright ban is more likely to be held invalid than an ordinance that permits residential rentals, but regulates them through reasonable licensing or registration requirements or operational restrictions. In fact, many of the short-term rental cases discussed in Sections 8.6 and 8.7 of this paper pertained to either a partial¹²⁷ or citywide¹²⁸ ban on short-term rentals.

Because they are the most onerous type of residential rental regulation, outright bans implicate virtually every type of constitutional or statutory limit on the police power, including takings and state private property rights protection laws. As noted in Section 3.3(b) of this paper, amortization is, in effect, a type of ban that includes a grace period (generally a set number of months or years) in order to give affected property owners time to recoup their investment before being forced to discontinue the use without compensation. The majority rule is that provisions for amortization of nonconforming uses are valid if the amortization period is reasonable.¹²⁹ In determining the reasonableness of an amortization period, the courts generally seek to balance the public gain that will be gained from the particular regulation against the private loss sustained by the property owner.¹³⁰ As a result, the validity of an amortization clause does not depend on precise compensation of an owner’s monetary loss where the public good outweighs the private loss.¹³¹

However, in some states amortization of a nonconforming use is *per se* unconstitutional. For example, in a 1991 case the Pennsylvania Supreme Court ruled that “municipalities lack the power to compel a change in the nature of an existing lawful use of property.”¹³² In reaching that conclusion, the court reasoned that:

A lawful nonconforming use establishes in the property owner a vested property right which cannot be abrogated or destroyed, unless it is a nuisance, it is abandoned, or it is extinguished by eminent domain.

...

¹²⁷ See *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6th Dist. Cal. 1991); *Aamodt v. City of Norfolk*, 2011 WL 4499364 (W.D. Ark); and *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

¹²⁸ See *Village of Tiki Island v. Ronquille*, 2015 WL 1120915 (Tex. App. Houston (1st Dist.)).

¹²⁹ ROHAN § 41.04[3] (citing a North Carolina case in which an amortization period of three years was upheld).

¹³⁰ See *id.*

¹³¹ See *id.*

¹³² *Pennsylvania Northwestern Distributors, Inc. v. Zoning Hearing Board of the Township of Moon*, 584 A.2d 1372, 1374 (Pa. 1991).

The Pennsylvania Constitution, Pa. Const. art. I, § 1 ... protects the right of a property owner to use his or her property in any lawful way that he or she so chooses. If government desires to interfere with the owner's use, where the use is lawful and is not a nuisance nor is it abandoned, it must compensate the owner for the resulting loss. A gradual phasing out of nonconforming uses which occurs when an ordinance only restricts future uses differs in significant measure from an amortization provision which restricts future uses and extinguishes a lawful nonconforming use on a timetable which is not of the property owner's choosing.¹³³

Under this reasoning, the Pennsylvania Supreme Court ruled that “amortization and discontinuance of a lawful pre-existing nonconforming use is per se confiscatory and violative of the Pennsylvania Constitution, Pa. Const. art. I, § 1.”¹³⁴

¹³³ *Id.*

¹³⁴ *Id.*

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SECTION 9. POTENTIAL POSITIVE EFFECTS OF RENTAL REGULATIONS

This section discusses the potential positive effects that rental regulations can have on a community. Not surprisingly, these potential positive effects are closely aligned with the regulatory objectives (i.e., the reasons cited by communities for adopting rental regulations) discussed in Section 3 of this paper. These positive effects are described as “potential” because, as of the date of this paper, there is virtually no empirical evidence demonstrating that rental regulations have produced such positive effects.

9.1 Greater Compliance with Maintenance, Building and Nuisance Codes

As discussed in Section 3.1(e), achieving a greater level of compliance with property maintenance, building, and public nuisance codes is sometimes cited as justification for the adoption of rental regulations. For example, the City of Gary, Indiana’s rental registration and inspection ordinance states that its purpose is to “facilitate enforcement of minimum standards for the maintenance of existing residential buildings and thereby prevent slums and blight.”¹

Communities seeking to increase the level of code compliance in rental properties typically do so by requiring that rental properties be registered with or licensed by the local government, and providing in the regulations that the registration or license can be suspended or revoked for violation of any applicable law. For example, the “Rental Dwelling License” code adopted by the City of Minneapolis, Minnesota authorizes the city council to “deny, refuse to renew, revoke, or suspend” a rental dwelling license for any dwelling that fails to comply with applicable licensing standards.² Sonoma County, California’s vacation home rental code similarly authorizes the county code enforcement officer to schedule a revocation hearing with the board of zoning adjustments upon determination that a violation has occurred.³

Some communities have also sought to improve the level of code compliance in rental properties by requiring that all residential rental agreements contain provisions that expressly require tenants to comply with *all* applicable laws. In 2015 the Town of Kure Beach, North Carolina, for example, considered an ordinance that would have required all vacation rental permit holders to include in their rental agreements a statement that “tenants shall not violate federal, state, or local laws, ordinances, rules, or regulations.”⁴ The proposed ordinance, which was tabled by the Kure Beach Planning and Zoning Commission,⁵ also would have required all rental agreements

¹ See City of Gary, IN Rental Registration/Inspection Program Fact Sheet.

² See City of Minneapolis, MN – Rental Dwellings License Code § 244.1940 (available online at https://www.municode.com/library/#!/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT12HO_CH24_4MACO_ARTXVIREDWLI).

³ Sonoma County Code § 26-88-120(g)(1).

⁴ Town of Kure Beach, NC: Proposed Vacation Rental Ordinance § 9(c) (available online at <http://townofkurebeach.org/Data/Sites/1/media/government/planning-zoning/proposed-vacation-rental-ordinance-version-four-final-2-5-15.pdf>).

⁵ See <http://www.wect.com/story/28694632/kure-beach-officials-decide-against-using-proposed-rental-property-ordinance>.

to contain a statement that a “material breach” of above-quoted provision would result in a termination of the rental agreement.⁶ The rationale is that, if the law itself is not sufficient to deter renters from engaging in unlawful conduct, the knowledge that the rental agreement could be terminated—for example, for having a party that results in a call to the police—might make renters think twice about their behavior.

9.2 Stabilization of Neighborhoods

As discussed in Section 3.1(a), the protection of neighborhood character is the most commonly cited municipal purpose for regulating rental housing. The need to protect the residential character is frequently cited as justification for a proposed vacation rental ordinance or a restriction on single-family home rentals. Communities generally cite the need to protect neighborhoods from the types of disturbances that often are associated with short-term tenants, such as excessive noise, late night parties, trespassing, increased traffic, and other activities that disrupt the residential character. They also cite the need to protect the physical characteristics of residential neighborhoods. The underlying rationale is that rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences.

In theory, rental regulations can protect the residential character and stabilize neighborhoods in two ways. First, a regulation can prohibit rentals outright (either citywide or in certain zoning districts) or restrict the number of rentals permitted within the community by adopting a quantitative restriction or a proximity restriction.⁷ In the alternative, communities may choose to permit long-term or short-term residential rentals, but address the perceived negative impacts by imposing performance-type standards on the operation of rental properties. The rationale for this approach is that, rather than banning residential rentals, communities can mitigate the negative impacts often attributed to rental occupancies (e.g., overcrowding and disruptive conduct) by establishing a set of rules governing the occupation and operation of rental properties. For a comprehensive discussion of operational restrictions, see Section 3.3(g).

9.3 Increased Landlord Accountability

Closely related to greater compliance with property maintenance, building, and public nuisance codes is the potential for increased landlord accountability. Some rental regulations hold landlords accountable any violation that occurs on a rental property, regardless of whether the landlord is directly responsible. An example of this approach is the City of Minneapolis, Minnesota, which states the following on a webpage entitled “Holding Property Owners Accountable”:

The City of Minneapolis does not tolerate landlords who violate rental licensing standards. We hold property owners responsible for the condition of their properties and hold owners responsible to proactively plan for, address and respond to issues of tenant behavior. Landlords are required by law to comply with the conditions of their rental

⁶ Town of Kure Beach, NC: Proposed Vacation Rental Ordinance § 9(d).

⁷ See Section 3.3(d) for a discussion of the quantitative restrictions and Section 3.3(e) for a discussion of proximity restrictions.

license and must be responsive to problems on their properties. Maintaining a rental license in the City of Minneapolis is a privilege.⁸

The effectiveness of Minneapolis’s no-tolerance policy, however, is open to question, as the same webpage states:

Unfortunately, the City of Minneapolis has not been able to convince all property owners to comply with our laws. As a result, properties have been condemned for maintenance, licenses have been revoked and in some instances, properties have been demolished.⁹

The City of New Braunfels, Texas also holds rental property owners accountable for violations of the short-term rental regulations, even if the violation is committed by a tenant. Section 144-5.17-7(b) (Enforcement/Penalty) of New Braunfels’s short-term rental ordinance states: “Violations of any subsection of this [ordinance] may revoke the short term rental permit in accordance with subsection 144-5.17-8, Revocation.”¹⁰

9.4 Increased Tax Revenue

Rental regulations can benefit communities by generating additional tax revenue by either improving the rate of collection in a community where rentals already are required to pay a lodging or use tax, or by imposing a new tax on rentals. The potential revenue from a lodging or use tax on rental properties can be significant, particularly for communities with a robust tourism industry.

Given the rapid growth of Airbnb and other online short-term rental platforms, a common concern among municipalities is that online hosting platforms make it easier for an owner to use their home as a short-term rental without paying required lodging or use taxes. For some communities, the amount of tax revenue not being collected from short-term rentals may be significant. According to a 2014 report by the Attorney General of the State of New York, private short-term rentals in New York City incurred more than \$33 million in unpaid hotel taxes from 2010 through June 2014.¹¹ Airbnb itself has estimated that it could produce as much as \$65 million annually in hotel occupancy taxes in New York state.¹²

Communities that have been more successful in collecting taxes on short-term rental activity include the City of Newport Beach, California, which collected approximately \$1.95 million in

⁸ City of Minneapolis, MN: Housing Inspections Services – Holding Property Owners Accountable (available online at http://www.ci.minneapolis.mn.us/inspections/inspections_accountable).

⁹ *Id.*

¹⁰ New Braunfels, TX Code § 144-5.17-7(b) (available online at https://www.municode.com/library/#!/tx/new_braunfels/codes/code_of_ordinances).

¹¹ *Airbnb in the City* at 9 (Oct. 2014, New York State office of the Attorney General) (available online at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>).

¹² See “As It Seeks New Regulations in NY, Airbnb Estimates It Would Collect \$65 Million in Taxes There,” *Techcrunch* (Jan. 16, 2015) (available online at <http://techcrunch.com/2015/01/16/airbnb-65-million-in-ny/>).

short-term rental tax revenue in 2014,¹³ and the City of San Clemente, California, which reportedly collects about \$280,000 per year on just 300 registered short-term rental properties.¹⁴

To improve the collection of taxes, some communities have adopted regulations requiring that **online hosting platforms**¹⁵—rather than the hosts—collect and remit the required tax payments. San Francisco imposes such a requirement:

A Hosting Platform shall comply with the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability related to an occupant's, resident's, or Business entity's failure to comply with the requirements of the Business and Tax Regulations Code.¹⁶

In January 2015, the City of Portland, Oregon amended its short-term rental ordinance to require online “booking agents” to “collect, report and remit transient lodging taxes” to the city.¹⁷ The “findings” adopted by the City Council made clear that the amendment was specifically intended to improve the rate of tax collection from short-term rentals, stating, in relevant part:

2. The City is aware that ... [many] Short-Term Rental Hosts (“Hosts”) have not registered with the Revenue Division and *are not collecting and/or remitting the appropriate transient lodging or business license (income) taxes*....
3. The City has determined that finding these non-compliant Hosts and properties is difficult as they are often rented or “booked” through online agents (“Booking Agents”) that refuse to provide the short-term rental location address or contact information of the Host, or to remit transient lodging taxes on behalf of the Hosts....
4. The City believes that compelling Booking Agents to provide Host information will raise compliance, permit fees and transient lodging tax revenue....
5. The City believes that, to the extent Booking Agents are booking rooms and accepting payments on behalf of their Hosts, they should also collect and remit the City transient lodging tax on behalf of their Hosts.¹⁸

¹³ “Rental properties: Beach cities balancing potential revenue with parties, loud music, disrespect,” *Orange County Register*, May 26, 2015) (available online at <http://www.ocregister.com/articles/beach-663028-rentals-short.html>).

¹⁴ *Id.*

¹⁵ San Francisco defines “online hosting platform” to mean:

A person or entity that provides a means through which an Owner may offer a Residential Unit for Tourist or Transient Use. This service is usually, though not necessarily, provided through an online platform and generally allows an Owner to advertise the Residential Unit through a website provided by the Hosting Platform and provides a means for potential tourist or transient users to arrange Tourist or Transient Use and payment, whether the tourist or transient pays rent directly to the Owner or to the Hosting Platform.

San Francisco Code § 41A.4.

¹⁶ San Francisco Code § 41A.5(g)(4)(B).

¹⁷ See City of Portland, OR – Ordinance Amending Transient Lodgings Tax (available online at <http://media.oregonlive.com/front-porch/other/Short-term%20rental%20ordinance.pdf>).

¹⁸ *Id.* § 1 (emphasis added).

According to an “impact statement” attached to the Portland ordinance, the requirement that online Booking Agents collect and remit the transient lodging tax to the city will yield an additional \$500,000 in revenues annually.¹⁹

9.5 Protection of Long-Term Rental Housing Inventory

In some communities, the rapid growth of Airbnb and other online hosting platforms has raised the concern that rental property owners and investors are converting long-term rental properties into short-term rentals, thereby reducing the available supply of long-term rentals and driving up rental prices in the local market. As discussed in Section 6.1, an analysis of Airbnb rentals in Los Angeles described how short-term rentals can affect the supply of affordable housing:

The Los Angeles Department of City Planning’s Housing Needs Assessment shows that the city needs an additional 5,300 units of affordable housing each year to keep up with demand. However, Los Angeles developers have only averaged about 1,100 units of affordable housing per year since 2006. The 7,316 whole apartments currently listed on AirBnB represents nearly seven years’ of affordable housing construction at the current rate of housing development.²⁰

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.²¹

To prevent the loss of long-term rental housing, some communities have adopted regulations that expressly require that short-term rental “hosts” reside in the dwelling unit for a minimum number of days each calendar year. For example, San Francisco’s short-term residential rental ordinance requires that a “permanent resident” occupy a short-term rental unit for at least 275 days per calendar year and that the permanent resident maintain records demonstrating compliance with the requirement for a period of two years.²² Portland, Oregon’s Accessory Short-Term Rentals ordinance contains a similar requirement, which states:

A Type A accessory short-term rental must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and unless allowed by Paragraph .040.B.2 or .040.B.3, the bedrooms rented to overnight guests must be within the dwelling unit that the resident occupies.²³

¹⁹ *See id.*

²⁰ *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles* at 16 (LAANE, March 2015) (available online at <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>).

²¹ *See* Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association).

²² San Francisco Code § 41A.5(g)(1) (available online at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0218-14.pdf>).

²³ Portland, OR Code § 33.207.040(A)(1) (available online at <http://www.portlandonline.com/auditor/index.cfm?c=28197&a=501886>).

The vacation rental ordinance adopted in 2015 by the City of Santa Monica, California takes a similar approach. Santa Monica’s “Home Sharing and Vacation Rentals” ordinance divides short-term rentals into two categories: (1) “vacation rentals,” in which a guest has “exclusive private use of the unit” for less than thirty days; and (2) “**home-sharing**,” in which the primary resident of the property lives “on-site during the visitor’s stay.”²⁴ Under the “Home Sharing and Vacation Rentals” ordinance, vacation rentals are banned citywide, while home-sharing is permitted, provided that the owner obtains a business license and pays a 14% hotel tax on all home sharing stays.²⁵

²⁴ See generally Santa Monica, CA Ordinance No. CSS (available online at <http://www.smgov.net/departments/council/agendas/2015/20150512/s2015051207-A-1.htm>); see also Sam Sanders, “Santa Monica Cracks Down on Airbnb, Bans ‘Vacation Rentals’ Under a Month,” NPR (May 13, 2015) (available online at <http://www.npr.org/sections/thetwo-way/2015/05/13/406587575/santa-monica-cracks-down-on-airbnb-bans-vacation-rentals-under-a-month>).

²⁵ See *id.*

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SECTION 10. STRATEGIES FOR ADDRESSING PROPOSED RENTAL REGULATIONS

10.1 Question Local Authority to Adopt Rental Regulations

The first question that should be asked when a city or town proposes to adopt a residential rental ordinance is whether the local legislative body has the authority to do so. As discussed in Section 8.3, communities typically cite the police power or the zoning authority granted by a state zoning enabling act as the basis of their authority to adopt rental regulations. However, local officials or a local governing body should not be allowed to skirt the issue by providing a general and unsupported reference to the police power or zoning enabling act. Instead, Realtors[®] should question whether the legislative body has sought and received an opinion from its legal counsel regarding its authority to adopt the specific type of regulation being considered for adoption. If it has not, then Realtors[®] should urge local officials to table the proposal pending receipt of such a legal opinion.

Realtors[®] should consider obtaining the advice of local counsel regarding the community's authority to adopt a residential rental regulation, and whether the proposal may be vulnerable to challenge on the ground discussed in Section 8 of this paper.

10.2 Consistency With Statutory Planning and Procedural Requirements

In some states, the adoption of a local law or regulation is subject to statutory planning and procedural requirements. Such statutes may require that a local law or regulation be consistent with the community's general plan or that the potential environmental impacts of the proposed law or regulation be determined prior enactment.

(a) General Plan Consistency Requirement

In some states, the zoning enabling statute requires that the zoning regulations adopted by a community be consistent with the community's comprehensive plan (known in some jurisdictions as a general plan or master plan).¹ For example, Arizona's enabling legislation states, in relevant part: "All zoning and rezoning ordinances or regulations adopted under this article shall be consistent with and conform to the adopted general plan of the municipality, if any, as adopted under article 6 of this chapter."² In Rhode Island, where local planning is mandated by the Comprehensive Planning and Land Use Regulation Act of 1988, local governments are expressly required to "conform [their] zoning ordinances and maps with [their] comprehensive plan within eighteen (18) months of plan adoption."³

¹ See generally ROHAN: ZONING AND LAND USE CONTROLS § 37.03[3] (discussing the consistency requirements of state zoning enabling statutes).

² Ariz. Rev. Stat. § 9-462.01(F).

³ R.I. Gen. Laws § 45-22.2-5(a)(3).

In light of these consistency requirements, a proposed rental regulation should always be reviewed for consistency with the adopted comprehensive plan. In particular, Realtors[®] should carefully review any chapter of the comprehensive plan that might contain policies relevant to long-term or short-term rentals, such as the land use, housing, and economic development chapters. For example, in a vacation destination community, the comprehensive plan is likely to contain policies that support local tourism and may establish goals for the expansion of recreational opportunities and tourist accommodations. A rental ordinance that would prohibit or restrict short-term rentals arguably would be inconsistent with such policies and goals.

(b) Environmental Review Process

In some states, the potential environmental consequences of a proposed ordinance must be considered prior to adoption by the local legislative body. For example, in California, the California Environmental Quality Act (“CEQA”) applies to state and local government decisions to approve or undertake any project that could have adverse environmental consequences.⁴ The statute requires a process, rather than a particular outcome. That process is intended to:

(1) inform government decisionmakers and the public about the potential environmental effects of proposed activities; (2) identify the ways that environmental damage can be avoided or significantly reduced; (3) prevent significant environmental damage by requiring changes in projects, either by the adoption of alternatives or imposition of mitigation measures; and (4) disclose to the public why a project was approved if that project would have significant environmental effects.⁵

Although some projects are exempt from CEQA and others only require limited review of potential environmental consequences, if the agency determines that a project may have significant effects on the environment, an environmental impact analysis and report (“EIR”) must be performed. The EIR is only required to cover the impacts of the proposed project, but it may be used to analyze broader policy issues, including cumulative and growth-inducing impacts, so that the single review process may satisfy CEQA requirements of future projects.⁶

Cities and counties in California that have rental regulations generally have determined that the enactment of a rental ordinance does not require CEQA review. For example, in adopting amendments to its vacation rental ordinance in 2010, the Sonoma County Board of Supervisors found:

The adoption of the proposed regulations is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the State CEQA Guidelines because allowing vacation rentals meeting the standards adopted herein to be located within existing single-family residences will not involve an expansion of use beyond that currently existing; and further, is exempt under Section 15061 (b)(3) because it can be seen with certainty that adoption of the Ordinance does not result in a physical change in the environment. Implementation of the regulations does not increase

⁴ CECILY TALBERT BARCLAY, CURTIN’S CALIFORNIA LAND USE AND PLANNING LAW 151 (30th ed. 2010) (hereinafter “CURTIN’S”).

⁵ *Id.* (citing Cal. Pub. Res. Code §§ 21000, 21001).

⁶ *Id.* at 162.

residential density or the intensity of use as the standards adopted herein are consistent with otherwise allowable residential use and any activities that may exceed the residential character would be subject to further discretionary review.⁷

Similar findings were made by the cities of Seal Beach,⁸ Rolling Hills,⁹ Aliso Viejo,¹⁰ and Palm Desert, California.¹¹ Although communities have generally reached the same conclusion, namely that their short-term rental regulations are exempt from CEQA, should actively monitor and participate in the public hearing processes and should carefully evaluate the CEQA analysis and findings associated with a proposed rental regulation.

10.3 Question the Need for Residential Rental Regulations

Even if a local government has the authority to adopt a residential rental ordinance, Realtors[®] should question whether there truly exists a need for the restrictions. For example, in some cases, the perceived need for a short-term rental ordinance may be based solely on anecdotal evidence about the alleged problems caused by short-term rental tenants (e.g., overcrowding, excessive noise, late-night parties, or increased traffic or parking problems) rather than on documented evidence that short-term rental tenants are causing problems. If nothing more than anecdotal evidence is provided in support of a proposed rental ordinance, the ordinance may be vulnerable to claims that it was adopted arbitrarily without any rational basis.

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

- What number of complaints logged by the local code enforcement and police departments were generated by residential rentals? Does the data evidence an increase in the number of complaints attributable to rentals over the last five years?
- How do the complaints concerning rentals relate to the number of individuals occupying the rental that is the subject of the complaint? Does the city or town have factual support to justify a proposed occupancy limit for residential rental

⁷ Sonoma County, CA Ordinance No. 5908, Sec. 1.5 (available online at <http://www.sonoma-county.org/prmd/docs/vacrent/vacation-rentals-final-ordinance.pdf>).

⁸ City of Seal Beach, CA – Ordinance Prohibiting Rental of Residential Property on a Short-Term Basis, Sec. 3.A (finding the ordinance to be “categorically exempt from review” pursuant to CEQA Sections 15305 and 15061(b)(3)) (available online at <http://www.cacities.org/Resources/Documents/Policy-Advocacy-Section/Hot-Issues/vacation-rentals/City-Ordinances/Seal-Beach>).

⁹ City of Rolling Hills, CA Ordinance No. 342 (Prohibiting short term rental of single-family residences) (available online at <http://rolling-hills.org/DocumentCenter/View/856>).

¹⁰ City of Aliso Viejo, CA (Ordinance confirming existing prohibition of short-term rentals in residential districts) (available online at <http://civicaweb.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=157305>).

¹¹ City of Palm Desert, CA Ordinance No. 1236 (Requiring a conditional use permit for short-term rentals) (available online at <http://qcode.us/codes/palmdesert/revisions/1236.pdf>).

housing and to what extent does this limitation exceed the occupancy limits applicable to other types of housing?

- Does a specific type of complaint (e.g., noise disturbance, litter or trash, parking violations, or late night parties) constitute a large percentage of the total number of complaints recorded in the last five years? If so, does a provision of the local zoning or general ordinance already regulate the offending behavior? If it is possible to address the majority of the problems by enforcing existing nuisance regulations, rather than by imposing new maximum occupancy limits on rentals, it may call into question the need for the proposed ordinance.
- Does a disproportionate number of complaints arise from a small number of rental properties? If yes, then a more appropriate response might be to adopt narrowly tailored regulations. An example of this approach would be a regulation that would apply only after one or more violations are found on a property, rather than imposing the cost and disruption of new regulations on all owners of rental property.

10.4 Suggest Alternatives to Rental Regulations

(a) Enforcement of Existing Ordinances

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

(i) Noise Restrictions

As discussed in Section 3.1(a)(i) of this paper, excessive noise is a problem that permanent residents often attribute to residential rentals, particularly short-term rentals and student rentals in a college towns. However, local governments typically already have a noise control ordinance in place that addresses excessive noise. For example, the City of San Luis Obispo, California’s Noise Control Ordinance Noise Control Ordinance (Chapter 9.12 of the San Luis Obispo Municipal Code) expressly states that any noise in violation of Chapter 9.12 is a public nuisance, punishable by civil or criminal action. The term “noise disturbance” is defined to mean:

any sound which (a) endangers or injures the safety or health of human beings or animals, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates the factors set forth in Section 9.12.060 of this chapter. Compliance with the quantitative standards as listed in this chapter shall constitute elimination of a noise disturbance.¹²

¹² City of San Luis Obispo, CA Municipal Code § 9.12.020(U) (available online at <http://www.codepublishing.com/ca/sanluisobispo/>).

Additionally, specific types of noise violations that commonly arise in residential neighborhoods are expressly prohibited by Section 9.12.050 of the San Luis Obispo ordinance, including the following:

- Noise disturbances that are “plainly audible at a distance of fifty feet from the noisemaker,” unless the noise does not penetrate beyond the boundaries of the noisemaker’s own premise.¹³
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device between the hours of 10:00 PM and 7:00 AM in such a manner as to create a noise disturbance audible across a property line.¹⁴
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device in a manner that creates a noise disturbance at any time in excess of noise levels defined in Section 9.12.060 (measured by decibel levels and duration of the disturbance).¹⁵

(ii) Public Nuisance Ordinance

As discussed in Section 3.6(a) of this paper, local governments generally have the power to declare and abate public nuisances.¹⁶ For example, the Marco Island City Code defines “public nuisance” to mean:

the commission or omission of any act, by any person, or the keeping, maintaining, propagation, existence or permitting of anything, by any person, by which the life, health, safety, or welfare of any person may be threatened or impaired. Additionally, permitted uses and conditional uses in any residentially zoned area which create smoke, dust, noise, odor, vibration, or glare which by themselves or in combination may be harmful or injurious to human health or welfare or which unreasonably interfere with the customary use and enjoyment of life or property are a public nuisance.¹⁷

In addition, Section 18-36(4) of the City Code provides that: “No owner, lessee, occupant, guest, or agent for the owner shall allow the keeping of a public nuisance on any property, developed or undeveloped.” Marco Island’s public nuisance ordinance also requires that the “owners, lessees, occupants or agents for the owner of developed and undeveloped lots shall control all excessive growth of grasses or weeds within the right-of-way adjacent to their property by cutting or removing the grasses and weeds, and shall maintain the right-of-way free from any accumulation of abandoned property, litter, pollution, or other matter.”¹⁸

Legal remedies to abate public nuisances generally include the filing of a criminal complaint, or a civil action, or an administrative abatement.

¹³ See San Luis Obispo Municipal Code § 9.12.050(A).

¹⁴ See San Luis Obispo Municipal Code § 9.12.050(B)(1)(a).

¹⁵ See San Luis Obispo Municipal Code § 9.12.050(B)(1)(b).

¹⁶ EUGENE MCQUILLIN, 6A THE LAW OF MUNICIPAL CORPORATIONS § 24:62 (3d. ed., 2015).

¹⁷ Marco Island, FL City Code § 18-32.

¹⁸ Marco Island, FL City Code § 18-36(5)

This type of public nuisance ordinance can and should be used by communities as a tool for addressing many of the complaints commonly associated with short-term rentals, including late-night parties, excessive noise, and lack of property maintenance.

(iii) Property Maintenance Standards

As discussed in Section 3.1(a)(ii), another common complaint is that rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. As a result, some communities have cited inadequate property maintenance as justification for the adoption of a residential rental ordinance. For example, the City of Frisco, Texas cited inadequate property maintenance by absentee owners as justification for requiring the owners of single-family rental properties to register with the city. Many communities have adopted property maintenance codes that *all* property owners must satisfy. Communities often adopt (sometimes with amendments) the International Property Maintenance Code (IPMC), which contains a comprehensive set of interior and exterior property maintenance requirements.¹⁹ According to the International Code Council (ICC), as of February 2015, the IPMC has been adopted, with or without limitations, by hundreds of local jurisdictions in 38 states and the District of Columbia.²⁰

(iv) Nighttime Curfews

To the extent that underage drinking and juvenile crime are a significant contributors to excessive noise and party disturbances in short-term rental properties in residential neighborhoods, a nighttime curfew ordinance that prohibits persons under the age of 18 years from being on or about public streets and public places during specified hours of the day could be an effective deterrent. The effectiveness of nighttime curfews is evidenced by a 2005 survey published by National League of Cities, in which 96% of communities that have nighttime curfew ordinances reported that they help combat juvenile crime.²¹ It bears noting, however, that a juvenile curfew ordinance generally would not be applicable to college students and other youthful offenders over the age of eighteen. To the extent that parties hosted and attended by college-aged young people are perceived as causing the disturbances that are of greatest concern, a curfew ordinance would probably have little, if any, effect.

(v) Parking Regulations

Communities often address the problem of improperly parked vehicles and excessive numbers of vehicles parked in residential neighborhoods through off-street parking regulations. These regulations may include provisions that prohibit vehicle parking within front yard setback areas

¹⁹ See generally International Property Maintenance Code, 2012 ed. (International Code Council) (available online at <http://publicecodes.cyberregs.com/icod/ipmc/index.htm>).

²⁰ See International Codes—Adoption by State (Feb. 2015) (available online at <http://www.iccsafe.org/gr/Documents/stateadoptions.pdf>); see also International Codes—Adoption by Jurisdiction (Feb. 2015) (available online at <http://www.iccsafe.org/gr/Documents/jurisdictionadoptions.pdf>).

²¹ See “Youth Curfews Continue to Show Promise, National League of Cities (Jan. 13, 2006) (available online at <http://www.nlc.org/documents/Find%20City%20Solutions/IYEF/Violence%20Prevention/Instapoll-youth-curfews-2005.pdf>).

in residential zoning districts and that restrict vehicle parking to hard surface driveways or designated parking areas. Regulations may also prohibit parking on grass areas, sidewalks, or within a certain distance of side property lines.

(b) Adoption of Ordinances that Target Community-Wide Issues

As discussed in Section 10.4(a), many of the problems commonly attributed to residential rental properties (e.g., overcrowding, excessive noise, late-night parties, or increased traffic or parking problems) can be addressed by enforcement of noise, public nuisance, property maintenance, and parking regulations. Communities that have not yet adopted such regulations, should be encouraged to adopt such generally applicable regulations rather than singling out short-term rental properties for regulation.

10.5 Stakeholder Input and Collaborative Problem-Solving

(a) Input of Stakeholders

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

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

State and local open public meetings laws generally require local legislative bodies to publish notice of scheduled public hearings, typically in the local newspaper, by posted notice at city or town hall, and/or on the official website of the city or town. If a draft of the proposed rental ordinance is available prior to the public hearing, Realtors[®] should request a copy and review it thoroughly in advance of the hearing.²² Realtors[®] should be prepared to submit written comments and/or to testify at the public hearing about their concerns with the proposal.

(b) Collaborative Problem Solving

By inviting stakeholder input, communities can create the opportunity to collaborate with rental property owners and associations to address the perceived problems with residential rental properties without adopting an ordinance or regulation. A good example of this collaborative problem solving approach is the “Collaboration Corvallis” project, a partnership formed in 2011 between the city of Corvallis, Oregon, community members, and Oregon State University to

²² The Realtor[®] association may obtain assistance in this effort through NAR’s Land Use Initiative program.

“enhance the livability of both the community and the university ... and to manage the impacts of growth at the university and in the city.”²³ The Collaboration Corvallis project includes a number of working groups, each with a specific mission. The Neighborhood Parking & Traffic Mitigation working group, for example, was tasked with recommending effective solutions to traffic and parking issues generated by the growth of the university, while the Neighborhood Livability work group was formed to “work with community members, neighborhood residents and stakeholders, including Oregon State faculty, staff and students to address a wide range of livability issues,” including the following:

- Recommending municipal code amendments and OSU student conduct standards to help achieve and maintain livability standards; and
- Evaluating and recommending funding mechanisms to support [and] enhanced code enforcement and student conduct programs.²⁴

The Collaboration Corvallis project is an ongoing effort that has produced a number of positive results, many of which were recognized by the *Corvallis Gazette-Times* in an editorial entitled “As I See It: Collaboration Corvallis producing results,” the text of which is presented below:

As a new school year approaches, residents can expect to see a number of new or expanded initiatives as a result of Collaboration Corvallis, the three-year effort designed to strengthen the relationship between the city of Corvallis and Oregon State University.

Now entering its second year, Collaboration Corvallis seeks to enhance community livability by understanding and actively addressing issues related to growth and development, both at OSU and in the city. As co-chairs of the collaboration’s Steering Committee, we see the importance of this work reflected in the commitment of time and expertise shown by work group members, city and university staff, and the community at large.

Here’s a look at some of the key actions currently underway that originated from each of the three work groups.

Neighborhood Livability:

- This fall, Oregon State is implementing a requirement that first-year students live in on-campus housing their freshman year.
- OSU funded an off-campus living guide to communicate community expectations to students and other guests.
- Special Response Notices to address municipal code violations have increased in neighborhoods, with higher fees implemented for initial police responses.
- OSU added two full-time staff members — and this fall will add two half-time graduate student staff members — to the Office of Student Conduct to proactively address student behavior on and off campus, and work more closely with local

²³ See Collaboration Corvallis (available online at <http://blogs.oregonstate.edu/collaboration/about/>).

²⁴ See Neighborhood Livability at <http://blogs.oregonstate.edu/collaboration/livability/>.

residents, students, community organizations and law enforcement. The new employees will expand community outreach, education and enforcement programs in Corvallis neighborhoods. Oregon State also has hired an assistant director of fraternity & sorority life, whose duties include building strong relationships between fraternities and sororities and community stakeholders.

- The City Council approved revised ordinances that increase fines for alcohol-related issues.
- The council authorized a local option levy that includes hiring of three additional police officers with a focus on livability. Voters will consider this levy in November.
- To learn from other college towns and share best practices, the city and OSU joined the International Town & Gown Association and sent staff to the association's 2013 conference.

Neighborhood Planning:

- The City Council changed the Land Development Code to change parking requirements for four- and five-bedroom units. The council will consider additional code changes this fall.
- OSU is building a new residential hall and expanding occupancy in other residence halls to accommodate more on-campus housing.

Parking and Traffic:

- Corvallis Transit System service has been expanded with increased OSU financial support.
- The city and OSU each substantially increased funding to the Linn-Benton Loop.
- The City Council has agreed to expand residential parking districts in the city.
- Oregon State will improve its on-campus shuttle service and expand the use of parking facilities on the south side of campus by offering incentives and future variable pricing plans for campus parking.
- OSU has increased funding so additional bikes can be added to the bike loan program to expand the ways that students and faculty sustainably move around campus and the community.²⁵

While some of these actions might be infeasible or impractical for other communities, the collaborative approach taken by the City of Corvallis and Oregon State University, and the results being achieved by the Collaboration Corvallis project, can serve as a model for the

²⁵ "As I See It: Collaboration Corvallis producing results," *Corvallis Gazette-Times* (Sept. 13, 2013) (available online at http://www.gazettetimes.com/news/opinion/as-i-see-it/as-i-see-it-collaboration-corvallis-producing-results/article_f62afa5e-1c3e-11e3-b9e7-001a4bcf887a.html).

communities to emulate in formulating a solution to the perceived problems with residential rental properties.

10.6 Propose Best Practice Rental Regulations as Alternatives

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

(a) Adopt Narrowly-Tailored Regulations

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

Residential rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which a rental regulation is justified. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

The rapid growth of Airbnb and similar online rental platforms has raised the concern that an increasing number of owners are converting long-term rental properties into short-term rentals, resulting in a decline in the available supply of long-term rental housing. A related concern is that “commercial users” of Airbnb are purchasing rental properties for the purpose of converting them to short-term rentals. An October 2014 report by the New York State Attorney General found that “commercial users” of Airbnb (i.e., hosts that offered three or more rental units) represented just six percent of Airbnb hosts in New York City, but generated 36% of the total reservations and 37% of the total Airbnb revenue in the city.²⁶ To the extent that the loss of available long-term rental housing to short-term rentals is a concern, communities can address

²⁶ *Airbnb in the City* (Oct. 2014, New York State office of the Attorney General) (available online at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>).

the problem by requiring that the owner or “host” reside in the dwelling unit for a minimum number of days each calendar year. In the alternative, communities may choose to draw a line between short-term rentals, in which an entire dwelling unit is rented out, and “home sharing,” in which a host rents out a spare room but resides on-site throughout the visitor’s stay.

Best Practice Example: Clatsop County, Oregon. In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into about forty zoning district designations, including more than a dozen residential districts.²⁷ The county’s short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.²⁸

Comment: The Clatsop County ordinance is a best practice example of narrowly tailoring because it applies only to a specific residential district rather than city-wide.

Best Practice Example: San Francisco, California. San Francisco’s short-term residential rental ordinance requires that a “permanent resident” occupy a short-term rental unit for at least 275 days per calendar year and that the permanent resident maintain records demonstrating compliance with the requirement for a period of two years.²⁹ **Comment:** The San Francisco ordinance is a best practice example of narrowly tailoring because it addresses the problem of converting long-term rental properties into short-term rentals by requiring that a “permanent resident” occupy a short-term rental unit rather than banning short-term rentals outright.

Best Practice Example: Santa Monica, California. In May 2015 the Santa Monica City Council adopted a “Home-Sharing Ordinance” that authorizes “home-sharing, which is defined as an activity whereby a resident hosts visitors in their home, for periods of 30 consecutive days or less, while at least one of the primary residents lives on-site throughout the visitor’s stay.”³⁰

Comment: The Santa Monica ordinance is a best practice example of narrowly tailoring because it addresses the problem of converting long-term rental properties into short-term rentals by permitting “home-sharing” rather than banning all types of short-term rentals outright.

(b) “Grandfathering” Provisions

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

²⁷ See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010 (available online at http://www.co.clatsop.or.us/sites/default/files/fileattachments/land_use_planning/page/612/zoning_Ordinance_80-14_codified_08-25-14.pdf).

²⁸ See Clatsop County, OR Land and Water Development and Use Ord. § 4.109 (Arch Cape Short Term (Vacation) Rentals).

²⁹ See San Francisco Code § 41A.5(g)(1) (available online at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0218-14.pdf>).

³⁰ See City of Santa Monica, CA – Overview of Home-Sharing Ordinance (available online at <http://www.smgov.net/Departments/PCD/Permits/Short-Term-Rental-Home-Share-Ordinance/#1. Why>).

grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

Best Practice Example: Kauai County, Hawaii. Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and 8-17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a “Nonconforming Use Certificate.” To obtain a Nonconforming Use Certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that the “dwelling unit was being used as a vacation rental on an ongoing basis prior to March 7, 2008.”³¹

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on records of occupancy and tax documents, including relevant State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment.³² **Comment:** The Kauai County ordinance is a best practice example of grandfathering because it allows single-family vacation rentals that were lawfully established prior to the effective date of the ordinance to continue.

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

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and the administrative permit application is filed within ninety (90) days of the effective date of this Section.... The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is not the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.³³

Comment: The Monterey County ordinance is a best practice example of grandfathering because it allows single-family vacation rentals that existed prior to the effective date of the ordinance to continue.

(c) Quantitative Restrictions

From a property owner’s perspective, the use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of

³¹ Kauai County Code § 8-17.10(c) (available online at <http://qcode.us/codes/kauaicounty/>).

³² Kauai County Code § 8-17.10(e).

³³ Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b) (available online at https://www.municode.com/library/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT21ZO_CH21.64SP_RE_21.64.280ADPETRUSREPRRE).

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

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

Best Practice Example: Mendocino County, California. Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.”³⁴ To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved subsequent to the effective date of this section, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”³⁵ While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.³⁶ **Comment:** The Mendocino County ordinance is a best practice example of a quantitative restriction because it allows vacation rentals, subject to the maximum ration of one vacation rental per thirteen long term residential dwellings, rather than prohibiting vacation rentals outright.

Best Practice Example: San Luis Obispo County, California. The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”³⁷ More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full-time residents.”³⁸ Accordingly, rather than prohibiting

³⁴ Mendocino County, CA Code § 20.748.005 (available online at https://www.municode.com/library/ca/mendocino_county/codes/code_of_ordinances?nodeId=MECOCO_TIT20ZO_OR_DIVIIIMETOZOCO_CH20.748SIUNREVAHORE).

³⁵ Mendocino County, CA Code § 20.748.020(A).

³⁶ See Mendocino County, CA Code § 20.748.020(B).

³⁷ San Luis Obispo County, CA Code § 23.08.165(1) (available online at <http://www.slocounty.ca.gov/Assets/PL/Ordinances/vacationrentals.pdf>).

³⁸ *Id.*

vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.³⁹

Comment: The San Luis Obispo County ordinance is a best practice example of a quantitative restriction because it addresses the problem of overconcentration of vacation rentals by implementing a proximity restriction rather than prohibiting vacation rentals outright.

(d) Operational Restrictions

Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 10.3 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

(e) Licensing/Registration Requirements

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

For communities seeking to enhance the collection of transient occupancy taxes, a short-term rental ordinance should place the burden of collecting and remitting such taxes on the hosting platform (e.g., Airbnb) rather than on individual hosts.

Best Practice Example: City of Palm Springs, California. In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to

³⁹ San Luis Obispo County, CA Code § 23.08.165(c).

submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (1) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city's Business Tax Ordinance for such activity.⁴⁰ Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee "shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration]."⁴¹ *Comment:* The Palm Springs ordinance is a best practice example of a registration requirement because it is not overly burdensome and limits the registration fee amount to the costs incurred by the city in administering the registration.

Best Practice Example: San Francisco, California. In San Francisco, online hosting platforms are responsible for "collecting and remitting all required Transient Occupancy Taxes."⁴²

Comment: The San Francisco ordinance is a best practice example because it makes online hosing platforms, rather than hosts, responsible for collecting and remitting the required Transient Occupancy Tax.

Best Practice Example: City of Encinitas, California. In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted "unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law."⁴³ *Comment:* The Encinitas ordinance is a best practice example of a registration requirement because it limits the registration fee amount to the costs incurred by the city in administering the registration.

(f) Inspection Requirements

As noted in Section 3.3(f), many communities require rental properties to pass certain inspections prior to the issuance or renewal of a rental permit. However, mandatory inspection requirements arguably do not advance a community's interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

Best Practice Examples: Douglas County, Nevada and Sonoma County, California. The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of

⁴⁰ City of Palm Springs, CA Municipal Code § 5.25.060 (available online at <http://www.qcode.us/codes/palmsprings/>).

⁴¹ City of Palm Springs, CA Municipal Code § 5.25.060(b).

⁴² See San Francisco Code § 41A.5(g)(4)(B).

⁴³ See City of Encinitas, CA Municipal Code § 9.38.040(A)(3) (available online at <http://www.qcode.us/codes/encinitas/>).

these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.⁴⁴ **Comment:** The Douglas County and Sonoma County ordinances are best practice examples because they do not contain a mandatory inspection requirement.

Mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”⁴⁵ It stands to reason that a provision requiring inspection of transient private rental homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

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

Best Practice Example: City of Cannon Beach, Oregon. Under Section 17.77.040 of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.⁴⁶

Comment: The Cannon Beach ordinance is a best practice example because it establishes a more reasonable periodic inspection requirement than the annual requirement that communities often impose on short-term rentals.

Best Practice Example: Tillamook County, Oregon. The Tillamook County Short Term Rental Ordinance requires that all short-term rentals be inspected in connection with the initial permit application, but thereafter requires an inspection only if (1) there has been a fire, flood or other event that caused substantial damage to the structure; (2) the permit was revoked; (3) there

⁴⁴ See generally Douglas County, CA County Code § 5.40 (Vacation Rentals in the Tahoe Township) (available online at <http://dcnvda.org/userpages/CountyCodes.aspx>); Sonoma County, CA County Code § 26-88-120 (available online at https://www.municode.com/library/ca/sonoma_county/codes/code_of_ordinances?searchRequest=%7B%22searchText%22:%22inspection%22,%22pageNum%22:7,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentTypes%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=16331).

⁴⁵ City of Bear Lake, CA Municipal Code § 17.03.310(A) (available online at https://www.municode.com/library/ca/big_bear_lake/codes/code_of_ordinances?searchRequest=%7B%22searchText%22:%22rental%22,%22pageNum%22:1,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentTypes%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=MUNICIPAL_CODE_TIT17LAUS_CH17.03GEPR_17.03.310TRPRHORE).

⁴⁶ See City of Cannon Beach, OR Zoning Code § 17.77.040(A)(2)(a) (available online at <http://www.qcode.us/codes/cannonbeach/>).

has been an addition or substantial modification to the structure; or (4) the permit has lapsed for more than 180 days.⁴⁷ **Comment:** The Tillamook County ordinance is a best practice example because it requires that a short-term rental be inspected after the permit is issued only under specific limited circumstances.

(g) Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.⁴⁸

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.⁴⁹ By contrast, under Section 1.06.040 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

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

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

5.40.110 Violation and administrative penalties.

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:

⁴⁷ See Tillamook County, OR Short Term Rental Ordinance § 7(d), (e) (available online at <http://www.co.tillamook.or.us/gov/comdev/documents/STVR/Amendment%201-Ordinance%2069%20Filed.pdf>).

⁴⁸ See generally Clatsop County Land and Water Development and Use Ordinance § 4.115; see also Monterey County, CA Code of Ordinances § 21.64.280.D.3.

⁴⁹ See City of Palm Springs, CA Municipal Code § 5.25.090(a).

1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
3. The owner has violated the provisions of this chapter; or
4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code; or
5. Any false or misleading information supplied in the application process; or
6. The permit number was not included in all forms of advertisement; or
7. The occupancy was not included in all forms of advertisement, or the occupancy was not advertised correctly.

Comment: The Douglas County ordinance is a best practice example because it limits the suspension and revocation remedies to violations that are committed by the owner. A vacation rental permit cannot be suspended or revoked due to a violation committed by a vacation rental tenant.

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

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

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the City Clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection A of this section, the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more than 45 days of receipt of request for a hearing. The City Manager or his/her designee shall preside over the hearing. The City Manager or his/her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and

that the penalty, or penalty and suspension are consistent with this chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.⁵⁰

Comment: The Encinitas ordinance is a best practice example of an enforcement provision because it establishes a process for the investigation of complaints and the imposition of penalties for violation of the short-term rental ordinance.

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

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.⁵¹

Comment: The Cannon Beach ordinance is a best practice example of an enforcement provision because it establishes a process, including written notice to the property owner and a public hearing, before a permit may be suspended or revoked.

⁵⁰ City of Encinitas, CA Municipal Code § 9.38.060.

⁵¹ City of Cannon Beach, OR Zoning Code § 17.77.050(B)

10.7 Pursue Proactive Strategy: State Legislation to Require More Uniform, Fairer, and Market-Sensitive Regulations

Rather than taking a reactionary approach to proposed rental regulations, Realtors[®] should consider the proactive strategy of pursuing state legislation governing local rental regulations. As discussed in Section 8.1(c), the legislative approach has been used with some success in Florida, where in 2011 the state legislature enacted a law that specifically limited the authority of local governments to regulate or prohibit short-term rentals. Section 509.032(7) of the Florida Lodging Statute (entitled “Preemption Authority”) stated, in relevant part:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.⁵²

However, in 2014 the Florida State Legislature amended Section 509.032(7) in a manner that expanded the authority of local governments to regulate vacation rentals.⁵³ Where the 2011 statute prohibited Florida municipalities from regulating vacation rentals “based solely on their classification, use, or occupancy, the 2014 amendment now only prohibits municipalities from regulating the “duration or frequency of vacation rentals.”⁵⁴

Although the 2014 amendment did expand the scope of local authority to regulate vacation rentals in Florida, it arguably represented a victory for property rights and vacation rental advocates. That is because the original version of the bill (Senate Bill 356)—which was supported by the Florida League of Cities—would have repealed the 2011 legislation, giving local governments far greater latitude in regulation vacation rentals, including the authority to ban short-term rentals altogether.⁵⁵ Proposed amendments to Senate Bill 356 that would have authorized local governments to impose minimum stay requirements on vacation rentals were also rejected by the legislature.⁵⁶

10.8 Bring Legal Challenges to Rental Regulations

As discussed in Section 8, rental regulations may be vulnerable to challenge on several grounds, including the authority of the local government to adopt the regulations and whether proper procedures were followed by the governing body. Other potential grounds for legal challenge include constitutional due process, equal protection, takings, and unreasonable search and seizure claims. Rental regulations may also be susceptible to challenge on statutory grounds, including the Fair Housing Amendments Act and state property rights statutes, such as Arizona’s Private

⁵² Fla. Stat. § 509.032(7)(b) (2011).

⁵³ See Ch. 2014-71, Laws of Florida.

⁵⁴ See Fla. Stat. § 509.032(7)(b), which states, in relevant part: “A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.”

⁵⁵ See Florida Senate Bill 356 (2014) – “Filed” version (available online at <http://www.flsenate.gov/Session/Bill/2014/0356/?Tab=BillText>).

⁵⁶ See Florida Senate Bill 356 (2014) – “First Engrossed” and “Second Engrossed” versions (available online at <http://www.flsenate.gov/Session/Bill/2014/0356/?Tab=BillText>).

Property Rights Protection Act and Florida's Bert J. Harris, Jr. Private Property Rights Protection Act.

For Realtors® who are unsuccessful in their opposition to a proposed rental regulation, legal action can be an effective strategy for fighting the regulation after it has been adopted. A successful challenge could result in all or a portion of an ordinance being invalidated. A potential positive outcome could also be achieved through settlement. A local government that lacks the necessary resources or is simply loath to engage in a lengthy court may be motivated by the filing of a law suit to reconsider a challenged ordinance or possible amendments that could result in the case being settled without a trial.

APPENDIX A

LIST OF JURISDICTIONS CITED IN WHITE PAPER

City of Aliso Viejo, CA: 10.2(b)
City of Anaheim, CA: 3.2(b), 7.2
City of Arcadia, CA: 3.4(b)
City of Austin, TX: 3.1(b)
City of Bear Lake, CA: 3.1(d)
City of Bend, OR: 4.4
City of Big Bear Lake, CA: 10.6(e)
City of Boulder, CO: 2.4(b), 5.1, 6.6(b), 6.7
City of Boston, MA: 3.4(a)
City of Cannon Beach, OR: 3.3(b), 8.6(d), 10.6(e), 10.6(f)
City of Carmel-by-the-Sea, CA: 8.6(b), 8.6(b)
City of Cedar Falls, IA: 3.2(b), 3.3(j)
City of Charlotte, NC: 3.3(i)
City of Chicago, IL: 1.2, 3.3(o)
City of Clinton, MS: 3.1(a)(ii)
City of Elgin, IL: 3.3(f)
City of Encinitas, CA: 10.6(d), 10.6(f)
City of Evanston, IL: 8.3(b), 8.4(a)
City of Fairlawn, OH: 7.3
City of Frisco, TX: 3.1(a)(ii)
City of Galveston, TX: 3.3(k)
City of Gary, IN: 3.1(d), 3.1(e), 9.1
City of Hagerstown, NC: 3.3(n)
City of Islamorada, FL: 1.2
City of Isle of Palms, SC: 3.3(g), 3.6
City of Key West, FL: 1.2
City of La Crosse, WI: 3.2(b)
City of Lancaster, CA: 6.7
City of Las Vegas, NV: 3.3(l)
City of Lincoln City, OR: 3.3(o)
City of Los Angeles, CA: 3.1(a)(i), 6.1, 6.6(a), 9.5
City of Manhattan Beach, CA: 3.3(a)
City of Marathon, FL: 4.3
City of Marco Island, FL: 3.3(f), 3.3(g), 3.3(i), 3.6(a), 3.6(c)(ii), 5.3, 7.4
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City of Miami Beach, FL: 3.3(a), 8.4(b)
City of Milwaukee, WI: 6.7
City of Minneapolis, MN: 3.1(f), 3.6(c)(i), 4.1, 4.3, 9.1, 9.3
City of Myrtle Beach, SC: 6.3
City of Nashville, TN: 3.3(o)
City of New York, NY: 2.4(b)

City of New Braunfels, TX: 3.1(f), 3.3(g), 9.3
City of New Orleans, LA: 6.2
City of Newport Beach, CA: 3.3(b), 3.3(l), 6.5, 9.4
City of Norfolk, AR: 8.6(c)
City of Ocean City, MD: 7.5
City of Palm Desert, CA: 10.2(b)
City of Palm Springs, CA: 3.3(g), 10.6(d), 10.6(f)
City of Portland, OR: 2.3, 3.3(o), 3.4(a), 7.1, 9.4
City of Prior Lake, MN: 4.3
City of Provo, UT: 3.3(l)
City of Raleigh, NC: 3.6(a)
City of Rolling Hills, CA: 10.2(b)
City of Saint Paul, MN: 3.1(a)(i), 3.1(a)(ii)
City of San Clemente, CA: 6.5, 9.4
City of San Francisco, CA: 3.1(a)(i), 3.3(o), 4.3, 6.1, 9.4, 10.6(a), 10.6(d)
City of San Jose, CA: 3.3(o)
City of San Luis Obispo, CA: 10.4(a)(i)
City of Santa Fe, NM: 3.3(d)(1), 3.3(g), 3.6, 4.1
City of Santa Monica, CA: 3.3(a), 6.7, 7.1, 10.6(a)
City of Seal Beach, CA: 10.2(b)
City of Seattle, OR: 4.3
City of Sedona, AZ: 8.6(f)
City of South Lake Tahoe, CA: 3.3(c)
City of Steubenville, OH: 3.3(k)
City of Telluride, CO: 3.3(l)
City of Venice, FL: 3.1(a)(i), 3.3(c), 8.4(b)
City of Waconia, MN: 3.1(a)(ii)
City of Washington, D.C.: 3.3(o)
Commonwealth of Massachusetts: 3.1(b), 3.3(m), 6.5
County of Buncombe County, NC: 3.1(c)
County of Calaveras County, CA: 3.3(b)
County of Clatsop County, OR: 10.6(a), 10.6(f)
County of Coconino County, AZ: 3.3(g), 3.3(j), 4.5
County of Douglas County, NV: 10.6(e), 10.6(f)
County of Garrett County, MD: 3.3(f)
County of Kauai County, HI: 1.2, 10.6(b)
County of Maui County, HI: 1.2, 3.3(d)(1), 3.6(c)(ii), 6.2, 6.4
County of Mendocino County, CA: 3.3(d)(2), 10.6(c)
County of Monterey County, CA: 10.6(b), 10.6(f)
County of Napa County, CA: 6.2
County of Pima County, AZ: 3.1(b)
County of San Luis Obispo County, CA: 3.3(e), 10.6(c)
County of Sonoma County, CA: 1.2, 3.3(g), 3.3(h), 3.6, 3.6(c)(i), 4.1, 9.1, 10.2(b), 10.6(e)
County of Tillamook County, OR: 3.3(f), 10.6(e)
Island of Martha's Vineyard, MA: 6.5, 6.6(a)
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State of California: 3.3(o), 10.2(b)
State of Florida: 3.5, 6.2, 6.4, 8.5(c)(i), 8.5(c)(iii)
State of Illinois: 3.6(c)(ii)
State of Michigan: 8.4(b)
State of New York: 3.1(b), 5.2, 6.1, 6.5
State of Rhode Island: 3.1(b), 10.2(a)
State of Texas: 3.1(b), 3.3(m)
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Town of Jamestown, NC: 2.4(c)
Town of Kure Beach, NC: 3.1(e), 5.4, 9.1
Village of Bal Harbour, FL: 8.4(a)
Village of Tiki Island, TX: 8.6(d)

APPENDIX B

INDEX OF KEY TERMS

(Section Number Indicates Where Term is Defined)

Affordable Housing: 2.3
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Bed and Breakfast: 2.2(e)
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Due Process: 8.4(c)(i)
Dwelling Unit: 1.2
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