



**Sustainable  
Economies  
Law Center**

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# **REGULATING SHORT-TERM RENTALS: A Guidebook for Equitable Policy**

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# CREDITS

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**Sustainable Economies Law Center** (SELC) is a nonprofit that charts the legal territory of the new economy, educates people about the possibilities and limits of creative economic structures, and advocates for laws that clear the way for community resilience.

*\*(this publication does not necessarily represent their positions)*



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# EXECUTIVE SUMMARY

Sooner or later, nearly every city will need to address the rapid spread of short-term rentals. Though the activity itself is not new, in recent years, companies including Airbnb, VRBO, Flipkey, and Homeaway have facilitated and mainstreamed short-term rentals to a point where local governments are taking note, and taking action.

Sustainable Economies Law Center (SELC) offers the following recommendations to assist policymakers with the process of drafting a local short-term rental ordinance. SELC's goal is for local governments to craft short-term rental policies that generate inclusive opportunities for local wealth-creation, while balancing the needs of all members of the community. Ideally, the result will be an equitable policy that protects public interests, including housing affordability, health and safety, neighborhood quality, and municipal revenues, while retaining reasonable latitude for city residents to host and earn money from short-term guests.

A short-term rental (STR) refers to a room or housing unit that is rented to a person or group for a short period of time, typically under 30 nights. The legality of STRs is being questioned in cities across the country because most local planning codes define STRs as a commercial activity akin to bed and breakfasts or inns, and typically prohibit them in residential areas without proper permitting and licensing.

In addition to legal questions, STRs raise important questions about local priorities and the larger role STRs play in cities and neighborhoods. The staunchest proponents of STRs argue that hosting short-term guests enables residents to offset the cost of housing, make efficient use of otherwise unused space, and benefit directly from tourism dollars and cultural exchange. Others are less convinced of the benefits of STRs, arguing that the short-term rental of residential units negatively impacts local housing stock, neighborhood quality, public tax revenues, and conventional hotels.

In cities with high housing demand, the most contentious issue tends to be the impact of STRs on housing availability and affordability. Though STRs may help some hosts occasionally rent a portion of their primary residence, thus offsetting mortgages and rent with the added income, a significant number of hosts are using STR platforms to rent multiple homes or entire apartment complexes to transient occupants instead of housing local residents. In many cases, STRs create a monetary incentive to shift the use of housing from long-term residential use to transient use, and without appropriate regulation, STRs will continue to reduce the amount of housing available to long-term residents – thereby increasing the cost of owning or renting in any impacted area.

In light of the complexity of STR issues, SELC sees a need for municipalities to respond with nuanced and comprehensive public policy. We offer this set of issue analyses and policy recommendations to assist policymakers, advocates, and residents in shaping such regulations. We emphasize that there is no one-size-fits-all STR regulation. In fact, of the existing local STR regulations, no two are exactly alike – and for good reason. Each city must regu-

late STRs according to its unique set of circumstances and priorities, and should arrive at an appropriate and equitable policy through open dialogue with the diversity of stakeholders involved. The following are key considerations cities should factor into an STR ordinance.

In crafting an equitable STR policy, we recommend that municipalities focus on how STRs:

- Impact the supply and affordability of housing;
- Provide economic benefit to those with economic need; and
- Affect neighborhood quality.

To address these issues, we recommend that municipalities take the following measures, where appropriate:

- Set clear definitions that distinguish STRs from commercial hotels;
- Limit STRs to primary residences, distinguishing them from vacation rentals;
- Require registration and recordkeeping;
- Institute a cap on rental nights per year;
- Establish protections and complaint procedures for guests and neighbors;
- Limit crowding, noise, and parking strains; and
- Collect transient occupancy tax.

# I. INTRODUCTION



Sooner or later, nearly every city will need to address the rapid spread of short-term rentals, such as those facilitated by online platforms including Airbnb, VRBO, Flipkey, and Homeaway. To help local policymakers and advocates draft comprehensive and equitable short-term rental ordinances, Sustainable Economies Law Center (SELC) has conducted a broad survey of local short-term rental policies that have emerged over the past four years, offering this set of issue analyses and recommendations. SELC's goal is for STR policies to generate inclusive opportunities for local wealth-creation, while still balancing the needs of all members of the community.

***SELC's goal is for STR policies to generate inclusive opportunities for local wealth-creation, while still balancing the needs of all members of the community.***

To create an equitable and appropriate short-term rental policy, each city must regulate short-term rentals according to its unique social and economic circumstances and priorities, and should craft solutions through open dialogue with the diversity of stakeholders involved. Ideally, the result will be a policy that protects public interests such as housing affordability, municipal revenues, health and safety, parking, and the quality and character of neighborhoods, while retaining reasonable latitude for city residents to host and earn money from short-term guests.

## II. BACKGROUND

### WHAT IS A SHORT-TERM RENTAL?

A short-term rental (STR) refers to a room or housing unit that is rented to a person or group for a short period of time, typically under 30 nights. STRs are distinct from long-term rentals in that the room or unit is rented on a nightly or weekly basis, whereas long-term rentals must exceed the minimum number of nights required by local laws. Due to the brief nature of STR stays, STR guests are typically transient occupants such as travelers who would otherwise stay in a hotel or similar accommodation. Long-term rentals, on the other hand, typically house individuals who work, attend school, or otherwise wish to “permanently” reside in the city.

### STRS ARE NOT NEW

STRs are garnering more attention by the day, as are the online platforms that facilitate connections and/or payments between STR guests and hosts. But hosting short-term guests is not a new phenomenon, nor was it invented by these platforms. Before these platforms became available, travelers who wanted a different type of vacation experience were already opting to stay with locals rather than in hotels, in order to more fully experience the culture, food, and lifestyle of the region. Locals who hosted backpackers, “couch surfers,” pilgrims, and touring cyclists often did and continue to do so in exchange for money or skill trades, to be an ambassador of their locale, or simply to interact with visitors from faraway places.

### STRS ON THE RISE

Within the past several years, both the *number* of properties available for short-term rental, and the *frequency* with which they are rented, have skyrocketed, transforming the activity from a casual and occasional practice to an increasingly formalized and pervasive activity in cities from San Francisco to Paris. Online platforms have played an essential role in the STR boom, enabling millions of people around the world to list and browse rentals, and to connect, coordinate, and transmit payments through one interface.

The most popular platform, Airbnb, self-reported that from 2013 to 2014, STR bookings in Nashville increased 365 percent, stays in New Orleans increased by 340 percent, and stays in Portland, Maine increased by 328 percent.<sup>1</sup> With such a sudden increase in STR activity and lack of corresponding regulatory action, it's no wonder cities are now feeling the effects of STRs on housing and rental markets, public tax revenues, and neighborhood quality.

San Francisco is one of many cities where STRs have caused heated controversy, particularly around tenant evictions and conversion of residential units to commercial use. A

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1. Airbnb Unveils Top 10 Trending U.S. Travel Destinations for Summer 2014, Airbnb (May 1, 2014), <https://www.airbnb.com/press/news/airbnb-unveils-top-10-trending-u-s-travel-destinations-for-summer-2014>.

recent memo from the San Francisco Budget and Legislative Analyst states that between November 2013 and February 2015, the city had an estimated 5,249 to 6,113 Airbnb listings – all during a time when STRs were still illegal.<sup>2</sup> Not including STR units listed on other platforms or sites, Airbnb units alone were said to amount to 11 to 23.2 percent of the city’s vacant units, entire homes listed on Airbnb were estimated to remove 14.8 percent of the total rental housing available for rent citywide, and private and shared rooms that might otherwise be occupied by roommates were estimated to take even more units off the rental market.<sup>3</sup> The same memo stated that STRs could lead to tenant evictions, because hosts have a financial incentive to leave the long-term rental market and enter the short-term rental market. In fact, the memo revealed that neighborhoods with the most intense STR activity also had high numbers of evictions.<sup>4</sup>

Numerous other studies and data scraping exposés have continued to illustrate the scope of STR use and impact in other cities including San Francisco, New Orleans, Nashville, New York, and Los Angeles.<sup>5</sup> New York state Attorney General Eric Schneiderman, known for his early investigation of the STR impacts, released a report showing that Airbnb rentals in New York City increased from 2,650 in 2010 to 16,500 in 2014, with nearly three-quarters of these listings in violation of city or state laws.<sup>6</sup> A Los Angeles study showed that 90 percent of Airbnb revenues are generated not by hosts who share a room in their homes, but by hosts who rent out *entire* units, and by leasing companies who rent out two or more entire units.<sup>7</sup> Short-term renting in Los Angeles has also removed 7,316 rental units from the market, which amounts to the equivalent of seven years’ of affordable housing construction.<sup>8</sup>

Because STR platforms refuse to release detailed usage data, the full extent of STR impacts is still unclear. Despite that, the handful of public and independent investigations into STR impacts on housing, neighborhoods, and tax revenues – though painting only a partial picture – provide valuable insights into how STRs are changing cities on the ground. These investigations also provide clues about what cities can do to encourage fair use of STRs, minimize harms, and penalize those who violate regulations.

2. San Francisco Budget and Legislative Analyst’s Office, Analysis of the impact of short-term rentals on housing, 11 (May 13, 2015), available at <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=52601>.

3. Ibid.

4. Ibid at 30-31.

5. See, for example: Anti-Eviction Mapping Project. Last viewed November 24, 2015. <http://www.antievictionmappingproject.net/airbnbmap.html>. Inside Airbnb. Last viewed November 24, 2015. <http://inside-airbnb.com>. And, Airbnb and San Francisco: Descriptive Statistics and Academic Research. Alex Marqusee. April 12, 2015.

6. Office of New York State Attorney General Eric Schneiderman, Airbnb in the city, 6 (October 2014).

7. Roy Samaan, Airbnb, Rising Rent, And The Housing Crisis In Los Angeles, 3 (March 2015), available at <http://www.laane.org/airbnb-report>.

8. Ibid.

### III. POSITIVE & NEGATIVE IMPACTS OF SHORT-TERM RENTALS

STRs can have a positive impact on cities, in that they can:

- **Contribute to local wealth** by giving residents the opportunity to earn money from hosting tourists. Fewer tourism dollars go to large corporate hotel chains, and more dollars stay within the community;
- **Make efficient use of space** by allowing residents to host guests in a room or unit when it might otherwise be unused;
- **Prevent economic hardship and displacement** by allowing some residents to use STR revenue to make ends meet and stay in their homes;
- **Provide both tourists and hosts with valuable social and cultural exchange**; and
- **Spread tourist dollars beyond typical hotel and tourism districts** by attracting travelers to less frequented neighborhoods and businesses.

At the same time, STRs can have a negative impact on cities, in that they can:

- **Take long-term rental units off the market**, creating a scarcity of housing options, and pushing up prices;
- **Incentivize property owners to keep rooms and units vacant or even evict long-term tenants** in order to make higher profit per night from short-term renters;
- **Unfairly compete with established hotels, inns, and bed and breakfasts** when STRs are not subject to the same level of taxation or regulation;
- **Reduce transient occupancy tax, or “hotel tax” revenues for the city** when STR hosts evade the tax or avoid remitting the tax on the grounds that they are not operating a hotel;
- **Violate residential zoning codes** that are intended to limit noise, traffic, parking shortages, and activities incompatible with the character of a neighborhood;
- **Adversely impact community cohesion** because vacation rentals house a revolving circuit of transient occupants who are not connected to or invested in the community; and
- **Reinforce class, gender, and racial inequities**, because online platforms make it easy for users to act on biases when selecting hosts or guests, and because the opportunity to rent living space to short-term guests, like most other economic opportunities, disproportionately privileges the privileged.

## IV. CURRENT LAW



Many municipal codes prohibit residents from hosting short-term guests in exchange for payment unless residents comply with all regulations applicable to commercial hotels and bed and breakfasts.

These laws tend to require zoning approval, compliance with health, building, and safety laws, and payment of a transient occupancy tax (TOT), also known as a “hotel tax.” Given that such laws are generally designed for commercial hotels, in the absence of a local ordinance that tailors such laws to STRs, these local laws effectively ban STRs.

Meanwhile, a growing number of cities and counties have crafted local ordinances that both legalize some form of STRs and impose limitations and regulatory processes that protect public interests. These cities and counties include Austin, San Francisco, Portland, Nashville, Santa Monica, Madison, and many others. Interestingly, of the dozens of new and emerging STR ordinances around the U.S., no two regulations are exactly alike. Indeed, the differences among them may lend valuable insight into each city’s political priorities, social and economic values, and in some cases, their most influential stakeholders. Each municipality should calibrate its STR ordinance to its particular social and economic circumstances, but there are several basic considerations that all cities and counties should take into account when drafting such a policy. These considerations are outlined below.

***Interestingly, of the dozens of new and emerging STR laws around the U.S., no two regulations are exactly alike. Indeed, the differences among them may lend valuable insight into each city’s political priorities, social and economic values, and in some cases, their most influential stakeholders.***

## V. SELC'S RECOMMENDATIONS: THE BASIC COMPONENTS OF AN STR ORDINANCE



Local governments can benefit from adopting more nuanced regulations that simultaneously lift any outright ban on STRs, channel STR income-earning opportunities to those who need them, and restrict STRs in ways that reduce negative externalities. We believe that such short-term rental regulations must be comprehensive. Therefore, in this section, we highlight some of the key elements of a short-term rental policy, and include examples from local STR regulations throughout the county. Policymakers and advocates should adapt these recommendations to local contexts, and involve a diverse set of stakeholders in doing so. The result should be an STR regulation that fairly and accurately reflects local needs and priorities.

Though adoption of these or similar recommendations ultimately depends on local context, we encourage policymakers to still consider the principles that underlie these recommendations. That includes setting definitions that effectively frame the issues; creating restrictions that preserve housing affordability; devising registration, record-keeping, and reporting processes that encourage compliance and facilitate effective enforcement; and including measures to ensure the safety of guests, the preservation of neighborhood quality, and the protection of public revenues.

### A. ESTABLISH CLEAR DEFINITIONS

We recommend that municipalities establish clear definitions that distinguish a “Short-Term Rental” from a long-term rental, as well as describe the qualities that set STRs apart from their more commercial counterparts, including a “Hotel,” “Motel,” “Boarding House,” or a “Bed and Breakfast.” In addition to drawing distinctions between STRs and other activities or establishments, regulators must also address variations among STRs, including whether or not the unit is a the host’s primary residence, and whether or not

the STR is occupied by the host during a guest's stay. Though a municipality's definition of STRs can include more embellishment, our recommended basic definition of STRs and STR subcategories are as follows:

**Short-Term Rental (STR)** is the rental of a primary residence or portion thereof for a period of less than 30 nights, for which the guest compensates an owner or lessee of the unit.<sup>9</sup>

**Primary Residence:** A housing unit in which an owner or lessee resides for the majority of the year.<sup>10</sup>

**Hosted Primary Residence STRs:** An STR unit is a Hosted Primary Residence STR if the owner or lessee who is hosting a short-term guest occupies that dwelling unit as his or her primary residence for the majority of the year, and if the owner or lessee hosts one or more guests in a bedroom or some portion of the unit and is generally present for the duration of the rental period.<sup>11</sup>

**Un-Hosted Primary Residence STRs:** A unit is an Un-Hosted Primary Residence STR if the owner or lessee occupies the dwelling unit as his or her primary residence for the majority of the year, but leaves his or her unit for a period of time – for example, over a weekend, when traveling for work, or while on vacation – and rents out all or part of the unit in his or her absence.

**Vacation Rentals:** A Vacation Rental is an entire residential unit that is not a primary residence and is rented to guests on a short-term basis, typically under 30 nights.<sup>12</sup>

## B. REQUIRE REGISTRATION AND RECORDKEEPING

### Proof of Primary Residency:

We recommend that all STRs be limited to primary residences. As defined above, a primary residence is a housing unit in which a renter or owner resides for the majority of the year. By definition, a person may have only one primary residence, and it follows that a person may have only one STR address.

9. Though we define short-term as less than 30 nights, a common requirement for tenancy, the minimum number of nights for tenancy could be based on existing local tenancy laws if those are more appropriate.

10. We suggest defining majority as a minimum of nine months, with variations depending on local circumstances. If a municipality has an existing definition of primary residence, it could be referenced here.

11. We define "generally present" as having the host present for an average of 6 hours out of any 24-hour period.

12. The Sustainable Economies Law Center does not consider Vacation Rentals to be short-term rentals, but considers them a separate category of transient accommodations. See "Setting Caps on the Number of Rental Nights Per Year" in Section C for a description of how Austin, TX, and Nashville, TN regulate vacation rentals as a separate and distinct activity. See: Austin, Tx., City Land Development Code § 25-2-793 (2014), and Nashville, Tenn., Metropolitan Code Ordinance No. BL2014-951, § 6.28.030.Q. (2015).

An STR registration process should require hosts to provide records demonstrating that the unit is their primary residence. We recommend that cities follow the example of San Francisco and require hosts to show that the unit is listed as the applicant's residence on at least two of the following documents in order to register: motor vehicle registration, driver's license, voter registration, or a utility bill.<sup>13</sup> Though the documents listed in San Francisco's administrative code should provide sufficient evidence of primary residency, cities could add to the list of acceptable documentation federal and state tax returns that reflect the address of the residential unit in question. If primary residency is in dispute, regulators could resort to using the various factors that the IRS uses to determine principal residency.

### **Registration:**

Enforcing the provisions of an STR ordinance, particularly caps on the number of units per host, rental nights per year, payment of transient occupancy taxes, and other recommendations outlined below, necessitates that hosts be accountable to some form of local oversight. By requiring STR hosts to register with the Planning Department or some similar office, cities will identify a unit being used for short-term rental, a point person for complaints, and a party who will be held liable for violations. We suggest that cities keep the registration process relatively simple to encourage participation. A primary objective of registration should be to collect basic information from hosts and to open a line of communication between hosts and the city. As discussed below, we do not recommend that approval of registration be contingent on inspection.

### **Cost of Registration:**

We suggest that cities keep both registration costs and subsequent renewal fees as low as possible by relying on registration fees only to cover the administrative cost of processing registrations, as in Anaheim, CA.<sup>14</sup> If registration costs are kept low, cities can factor the costs of fielding complaints and enforcing STR laws into the tax rate and fines for violations. That way, hosts who comply with the law or only engage in short-term rental occasionally will not bear the cost of oversight for those who do not comply.

### **Registration Renewal:**

Registration renewal could be required yearly (as in Anaheim<sup>15</sup> and Dana Point, CA<sup>16</sup>), every two years (as in St. Helena, CA<sup>17</sup> and for Type A STRs in Portland, OR<sup>18</sup>), or follow a model like Maui County, HI, where permits are valid for one year but are extended to two years if there are no recorded complaints.<sup>19</sup> We recommend that cities follow a responsive approach similar to Maui County's, where permits are valid for two years unless

13. San Francisco, Cal., Administrative Code ch. 41A, § 41A.5.(g)(3)(A) (2015).

14. Anaheim, Cal., Municipal Code ch. 4.05, § 4.05.090 (2014).

15. Anaheim, Cal., Municipal Code ch. 4.05, § 4.05.070 (2014).

16. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.055 (2013).

17. St. Helena, Cal., Municipal Code ch. 17.134, § 17.134.060(F) (2012).

18. Portland, Or., City Code & Charter ch. 33.207, § 33.207.040(C) (2015).

19. Maui County, Haw., County Code ch. 19.65, § 19.65.070(A) (2012).

there are complaints of violation, in which case permits would have to be renewed more frequently. Unless regulators rely on yearly permit renewals to inform them of the number of active STRs, this process would be an effective way to reward law-abiding hosts and reduce paperwork for regulators.

In an effort to encourage compliance with its short-term rental laws, Portland, OR has included a provision in its permitting policy wherein an STR permit can be revoked for failure to comply with the city's set of STR rules.<sup>20</sup> We recommend that cities adopt a provision similar to Portland's, including withholding permit renewal for a certain amount of time after a host is found to be in violation of STR laws.

### Reporting and Recordkeeping:

To assist with the oversight and enforcement of ordinance requirements, a city may want to require hosts to keep records of guest names, guest contact information, dates of stay, indication of the host's presence or absence during the stay, and revenue earned. Cities already requiring this level of detail in recordkeeping include Madison, WI<sup>21</sup> and Portland, OR, the latter requiring hosts to also maintain guests' license plate numbers (if traveling by car) and a record of the room assigned to each guest.<sup>22</sup> Cities could require hosts to maintain the records for at least two years and make them available to the city upon request when the host is suspected of a violation, or in the event of a randomized inspection.<sup>23</sup> An alternative process could require hosts to regularly submit reports to the city regarding the number of hosted and un-hosted nights the STR was rented, as is required in San Francisco.<sup>24</sup>

However, the major online STR platforms already collect host, guest, and usage information, and if a city decides to require hosts to record and report that data, it could also require the STR intermediaries themselves to make some information – such as the number of STR units per host, and the number of nights rented per unit – available to the Planning Department or other oversight office as a condition for operating in their jurisdiction. Cities could require platforms to regularly submit a blanket report of all STR activity in their jurisdiction, or to submit the information of suspected violators only as requested by the city. Santa Monica, CA requires STR intermediaries to “Disclose to the City on a regular basis each home-sharing and vacation rental listing located in the City, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay.”<sup>25</sup> We recommend that other cities wishing to improve recordkeeping and reporting follow suit.

Requiring STR platforms to report the information of their customers to local government could cause concerns about the information privacy of STR platform users. To

20. Portland, Or., City Code & Charter ch. 33.207, § 33.207.040(D) (2015).

21. Madison, Wis., Code of Ordinances ch. 28 § 28.151 “Tourist Rooming House” (h) (2014).

22. Portland, Or., City Code & Charter ch. 33.207, § 33.207.060 (2015).

23. Cities may want to require STR hosts to retain records for more than two years in some circumstances, such as if they city adopts a private right of action.

24. San Francisco, Cal., Administrative Code ch. 41A, § 41A.5(g)(3)(C) (2015).

25. Santa Monica, Cal., Municipal Code ch. 6.20, § 6.20.050(b) (2015)

address privacy concerns, these intermediaries could require all users, prior to starting or continuing to use the service, to authorize the platform to share STR usage data with local governments, either regularly or in the event of a suspected violation. If a provision for STR intermediaries to report data were added to a local ordinance, it would also make sense for a host to list, on the municipality's STR registration application and in subsequent reporting and permit renewal, all the platforms that he or she uses to book an STR. Adding this question to STR registration would help authorities to cross check the self-reported information of suspected violators with data on multiple platforms – improving both the reliability of information and facility of enforcement.

Some will argue that requiring STR platforms to report host, guest, and usage data to the city would unduly burden only those platforms that collect such data, and cause STR hosts to migrate to platforms that do not collect this information. However, municipalities might consider reporting as a requirement for operating in their jurisdiction, particularly because without this information, local governments would be unable to effectively enforce STR laws. In fact, the San Francisco Planning Department itself admitted only months after the city's STR law went into effect that booking data from STR platforms was necessary for the effective enforcement of yearly caps and other provisions of the ordinance.

Without reporting from the STR platforms, tracking and regulating STR units to ensure hosts are licensed, registered, and in compliance will remain extremely difficult and require significant public resources – something most cities are unable or reluctant to dedicate to STRs.

### **Advertisement:**

To assist with enforcement, a city should require that hosts include the STR registration or permit number on all advertisements. Municipalities that require disclosure of this information on advertisements include Austin, TX,<sup>26</sup> Maui County, HI,<sup>27</sup> Dana Point, CA,<sup>28</sup> San Francisco, CA,<sup>29</sup> and St. Helena, CA.<sup>30</sup> We recommend that cities require all STR advertisements, including listings on STR platforms, to include a valid permit number.

In addition to requiring hosts to verify the legality of their listed STR with a valid permit number, cities could also place responsibility on the STR platforms to list only registered STR units, and to remove the listings of any violators. A 2015 ballot initiative in San Francisco proposed placing such responsibility on any STR platform operating in the city, requiring that all listed units be registered with the city, creating a daily penalty for STR platforms that list unregistered units, and mandating that platforms remove the listing of any unit that has surpassed the yearly rental cap.<sup>31</sup> Maui County places some degree of responsibility on STR platforms by requiring any intermediary advertising an STR-

26 Austin, Tx., City Land Development Code § 25-2-791(F) (2014).

27. Maui County, Haw., County Code ch. 19.65, § 19.65.040(A) (2012).

28. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.080(a)(8) (2013).

29. San Francisco, Cal., Administrative Code ch. 41A, § 41A.5(g)(1)(F) (2015).

30. St. Helena, Cal., Municipal Code ch. 17.134, § 17.134.040(N) (2012).

31 City of San Francisco Initiative to Restrict Short-Term Rentals, Proposition F (November 2015).

within the county to include or link to the municipality's STR policies.<sup>32</sup> We believe that, in addition to informing their users of the law, STR platforms should also be responsible for requiring proof that listed STRs comply with the law (e.g., by requiring a valid permit number), and removing listings that are in violation of local laws, such as a yearly cap.

### C. ESTABLISH PROTECTIONS FOR THE SUPPLY AND AFFORDABILITY OF HOUSING

STRs can escalate housing costs in at least two ways: 1) each room or unit regularly used for STRs removes from the market a room or unit that might otherwise have been offered to a long-term tenant, and 2) the ability to derive income from a housing unit raises its value, raises the tenant's ability to pay for expensive housing, and thereby raises prevailing housing prices.

Cities have the power to protect multiple public interests by, for example, setting caps on the number of allowed STR units per host and number of nights per year that an STR unit may be rented to short-term guests. We recommend that cities allow all residents to engage in a limited amount of STR activity within their primary residences, but to set parameters based on the interests the city is aiming to protect.

#### **Preventing Speculation - STRs for Cost-Sharing, Not Profit-Making:**

A San Francisco Planning Commission memo framed the STR issue succinctly: "The critical questions for policy makers seeking to protect housing are: when does STR make more efficient use of unused resources and when does it incentivize the conversion of residential space to tourist use?"<sup>33</sup> If the underlying purpose of STRs is helping residents offset the costs associated with owning or renting their home, an STR ordinance should include provisions that prevent people from buying or renting units with the primary goal of earning STR income.

In order to deter individuals or entities from buying or renting a unit with the intention to subsequently turn a profit from its short-term rental, a city could require that a resident have occupied the unit for a minimum number of months or years before hosting STR guests. San Francisco's STR regulations require residents to have occupied their unit for at least 60 days prior to hosting STR guests, which starts to address the issue, but is ultimately too short a time period to effectively deter such speculation.<sup>34</sup> Furthermore, in cities experiencing rapid gentrification, requiring a certain length of time of owner or tenant occupancy prior to being eligible to host STR guests could channel STR income-generating opportunities to longer-term residents who risk being crowded out by newer and often wealthier neighbors. Cities may find that directing the income-generating power

32 Maui County, Haw., County Code ch. 19.65, § 19.65.040(B) (2012).

33. San Francisco Planning Commission. Administrative Code Text Change Recommendations to Board of Supervisors, 10 (April 23, 2015). See: <http://commissions.sfplanning.org/cpcpackets/2014-001033PCA.pdf>.

34. San Francisco, Cal., Administrative Code ch. 41A, § 41A.4. "Permanent Resident" (2015).

of STRs to longer-term residents could provide those residents with the economic boost necessary to combat threats of displacement.

In many circumstances, property owners may find STRs to be a more lucrative option than long-term rentals. In order to reduce any incentive to evict tenants, STR regulations must pay special attention to rent-controlled units and units that have recently been

***If the underlying purpose of STRs is helping residents offset the costs associated with owning or renting their home, an STR ordinance should include provisions that prevent people from buying or renting units with the primary goal of earning STR income.***

subject to an eviction. To preserve the integrity of rent-controlled units, cities can limit the amount that residents of rent-controlled housing may charge for short-term rental of their dwelling. San Francisco's STR ordinance, though it allows renters to host short-term guests, limits the amount that a tenant in a rent-controlled unit may charge short-term guests to the equivalent of what the tenant pays to the landlord each month.<sup>35</sup> In order to reduce a property owner's incentive to evict tenants in order to engage in short-term rental, cities with high housing

demand could prohibit units that have recently been subject to an eviction from being registered as an STR.<sup>36</sup> A number of high-level San Francisco policymakers recommended instituting such a limitation, suggesting that units that have been subject to an Ellis Act Eviction within the last five years be barred from registering as an STR. Other California cities with high housing demand could find that adopting a similar restriction on STR registration for recent Ellis Act Eviction units could be a powerful way to prevent the tenant abuses and displacement caused by unfettered STR activity.

### **Preventing Conversion of Housing Stock & Preserving Residential Use:**

Cities should adopt regulations that prevent the physical conversion of residential housing to transient use. For example, Portland prohibits remodeling or structurally altering units that would prevent the structure from being used as a residence in the future. Portland even prohibits changes that would make a unit appear "less residential," for example installation of more than three parking spaces, paving of required setbacks, and commercial-type exterior lighting.<sup>37</sup>

Maui County has attempted to protect housing for permanent residents by deterring

35. San Francisco, Cal., Administrative Code ch. 41A, § 41A.4., § 41A.5. (g)(1)(G) (2015).

36. San Francisco Planning Commission. Administrative Code Text Change Recommendations to Board of Supervisors pp. 2, 16. (April 23, 2015). See: <http://commissions.sfplanning.org/cpcpackets/2014-001033PCA.pdf>.

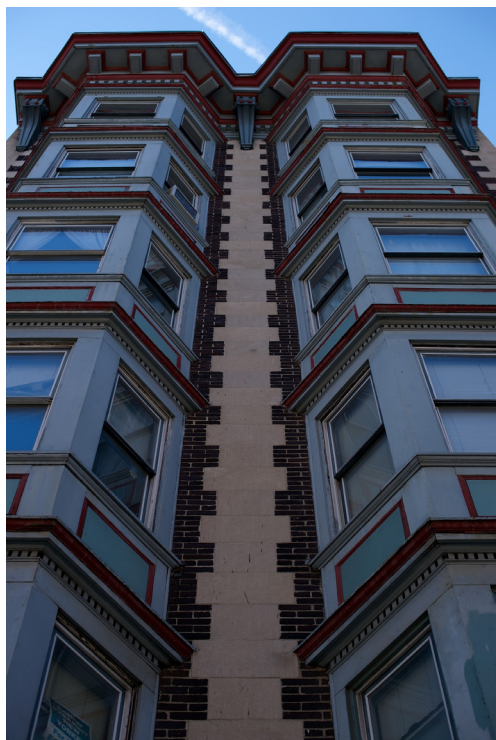
37. Portland, Or., City Code & Charter ch. 33.207, § 33.207.050(B)(9) (2014).

the construction of new homes that are primarily intended for rental to transient guests. The region does so by prohibiting short-term rental of single-family structures that were constructed less than 5 years prior to the date of application for an STR permit.<sup>38</sup>

### Setting Caps on the Number of Rental Nights Per Year:

In addition to limiting short-term rentals to primary residences, we recommend that all cities (with limited exceptions) set a baseline cap on Un-Hosted STR nights per year.

In cities where housing supply and affordability is a primary concern, this cap could be relatively low, for example, 30 nights per year, as is the case in Madison, WI.<sup>39</sup> In cities



where housing supply is not a major public concern, these caps could be considerably higher and adapted over time as the housing climate changes. Capping the number of Un-Hosted STR nights per year could encourage residents who leave town for months on end to rent their homes to longer-term tenants, including city residents who are transitioning between rental units, or to workers, students, or academics staying for a season or semester.

Unlike Madison, WI, which limits Un-Hosted STRs to 30 nights per year, but allows an unlimited number of Hosted STR nights per year,<sup>40</sup> and unlike Santa Monica, which prohibits Un-Hosted STRs but allows unlimited Hosted Primary Residence STR nights per year,<sup>41</sup> we believe that the ideal STR ordinance places a *total cap* on both Hosted STR nights per year and Un-Hosted STR nights per year.

We recommend a cap on both Hosted and Un-Hosted STRs for two reasons. The first reason

is that regulators currently face a great challenge in distinguishing between STRs with a host present and STRs that are un-hosted. Indeed, since San Francisco legalized unlimited Hosted STR nights per year, the city's Planning Department has reported that it is "virtually impossible" to discern law-abiding hosts from scofflaws, stating that in order to effectively enforce the law, the department would require a straight cap on the number of days any unit can be rented out per year (i.e. a cap on both Hosted and Un-Hosted STRs).<sup>42</sup> As long as STR platforms refuse to make STR records available to regulators, and as long as regulating agencies are limited in staff capacity to audit and confirm self-reported information, this challenge is likely to persist.

38. Maui County, Haw., County Code ch. 19.65, § 19.65.030(O) (2012).

39. Madison, Wis., Code of Ordinances ch. 28, § 28.151 "Tourist Rooming House"(e) (2014).

40. Madison, Wis., Code of Ordinances ch. 28, § 28.151 "Tourist Rooming House"(f) (2014).

41. Santa Monica, Cal., Municipal Code ch. 6.20, § 6.20.010(a) (2015).

42. Phil Matier and Andy Ross, 'No way of enforcing' Airbnb law, S.F. planning memo says (March 22, 2015), <http://www.sfchronicle.com/bayarea/matier-ross/article/No-way-of-enforcing-Airbnb-law-S-F-planning-6151592.php>.

The second reason is that an STR host engaging in Hosted Primary Residence STR activities has one or more bedrooms unused and available for travelers (presuming, of course, that the host is offering an entire room, rather than a living room couch or portion of some other shared space). If a cap were placed on the number of permissible Hosted Primary Residence STR nights per year, and a host reached that cap, the host would be prohibited from renting to transient guests for the remainder of the year, and would have an economic incentive to rent the unused bedroom to long-term tenants.

The STR regulations in Austin, TX, and Nashville, TN, bring up an interesting question of how to limit STR activity. Austin includes Vacation Rentals as one of several types of STR units, and limits their density by capping the number of permissible rental units per census tract.<sup>43</sup> Similarly, Nashville places a 3% cap on the percentage of non-owner occupied single-family and two-family Vacation Rentals allowed to legally operate in each census tract of the county.<sup>44</sup> Though a density

***There may be situations where a city will want to refrain from capping STRs in any form, such as in a city wanting to encourage tourism and where housing is in relatively abundant supply. However, in the absence of adequate protections for housing affordability, STRs could escalate housing costs and ultimately drive out lower-income and even middle-income residents.***

cap may be an approach worth investigating for cities interested in better regulating Vacation Rentals, we do not advocate for caps on the total number of permitted Primary Residence STRs, as that would place a haphazard limit on who can benefit from limited rental of their primary residences to short-term guests. Instead, we recommend that cities wishing to legalize but limit STR activity restrict STRs to primary residences, and then cap the number of permitted STR rental nights per year.

43. Austin, Tx., City Land Development Code § 25-2-793 (2014). Austin classifies its STRs into three types, and the density cap applies only to Type 2 STRs. A Type 2 STR is similar to what is referred to in this brief as a Vacation Rental. Type 2 STRs must be single-family, detached residential structures; cannot be not owner-occupied or associated with an owner-occupied principal residential unit; and cannot include the rental of less than the entire dwelling unit. On February 23, 2016, Austin City Council voted to ban all Type 2 STRs, and the City plans to phase out any existing Type 2 STRs in residential areas by 2022. As of this writing, the final ordinance language has not been released.

44. Nashville, Tenn., Metropolitan Code Ordinance No. BL2014-951, § 6.28.030(Q) (2015). The Nashville metro area provides an online map illustrating the density of registered non-owner-occupied STRs in each census tract. Property owners interested in applying for a non-owner-occupied STR permit can use this map as a tool to determine their eligibility.

There may be situations where a city will want to refrain from capping STRs in any form, such as in a city wanting to encourage tourism and where housing is in relatively abundant supply. However, in the absence of adequate protections for housing affordability, STRs could escalate housing costs and ultimately drive out lower-income and even middle-income residents.

Below, in Section VI, we explore some creative and as yet untested opportunities for cities to create selective exemptions to STR caps in order to use STRs as a lever for economic development that does not cause or exacerbate resident displacement.

## D. CREATE PROTECTIONS FOR THE WELLBEING OF GUESTS

### Health and Safety Standards:

Cities should require STR hosts to adhere to basic standards for health and safety of their guests. For example, the city could deny an STR permit to an applicant whose residential unit has outstanding Planning, Building, Housing, Fire, Health, Police, or other applicable City code violations that would make their residence unsafe for short-term guests. In addition, cities could require hosts to apply basic safety precautions such as working smoke detectors in every bedroom, a carbon monoxide detector, and an evacuation plan that identifies all exits.

A city may also want to require that hosts provide guests with basic information, including proof of STR registration, a list of the minimum safety requirements, instructions for lodging a complaint, and the name and contact information for the host and/or another responsible party that could assist guests with any problems that arise during the stay.

### Inspections:

Municipalities such as Austin, TX,<sup>45</sup> Tillamook County, OR,<sup>46</sup> and St. Helena<sup>47</sup> and Dana Point,<sup>48</sup> CA require inspection by the Fire Department, Planning Department, Bureau of Development Services, or a building official. Some of these cities provide a building and safety self-check list for hosts to prepare for the inspection.

We do not advocate for an inspection requirement, but might urge cities to create a self-inspection checklist that hosts can submit along with registration. Inspections would greatly raise the administrative costs for the city and hosts, creating undue barriers particularly for people who would only host guests during one to two weeks per year. A city may, however, wish to require inspections when guests file health & safety complaints.

45. Austin, Tx., City Land Development Code § 25-2-791 (2014). Note that the inspection requirement applies only to Vacation Rentals and multifamily unit STRs; it does not apply to Hosted Primary Residence STRs.

46. Tillamook County, Or., Ordinance 69, Section 9(a)(B) (2012).

47. St. Helena, Cal., Municipal Code ch. 17.134, § 17.134.040(F) (2012), and at § 17.134.080(B).

48. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.080(a)(3) (2013).

Where STRs are arranged through select online portals, it is important to acknowledge that the safety and wellbeing of guests is already partially supported by the guests' access to information and reviews of the hosts. As bookings and profits are largely based on good reviews from past guests, hosts are incentivized to provide safe and clean accommodations in order to maintain a good reputation in the review and rating system.

### **Insurance:**

To ensure that guests have recourse in the event that they are injured during an STR stay, cities should require that hosts are covered by an appropriate insurance policy.

Some examples could include general liability insurance, a homeowners' insurance endorsement, coverage through their STR platform, or other insurance appropriate to cover injuries to STR guests or other losses or damages that could result from the operation of an STR. San Francisco requires that hosts carry liability insurance for claims up to \$500,000, or to conduct STR transactions through an STR platform that provides equal or greater coverage.<sup>49</sup> Nashville, TN requires STR permit applications to include proof of homeowner's fire, hazard, and liability insurance, with liability insurance covering no less than \$1,000,000 per occurrence.<sup>50</sup> Dana Point, CA requires proof of general liability insurance with a minimum of \$1,000,000 in coverage, along with an agreement to indemnify and hold the city harmless for any liability claims.<sup>51</sup> Further, the city of Dana Point requires STR permit holders to provide current proof of general liability insurance during each annual permit renewal.<sup>52</sup>

## **E. ESTABLISH OVERSIGHT, COMPLAINT, AND SANCTION PROCEDURES FOR THE WELLBEING OF NEIGHBORS**

### **Oversight:**

Enforcement of an STR ordinance can present challenges, particularly in enforcing a cap on nights rented. Without access to transactional data from online STR portals, cities must rely primarily on hosts' own self-reporting, complaints by neighbors, and its own investigations of suspected violations. As such, a city could require online STR intermediaries to release, regularly or upon the city's request, information about the number of nights per year that any listed unit in their city was rented to short-term guests and the income received by the host. The city could also mandate that intermediaries do all reporting electronically and in a standardized format to make it easier for cities to aggregate data from multiple platforms. Of course, there are already dozens of companies and websites facilitating STRs, and it would be too large a burden on cities to discover and work with all of them. That being said, even just requiring the biggest players to report data could have a big impact on the ability of local regulators to oversee STR activity.

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49. San Francisco, Cal., Administrative Code ch. 41A, § 41A.5(g)(1)(D) (2015).

50. Nashville, Tenn., Metropolitan Code Ordinance No. BL2014-951, § 6.28.030.D.2. (2015).

51. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.050(d) (2013).

52. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.055 (2013).

### Avoiding and Addressing Conflict:

Cities should create channels for neighbors to file complaints about nuisance or STRs believed to be in violation of rental caps. To make neighbors aware of area STRs, an STR ordinance could require that residents applying for an STR permit or license notify adjacent neighbors, as is the case in Nashville, TN, where a permit applicant must provide proof of written notification to any property owner sharing a common wall or a common driveway with the applicant's unit.<sup>53</sup>

For cases where neighbors are disgruntled about STR activity, but a host is neither in violation of an ordinance nor creating an objective nuisance, we also recommend that cities help fund community mediation services, to give neighbors low-cost conflict resolution mechanisms.

### Complaints and Grievances:

A city should establish an accessible system for guests, neighbors, and other stakeholders to bring to the city's attention any host that is in violation of the ordinance or otherwise creating a nuisance or health and safety risk. Prior to resulting in sanctions, the grievance process should give hosts a reasonable opportunity to respond to the city to demonstrate compliance and/or explain measures the host will take to eliminate the concern. For example, Nashville, TN gives the department of codes administration the ability to revoke a host's STR permit if reports of code violation have been received, but not without providing fifteen days prior written notice of the alleged violations to the host and providing him or her the right to appeal the permit denial or revocation.<sup>54</sup>



In addition to creating such a grievance process, a city may also consider creating a private right of action that gives certain stakeholders standing to bring a complaint in court, provided that the stakeholder has already taken a complaint to the city, and the city failed to respond within a specified amount of time. San Francisco's STR ordinance contains a private right of action wherein, following a determination that the STR ordinance has been violated, an interested party (defined as the city, county, unit owner, certain housing nonprofits, homeowners association associated with the STR unit, permanent resident of the building where the alleged STR is located, or permanent resident or owner of a property within 100 feet of the property containing the alleged STR) can

53. Nashville, Tenn., Metropolitan Code Ordinance No. BL2014-951, § 6.28.030.D.3. (2015).

54. Nashville, Tenn., Metropolitan Code Ordinance No. BL2014-951, §§ 6.28.030.R.2., 6.28.030.R.3., 6.28.030.R.4. (2015).

bring civil suit against the host for monetary and injunctive relief. In such a suit, the interested party is entitled to attorney's fees if it prevails in the suit.<sup>55</sup>

### Sanctions:

We recommend that cities create a graduated scale of sanctions for hosts who are in violation of STR regulations or who are the subject of multiple complaints.

Sanctions might include:

- Reducing the number of nights per year that a host may rent to STR guests;
- Prohibiting un-hosted nights, particularly where neighbors have complained that guests have created a nuisance;
- Inspection of the unit and a requirement that the host pay for costs of inspection;
- Suspension or revocation of the STR registration or permit;
- Fines that increase with the number of violations. For example, Dana Point, CA may penalize a host \$250 for a violation. If, within a single year, the host has multiple violations, the fines rise to \$500, then to \$1,000, and eventually result in revocation of the STR permit;<sup>56</sup> or
- Ineligibility to reapply for an STR permit for some extended period of time. For example, Nashville, TN imposes a one year waiting period on hosts found operating an STR without a permit,<sup>57</sup> and Maui County, HI makes a violator ineligible to apply for a permit for five years.<sup>58</sup>

STR platforms should also be subject to sanctions for violation an STR ordinance. For example, San Francisco's STR ordinance states that any hosting platform violating its responsibilities under the code shall be subject to the city's administrative penalties and enforcement provisions, including payment of civil penalties of up to \$1,000 per day for the period of noncompliance.<sup>59</sup>

## F. PRESERVE NEIGHBORHOOD QUALITY

Cities play an important role in shaping the livability of neighborhoods, and STRs have the potential to both positively and negatively affect neighborhoods. On the positive side, visitors bring income to a neighborhood, both through payments to STR hosts and by potentially patronizing neighborhood businesses. However, many residential areas are zoned with the goal of preserving a quiet "neighborhood feeling" and promoting social cohesion among neighbors. A constant stream of STR guests can undermine both neighborhood character and simple infrastructure, such as adequate supply of street parking.

55. San Francisco, Cal., Administrative Code ch. 41A §§ 41A.4.; 41A.5.(d) (2015).

56. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.090(b) (2013).

57. Nashville, Tenn., Metropolitan Code Ordinance No. BL2014-951, § 6.28.030.R.6.b. (2015).

58. Maui County, Haw., County Code ch. 19.65, § 19.65.080(D) (2012).

59. San Francisco, Cal., Administrative Code ch. 41A § 41.A.5.(g)(4)(C) (2015).

### Limiting Crowding and Noise:

Cities may want to limit the purposes for which residents may host guests. For example, Dana Point, CA,<sup>60</sup> Anaheim, CA,<sup>61</sup> and Maui County, HI<sup>62</sup> all limit or prohibit hosting of weddings, parties, and other similar gatherings. St. Helena, CA further specifies that a party may be no larger than twice the number of guests, with a maximum of 20 party guests.<sup>63</sup> Both Maui County and St. Helena also impose quiet hours at night.<sup>64</sup>

### Managing Parking:

In an effort to address parking concerns, Maui County, HI<sup>65</sup>, Dana Point, CA<sup>66</sup>, and Anaheim, CA<sup>67</sup> have all required hosts to provide off-street parking for STR guests. Because these requirements could bar residents of transit-oriented units, dense developments, or smaller lots from hosting short-term guests, we recommend against off-street parking requirements for STRs.

## G. PRESERVE PUBLIC TAX REVENUES AND LEVEL THE PLAYING FIELD BETWEEN STRS AND COMMERCIAL HOTELS

### Taxing STRs:

Cities attract visitors by investing in and cultivating welcoming public spaces, tourist attractions, and basic infrastructure. Cities' efforts to create welcoming environments for visitors provide substantial private benefit to hotels, B&Bs, and STR hosts. By charging a Transient Occupancy Tax (TOT) or "hotel tax," cities can recoup part of this benefit and invest travelers' dollars back into the city.

The hotel tax can be a substantial source of income for cities, generating approximately \$226 million in annual revenue for Washington D.C., \$274 million in San Francisco, and \$536 million in New York City in recent fiscal years.<sup>68</sup> Transient occupancy taxes from STR stays hosted through Airbnb are estimated to amount to roughly \$11 million per year in San Francisco,<sup>69</sup> and according to a 2014 estimate published by Airbnb, New York City STRs operating through its platform could generate \$21 million in annual TOT revenues

60. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.080(a)(7) (2013).

61. Anaheim, Cal., Municipal Code ch. 4.05, § 4.05.100.0107 (2014).

62. Maui County, Haw., County Code ch. 19.65, § 19.65.030(Q)(4) (2012).

63. St. Helena, Cal., Municipal Code ch. 17.134, § 17.134.040(J)(4) (2012).

64. See Maui County, Haw., County Code ch. 19.65, § 19.65.030(Q)(1) (2012), and St. Helena, Cal., Municipal Code ch. 17.134, § 17.134.040(J)(1) (2012).

65. Maui County, Haw., County Code ch. 19.65, § 19.65.030(Q)(3) (2012).

66. Dana Point, Cal., Municipal Code ch. 5.38, § 5.38.080(a)(5) (2013).

67. Anaheim, Cal., Municipal Code ch. 4.05, § 4.05.100.0105 (2014).

68. Alison Griswold, Why Airbnb Desperately Wants to Pay Hotel Taxes. And why some cities won't let it (February 13, 2015), [http://www.slate.com/articles/business/moneybox/2015/02/airbnb\\_hotel\\_taxes\\_why\\_does\\_the\\_sharing\\_economy\\_startup\\_want\\_to\\_pay\\_them.html](http://www.slate.com/articles/business/moneybox/2015/02/airbnb_hotel_taxes_why_does_the_sharing_economy_startup_want_to_pay_them.html).

69. Ibid.

for the city.<sup>70</sup> If the projected TOT was calculated for all STR units, including those listed independently or facilitated by platforms other than Airbnb, the amount of annual TOT revenues for municipalities like San Francisco and New York City would likely be considerably higher.

Most cities with new STR ordinances require hosts to pay TOT. Due to the adverse effects STRs can have on housing affordability and displacement, we believe that cities should designate all or most of the TOT collected from STR activity toward affordable housing initiatives and other economic support services for low-income, unemployed, and underemployed residents. This could include investing TOT revenues into community land trusts, which are nonprofit housing providers that create permanently affordable homes for low-income residents.<sup>71</sup> In cities where effective enforcement of STR regulations requires additional funds not provided by sanctions and fees, a municipality might also consider directing a portion of the TOT from STR activity toward improving oversight and compliance.

### **Collecting Taxes Through Intermediaries:**

To ensure payment of taxes, cities should require that the third party facilitators of STRs collect and remit the TOT in the same way that these platforms could be required to report residents' STR activity to cities. STR platforms are in the best position to know who is hosting, which units are being rented, and how much revenue is earned. Additionally, because these platforms transfer payments from guests to hosts, they can withhold and remit the taxes with relative ease.

San Francisco's ordinance was the first to require STR platforms and services to collect the city's 14% TOT from guest fees and remit the revenue to the city. In addition, San Francisco requires STR platforms to maintain and make available to the city a record demonstrating that the TOT has been remitted, and the platforms will remain liable for the failure of a user to comply with the requirements of the Business and Tax Regulations Code.<sup>72</sup> Santa Monica, CA, Portland, OR, and Multnomah County, OR have also required STR intermediaries to collect and remit a TOT.<sup>73</sup>

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70. David Hantman, \$21 million more for New York (April 14, 2014), <http://publicpolicy.airbnb.com/21-million-new-york/>.

71. Community Land Trusts sell or lease homes to low- and middle-income residents while permanently retaining ownership of the underlying land. Through this dual ownership system, CLTs insulate the value of housing from the fluctuating value of land and can preserve the affordability of housing even in areas with substantial increases in land value.

72. San Francisco, Cal., Administrative Code ch. 41A § 41.A.5.(g)(4)(B) (2015).

73. The City of Santa Monica charges a 14% TOT. (Santa Monica, Cal., Municipal Code ch. 6.20, § 6.20.020(a)(3) (2015), and at ch. 6.68, § 6.68.020 (2004).) The City of Portland charges a 6% TOT, and Multnomah County charges 5.5% TOT. See: <http://www.portlandoregon.gov/revenue/29976>.



## SAN FRANCISCO: A CASE STUDY

For cities wishing to address the housing affordability issues exacerbated by STRs, it is helpful to use San Francisco as a case study of what not to do. Even those elements of San Francisco's STR ordinance that were intended to address housing affordability and availability were included without the reporting and enforcement mechanisms necessary for their success. Added to that, the San Francisco ordinance only focused on preventing *units*, but not *rooms*, from being removed from the long-term rental market.

### **ATTEMPT TO PROTECT THE SUPPLY OF UNITS: ONE SUCCESS AND ONE FAILURE**

San Francisco has attempted to prevent the conversion of residential units into primarily transient use by setting a cap on the number of nights per year that a whole unit may be rented to short-term guests. The city's short-term rental ordinance, which went into effect on February 1, 2015, limits STRs to primary residences, allows an unlimited number of hosted short-term stays (when the host concurrently resides in the unit) and places a 90-night cap on the number of un-hosted nights per year that a unit may be rented to short-term guests.

Though the 90-night cap on un-hosted rentals was likely prompted by the need to prevent the removal of residential units from the market, in the end it is incredibly difficult for regulators to tell the difference between a short-term rental stay that was hosted versus one that was un-hosted, even with regular self-reporting requirements. Some San Francisco regulators say that their ability to reliably distinguish between hosted

## SAN FRANCISCO: A CASE STUDY, CONTINUED

and un-hosted short-term rentals, as well as the frequency of use, could be greatly improved with access to booking data from the short-term rental platforms. However, STR platforms have refused to release this data, and the great majority of San Francisco's STR hosts remain unregistered and outside the reach of the city's new rules. As such, and so long as the city lacks mechanisms for reliable reporting and effective enforcement, the provision allowing STR hosts to rent to short-term guests for up to 365 nights

*per year so long as they are present during the stay* essentially opens the doors for year-round un-hosted STRs.



In the end, the element of San Francisco's ordinance that would most effectively reduce the conversion of residential units is actually its restriction of STRs to *primary residences*. By restricting STRs to primary residences, the ordinance allows only individuals who actually live in a unit to host short-term guests in an extra room, or to rent out the entire unit to short-term guests for up to 90 nights per year when they are away from their homes. It does not, however, incentivize landlords to evict tenants or permit individuals who own multiple residential units to keep those units empty of tenants in order to rent to short-term guests.<sup>74</sup>

### SAN FRANCISCO'S FAILURE TO PROTECT THE SUPPLY OF ROOMS:

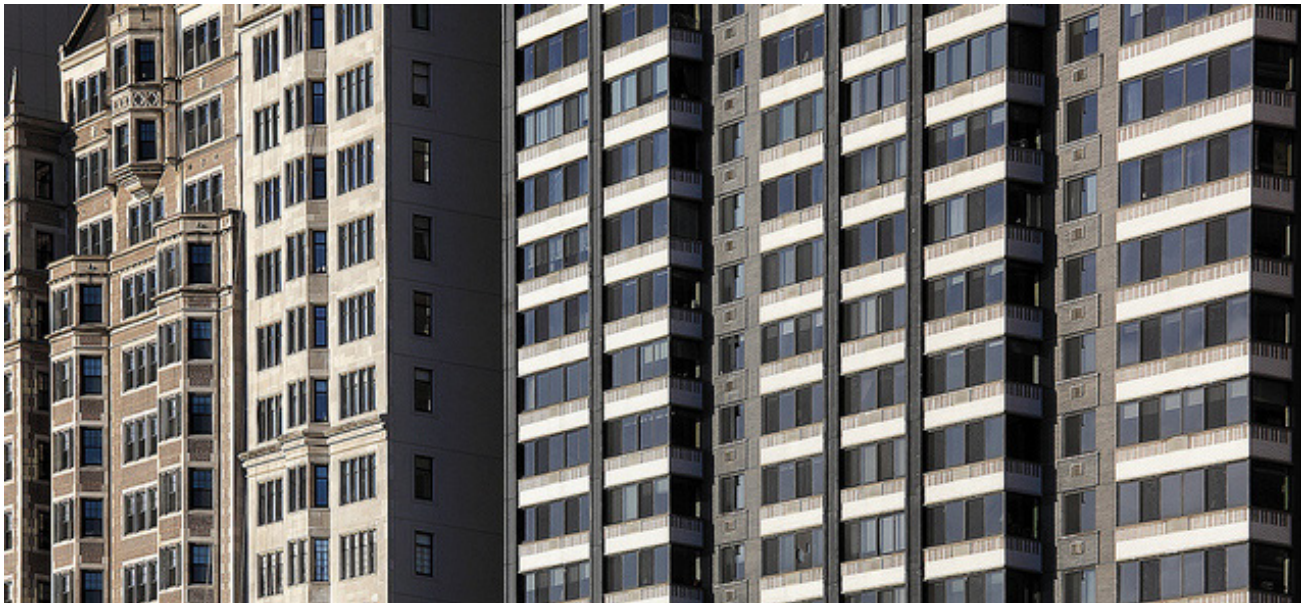
As stated above, allowing hosts to engage in unlimited Hosted Primary Residence short-term rentals can reduce the availability and affordability of housing units if unaccompanied by proper reporting and enforcement mechanisms.<sup>75</sup> But allowing year-round hosted STRs is also problematic for another reason: it creates an incentive for renters and owners to remove rooms from the long-term rental market. If a city does not place a limit on Hosted Primary Residence STRs, people who might otherwise seek a housemate might opt to earn more flexibility or more income per night by using rooms primarily for short-term rental. However bedrooms for rent within a unit are a key source of affordable housing for single individuals, couples, students, and others who cannot afford to rent entire units. Therefore, in cities that are experiencing severe housing pressures, we recommend setting a limit on the number of nights per year that rooms can be rented to short-term guests, whether hosted or un-hosted.

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74. Such units would be considered Vacation Rentals, and we recommend that cities where low-income and middle-income households experience difficulty finding affordable housing units strictly limit or even ban Vacation Rentals. See definition of Vacation Rentals in Section V.A.

75. See definition of Hosted Primary Residence STRs in Section V.A.

## VI. GOING BEYOND IMPACT MITIGATION: RESTORATIVE APPROACHES TO REGULATING STRS



Although the recommendations above are aimed at mitigating potential harms of STRs, they do not solve the underlying economic imbalances that are damaging communities and motivating the pushback against STR platforms. We believe that it is the responsibility of cities to find ways to address wealth inequality, income inequality, affordable housing shortages, unemployment, under-employment, and poverty. Rather than focusing solely on mitigating the harms of STRs, cities could see STRs as a lever for economic change that can repair persisting economic problems already impacting communities. Indeed, the widespread use of STRs has encroached substantially upon domains under cities' control, namely land use laws and controls on housing supply. For this reason, cities can legitimately maintain their claim on such domains, and perhaps even go as far as prohibit private companies from brokering STRs.

Below, we offer three bold and creative approaches for municipalities interested in harnessing the economic benefits of STRs in addressing local economic issues. That we know of, no city has yet experimented with the following approaches.

### **Approach #1: Raising STR Caps on the Basis of Financial Need**

Gentrification is a powerful economic and cultural process of neighborhood change. The patterns of gentrification can be found in the US and in districts, towns, and cities around the world. Complex and multifaceted, gentrification can occur at differing rates and for different reasons. One main factor, of course, is wealth and income disparities. Cities concerned by the disruptive and exclusionary effects of gentrification could consider STRs as either an agent of gentrification, or a lever against it.

Allowing high-income residents to earn additional income from STRs might intensify the process of gentrification, but allowing low-income residents to earn income from STRs has the potential to protect residents who might otherwise be displaced. Though regulating STRs on a household-by-household basis could be challenging to manage, cities could help low-income long-term residents use STR income to keep pace with increasingly expensive surroundings, remain in place, and benefit from – rather than be displaced by – the economic development of the area.

As STRs have become increasingly popular, many anecdotes have emerged of families, senior citizens, and other individuals avoiding foreclosure or eviction as a result of income generated by hosting short-term guests. Ideally, the potential for residents to use STR income to stay in place would not be fully lost if STR activity was limited by regulation. STR regulation could, in fact, offer cities a lever to create income opportunities for populations that are most impacted by unemployment and underemployment. Cities could even use this lever to selectively raise caps on the number of STR nights per year for households that meet objective financial need criteria.

Granting exemptions to STR caps on a household-by-household basis challenges cities to develop clear objective criteria on which to review applications, and makes the granting of exemptions somewhat more akin to a form of public benefit, like unemployment benefits. An application process might require the applicant to show that he or she has recently become unemployed, recently lost unemployment payments or other public benefits, or recently had a substantial increase in monthly rent. A cap exemption could also be time-limited, recognizing that the exemption acts as a temporary bridge for an individual or household seeking to get back on its feet after a financial blow. Any strategy for raising caps on a household-by-household basis should be carefully reviewed for compliance with constitutional due process provisions.

Selectively raising caps on a household-by-household basis would create substantial administrative costs for a city, but these costs should be seen in the context of the city's economic stabilization and development strategies. Furthermore, the administrative costs of such a program could be offset by TOT if the costs were passed to STR hosts through added STR taxes.

### **Approach #2: Keeping Wealth Local with a Municipally-Owned STR Platform**

In order to recapture wealth that is leaving cities through payments to absentee STR platforms such as Airbnb, cities can prohibit the use of these STR companies, and require that residents use a municipally owned platform with functionality similar to that of Airbnb and other leading STR intermediaries. While this solution may prove difficult to implement at the level of a single city, it would become more financially viable if multiple large cities formed a partnership to jointly invest in the development and ongoing maintenance of the software. The financial return to cities would be nearly guaranteed, given that fees users

are accustomed and willing to pay to existing STR platforms would instead go directly to the City, providing funds for administration, affordable housing, or investment in other city programs. A substantial benefit of a municipal STR platform would be its facilitation of oversight and enforcement, because compliance with the law, including TOT remittances, reporting, and permit renewal, could be carried out directly through the platform.

### **Approach #3: Building Community Wealth Through a Sharing Economy Trust**

Another bold strategy for using STRs to build community wealth is for a City to create a permanent trust for the collection, investment, and distribution of fees from STR bookings, much in the same way that the Alaska Permanent Fund pays all Alaska residents annual dividends from mineral, gas, and oil revenues.<sup>76</sup> Such a trust would ensure that all city residents benefit from the economic wealth brought by tourism and travel, and the trust could also align residents around the goal of ensuring an adequate supply of housing for all. Peter Barnes's book, *With Liberty and Dividends for All*, describes a variety of strategies for creating trusts that pay universal dividends derived from fees collected on the use of other assets, such as the atmosphere and intellectual property. In this vision, as the recipients of dividends from multiple sources, citizens would ultimately accumulate what amounts to a universal basic income.

We offer this idea because of its potential political viability in comparison to approaches that focus primarily on setting caps and investing tax revenue in affordable housing development. During a 1999 referendum, 83% of Alaskan voters voted to keep the Alaska Permanent Fund in place, demonstrating the potential for universal dividend systems to inspire support from citizens across the political spectrum.

To illustrate how this might work with STRs: Imagine that the City of San Francisco chartered a corporation called the "San Francisco Sharing Economy Trust." The stated purpose of the Trust is to support the long-term creation and preservation of an adequate housing supply for a socio-economically diverse city. Once chartered, the Trust would be somewhat insulated from the dynamics of electoral politics, enabling trustees to make decisions that serve the Trust's purposes, while remaining accountable to San Francisco residents, who are the beneficiaries of the Trust. The Trust could be empowered to determine the City's caps on STR rentals, and, separate from the 14% TOT already collected by the City, the Trust would be empowered to collect an additional percentage of all revenue from STRs. Ideally, the City would mandate that all STR bookings of housing within its borders be made through a municipally-owned or Trust-owned booking platform, rather than a for-profit platform like Airbnb. As such, the 10% to 20% booking fee normally collected by companies like Airbnb could go to the Trust. The Trust could then raise and lower the fee based on the Trust's assessment of housing unit supply in the city. When housing is in short supply, the Trust might raise the booking fee as high

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76. For more information about the Alaska Permanent Fund, see <http://pfd.alaska.gov/>.

## GOING BEYOND IMPACT MITIGATION, CONT.

as 30% to 40%, thereby giving STR hosts an incentive to put rooms back on the market for long-term rental. Because higher fees could ultimately bring higher dividends to city residents, residents will directly benefit from the Trust's efforts to preserve the housing supply.

There are at least three options for the management of the Trust's funds:

1. The Trust could retain all STR booking income and invest it (in the form of loans) in housing developments and purchases designed to preserve long-term affordability, such as projects stewarded by community land trusts. When the loans begin to pay a return, that income will be divided equally among all city residents and direct-deposited into their bank accounts.
2. The Trust could distribute STR booking income as dividends to residents, without the intermediate step of investing it in affordable housing development.
3. The Trust could strike a balance between the two options above, investing some STR booking income and making direct distributions of the rest.

Like its Alaskan counterpart, the San Francisco Sharing Economy Trust could create an online system to administer the funds. City residents could also use the online system to register and prove their residency in order to receive the dividend deposit. The Trust could set similar eligibility requirements to Alaska's Fund,<sup>77</sup> such as requiring that someone have lived in the city for at least one year prior to receiving a dividend.

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77. See Alaska's residency verification information here: <http://pfd.alaska.gov/Eligibility/EstablishingResidency>.

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