

REGULATING SHORT TERM RENTALS

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The Problem

At a time when we are facing a nationwide housing crisis, **unregulated short-term rentals (STRs) can take up to thousands of units of housing away from local housing stock, thus increasing housing costs, evictions and displacement.**¹ Short-term rentals are a model of tourist accommodation where part or whole residential units are rented for less than thirty days through online platforms like Airbnb, Booking.com, and VRBO. Because short-term rentals can generate more revenue than a long-term lease, the **business model encourages investors to engage in real estate speculation and convert housing units from residential to commercial use.** These conversions can fuel gentrification and displacement directly and indirectly by increasing property tax assessments and nearby rents; communities of color, and specifically Black communities, often bear the brunt of these consequences.² A national study of short-term rental impacts found that **short-term rentals accounted for one-fifth of the average annual rent increase nationwide**, with more severe impacts in neighborhoods with higher density of short-term rental activity.³

STR platforms have grown exponentially since the founding of Airbnb in 2008, reaching a record high of 1.3 million U.S. listings in summer 2022.⁴ In some markets, the number of entire housing units listed as short-term rentals has exceeded the number of units available for rent.⁵ Since the pandemic, short-term rentals have grown particularly rapidly in small cities and rural areas.⁶

The STR business model creates an unfair playing field for local tourist commercial accommodations because, absent regulation, **short-term rentals are not taxed or zoned as hotels or lodging.** In cities with union hotels, short-term rentals undermine the high-quality, family-supporting jobs of hotel workers, whose living wage jobs and benefits are a backbone of local communities. In cities which depend on hotel taxes for general fund revenue, regulating short-term rentals is of fiscal importance. For example, San Francisco and Los Angeles received \$300-400 million annually in hotel taxes, or 11% and 7% of their general fund revenue respectively, before the pandemic.⁷ Short-term rentals also can violate local zoning ordinances bringing commercial activity into residential areas, turning neighborhoods into high turnover tourist hubs.

Although platforms like Airbnb have defended their business model by pointing to potential wealth creation for small homeowners and contribution to local economic development, the **major beneficiaries of unregulated short-term rentals, in addition to the multinational corporate platforms themselves, are more likely to be real estate investors, landlords and homeowners who are disproportionately white and of higher wealth.**⁸ Numerous studies of underregulated short-term rentals have found that the bulk of listings and their revenue are part of multi-unit operations and take entire units from the housing market, and that their impact on economic development is often overstated because short-term rentals are more likely to cannibalize existing business accommodations than expand it.⁹

The Solution

Many municipalities have created regulations to restrict short-term rental activity and limit or prohibit the effective conversion of residential units to commercial uses, through mandatory registration of licensed units with minimum standards for safety and habitability and enforcement provisions. As with any new regulatory efforts, leaders should first assess and consider existing planning frameworks. **Each effective policy includes the following core components**, though municipalities may want to choose different models based on local differences in goals, economic conditions and enforcement infrastructure.

Core Pieces of a Short-Term Rental Policy

1. Limit Short-Term Rentals

Short-term rental ordinances have an opportunity to define and limit the scope of allowable short-term rental activity. Municipalities may already have restrictions on vacation rentals or bed and breakfasts on the books which could be applied to short-term rentals. Several models for limiting short-term rentals have been implemented successfully, including:

Host Residency Requirements

(True Home-Sharing): Allowing short-term rental hosting only in one's primary residence effectively limits short-term rentals to no more than one unit per host. Primary residency requirements prevent loss of long-term housing units, prohibit hosting and holding of multiple units, discourage speculation and its impacts, and ensure that whatever economic development benefits generated by STR activity remain in the community, instead of flowing to out-of-town investors. Many policies authorize only short-term rentals that are hosted by the primary resident (owner, sometimes including renter) ([San Francisco](#), [Denver](#), [Boston](#)). Establishing a clear definition of primary residence and other terms are critical components to an effective ordinance. In order for STR proprietors to

register, Santa Monica requires proof of residency through two forms of identification including state ID, income tax, property tax, or utility bill.

Hosted vs. Unhosted Rentals: Some regulations go further to require that hosts must be present at the property during all short-term rental stays ([Santa Monica](#), [New York City](#)). Proponents argue that hosted rentals discourage disruptive behavior by guests. Other policymakers have cautioned that it can be challenging to determine whether a rental is hosted or unhosted.

Capping Short-Term Rental Permits and

Moratoriums: Some policies cap the number of permits that can be issued in a municipality to limit the impact on the housing market. Some policies select a maximum number of allowable permits (ex. 280 in Woodstock, NY), while others cap the number as a percentage of market rate units (1% for whole units in San Diego). Short-term rentals can also be limited to a percentage, or banned, in multi-family buildings ([Austin](#), [Chicago](#), [New Orleans](#), [Raleigh](#)). In order to best preserve affordable housing, policies should prohibit short-term rentals in any subsidized affordable housing or rent-stabilized housing. In addition, some municipalities have put into place temporary **moratoriums** on all new STR permits when facing a large influx ([Aspen, CO](#), [Woodstock, NY](#)).

Zoning: Other effective policies restrict short-term rentals by defining them as a lodging use only allowable in certain zoned areas (usually commercial or mixed-use and not residential). Some cities with large influxes of tourists like [Honolulu, HI](#), [South Lake Tahoe, CA](#), [Durango, CO](#), [Miami Beach, FL](#), [Arlington, TX](#), and [San Antonio, TX](#) have pursued this model to contain the impact of tourists in residential neighborhoods. [Durango, CO's](#) policy uses both a cap of 2-3% of residential units citywide and a further zoning-based restriction in residential neighborhoods.

2. Establish Mandatory Registration

Most short-term rental regulations create a system of mandatory registration and permitting of legal short-term rentals. **Permitting allows short-term rentals to be held to common building code, habitability, fire and safety standards, and for enforcement of quality-of-life complaints.** Many policies require a business license ([Portland, OR](#), Santa Monica, and many more), create a public registry of licensed rentals (Portland, OR, [Nashville](#), Boston, and more), and require proof of residency at registration through documentation like a drivers license, utility bill, etc. Many policies require short-term rental listings to include their valid registration number and some put the onus on the platforms to advertise valid registration numbers (San Francisco, CA, Austin, TX, Maui County, HI, Denver, CO). Free or streamlined registration systems with online portals can encourage host compliance. On the other hand, registration fees can be calibrated to cover the cost of funding enforcement. Enforcing valid registrations or licenses is less costly and more effective than trying to enforce quality-of-life complaints, which involves summoning enforcement officers to the site.

3. Establish Taxes and Fees Structure

Many STR policies levy fees on short-term rentals in an attempt to **achieve parity with other regulated accommodations, cover the cost of enforcement, or mitigate the impact on housing affordability.** In jurisdictions with hotel or lodging taxes, they are often applied to short-term rentals through the ordinance (14% of booking revenue in San Francisco). In many jurisdictions, Airbnb has agreed to collect and remit hotel taxes to the municipality (SF, Santa Monica, Portland, Chicago, and more). Some jurisdictions have required STR taxes to be dedicated to affordable housing programs ([Seattle](#)). Generating tax revenue from short-term rentals can, however, create a perverse incentive for local governments to enable the industry. Local leaders should keep in mind that it's nearly impossible for STR taxes or fees to fully mitigate negative housing impacts.¹⁰

4. Establish Enforcement Mechanisms

It is important to have a clear and consistent set of rules that apply to all operators and do not rely on self-policing. Local governments have struggled to achieve high rates of compliance with STR regulations. Municipalities need to **identify unregistered listings, inspect registered listings, and deter non-compliance.** The most effective policies either enlist platforms in compliance or use third party contractors or city agencies to scrape listings to check for compliance (See section below on Platform Compliance). Many policies give enforcement departments subpoena power to obtain records related to compliance from hosts and platforms (Santa Monica, NYC, San Francisco, Denver). Municipalities often identify an existing department which can carry out enforcement such as building inspection, code enforcement (Santa Monica, Portland), business license office (Denver), or consumer protection (Chicago). Denver additionally has a [Short-Term Rental Advisory Committee](#) made up of city councilmembers, stakeholders and department staff which meets monthly to discuss licensing and compliance rates and provides recommendations to the enforcement department.

Platform Accountability: One effective enforcement strategy is to **hold STR platforms accountable to local regulations** in their listings. Platform accountability policies typically require platforms to only process transactions of legal units, penalize the platform for listing illegal units and may include tax collection and remittance, recordkeeping, and regular data reporting requirements.¹¹ Platform compliance policies are only effective when paired with a functional mandatory registration system so that platforms can easily determine which units are allowed or not allowed. Instead of finding non-compliant listings after the fact through complaints, investigations, and citations, platform accountability incentivizes platforms to remove these listings upon creation or upon request from an enforcement agency, adding proactive opportunities to de-list non-compliant

listings, saving municipal resources. Platform accountability policies are more common in mid-sized or larger cities given the legal resources that may be needed to enforce them. Denver and New York City are the most recent cities to add or strengthen [platform accountability requirements](#) in 2020 and 2021. Alternatively, and in addition, some jurisdictions have contracted with a third party tech companies to access platform data, identify non-compliance and host registration systems (Los Angeles, Mountain View, CA, Truckee, CA, [Denver, CO](#), Nashville, TN). Municipalities will need to budget for compliance and enforcement, whether done in-house or via a third party.

Complaints: Some policies create a mechanism for neighbors, guests or residents to lodge complaints of violations of a short-term rental ordinance, empowering city code enforcement agents to respond to such complaints (Nashville, TN, Portland, OR). Some municipalities have empowered inspectors to spot check registered units and respond to complaints of unregistered short-term rentals (Portland).

Private Right of Action: San Francisco's policy allows for private right of action to be taken against illegal listings by nearby neighbors or other stakeholders if the planning department finds an illegal conversion occurred.¹²

Penalties: Short-term rental ordinances can create penalties for both the host and the booking service. Hosts can have their registration revoked, or under [NYC's Local Law 18](#), hosts can be fined up to \$5000 per violation and booking services can be fined \$1500 for each unlawful transaction. Many policies require penalties for false statements by hosts in registration materials.

Preemption Challenges

STR platforms have pushed statewide bills in several states which remove the ability of local governments to regulate short-term rentals. Regulation of short-term

rentals is preempted in Florida, Idaho, Indiana, Tennessee, and Arizona (but was modified in Arizona in 2022 to allow some local regulation).

STR preemption bills have been proposed (but defeated) in Texas, Georgia, Mississippi, Missouri, Virginia, Michigan, Illinois, and other states.¹³ Cities in states with high preemption should be aware of the status of STR preemption bills in their state and may need to fight back in coalition with other local governments for the right to create their own STR ordinances.

Legal Challenges

Many early short-term rental ordinances were legally challenged by Airbnb. Airbnb sought to avoid turning over host booking data, raising a number of different legal theories to oppose regulation such as host privacy rights, unlawful search and seizure, and trade secrets.

Fortunately for regulators, these challenges have mostly been unsuccessful. Courts have upheld municipalities' right to obtain certain information about short-term rental transactions from platforms. In 2019, the Ninth Circuit Court of Appeals upheld Santa Monica's strict STR regulations including their requirements for platforms to remit taxes, share transaction data and only complete bookings for locally registered properties.¹⁴ The court rejected Airbnb's legal theory that the Communications Decency Act shielded online platforms from having to share host data with local governments and paved the way for local governments to regulate short-term rentals on surer legal footing. Following the Santa Monica ruling, Airbnb reached settlements with other cities it has sued including New York City, San Francisco, [Santa Monica](#), NYC, Boston, Miami Beach, Los Angeles and others, agreeing to similar platform accountability provisions. Some cities modified their platform accountability provisions to prohibit platforms *processing* illegal transactions instead of *posting* illegal listings, in order to be the most legally defensible under the Ninth circuit ruling. In 2020, The

Supreme Court denied a petition to hear an appeal of the Ninth Circuit ruling.¹⁵

Some legal pitfalls remain. In August 2022, the 5th Circuit Court of Appeals, which has jurisdiction over Mississippi, Louisiana and Texas, struck down New Orleans' STR primary residency requirement, as discriminatory against out-of-state property owners under the Commerce Clause.¹⁶ **Cities in Texas, Louisiana and Mississippi with STR residency requirements must revise their ordinances**, but may be able to creatively restrict real estate speculators through other models such as LLC-restrictions or accessory-use zoning requirements.

In addition, some municipalities have entered into MOUs with Airbnb in order to clearly define platform responsibilities from the outset. These MOUs can be counterproductive if the city gives platforms undue rights to confidentiality. MOUs can also be burdensome and less comprehensive than regulation because they need to be negotiated with each platform separately in an evolving marketplace.

Next Steps and Additional Resources

As a first step, leaders should **consider how their goals with respect to regulating short-term rentals fit into and fulfill existing planning frameworks** (master/general plan, housing needs assessments, etc). Municipalities may also **consider commissioning studies** of their short-term rental market and its impact on housing affordability as a way to catalyze and inform policymaking (for example, [New Orleans](#), [Los Angeles](#), [Oakland](#)).

To learn more about short-term rentals' impact on your local housing market, see data from [insideairbnb.com](#) or [Airdna.com](#).

Endnotes

1. Short-term rentals removed between 7,000 and 13,500 housing units from NYC's long-term rental market from 2014-2017 and contributed to racialized gentrification. ["The High Cost of Short-Term Rentals"](#), Wachsmuth et. al., McGill University School of Urban Planning, 2018.
2. Jane Place studied the impact of STR activity on Black Communities in New Orleans: [Short-Term Rentals, Long Term Impact](#), Jane Place Neighborhood Sustainability Initiative.
3. ["Research: When Airbnb Listings in a City Increase, So Do Rent Prices"](#), Barron, Kung, Proserpio, Harvard Business Review, 2019.
4. ["U.S. Market Review: Record Summer Ends on a High"](#), Airdna, September 2022.
5. ["NYC Now Has More Airbnb Listings Than Apartments for Rent"](#), Kim Velsey, Curbed, May 17, 2022.
6. ["How two years of a pandemic impacted the short-term rental industry: Four trends in 2022"](#), Peter Abualzolof, Silicon Valley Business Journal, July 2022.
7. [California Fiscal Focus. A Monthly Report from the State Controller](#), November 2019.
8. ["The economic costs and benefits of Airbnb: No reason for local policymakers to let Airbnb bypass tax or regulatory obligations"](#), Josh Bivens, Economic Policy Institute, 2019.
9. InsideAirbnb's data reports the percentage of hosts with multiple listings for each city (ex. [68% in Dallas](#), [66% in Chicago](#)), and the percentage of entire unit listings.
10. For example, New Orleans' policy dedicates fee revenue to fund affordable housing development but only collected enough funds to cover the cost of developing one affordable unit in a nine-month period, while STR activity takes thousands of units away from the rental stock in the city, per [Short Term Rentals, Long Term Impacts](#)
11. See "Legal Challenges" for more information about platform accountability requirements.
12. See [San Francisco Administrative Code Chapter 41A.5](#)
13. ["Three More States Propose Short-Term Rental Preemptions"](#), Greg Holcomb, Vacation Rental Management Association, 2019.
14. [HomeAway.com vs. The City of Santa Monica: Opinion](#), March 13, 2019.
15. ["Supreme Court Declines to Hear Santa Monica Ordinance Limiting Airbnb"](#), JD Supra, May 31, 2020.
16. ["Fifth Circuit Strikes Down New Orleans Short-Term Rental Restriction"](#), Thomson Reuters Practical Law, August 25, 2022.