



AGENDA
for the Planning Commission
of the Town of Palisade, Colorado
341 W. 7th Street (Palisade Civic Center)

January 21, 2025

6:00 pm Regular Meeting

<https://us06web.zoom.us/j/3320075780>

Meeting ID: 332 007 5780

I. REGULAR MEETING CALLED TO ORDER AT 6:00 pm

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. AGENDA ADOPTION

V. ANNOUNCEMENTS

A. Upcoming Meetings:

1. Board of Trustees - Tuesday, January 28, 2025, located at 341 W. 7th Street commencing at 6:00 pm

VI. APPROVAL OF MINUTES

- A. Minutes from January 7, 2025, Regular Planning Commission Meeting**

VII. TOWN MANAGER REPORT

VIII. PUBLIC HEARING I

A. Conditional Use Permit Processing of Food and Related Products at 3810 North River Rd – Monumental Mushrooms

The Planning Commission will consider an application for a Conditional Use Permit (CUP) to allow the processing of food and food-related products at 3810 North River Road, Palisade, as applied for by Monumental Mushrooms.

1. Staff Presentation
2. Applicant Presentation
3. Public Comment
4. Board Discussion
5. Applicant Closing Remarks

6. Decision - Motion, Second, and Rollcall Vote to: *Forward a recommendation to the Board of Trustees to **approve or deny** a Conditional Use Permit (CUP) for Monumental Mushrooms located at 3810 North River Rd to allow processing of food and related products **with or without** conditions.*

IX. PUBLIC HEARING II

A. Variance for Accessory Structure (Garage) Height at 398 West First Street

The Planning Commission will consider a request for a variance request to allow the construction of a garage with a maximum height of 29 feet, which exceeds the current 15-foot height limitation by approximately 14 feet at 398 W 1st Street as applied for by Tony Ware.

1. Staff Presentation
2. Applicant Presentation
3. Public Comment
4. Board Discussion
5. Applicant Closing Remarks

6. Decision - Motion, Second, and Rollcall Vote to: *Forward a recommendation to the Board of Trustees to **approve or deny** a variance request for 398 West First Street to allow a maximum accessory structure height of 29 feet, **with or without** the following conditions, finding that the application **meets or does not meet** the criteria for variance approval under Section 4.12.F of the Land Development Code.*

X. CONTINUED BUSINESS

A. Review of Draft STVR Regulations

Further edits have been made to the draft regulations amending section 7.01 of the Palisade Land Development Code concerning Short Term Vacation Rentals (STVRs)

1. Staff Presentation
2. Public Comments and Questions - *Please state your name and address, keep comments on the current planning topic, and 3 minutes or less.*
3. Board Discussion
4. Direction – *Provide staff with direction to bring forward comparative policies from similar communities, evaluate licensing/permit fee structures, make changes to existing draft regulations, or draft an ordinance and schedule public hearings based on the discussion & packet items presented.*

XI. PUBLIC COMMENT – For items not on the Public Hearing agenda

Please keep comments to 3 minutes or less and state your name and address. Neither the Planning Commissioners nor staff will respond to comments at this time. The Commission may direct staff to look into specific comments to bring back as an Agenda item at a future meeting.

XII. ADJOURNMENT



**MINUTES OF THE REGULAR MEETING OF THE
PALISADE PLANNING COMMISSION
January 7, 2025**

The regular meeting of the Planning Commission for the Town of Palisade was called to order at 6:00 pm by Vice-Chair Ed Seymour. Present were Commissioners LisaMarie Pinder, Brandon Burke, Don Bosch, Alex Sparks, and Dave Hull. Absent was Chair Amy Gekas. A quorum was declared. Also in attendance were Community Development Director Devan Aziz and Special Events Coordinator Rebecca Loucks.

AGENDA ADOPTION

Motion #1 by Commissioner Hull, seconded by Commissioner Burke, to approve the agenda as presented.

A voice vote was requested.
Motion carried unanimously.

APPROVAL OF MINUTES

Motion #2 by Commissioner Burke, seconded by Commissioner Bosh, to approve the minutes of the Palisade Planning Commission from November 19, 2024, and December 3, 2024.

A voice vote was requested.
Motion carried unanimously.

PUBLIC HEARING I

Proposed Amendment to Conditional Use Permit to Allow a Pole Sign-Happy Camper

Vice-Chair Seymour opened the hearing at 6:03 pm.

Community Development Director Aziz gave a brief presentation, including the findings of fact, to discuss a proposed amendment to a conditional use permit to allow a pole sign for Happy Camper Cannabis Company on the I-70 Corridor located at 420 Wine Valley Road, Palisade, CO 81526.

Applicant Colleen Scanlon gave a presentation regarding why the proposed amendment was necessary for a pole sign to be placed along the I-70 Corridor for Happy Camper Cannabis Company located at 420 Wine Valley Road. Ty Johnson, owner of Mesa Planning & Design, followed with a presentation regarding the placement and design of the proposed sign.

Vice-Chair Seymore opened the hearing to public comments.

Matt Payne, Laurie Ehrich, and Bob Clements of Palisade, CO, expressed concerns about light pollution. Jessica Burford, CEO of the Palisade Chamber of Commerce, expressed support for the pole sign.

Vice-Chair Seymore opened the hearing to Commission discussion.

Members of the Commission and Community Development Director Aziz discussed the following items and concerns:

- Understanding the need for advertising
- The impact the pole sign will have on the surrounding residents and businesses
- Concerns due to not having actual design plans to view for the presentation
- Proper permitting from Mesa County and the Town of Palisade

Applicant Colleen Scanlon closed by giving a verbal presentation on thoughts of the actual design and the guarantee the sign will be properly permitted with the Town of Palisade and Mesa County and thanking the Planning Commission for allowing her to present.

Motion #3 by Commissioner Burke, seconded by Commissioner Hull, to forward a recommendation of approval of the proposed amendment to the conditional use permit to allow Happy Camper Cannabis Company a pole sign located at 420 Wine Valley Road.

A roll call vote was requested.

Yes: Commissioner Bosh, Commissioner Hull, Vice-Chair Seymour, Commissioner Burke, Commissioner Sparks, Commissioner Pinder

No:

Absent: Chair Gekas

Motion carried.

Vice-Chair Seymour closed the hearing at 6:32 pm.

PUBLIC HEARING II

Variance for Pole Sign Height-Happy Camper

Vice-Chair Seymour opened the hearing at 6:32 pm

Community Development Director Aziz gave a brief presentation, including findings of fact, to discuss a proposed variance to allow a 40-foot pole sign for the Happy Camper Cannabis Company, located at 420 Wine Valley Road, Palisade, CO 81526.

Applicant Colleen Scanlon gave a presentation regarding why the proposed height variance is needed along the I-70 Corridor, along with details regarding the design of the sign. Ty Johnson, Owner of Mesa Planning & Design, followed with a presentation regarding why their proposal meets all criteria for the height variance. Colleen Scanlon closed with a presentation on how the Happy Camper Cannabis Company can attract new customers with the elevated 40-foot sign.

Vice-Chair Seymore opened the hearing to public comments.

Matt Payne expressed concerns about the light and the effects it would have on agriculture.

Vice-Chair Seymore opened the hearing to Commission discussion.

Members of the Commission and Community Development Director Aziz discussed the following items and concerns:

- Appreciation of the applicant for clarifying the sign’s designs to only being visible from the I-70 Corridor
- Clarification on the elevation of the sign
- Appreciation of Community Development Director Aziz and the applicant for giving a detailed presentation

No closing remarks from the applicant.

Motion #4 by Commissioner Bosh, seconded by Commissioner Hull, to forward a recommendation to the Board of Trustees to approve the variance request by Happy Camper Camper Cannabis Company for a 40-foot pole sign at 420 Wine Valley Road, finding that the application meets the criteria for variance approval under Section 4.12.F of the Land Development Code.

A roll call vote was requested.

Yes: Commissioner Hull, Vice-Chair Seymour, Commissioner Burke, Commissioner Sparks, Commissioner Pinder, Commissioner Bosh

No:

Absent: Chair Gekas

Motion carried.

Vice-Chair Seymour closed the hearing at 7:03 pm.

CONTINUED BUSINESS

Review of Ordinance 2025-XX

Community Development Director Aziz gave a brief presentation and led Commission discussion on further edits that have been made to the draft ordinance amending section 7.05 of the Palisade Land Development Code concerning specific accessory use and structure standards.

The consensus of the Commission is for staff to create further edits and schedule a public hearing for amending section 7.05 of the Palisade Land Development Code concerning specific accessory use and structure standards.

Review of Lot Requirements

Community Development Director Aziz gave a brief presentation and led Commission discussion on the current form of regulating lot sizes and potential alternatives.

The consensus of the Commission is to make further changes regarding setbacks and formal amendments to the Land Development Code, adjusting minimum lot sizes as recommended.

NEW BUSINESS

Municipal Trash Receptacles

Community Development Director Aziz gave a brief presentation and led Commission discussion on possible new trash receptacles to be placed in the downtown area and Riverbend Park with a budget for 25-30 units.

The consensus of the Commission is for staff to ensure trash receptacles are what works best for the Parks Department, with recommendations for high-visibility trash receptacles in Riverbend Park.

PUBLIC COMMENT

Bill McDonald, Palisade, CO, Christine McDonald, Palisade, CO, and Sarah Ownes, Palisade, CO, all expressed concerns about short-term rentals.

Matt Payne, Palisade, CO, voiced concerns about the negative effects of ambient lighting on agriculture, as well as the lack of affordable housing in Palisade.

ADJOURNMENT

Motion #5 by Commissioner Burke, seconded by Commissioner Bosh, to adjourn the meeting at 7:57 pm.

A voice vote was requested.

Motion carried unanimously.

X

Keli Frasier, CMC
Town Clerk

X

Amy Gekas
Planning Commission Chair

The Town is currently working on engineering and design for multiple projects listed below. Projects are currently scheduled for construction to begin in the Fall 2025. Construction projects to start in the fall include Elberta roundabout, multi-modal path on Elberta, sewer pipe construction, and Mesa County has scheduled to construct multi-modal path on 38 road. Lots of great investment and safety construction coming to small town Palisade!

The Town has received recognition through an article titled: ‘coolest desert town..’ Available through google.

Road work is occurring with crack seal and sidewalk grinding throughout town.

Connecting Communities sidewalk project 90% complete. Remaining 10% is asphalt repair and landscape in the spring.

Riverbend Park continuous with tamarisk and russian olive removal. Tree planting is scheduled for the spring to assist with growth as the maturing cottonwoods in the park die out, there are new ones growing.

The Water Department has been hard at work with State Certifications. We have 2 new additional employees who have passed the first round of tests. There are 4 levels in water & wastewater certification. Great work!

January 28 Work Session: the Board of Trustees will receive requested information for various Capital Projects. This is the beginning of the discussion of future infrastructure improvements.

Waste-Water Consolidation to Clifton**\$24 million**

- Project has officially started with kick-off meeting August 30, 2024
- Working with local bank on construction loan documents for \$24million
- Meetings with businesses affected by rate increase – October 2024
- Board of Trustees Resolution for rate change October 2024
- Engineering Design estimate 1.5 years – 9.2023 – 3.2025
- Easement acquisitions estimate 1.5 years - 9-2023 – 3.2025
- Winter Construction (canal drained) – Fall 2025 – Fall 2026
- Abandonment of existing lagoons – 1 year – Summer 2026 – 2027

DOLA Grant – Engineering Waste-Water Consolidation \$1 million

- Received grant to match Town \$1 million for the required contribution to the Engineering Design of the Waste-water project

Roundabout Highway 6 – CDOT CDOT

- The engineer design work is completed and CDOT finalizing
- CDOT estimated construction start is late fall of 2025
- This is a CDOT project – the Town is participating with bike delineators, landscaping, and street lighting.

TAP Grant Sidewalks – 80% Grant – 20% Town \$1 million

- Project changed with roundabout and multi-use paths with this project
- TAP grant sidewalks now from Cresthaven to High School
- 100% designed & CDOT approved
- Land acquisition complete – 3 property purchases –
- Land acquisition estimated cost: \$81,550 CDOT grant covers, any cost over this amount Town covers, possible 20%
- Request for bids was advertised and town accepted bid from United. Construction to be completed this winter.

Multi-Modal Sidewalk Grant Award for Elberta – 1st Street to Wine Cty Rd. \$1.8 million

- Town awarded \$1.8 million in grant funds from CDOT for multi-modal path
- Town match 20% at \$200,000
- Includes 2 bridges over canal
- RFQ for Design Engineering submitted to CDOT for approval
- JUB Design/Engineering Complete and in review with CDOT.

Land Use Code Update

- DOLA grant \$20,000 - Town \$20,000 total \$40,000
- This project is updating various land use codes to meet Town needs
- Project began Summer 2024 and continue to completion schedule Spring 2025

Department Projects and Maintenance

Parks

1. Riverbend Park:
 - Plant trees
 - Expand irrigation to the west
 - Continue tamarisk/russian olive removal
 - New trash cans & park benches
 - Remodel existing restroom
 - New restroom at playground
 - Construction of Harky's Boat Launch – Fall 2026 – waiting on Army Corp Permit
 - Purchased water rights for new irrigation expansion to west

2. Veterans Park
 - Tree fertilization
 - Plans on update to aged irrigation system
 - Tree planting plan to mitigate aging trees

3. Peach Bowl Park
 - Seek grant funding for new planning documents to upgrade the area

4. Independent Park
 - Regular maintenance

5. Plaza
 - Add perennial plants
 - Upgrade drip irrigation in areas
 - Concrete seal

Police

1. Order 2 new police vehicles
2. Hired new officer
3. Expand connections & training with High School and CMU Tech

Fire & EMS

1. Expand wildfire program
2. Expand connections & training with High School and CMU Tech

Community Development

1. Complete Land Use Code Re-write
2. Grant submitted for EV Stations in Main Street Parking
3. Continue work on Town GIS mapping for infrastructure projects including irrigation water
4. Grant research on street construction
5. Grant research on sewer lagoon abatement – reconstruction to open space
6. Work with new development in town

Finance

1. Report on Capital Projects Spending
2. Study of Fire Consolidation estimated cost per MIL
3. Grant reporting
4. Audit for 2024 – complete 2nd quarter

Clerical

1. Training with computer programs
2. Advertising of on-going community classes and events
3. Advertising of gym schedule
4. Working on quarterly news flyer to community

Public Works

1. Street Maintenance – chip seal, crack seal, sidewalk grinding, street painting – bike sharrows, electronic street signs
2. Water – training – 2 additional employees receive first level certification for water
3. Sewer – pre-treatment program being implemented for sewer connection in future
4. Replacing old water meters with new water meters – multi-year project
5. Replacing outdated fire hydrants on the system
6. Map of potholes complete – repairs in spring when plant opens

Board of Trustees Capital Projects to be Determined:

The Board of Trustees will be presented with cost analysis of projects and planning scope to make decisions on capital improvement projects.

A small tax base does not allow for all capital improvement needs of the Town to be completed.

Which project does the Board Determine Highest Priority for Future Infrastructure Improvement:

- ❖ New Swimming Pool
- ❖ New Splash Pad
- ❖ Veterans Memorial Center – Remodel or Tear Down
- ❖ Town Hall – Sell or Remodel
- ❖ Water & Sewer Line replacement and pave a street – Kluge, Peach, 5th, 7th, east 4th, east 5th???
- ❖ Fire District
- ❖ Peach Bowl Park Baseball Field
- ❖ Main Street Parking Lot



PALISADE PLANNING COMMISSION
Agenda Item Cover Sheet

Meeting Date: **January 17, 2025**

Presented By: **Devan Aziz, Community Development Director**

Department: **Community Development & Planning**

Re: **Public Hearing**

SUBJECT:

Conditional Use Permit Application - Processing of Food and Related Products at 3810 North River Rd

SUMMARY:

Monumental Mushrooms requests a Conditional Use Permit to establish a culinary mushroom production facility within an existing warehouse. The proposed operation would:

- Produce up to 500 pounds of fresh mushrooms per week
- Process and package both fresh and dried mushroom products
- Distribute to local grocers, restaurants, and resellers
- Utilize bulk waste products from local woodworking operations

Background:

- Location: 3810 North River Rd
- Parcel Number: 2937-091-00-106
- Zoning District: Light Industrial (LI)
- Parcel Size: 1.23 Acres
- Current Use: Manufacturing, General
- Proposed Use: Processing of Food and Other Related Products

Foundational Criteria:

1. That the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved.
2. That the application meets all required specifications and conforms to the standards and practices of sound land use planning and other applicable regulations.
3. That the application will not substantially injure the value of adjoining or abutting property and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.
4. That the application will not adversely affect the adopted plans and policies of the Town or violate the character of existing standards for development of the adjacent properties.

Recommended Conditions:

1. Business address must be updated to conform with Town's grid addressing system
2. Quarterly waste manifests must be submitted to the Town
3. Documentation required for staff training in sanitation and proper material disposal

REQUIRED MOTION:

*Motion, Second, and Rollcall Vote to: Forward a recommendation to the Board of Trustees to **approve or deny** a Conditional Use Permit (CUP) for Monumental Mushrooms located at 3810 North River Rd to allow processing of food and related products **with or without** conditions.*

How did we get here?

The APA Colorado *Short Term Rental, Long Term Impact?* presentation reveals that communities are grappling with STVRs creating both housing supply pressure (through conversions from long-term to short-term rentals) and demand pressure with some mountain towns seeing STVRs comprise up to 56% of their housing stock. The town's proposed regulations align with recommended best practices by implementing licensing controls (including the 3% cap and owner-occupancy requirement), establishing clear operational standards, and creating an enforcement system with a three-strike policy. The regulations take a balanced approach by allowing existing STRs through legal non-conforming status, reflecting an attempt to protect current investments while transitioning to a more sustainable model that addresses housing availability and neighborhood impact concerns.

The town's proposed regulations closely mirror the Nashville ordinance that was upheld in *Anderson v. Metropolitan Government*, where the Tennessee Court of Appeals found that while percentage caps on STRs did create a monopoly, they were permissible because they had "a reasonable tendency to aid in the promotion of health, safety, morals and well-being of the people." The town has learned from this case by adopting similar percentage caps (3%) while also taking the additional step of requiring owner-occupancy, which addresses the court's acknowledgment that residential neighborhoods needed protection from having "children's friends replaced by bachelorette parties." Nashville passed a new ordinance on the same day the *Anderson* opinion was issued by the Tennessee Court of Appeals, which phased out non-owner-occupied short-term rental properties by 2020.

The Town has conducted thorough research on short-term rental regulations across Colorado, studying established programs in Grand Junction, Crested Butte, Colorado Springs, and other mountain communities. This research has helped shape our approach to creating balanced, enforceable regulations that protect neighborhood character while supporting our local tourism economy.

Leveraging Technology:

With new short-term rental regulations being proposed, our enforcement team needs comprehensive data to ensure compliance across our community. Through [Deckard's](#) monitoring of over 10,000 STVR websites and advanced AI technology, we can identify up to unlicensed operations, allowing for more effective enforcement and fair competition in our local market. This improved coverage helps protect our neighborhoods while ensuring all STVR operators contribute their fair share to our community through proper licensing and tax collection.

The town is entertaining streamlining the permit process through permitting software like [CloudPermit](#).

The Commission will evaluate whether these provisions appropriately balance community needs with property rights and tourism accommodation demands.

Direction – *Provide staff with direction to bring forward comparative policies from similar communities, evaluate licensing/permit fee structures, make changes to existing draft regulations, or draft an ordinance and schedule public hearings based on the discussion & packet items presented.*



175 East Third Street
P.O. Box 128
Palisade, CO 81526

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COMMUNITY DEVELOPMENT

CONDITIONAL USE PERMIT—STAFF REPORT

Processing of Food and Related Products – Conditional Use

LOCATED AT 3810 North River Rd, PARCEL # 2937-091-00-106

LDC - SECTION 4.07 CONDITIONAL USE PERMIT

A conditional use is a use that may or may not be appropriate depending on the location and the conditions imposed upon the approval of the use that are designed to reasonably mitigate any adverse impacts on surrounding properties. Conditional uses may be approved for the uses indicated in the use regulations of the zoning district of the property for which the conditional use is requested. Approval of a conditional use permit allows for flexibility and to help diversify uses within a zoning district.

APPLICATION INFORMATION

Applicant: Rhysa Ferris

Property Owner: Curt Lincoln

Zoning District: Light Industrial (LI)

Surrounding Zoning: Light Industrial (LI), Commercial Business (CB), Agricultural Forestry & Transitional (AFT), Single Family Residential (SFR)

Current Use: Manufacturing, General

Proposed Use: Processing of Food and Other Related Products

Parcel Size: 1.23 Acres

Request Summary

The applicant, Monumental Mushrooms, requests a Conditional Use Permit to establish a culinary mushroom production facility within an existing warehouse at 3810 North River Road. The proposed operation involves processing food products in a Light Industrial zone. The applicant proposes to occupy the facility for a period not to exceed three years, with a maximum production capacity of 500 pounds of fresh mushrooms per week. The facility would process and package both fresh and dried mushroom products for distribution to local grocers, restaurants, and resellers.

Use Background and Description

The subject property at 3810 North River Road contains an existing warehouse within a Light Industrial zone. The proposed project consists of the following operational components:

Operational Parameters:

- Maximum production capacity of 500 pounds of fresh mushrooms per week
- Processing and packaging of both fresh and dried mushroom products
- Distribution to local markets including grocers, restaurants, and resellers
- Utilization of bulk waste products from local woodworking operations
- Three-year maximum operational timeline

Production Methods:

- Clean production protocols
- Focus on food safety standards
- Professional packaging systems
- Commercial-scale culinary mushroom cultivation

Site Utilization:

- Use of existing warehouse facility
- No external modifications proposed
- No additional utility requirements specified
- No anticipated noise or odor emissions from operations
- Integration with neighboring woodworking businesses through waste product utilization

SECTION 4.07.E. FINDINGS OF FACT:

In order to approve a conditional use permit, the Planning Commission must make certain findings about the request (in the form of a recommendation to the Board of Trustees):

1. That the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved.

The proposed culinary mushroom production facility presents several factors relevant to public health and safety. The project has received Fire Department review clearance for life safety requirements and industrial pretreatment clearance for wastewater discharge standards.

The operation requires compliance with all applicable food safety regulations and health department requirements for commercial food processing. The facility would operate within an existing warehouse in a Light Industrial zone. No structural major modifications are proposed that would trigger additional building safety requirements. The operation proposes no generation of noise or odors that would impact surrounding properties. And utilization of existing utility connections without modification. The facility proposes to utilize bulk waste products from neighboring woodworking operations, requiring proper material handling and storage protocols.

2. That the application meets all required specifications and conforms to the standards and practices of sound land use planning and other applicable regulations.

The application demonstrates conformance with applicable standards. The proposed food processing use in a Light Industrial zone aligns with permitted conditional uses per Table 6.1 in the Palisade LDC. The existing structure meets applicable setback, height, and lot coverage requirements. The proposed operation maintains the existing industrial character of the area, functions within an established warehouse facility, proposes no exterior modifications to the structure, and continues the established pattern of light industrial uses.

Effective land use planning guides how communities develop and maintain their distinct character over time. It supports economic growth by strategically allocating space for commercial, residential, and industrial activities that create local jobs. The planning approach helps strengthen regional economies by ensuring compatible businesses can operate and expand in appropriate zones. In Palisade's case, the planning methodology preserves the town's historic character while allowing for thoughtful development. Through adaptive reuse, these principles enable the transformation of existing buildings and to serve new purposes. Additionally, sound planning facilitates connections between local businesses by creating districts where complementary enterprises can establish beneficial relationships. Most importantly, well-designed land use policies protect neighborhood qualities that residents value while accommodating necessary growth and change.

Analysis using the ITE Trip Generation Manual 9th Edition demonstrates the proposed food manufacturing use generates a mean of 5.31 trips compared to a mean of 6.11 trips for the existing industrial park use. This net decrease in trip generation, combined with Section 10.11 5(a) of the Town's Land Development Code which bases impact fees on net increases, results in no transportation impact fee being required for this change of use.

3. That the application will not substantially injure the value of adjoining or abutting property and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.

The proposal retains the existing warehouse structure without modifications to the building footprint, maintaining current site access points and the established industrial character. Operationally, the facility will generate no noise or odors from its production processes. The operating hours align with light industrial standards, and the delivery schedule matches existing industrial uses in the area.

The applicants plan to utilize existing site infrastructure, including established loading areas and parking facilities. All material storage will be contained within the building structure or disposed/composted through proper channels. The proposed use demonstrates compatibility with adjacent properties through its relationship with neighboring woodworking businesses. The scale of operations fits within the light industrial zone designation while maintaining the area's established industrial development pattern. No damage to neighboring residential property values is expected due to the low impact nature of the business and lack of major structural changes to the building.

4. That the application will not adversely affect the adopted plans and policies of the Town or violate the character of existing standards for development of the adjacent properties.

The application demonstrates consistency with established Town development standards in several ways. The proposal maintains existing industrial development patterns while utilizing current infrastructure, with no changes to the building's scale, or the visual character of the neighborhood. From an economic development perspective, the project to the diversity of agricultural products while strengthening production capacity and fostering relationships between local businesses.

The land use aspects align with Town policies through continuation of light industrial activities at an appropriate intensity level that supports the function of the existing industrial district. The application addresses environmental considerations by incorporating waste recycling practices and minimizing resource consumption. The proposed use maintains current environmental conditions without generating additional impacts while supporting development of the local food system.

Findings

The application has demonstrated compliance with public health and safety requirements through obtained Fire Department clearance and Industrial pretreatment approval. The proposed protocols for food safety and operational procedures meet established standards for food processing facilities.

The proposed use conforms to applicable standards for a conditional use in the Light Industrial zone. The operation demonstrates sound land use planning principles through its efficient use of existing infrastructure and maintains compatibility with Palisade's agricultural heritage and food production identity.

The operation, as proposed, will not substantially impact neighboring properties. All activities will be contained within the existing structure, and the facility will not generate noise or odor emissions. The use of existing access points and loading areas, combined with the scale of operations, is appropriate for the industrial district.

The application aligns with Town development standards and policies through its preservation of existing industrial character and support of local economic development. The project enhances local food production capacity while implementing environmental stewardship practices through its waste management protocols.

Recommended Conditions:

- The business address shall be updated to conform with the Town of Palisade's grid addressing system.
- The applicant shall submit quarterly waste manifests to the Town of Palisade documenting the approximate quantity of land applied solids.
- The applicant shall provide documentation certifying that all business staff have received training in sanitation and proper disposal of materials.

ATTACHMENTS:

Site Plan

Letter of Intent

Drain access H₂O supply

Handwash
sink

Tri-Compartment sink

Steel counter top

1 ft.

Monumental Mushrooms

3810 North River Road
Palisade, Co 81526
(970) 438-4870
monumentalmushrooms.com

December 4th, 2024

Rhysa Ferris

Mad Scientist, Monumental Mushrooms
(720) 965-2118
rhysa@monumentalmushrooms.com

Dearest Town of Palisade,

Please consider my request to be allowed the opportunity to bring clean and careful commercial production of culinary mushrooms to your area.

It is my intention to occupy the warehouse at 3810 North River Road for a period of time, not to exceed 3 years. During which, strictly culinary mushrooms for local grocers, individuals, restaurants, and re-sellers will be picked and sold. The maximum harvest capacity of this facility is 500 pounds of fresh mushrooms per week, and I plan to offer skillfully packaged fresh and dried products to our community with a keen focus on health and safety. This large commercial operation will generate no noise, odor, or consequential negative impact on neighbors, and will utilize bulk waste products from our neighboring woodworkers.

As a Grand Valley native and multigenerational local farmer, I will uphold the impeccable agricultural reputation of this area and work peacefully with a myriad of established local businesses.

Sincerely,

Rhysa Ferris.



PALISADE PLANNING COMMISSION
Agenda Item Cover Sheet

Meeting Date: **January 17, 2025**

Presented By: **Devan Aziz, Community Development Director**

Department: **Community Development & Planning**

Re: **Public Hearing**

SUBJECT:

Variance Request: Relief from Height Restriction for Accessory Structure (Garage) at 398 West First Street

SUMMARY:

The applicant, Tony Ware, requests a variance from Section 7.05 A.5 of the Town of Palisade Land Development Code regarding maximum height requirements for accessory structures. The request is to allow construction of a garage with a maximum height of 29 feet, which exceeds the current 15-foot height limitation by approximately 14 feet.

Background:

- Property is located at 398 West First Street (Parcel #2937-092-35-001)
- Zoning: Mixed Use (MU)
- Parcel Size: 0.49 Acres
- Current Use: Residential
- Principal structure is a Queen Anne Victorian home built in 1907, with height of 32 feet
- Proposed garage designed to match architectural features of main house, including 12/12 roof pitch

Foundational Criteria:

1. There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size or topography that are not applicable to other lands or structures in the same district, or there is a peculiar characteristic of an establishment which makes the parking and/or loading requirements of this LDC unrealistic.
2. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
3. A literal interpretation of the provisions of this LDC would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
4. The requested variance will be in harmony with the purpose and intent of this LDC and will not be injurious to the neighborhood or to the general welfare.

5. The special circumstances are not the result of the actions of the applicant.
6. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

REQUIRED MOTION:

*Motion, Second, and Rollcall Vote to: Forward a recommendation to the Board of Trustees to **approve or deny** a variance request for 398 West First Street to allow a maximum accessory structure height of 29 feet, **with or without** the following conditions, finding that the application **meets or does not meet** the criteria for variance approval under Section 4.12.F of the Land Development Code.*

How did we get here?

The APA Colorado *Short Term Rental, Long Term Impact?* presentation reveals that communities are grappling with STVRs creating both housing supply pressure (through conversions from long-term to short-term rentals) and demand pressure with some mountain towns seeing STVRs comprise up to 56% of their housing stock. The town's proposed regulations align with recommended best practices by implementing licensing controls (including the 3% cap and owner-occupancy requirement), establishing clear operational standards, and creating an enforcement system with a three-strike policy. The regulations take a balanced approach by allowing existing STRs through legal non-conforming status, reflecting an attempt to protect current investments while transitioning to a more sustainable model that addresses housing availability and neighborhood impact concerns.

The town's proposed regulations closely mirror the Nashville ordinance that was upheld in *Anderson v. Metropolitan Government*, where the Tennessee Court of Appeals found that while percentage caps on STRs did create a monopoly, they were permissible because they had "a reasonable tendency to aid in the promotion of health, safety, morals and well-being of the people." The town has learned from this case by adopting similar percentage caps (3%) while also taking the additional step of requiring owner-occupancy, which addresses the court's acknowledgment that residential neighborhoods needed protection from having "children's friends replaced by bachelorette parties." Nashville passed a new ordinance on the same day the *Anderson* opinion was issued by the Tennessee Court of Appeals, which phased out non-owner-occupied short-term rental properties by 2020.

The Town has conducted thorough research on short-term rental regulations across Colorado, studying established programs in Grand Junction, Crested Butte, Colorado Springs, and other mountain communities. This research has helped shape our approach to creating balanced, enforceable regulations that protect neighborhood character while supporting our local tourism economy.

Leveraging Technology:

With new short-term rental regulations being proposed, our enforcement team needs comprehensive data to ensure compliance across our community. Through [Deckard's](#) monitoring of over 10,000 STVR websites and advanced AI technology, we can identify up to unlicensed operations, allowing for more effective enforcement and fair competition in our local market. This improved coverage helps protect our neighborhoods while ensuring all STVR operators contribute their fair share to our community through proper licensing and tax collection.

The town is entertaining streamlining the permit process through permitting software like [CloudPermit](#).

The Commission will evaluate whether these provisions appropriately balance community needs with property rights and tourism accommodation demands.

Direction – *Provide staff with direction to bring forward comparative policies from similar communities, evaluate licensing/permit fee structures, make changes to existing draft regulations, or draft an ordinance and schedule public hearings based on the discussion & packet items presented.*



175 East Third Street
P.O. Box 128
Palisade, CO 81526

Phone: (970) 464-5602
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COMMUNITY DEVELOPMENT VARIANCE: GARAGE HEIGHT – STAFF REPORT

Relief From Height Restriction for Accessory Structure (Garage)

LOCATED AT 398 West First ST, PARCEL # 2937-092-35-001

AKA BLOCK NO.1 LOT 5 OF THE MOUNT LINCOLN ADDITION

LDC - SECTION 4.12 VARIANCE

SECTION 4.12.A. PURPOSE

The variance procedure provides a process to grant limited relief from the requirements of this LDC for property where strict application of the LDC would result in an exceptional practical difficulty or undue hardship.

APPLICATION INFORMATION

Applicant and Owner: Tony Ware

Zoning District: Mixed Use (MU)

Surrounding Zoning: Agricultural Forestry & Transitional (AFT), Single Family Residential (SFR), Multifamily Residential (MFR)

Current Use: Residential

Primary Structure: 4590 sq ft.

Proposed Accessory Structure: 2300 sq ft.

Parcel Size: 0.49 Acres

APPLICATION SUMMARY

The applicant seeks a variance from Section 7.05 A.5 of the Town of Palisade Land Development Code regarding maximum height requirements for accessory structures. The subject property contains a Queen Anne Victorian principal structure built in the early 1900s with a height of 32 feet. The applicant proposes to construct a new accessory structure (garage) with architectural features matching the principal structure, including 12/12 (45-degree) roof pitches. The proposed design results in a maximum height of 28 feet, 5½ inches, which exceeds the Land Development Code's 15-foot height limitation for garages by 13 feet, 5½ inches. The applicant requests a variance to allow a maximum height of 29 feet for the accessory structure.

SECTION 4.12.F. FINDINGS OF FACT

1. There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size or topography that are not applicable to other lands or structures in the same district, or there is a peculiar characteristic of an establishment which makes the parking and/or loading requirements of this LDC unrealistic.

The subject property at presents several exceptional conditions that distinguish it from other properties within the same zoning district. The parcel's unique configuration includes frontage along both First Street and N Iowa Avenue, which creates distinctive site constraints not typically found on other properties in the district. This dual frontage characteristic limits the viable locations for accessory structure placement and specifically necessitates the proposed location in the northeast portion of the property. The placement requirements created by the dual frontage also result in unique visibility considerations from multiple public rights-of-way.

The principal structure, constructed in 1907, significantly predates current zoning regulations and features period-specific architectural elements including the steep roof pitches characteristic of Queen Anne Victorian architecture. This documented historical context creates an exceptional condition where modern accessory structure regulations do not anticipate the architectural requirements needed to maintain historical compatibility.

While the lot size of 0.49 acres provides adequate space for an accessory structure, the combination of dual frontage and the existing structure's location creates specific constraints on where the accessory structure can be placed while maintaining appropriate setbacks and site circulation. These physical site conditions, combined with the historical architectural requirements, create a unique circumstance specific to this property.

2. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

The request for a height variance to construct an architecturally compatible accessory structure does not confer special privileges upon the applicant that are denied to other residents in the district. The variance is necessitated by the documented historical nature of the principal structure, which was built in 1907 with architectural features including steep 12/12 roof pitches characteristic of Queen Anne Victorian style. Other property owners within the district who have historic homes with similar architectural characteristics would face the same challenges when attempting to construct complementary accessory structures and would have the same opportunity to pursue a variance under similar circumstances.

The applicant's request is driven by the legitimate objective of maintaining architectural compatibility between the principal and accessory structures, rather than seeking unique advantages. The requested height of 28 feet, 5½ inches directly corresponds to achieving the 12/12 roof pitch necessary to match the historic architectural style. This request represents a standard architectural solution that would be equally applicable to any property owner in the district facing similar circumstances with a historic structure.

3. A literal interpretation of the provisions of this LDC would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

A literal interpretation of the Land Development Code's 15-foot height limitation would deprive the applicant of rights commonly enjoyed by other residents in the district, as evidenced by existing the neighborhood character. The Town of Palisade has previously recognized this potential deprivation by approving a similar height variance at 404 W. 1st Street, allowing an accessory structure height of 22 feet.

The neighbor's home at 404 W. 1st was also built in 1907. The applicant would be denied the ability to construct an architecturally compatible accessory structure that maintains the character of their 1907 Queen Anne Victorian home, while other residents in the district have been permitted to construct taller accessory structures. Furthermore, the agricultural character of the surrounding area includes numerous barn-like structures that exceed the 15-foot height limitation, indicating that taller accessory structures are a common and accepted feature of the district.

The established pattern of development in the district, including both the previously approved variance and the presence of legal non-conforming agricultural structures, demonstrates that property owners commonly enjoy the right to construct accessory structures that exceed 15 feet in height when appropriate to the context.

4. The requested variance will be in harmony with the purpose and intent of this LDC and will not be injurious to the neighborhood or to the general welfare.

The requested height variance for the accessory structure demonstrates harmony with the Land Development Code's intent and presents minimal potential for adverse impacts to neighboring properties or the general welfare. The proposed structure maintains substantial separation distances from adjacent properties, with 110 feet of separation from the northern neighboring structure and 70 feet from the nearest accessory structure to the east. The primary dwelling to the east is even further removed at 130 feet from the proposed structure. These significant separation distances effectively mitigate potential impacts typically associated with increased building height, such as shadow effects, privacy concerns, or visual intrusion.

The western edge of the property borders N Iowa Avenue, eliminating any direct impact on neighboring properties from that direction. This street frontage provides additional open space and helps to maintain the spatial rhythm of the neighborhood. A potential condition for an increased rear setback from 5 feet to 10 feet demonstrates a proactive approach to potential future development, specifically accounting for the possibility of minor subdivision and redevelopment of the northern property.

The substantial building separations and potential for an increased setback, combined with the architectural compatibility with the historic principal structure, indicate that the variance request aligns with the LDC's presumed goals of maintaining neighborhood character while protecting property rights and preventing adverse impacts.

5. The special circumstances are not the result of the actions of the applicant.

The special circumstances driving this variance request predate the current applicant's involvement with the property. The principal structure was built in 1907, exhibiting Queen Anne Victorian architectural characteristics including steep 12/12 roof pitches and a 32-foot height. These architectural features were established over a century ago, long before current zoning regulations and the applicant's ownership. The historic nature of the home and its distinctive architectural style are inherent to the property rather than conditions created by the applicant.

The dual frontage situation along First Street and N Iowa Avenue, which influences the necessary placement of the accessory structure, is also a pre-existing condition of the property's platting and location. This site constraint was not created by any action of the current property owner but is instead an established characteristic of the parcel.

While the applicant is choosing to design an accessory structure that complements the historic architecture, this decision represents a reasonable response to pre-existing conditions rather than a self-imposed hardship. The applicant is working within the established context of the property to maintain architectural integrity, which aligns with standard historic preservation practices and community character considerations.

6. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

The submitted architectural plans demonstrate that the requested variance represents the minimum deviation necessary from the Land Development Code requirements to achieve both functional and architectural compatibility goals. The applicant has worked through multiple design iterations with architects, engineers, and town staff to reach a solution that minimizes the variance while maintaining essential architectural integrity. The original design, which included a cupola extending beyond the roof peak, was modified to reduce the overall height impact. The final proposed height of 28 feet, 5½ inches represents a carefully calculated minimum based on several critical factors.

The 12/12 roof pitch, which directly determines the building height, is the minimum slope required to match the architectural character of the 1907 Queen Anne Victorian principal structure. This pitch cannot be reduced without compromising the architectural compatibility that is fundamental to the project. The drawings illustrate that the design elements have been carefully considered and refined, with no extraneous features contributing to the height. All components of the proposed structure serve either a functional or architectural purpose essential to the building's integrity.

Through collaboration with town staff and design professionals, the applicant has demonstrated due diligence in seeking the minimum variance necessary. The final design represents a compromise between modern code requirements and historic architectural compatibility, with no unnecessary height elements included.

Findings

The property presents exceptional conditions through its dual street frontage and historic Queen Anne Victorian architecture dating to 1907, which create unique constraints for accessory structure placement and design compatibility.

The variance request is based on documented historical architectural features and site constraints that would be equally applicable to similar properties in the district, rather than seeking special privileges.

A literal interpretation would deprive the applicant of rights commonly enjoyed by others, as evidenced by a previous 22-foot height variance approval and the presence of larger agricultural accessory structures in the area.

The proposed structure maintains substantial separation distances from neighboring properties (110 feet primary dwelling to the north, 70 feet east to nearest structure, 170 feet to primary dwelling to the east), demonstrating harmony with code intent without creating adverse impacts.

The special circumstances arise from the historic architecture (1907) and lot configuration that predate current ownership and regulations.

The architectural plans, refined through multiple iterations and consultation with staff, demonstrate that 28'5½" represents the minimum height necessary to achieve architectural compatibility while meeting functional requirements.

Considerations

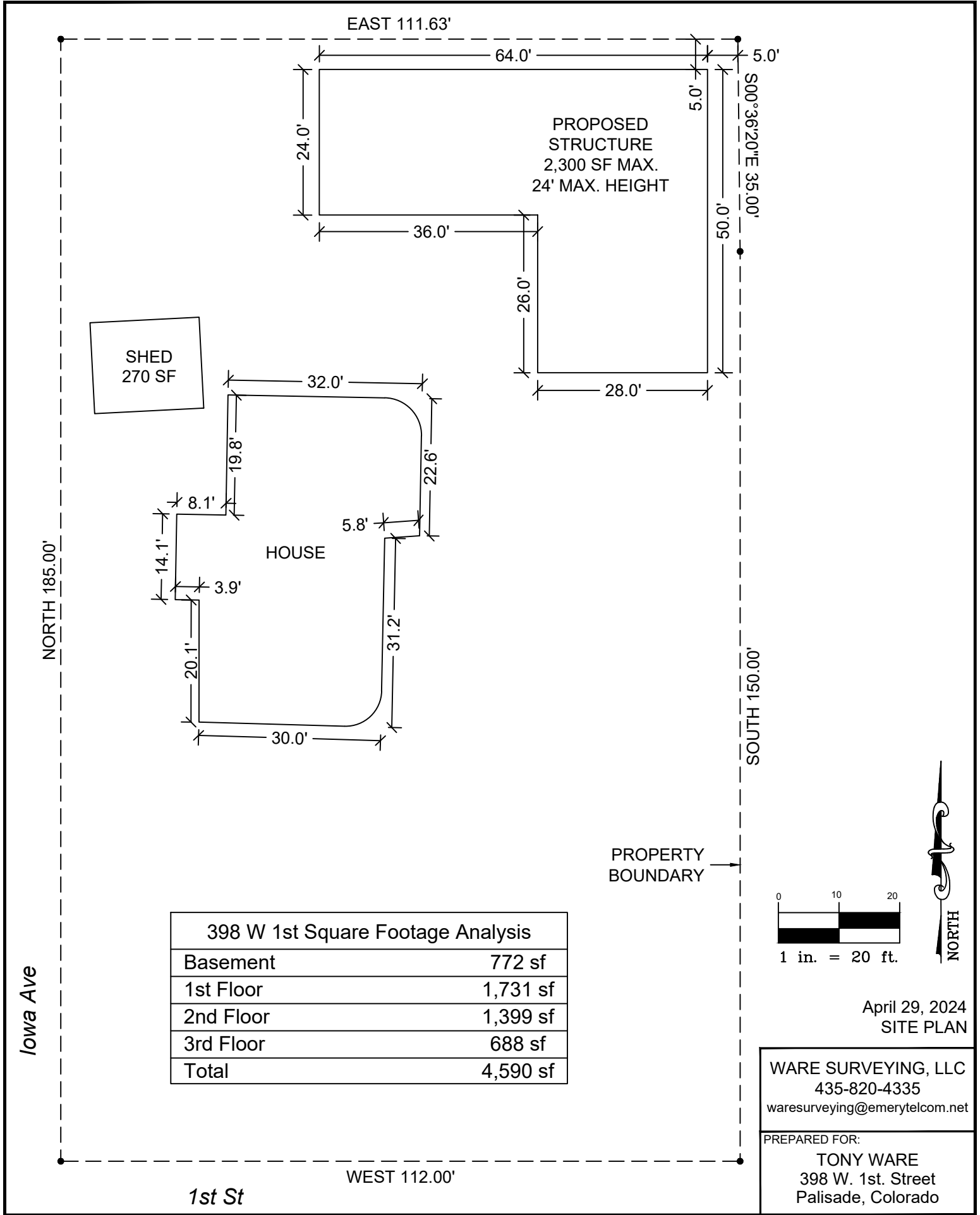
Increasing the rear and side setback to provide additional buffer for potential future development of the adjacent northern parcel.

The appropriateness of the proposed architectural features in maintaining historical compatibility while minimizing impact on adjacent properties.

ATTACHMENTS:

Site Plan

Letter of Intent



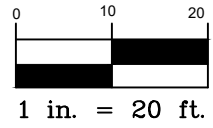
SHED
270 SF

PROPOSED
STRUCTURE
2,300 SF MAX.
24' MAX. HEIGHT

HOUSE

PROPERTY
BOUNDARY

398 W 1st Square Footage Analysis	
Basement	772 sf
1st Floor	1,731 sf
2nd Floor	1,399 sf
3rd Floor	688 sf
Total	4,590 sf



April 29, 2024
SITE PLAN

WARE SURVEYING, LLC
435-820-4335
waresurveying@emerytelcom.net

PREPARED FOR:
TONY WARE
398 W. 1st. Street
Palisade, Colorado

Iowa Ave

1st St

NORTH 185.00'

EAST 111.63'

SOUTH 150.00'

WEST 112.00'

Tony L Ware
398 West First Street
Palisade Colorado, 81526

December 3, 2024, revised January 7, 2025

Devan Aziz
Director of Community Development
Town of Palisade
175 E 3rd Street
Palisade, Colorado, 81526

Dear Mr. Aziz,

I am submitting this letter to pursue a variance from the Town of Palisade Land Development Code (LDC), Section 7.05 A.5 (Accessory Uses and Structures, Max Height).

My principal structure was built in the early 1900's, is of Queen Anne Victorian architectural style and has a height of 32 feet.

Attachment A includes a site plan for adding an accessory structure to my property. The architecture shown in Attachment A matches many of the architectural features of the principal structure, including steep roof pitches of 12/12 (45 degrees). A less steep roof pitch would be less expensive and meet the LDC height requirement, however, the result would be mismatched architectural styles between the two structures.

As designed, the accessory structure has a max height of 28 feet, 5 ½ inches which exceeds the LDC max height requirement of 15 feet for a garage.

After careful consideration and consulting professionals in the field of architectural design, a height variance allowing a max height of 29 feet is being requested.

Sincerely,

Tony L Ware
Tware@acsol.net



PALISADE PLANNING COMMISSION
Agenda Item Cover Sheet

Meeting Date: **January 17, 2025**

Presented By: **Devan Aziz, Community Development Director**

Department: **Community Development & Planning**

Re: **Land Development Code Update**

SUBJECT:
Short Term Vacation Rentals

SUMMARY:
The Planning Commission will review and discuss proposed regulations establishing new requirements for short-term vacation rentals (STVRs) that significantly change the current operating framework. The draft ordinance would restrict new STVR permits to owner-occupied properties only, while establishing a legal non-conforming status for existing permitted non-owner-occupied STVRs that were valid as of December 31, 2024.

Key provisions include:

- A cap of 3% of total town housing stock on the number of STVRs permitted to operate
- One permit limit per person or legal entity
- All legal non-conforming STVRs must comply with all new operational standards, requirements, and fees established

These changes aim to address community concerns while balancing property rights through:

- Maintaining neighborhood quality through owner presence during rentals
- Supporting existing non-owner-occupied STVR operators through legal non-conforming status provisions
- Ensuring consistent oversight through operational standards and a three-strike enforcement system
- Supporting property owner income through continued STVR opportunities while maintaining permanent resident presence

How did we get here?

The APA Colorado *Short-Term Rental, Long-Term Impact?* presentation reveals that communities are grappling with STVRs creating both housing supply pressure (through conversions from long-term to short-term rentals) and demand pressure with some mountain towns seeing STVRs comprise up to 56% of their housing stock. The Town's proposed regulations align with recommended best practices by implementing licensing controls (including the 3% cap and owner-occupancy requirement), establishing clear operational standards, and creating an enforcement system with a three-strike policy. The regulations take a balanced approach by allowing existing STRs through legal non-conforming status, reflecting an attempt to protect current investments while transitioning

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DIRECTION:

Provide staff with direction to bring forward comparative policies from similar communities, evaluate licensing/permit fee structures, make changes to existing draft regulations, or draft an ordinance and schedule public hearings based on the discussion & packet items presented.

SHORT TERM RENTAL, LONG TERM IMPACT?

APA Colorado Conference
September 2023



Economic & Planning Systems, Inc.
The Economics of Land Use





Rachel Shindman, AICP
Vice President
Economic & Planning Systems



Trent Hyatt
Deputy Director of Community Development
Eagle County



Brandi Timm
STR Program Coordinator
Summit County

Airbnb and Vrbo taxes are on the ballot in some Colorado ski towns. Will voters approve?

Frisco installs first short-term rental cap on housing market

Telluride is among the first Colorado mountain towns to consider easing short-term rental restrictions

Grand Junction voters to weigh in on affordable housing, short-term rentals

Short-term rentals in Colorado can be worth a year's salary for owners

Woodland Park council extends short-term rental moratorium

Short-Term Rentals Become Major Issue in Mountain Communities

Winter Park introduces short-term rental registration fee to fund affordable housing

New regulations on short-term rentals in Aspen are in effect

Larimer County to update short-term rental rules

Cripple Creek hopes a 9-month moratorium on new short-term rentals will ease its workforce housing crisis

Douglas County approves short-term rental regulations

SESSION OVERVIEW

1. What are the range of impacts that short term rentals can have on an area's economy and housing market?
2. What policy and funding options can help manage STRs and mitigate their impacts?
3. How can communities best match policy and funding options to local market conditions?



How do we balance the function of STRs in the lodging industry with the impacts on local communities?

WHAT DO WE MEAN BY “STR”?

Short Term Rental

- Any dwelling unit rented short term to guests (typically <30 days)
- Specific definition may be outlined in local code
- Residential property – differs from pure key hotels which are a commercial land use

Fixed Accommodations

- Front desk and 24 hour security
- Hotels, condohotels, timeshares, vacation clubs

Dispersed STRs (DSTRs)

- Individually or professionally managed
- Booked through RBO platforms (AirBNB, VRBO) and through property management companies

WHY TALK ABOUT SHORT TERM RENTALS?



Part of the lodging inventory



Generate local revenue



Can have infrastructure and community impacts



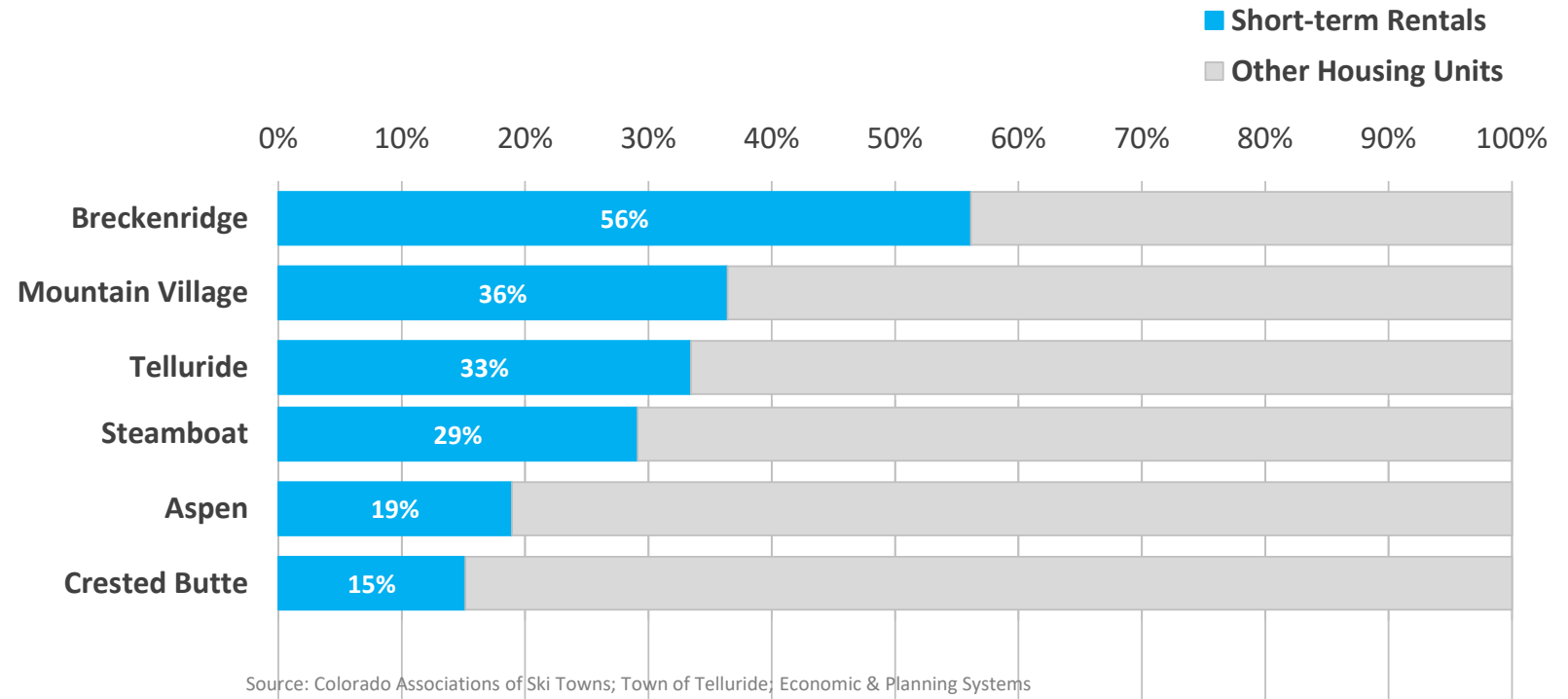
May impact rents and home prices



May impact housing inventory available to local/full-time residents

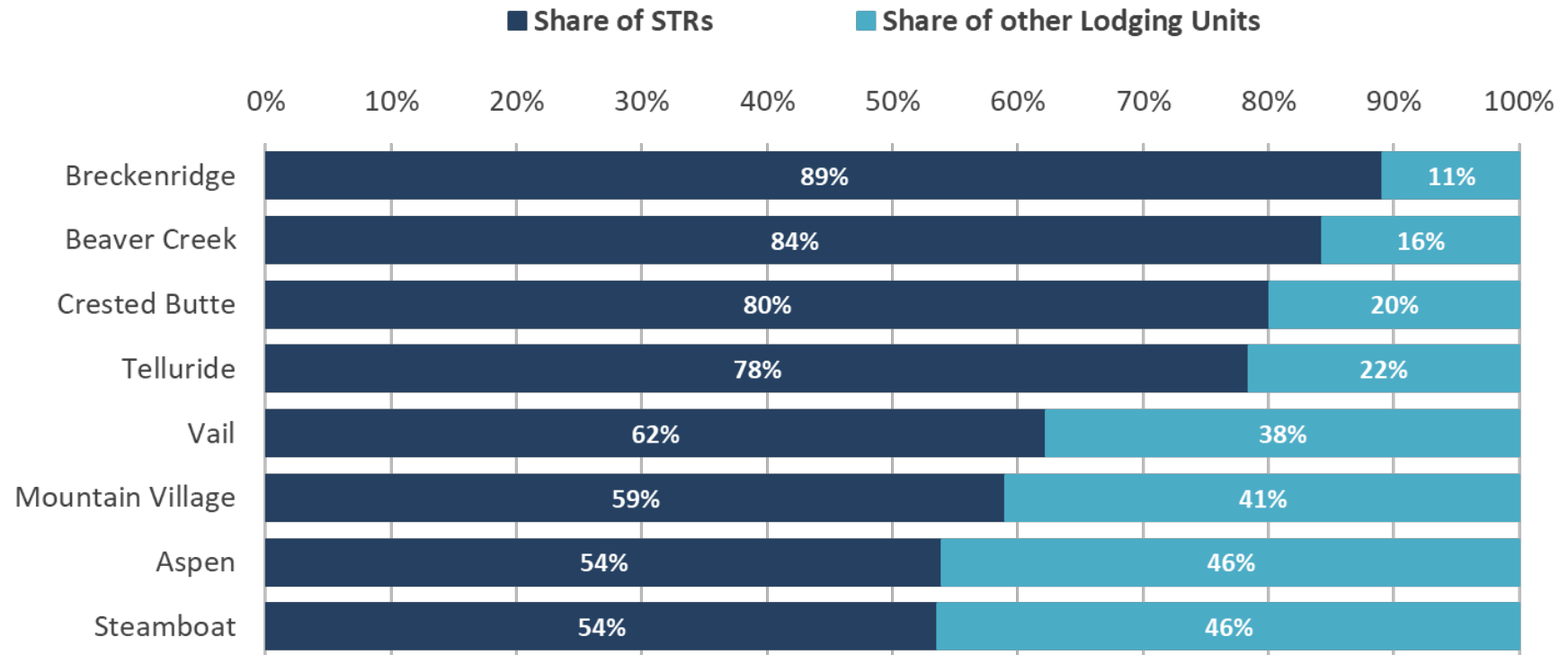
SHORT-TERM RENTALS AS PERCENT OF HOUSING STOCK

- In many communities, particularly mountain communities, STRs are making up an increasing share of the housing inventory
- Front Range, Western Slope, and Eastern Plains communities are seeing similar trends at different levels



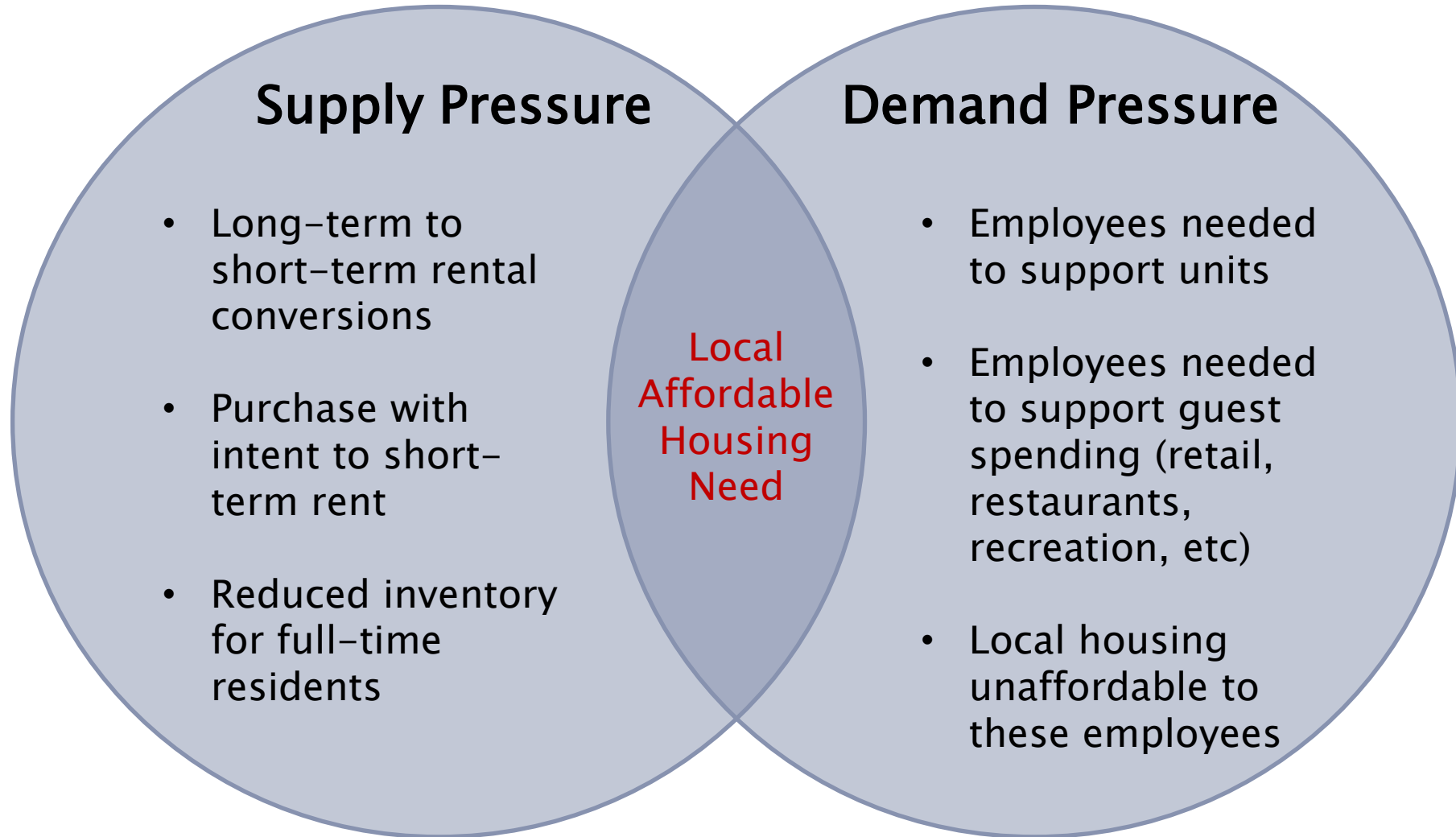
SHORT TERM RENTALS AS A PERCENT OF LODGING INVENTORY

- STRs can also make up a large share of lodging inventory, particularly in resort/destination communities
- These have significant economic impacts, in addition to other local impacts



Note: comparison is units, not bedrooms (on a bedroom basis, STRs will comprise a larger share)

HOUSING IMPACTS OF SHORT TERM RENTALS



OVERALL IMPACTS

Positive Impacts

- STRs play a role in the lodging inventory, often creating additional (needed) capacity
- STRs can generate local revenue through sales tax, lodging tax, excise tax, fees, or other means
- Guests in short term rentals spend money in the local economy

Negative Impacts

- Potential revenue difference between short-term and long-term rentals can put pressure on the rental housing market and can impact sale prices of homes
- Additional labor force needs to serve these units and their guests, and those employees often face challenges finding affordable housing
- Additional guests can impact local infrastructure (water, wastewater, traffic, etc)

How do we balance these impacts?

BALANCING POLICY ISSUES

Housing

- Affordable/workforce housing has been a challenge in Colorado communities for decades
- Need housing for a sustainable vibrant community and economy
- Mountain communities are at crisis levels
- Do STRs affect supply of local's housing?

Local economy

- Tourism: STRs accommodate guests which support the local economy

Neighborhoods and Quality of Life

- Guest impacts
- Noise and parking
- Water and sewer
- Ability of community to handle visitor traffic

POLICY APPROACHES

Licensing

- Caps or limits on the number of STR permits/licenses issued
- Tightening owner occupancy requirements for STR licenses
- Limits on rental nights per year
- Local contact person requirements and nuisance enforcement

Zoning

- Limits STRs to specific zoning districts or areas
- Minimum buffers between STRs or limits on STRs per block
- Can be combined with a license cap approach

Fees or Taxes

- Increased lodging tax
- Additional excise taxes levied specifically on STR stays
- Annual fee levied on short-term rentals per bedroom or unit; revenue used for housing
- Administrative fee to cover local government costs to administer STR program

Short Term Rental, Long Term Impact?



Trent Hyatt
Deputy Director of Community Development

Colorado APA Conference
September 27, 2023

Summary of Eagle County's Short Term Rental Regulations



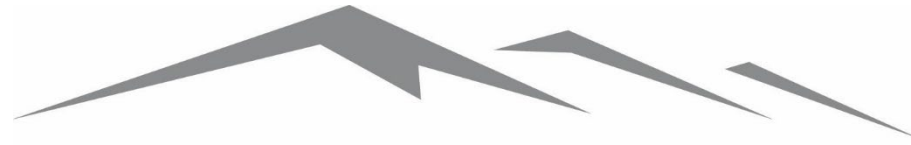
Short Term Rental Regulations

- Eagle County Characteristics
 - Awful housing shortage
 - 6,000 units
 - Est. approximately 13.7% of available units
 - \$3.5 million lodging tax
 - \$450 per square foot construction costs



Short Term Rental Regulations

- Why not, Eagle County?
 - Location of STRs
 - Beaver Creek
 - Eagle-Vail
 - Tourism economy
 - Private property rights
 - “Let’s just wait to see how it works out elsewhere. Most communities revise their STR regs multiple times anyways.” -Unnamed county commissioner
- Land Use Regulations Update in Progress
- *Bold Housing Moves* initiative by Board of County Commissioners
- Housing Guidelines
- Haven’t been force to yet



Short-Term Rental Impacts



Colorado APA
Conference
September 27, 2023





STR Licenses In Summit County

STRs in Unincorporated Summit County *As of May 22, 2022				
	STR Approvals by Year			
	2022*	2022	2021	2020
Resort	104	40%	55%	65%
Neighborhood	155	60%	45%	35%
Total	259			
Applications Rec'd / Week	13.6			

STR Licenses by Year *As of May 22, 2022			
	2022*	2021	2020
Total STRs	4,616	4,367	3,765
Resort	61%	62%	65%
Neighborhood	39%	38%	35%



STR Licenses in Summit County (Cont'd.)

Percentage of Units with STR License by Summit County STR Overlay Zone (As of 5-9-22)	
Resort Overlay Zone	50%
Units with STR License	2,823
Total number of existing units	5,664
Neighborhood Overlay Zone	18%
Units with STR License	1,783
Total number of existing units	9,910

STR Licenses: Projections Through 2022 Pace of Approvals from Jan. 1, 2022 - May 9, 2022 used to Project Remainder of 2022					
	Proj. Total STR Licenses	% of STRs by OZ	Proj. Remainder 2022	Proj. Total 2022	% of Housing Stock as STR
Resort OZ	2,995	59.7%	172	263	52.9%
Neighborhood OZ	2,036	40.6%	253	387	20.5%
Total	5,016		425	650	



Real Estate Sales & Demographics of STR Owners

Homes Sales Resulting in an STR License Second Half 2020 to Second Half 2021		
Year	% of Sales Resulting in STR License	% Change
2 nd Half 2020	29%	
2 nd Half 2021	39%	33%

Location of Homeowner *Location assumed via mailing address in Assessor database – data from April, 2022				
	All Housing Units		STRs	
Local	4,814	31%	452	10%
In State	6,484	42%	2,277	50%
Out of State	4,063	26%	1,808	40%
Total:	15,361	100%	4,537	100%



Overall Complaints (Nov. – April 2022)

- Ramped up enforcement and response to STR complaints by Sheriff's Office and Planning
- Noise is biggest issue in multi-family buildings

Complaint Type	Total	% of Total Complaints	% of Total Complaints
Noise	40	33%	48%
Noise/ No RA	19	15%	
Parking	25	20%	32%
Parking/ No RA	14	11%	
Trash	10	8%	8%
Trash/ No RA	0	0%	
Renting w/o Active License	7	6%	6%
Over Occupancy	8	7%	7%
Total	123	100%	100%

	2022 Q1 STR Total	% of Total STRs	% of Total Complaints	Complaint Total	% of Total Notices / Warnings	% of Total Violations / Citations	
Summary By Overlay Zone							
Neighborhood Overlay Zone	1778	39%	92%	113	85%	95%	
Resort Overlay Zone	2796	61%	8%	10	15%	5%	
	4574	100%	100%	123	100%	100%	

POLICIES AND STRATEGIES

POLICY APPROACHES

A – Licensing

- Caps or limits on the number of STR permits/licenses issued
- Tightening owner occupancy requirements for STR licenses
- Limits on rental nights per year
- Local contact person requirements and nuisance enforcement

B – Zoning

- Limits STRs to specific zoning districts or areas
- Minimum buffers between STRs or limits on STRs per block
- Can be combined with a license cap approach

C – Fees or Taxes

- Increased lodging tax
- Additional excise taxes levied specifically on STR stays
- Annual fee levied on short-term rentals per bedroom or unit; revenue used for housing
- Administrative fee to cover local government costs to administer STR program

A – LICENSING

LICENSING BASICS

- Requires STR owners to register their properties
- Can be simple data collection mechanism, or a tool to implement program standards
- Implementation considerations include:
 - Compliance monitoring (staffing needs)
 - License duration (how often to renew)

Policy Objectives

- Track how many STRs are in the community
- Collect data on types of STRs (unit type, size, etc)
- Have mechanism to communicate any regulations, enforce STR program components
- Understand locations and neighborhood impacts of STRs

ADDITIONAL LICENSING CONSIDERATIONS

- Basic STR licensing can be modified to have categories with different regulations
- Possible categories:
 - Primary residence
 - Condo–hotel (purpose built for lodging use)
 - General (not primary residence)
 - Deed–restricted (limited rental nights)*
- Some categories may not have a license cap, others could have an annual cap

Policy Objectives

- Manage the number of total STRs in the community, while balancing the need for lodging inventory
- Differentiate STR licensing based on the characteristics of the property and the owner

MUNICIPALITIES WITH LICENSES / PERMITS

Cities/Towns		Mountain Communities	Counties
<ul style="list-style-type: none"> Denver City of Boulder Broomfield Eagle (Town) Vail Avon* Colorado Springs Manitou Springs* 	<ul style="list-style-type: none"> Carbondale Glenwood Springs Winter Park Crested Butte* Mount Crested Butte Durango* Leadville* Fort Collins Fruita* 	<ul style="list-style-type: none"> Grand Junction Ouray* Ridgway* Aspen* Basalt Steamboat Springs* Telluride* Breckenridge* Frisco* 	<ul style="list-style-type: none"> Boulder County Larimer County Mesa County Ouray County* Pitkin County San Miguel County Grand County Lake County Summit County* Jefferson County

* STR License Cap

B – ZONING

STR ZONING

- Regulate STRs based on zoning (existing districts or overlays)
- Zones can have different caps on the number of licenses and/or the number of rental nights
 - Can be combined with a license category approach

Policy Objectives

- Manage the number of total STRs, while balancing the need for lodging inventory
- Differentiate STR licensing and regulations based on location/zone

EXAMPLES

Breckenridge

- STR licenses are regulated by zone
 - Resort: 1,816 licenses (all units can be STRs)
 - Zone 1 (tourism zone): 1,680 licenses (92% of units can be STRs)
 - Zone 2 (downtown core): 130 licenses (51% of units can be STRs)
 - Zone 3 (single fam. residential): 390 licenses (10% of units can be STRs)
 - 4,016 available STR licenses (52% of units can be STRs)

Steamboat

- Standard STRs are regulated by zone
 - Zone A (mountain area and downtown): No limit on STRs
 - Zone B: Six subzones, each with specific caps on the number of STRs
 - Zone C: Standard STRs are prohibited
- Caps for Zones B and C exclude:
 - Temporary STRs – up to 2 rentals for a max of 30 nights/year of a primary residence
 - Hosted STRs – rental of one guestroom

Avon

- Avon has three STR license categories
 - Full STR License (STR-F): unlimited rental nights
 - Limited STR License (STR-L): rent for up to 42 nights/yr and not subject to licensing caps
 - Resident-Occupied STR License (STR-RO): unlimited rental nights and not subject to caps
- STRs are only allowed within a zoning overlay area
- Within the STR zoning overlay, there is a designated 'town core'
 - Within the town core, there is no cap on licenses
 - Outside of the town core, STR-F licenses are limited to 15% of the total units in a given property (this is rounded up to the nearest whole and cannot be less than one)

C – TAXES AND FEES

TAXES AND FEES

Lodging Tax

Licensing Fee

Sales Tax

Administrative
Fee

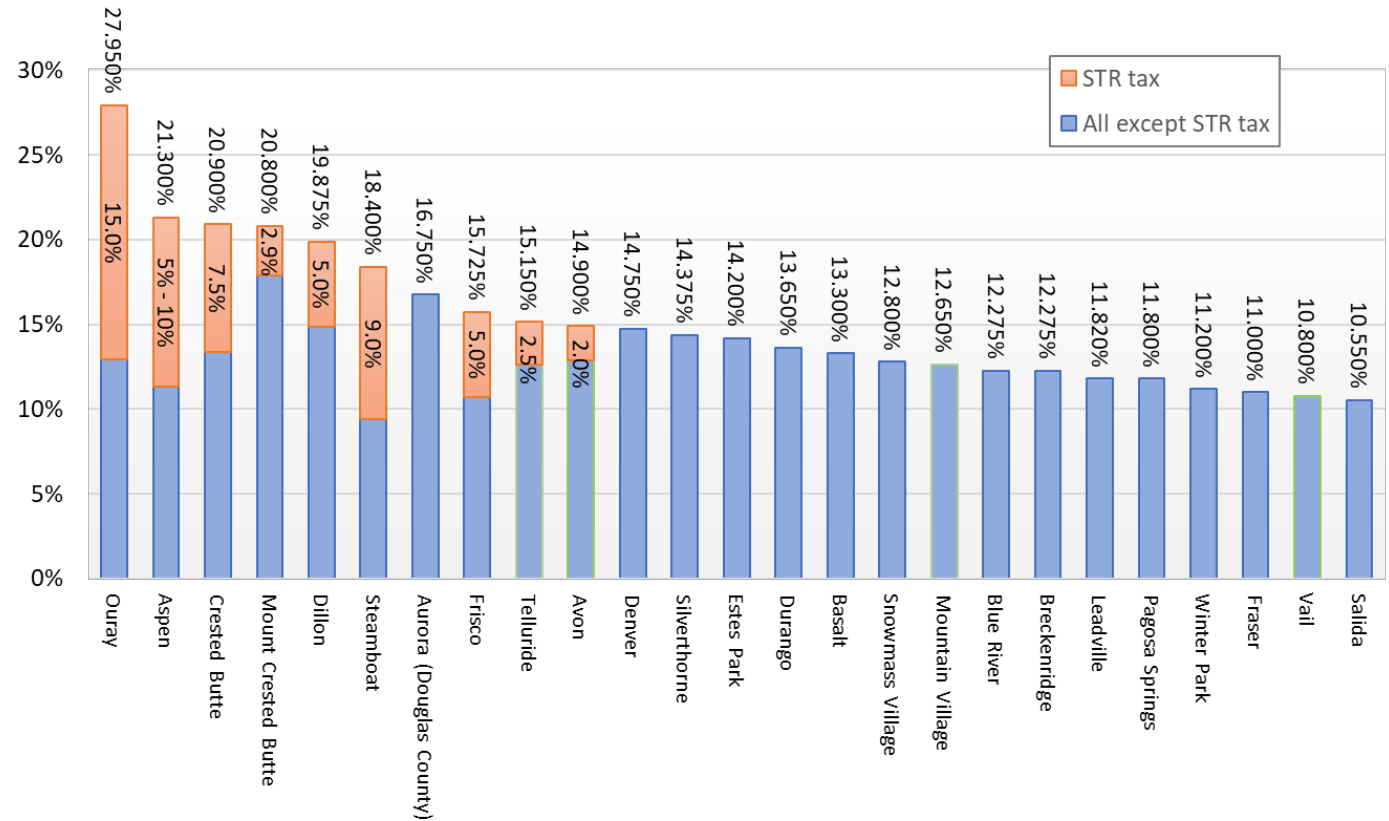
Excise Tax

Housing Fee

SHORT-TERM RENTAL TAX RATES

- Total tax rates on short-term rentals vary
 - Lodging tax, sales tax, excise tax, and any other applicable taxes
- Some communities have passed a dedicated excise tax on STR stays
 - Ouray: 15.0%
 - Steamboat: 9.0%
 - Crested Butte: 7.5%
 - Frisco: 5.0%
 - Telluride: 2.5%

Total Tax Rates on STRs
(including city, county, state, lodging, STR, and other taxes)



STR EXCISE TAX

- STRs can make up a large portion of the lodging bed base and therefore drive guest stays
- An excise tax on STR stays could capture additional revenue from guests and visitors
- The additional revenue could be used to fund local housing, or other local needs (flexible revenue source)

Policy Objectives

- STRs generate a significant amount of economic activity through guest stays
- Housing for the local workforce is a core policy of many communities, and additional revenue will help support housing programs
- Guests can also have other impacts on the community (infrastructure, etc) that require additional revenue

STR FEE TYPES AND RATIONALE

Administrative Impacts

- Municipalities incur costs to administer and regulate STRs beyond the standard costs of government
- Some departments are more significantly impacted (e.g. police, community development, finance, legal)
- Administrative fee on STRs can cover these costs

Housing Impacts

- In many areas, a large portion of the economy is based on guests and tourism
- STR guests spend money, supporting local jobs
- Local businesses need a dependable workforce
- Housing for the local workforce is a core policy in many communities
- A housing fee on STRs can help support housing programs

HOUSING FEE

- A large portion of many communities' economies are based on guests and tourism
 - Guests spend money that supports jobs in retail, food & beverage, recreation, services, and transportation
 - These jobs create local housing demand
- A regulatory fee can be charged on STR licenses (in addition to a business license fee and/or administrative fee) to address the community's need for local workforce housing

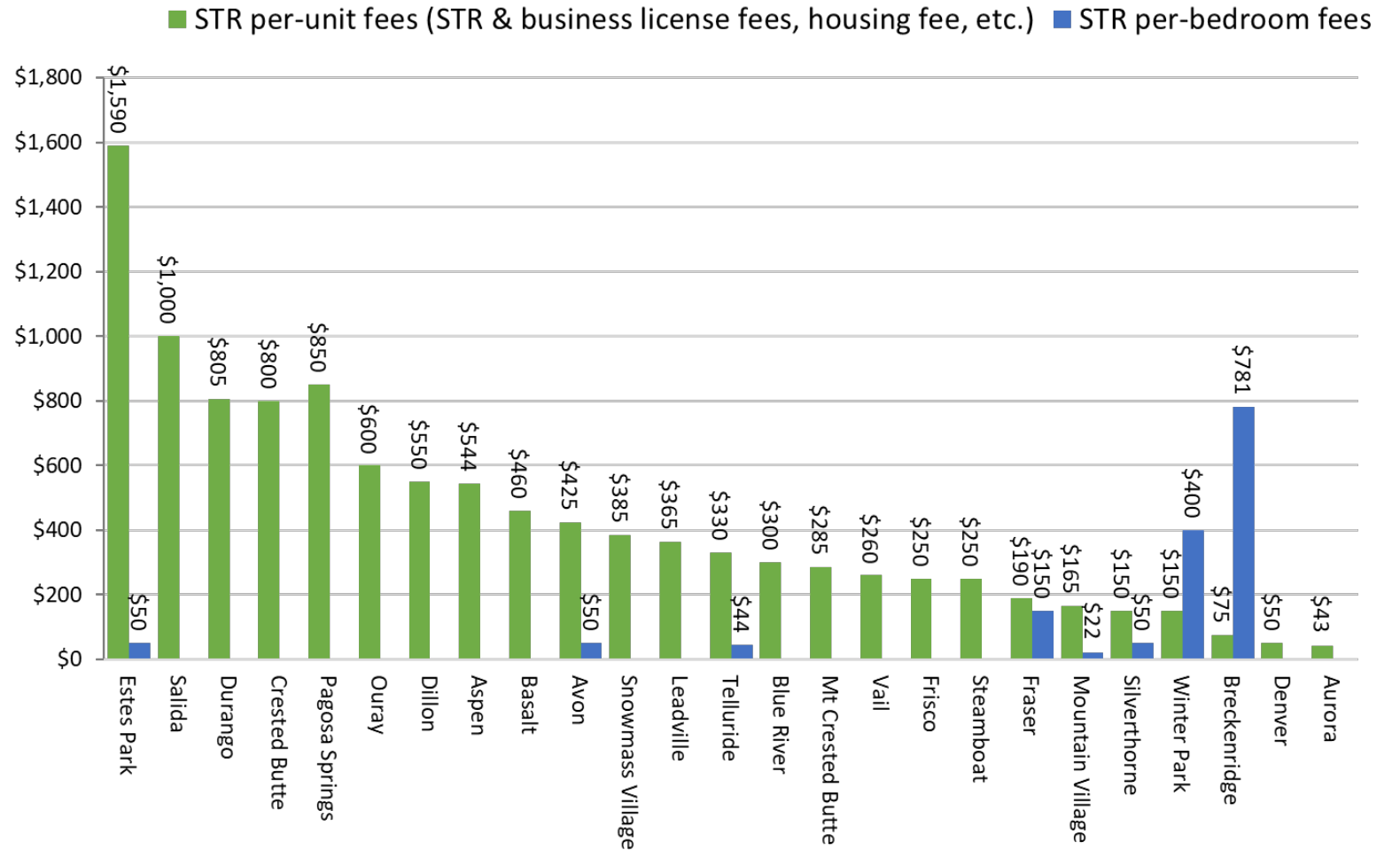
Policy Objectives

- Local workforce benefits from stable, affordable housing in the community
- Local businesses need a dependable workforce to support the customer and guest experience
- Housing for the local workforce is a core policy of communities, and additional revenue can help support housing programs

EXAMPLES

- Currently, four communities in CO have STR housing regulatory fees:
 - Breckenridge: \$756 per bedroom/yr
 - Pagosa Springs: \$500 per unit/yr
 - Estes Park: \$1,390 per unit/yr
 - Winter Park: \$400 per bedroom/yr

Annual STR Fees



*Additional Fees per Bedroom are shown for base number of bedrooms (e.g. studio/1br); fees multiply with additional bedrooms.
Source: Town websites.

OTHER TOOLS AND STRATEGIES

“Good Neighbor” guide

Targeted enforcement (e.g., garbage)

Dedicated complaint/enforcement phone number/email

Required local contact

... just don't allow them

NOW WHAT?

Understand the role STRs play in your housing and lodging inventory/market

Understand the positive and negative impacts of STRs

Decide what tool(s) would be most appropriate to address those impacts

If raising revenue, have a plan for how to spend it!

QUESTIONS AND DISCUSSION

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2019

Long Term Solutions to the Short-Term Problem: An Analysis of the Current Legal Issues Related to Airbnb and Similar Short-Term Rental Companies with a Proposed Model Ordinance

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LONG TERM SOLUTIONS TO THE SHORT-
TERM PROBLEM:
AN ANALYSIS OF THE CURRENT LEGAL
ISSUES RELATED TO AIRBNB AND SIMILAR
SHORT-TERM RENTAL COMPANIES WITH A
PROPOSED MODEL ORDINANCE

BY: RICHARD W. F. SWOR*

ABSTRACT

Airbnb and the short-term rental market have revolutionized the way that we travel and book accommodations, and now they are beginning to require cities to revolutionize their laws. This note argues that cities should adopt an ordinance that addresses health and safety, zoning, permitting, and taxation in an enforceable way by drawing on ideas already implemented in other cities such as Chicago, San Francisco, Nashville, and Portland.

In support of this conclusion, this note begins in Section I by discussing the history of vacation rentals and the sharing economy as a whole, before discussing Airbnb more specifically. Section II then provides an overview of some existing problems such as zoning, registration of properties, and taxation that cities are facing with the rise of short-term rentals. This is followed by Section III, which analyzes some existing short-term rental ordinances and how cities are dealing with these specific problems. Section IV delves into some of the limited case law that involves this short-term rental market in order to demonstrate additional legal

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considerations. Then Section V will provide a Model Ordinance for the regulation of the short-term rental market that Section VI will further advocate for specifically.

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I: AN INTRODUCTION TO SHORT-TERM RENTAL PROPERTIES

While it has changed greatly with the advent of the Internet and mobile apps, short-term rentals have existed to some degree for centuries.¹ The first part of this section focuses on important historical developments to the vacation rental market. The second part of this section then looks at the general sharing economy, while the third part gives some history and background information about Airbnb and other online, short-term rental, property-specific websites.

1. See Christine Dayao, *The Rise of the Vacation Home: From a Single Lodge to a \$85 Billion Industry*, SHERMANS TRAVEL (Mar. 30, 2015), <https://perma.cc/UZG8-7SJK> (discussing the early history of vacation homes back to the 1600s).

A. A History of Vacation Rentals and the Sharing Economy

Short-term rental properties and home sharing apps are better understood by looking at the history of boardinghouses and the development of the vacation rental market. Before vacation rentals were commonplace in American society, boardinghouses were an important part of American history.² Boardinghouses were places to stay where a large variety of people would rent rooms and eat together.³ With people moving into bigger cities in the 19th and 20th centuries, “boarding houses . . . served as places for new residents to get their city sea legs without immediately wading into the melee of the apartment-hunting game.”⁴ Not surprisingly then, these boardinghouses were usually concentrated near downtowns.⁵ Social historians estimate that in the 19th century, between one-third and one-half of urban residents either took in boarders or were boarders themselves.⁶

Boardinghouses served as a great alternative to long-term rentals or buying.⁷ More importantly, beyond being a place to stay cheaply when travelling somewhere in which you did not have family or friends, boardinghouses were an early form of affordable housing.⁸ However, “[a] tightening net of ordinances and codes have helped squeeze [boardinghouses], and related housing choices nearly to extinction.”⁹ Despite this, while the screening process is much more extensive, boardinghouses still exist to some degree in large cities like New York City.¹⁰

In addition to boardinghouses, there is a market that is perhaps more comparable to short-term rentals that has developed recently: the home rental market. The home rental market is functionally and economically similar to the online short-term rental market.¹¹ This industry has grown with technological advances, from the telegraph to the telephone to where it is now with the Internet.¹² Whether it be renting a home to stay in on a yearly basis or booking and renting an online vacation lodging, the basic economic

2. Ruth Graham, *Boardinghouses: where the city was born*, BOSTON GLOBE (Jan. 13, 2013), <https://perma.cc/2JV5-FJA6>.

3. *Id.*

4. Jessica Leigh Hester, *A Brief History of Co-Living Spaces*, CITYLAB (Feb. 22, 2016), <https://perma.cc/A7GY-EMZA> (further noting that these buildings also were historically considered “brick-and-mortar chastity belts, cast in the role of protecting women’s virtue against the city’s vices).

5. Alan Durning, *Rooming Houses: History’s Affordable Quarters*, SIGHTLINE INSTITUTE (Nov. 14, 2012), <https://perma.cc/7B74-5SVG>.

6. WENDY GAMBER, *THE BOARDING HOUSE IN NINETEENTH-CENTURY AMERICA* 3 (The Johns Hopkins University Press, 2007).

7. *Id.*

8. Durning, *supra* note 5.

9. *Id.* (referencing restrictions on room rentals, bed rentals, shared housing, building-by-building mandates, and off-street parking).

10. Hilary Stout, *Where the Boys Aren’t*, N.Y. TIMES, Nov. 5, 2009, at E1.

11. See Priceonomics Data Studio, *The Rise of the Professional Airbnb Investor*, PRICEONOMICS (Feb. 2, 2016), <https://perma.cc/G5D4-86W6>.

12. Dayao, *supra* note 1.

model is paying a set periodic amount to be able to stay in the home or apartment.¹³ Even though Airbnb is contemplating expansion into longer term rentals, these short-term rental websites are still used almost entirely for booking vacations.¹⁴

The concept of a vacation home traces back to the mid-1600s with King Louis XIII's "hunting lodge," also known as the Palace of Versailles.¹⁵ Vacation homes developed from only the wealthiest enjoying vacation travel to the 1800s, when vacationing in friends' homes became much more popular.¹⁶ It was custom during this time in Europe to ask friends to use their vacation homes using letters delivered by horse-and-carriage.¹⁷ However, it was not until the invention of the telegraph in 1837 that vacation rental bookings really expanded, allowing faster communication between potential renters and homeowners.¹⁸ The industry, which was previously primarily European, took off in the United States in the mid-1900s, with rentals being advertised in newspapers and by telephone through real estate agents.¹⁹

With the vacation rental industry growing in the second half of the twentieth century, the Vacation Rental Managers Association ("VRMA") was founded in 1985.²⁰ VRMA exists to "advance professionally-managed vacation rentals as a safe, reliable option for consumers" by providing education, information, research, and more to its members.²¹ As technology has advanced, it is only natural that the vacation rental industry has prospered with the Internet, like so many other industries.²² In 1995, a single condo in Colorado was available for rent as the Internet's first Vacation Rental by Owner.²³ This market was expanded in 1996 when a small division within Microsoft launched online travel booking site Expedia.com.²⁴

13. See generally F.T.C., *Renting an Apartment or House*, <https://perma.cc/K4SU-W2CU> (last visited Aug. 17, 2018).

14. See Olivia Zaleski, *Airbnb Explores Expansion in Long-Term Home Rentals*, BLOOMBERG TECH. (Mar. 8, 2017), <https://perma.cc/ZA29-YVHN>.

15. Dayao, *supra* note 1; see also Kristen Martinelli, *Everything You Need to Know About the Vacation Rental Industry Part 1*, FUTURESTAY, <https://perma.cc/V88N-9WEM> (last visited July 12, 2018).

16. Dayao, *supra* note 1.

17. *Id.*

18. *Id.*

19. *Id.*; see also Martinelli, *supra* note 15.

20. See *VRMA History*, VACATION RENTAL MANAGEMENT ASSOCIATION, <https://perma.cc/QPT2-CLWU> (last visited Jan. 28, 2018).

21. See *About the Vacation Rental Management Association*, VACATION RENTAL MANAGEMENT ASSOCIATION, <https://perma.cc/42W3-5GJK> (last visited Jan. 28, 2018).

22. Martinelli, *supra* note 15.

23. *Id.*

24. See *History of the Online Travel Industry Pioneer*, EXPEDIA INC., <https://perma.cc/4WUS-B8RH> (last visited Jan. 28, 2018).

B. Sharing Economy Generally

It was only natural that the growing popularity in online vacation rentals would come to a head with the rapid development of the sharing economy.²⁵ While many economic models are based on ownership, this economic model instead focuses on access to resources such as a car or a home.²⁶ The basics of this model are “early instances of a future in which peer-to-peer exchange becomes increasingly prevalent, and the ‘crowd’ replaces the corporation at the center of capitalism.”²⁷ Two big examples of this sharing economy are Uber and Airbnb.²⁸ However, this economic model is not really new.²⁹ In fact, “prior to the industrial revolution, a significant percentage of economic exchange was peer-to-peer.”³⁰

While Airbnb, which is the focus of this note, will be discussed in detail below, it is helpful to look at Uber, another industry giant. Uber, which launched in 2009 as a means for hailing premium black cars in a select few cities, has since evolved to provide car service similar to taxis in many cities across the globe.³¹ In fact, as a driving service, Uber has become so popular that its impact has been “absolutely detrimental” to the traditional taxi industry.³² However, the mere existence of Uber is dependent upon people being willing to share their automobiles and drive strangers around, yet whether these drivers are employees of Uber is a question without a definitive answer.³³

That question of whether the people providing the actual service are employees or independent contractors is common across the sharing industry.³⁴ Using Uber as an example, the economic model is dependent on the companies themselves providing people a means to find someone to drive them, but the company is in turn dependent on the drivers.³⁵ While Uber

25. See generally PIA A. ALBINSSON & B. YASANTHI PERERA, *THE RISE OF THE SHARING ECONOMY: EXPLORING THE CHALLENGES AND OPPORTUNITIES OF COLLABORATIVE CONSUMPTION* ix-x (Praeger 2018).

26. See Anastasia, *An Introduction to Sharing Economy*, CLEVERISM (Mar. 5, 2015), <https://perma.cc/J8UX-6APN>.

27. ARUN SUNDARAJAN, *THE SHARING ECONOMY: THE END OF EMPLOYMENT AND THE RISE OF CROWD-BASED CAPITALISM 2* (The MIT Press 2016).

28. See Sonya Mann, *These Companies Are Winning the Sharing Economy, and Investors Want In*, INC. (Mar. 15, 2017), <https://perma.cc/F2EC-US4S>.

29. Sundarajan, *supra* note 27, at 4.

30. *Id.* (“The trust needed to make economic exchange possible came primarily from social ties of different kinds.”)

31. *Our story*, UBER, <https://perma.cc/WP3Z-UZJ4> (last visited Jan. 28, 2017).

32. Georgios Petropoulos, *Uber and the Economic Impact of Sharing Economy Platforms*, BRUEGEL (Feb. 22, 2016), <https://perma.cc/NDK3-5UBX>.

33. See Omri Ben-Shahar, *Are Uber Drivers Employees? The Answer Will Shape the Sharing Economy*, FORBES (Nov. 15, 2017), <https://perma.cc/BN8U-KGPA>.

34. *Id.*

35. See generally *id.*; John Patrick Pullen, *Everything You Need to Know About Uber*, TIME (Nov. 4, 2014), <https://perma.cc/3ZFW-68NK> (“[t]o drivers, [Uber is] basically a referral services”).

settled a case in 2016 that allowed drivers to stay freelancers, this is an important debate that may be settled in the very near future and change much of this sharing economy.³⁶

On one side of the debate, this allows Uber to continue to “sidestep the costs of full-time employees,” including benefits such as a guaranteed minimum wage, insurance, share of Social Security, and other worker protections.³⁷ However, on the other side of the argument, some drivers “value their independence” in selecting when to work, as well as the ability to drive for multiple companies simultaneously.³⁸ With all of the concerns facing these revolutionary technologies, it is only natural that some cities have embraced these economic models while others have attempted to stifle them with regulations.³⁹

C. Airbnb and Other Short-term Rental Companies

Airbnb began in 2008 when a couple of roommates who needed some extra cash rented out some air mattresses in their loft and provided breakfast to their guests.⁴⁰ As of 2017, Airbnb has since turned into a \$31 billion company, the second most valuable start-up company in the United States behind Uber, and the biggest of the home sharing apps.⁴¹

Airbnb provides a website for hosts to share their spaces with guests, allowing individuals to book destinations in 190 countries and more than 34,000 cities.⁴² This model is similar to the traditional hotel model, except that there is no more a dedicated staff to check customers in, clean their rooms, or provide them with room service.⁴³ Instead, Airbnb is a house, condo, apartment, or other lodging that an individual owns and rents out to

36. Mike Isaac & Noam Scheiber, *Uber Settles Cases With Concessions, but Drivers Stay Freelancers*, N.Y. TIMES, Apr. 22, 2016, at B1. See generally Tad Devlin & Stacey Chiu, *Is Your Uber Driver or Lyft Driver an Employee or Independent Contractor and Why Does It Matter?*, KAUFMAN DOLOWICH & VOLUCK (June 2017), <https://perma.cc/9MAK-4E56>.

37. Isaac and Scheiber, *supra* note 36. But see *Insurance: How you're covered*, UBER, <https://perma.cc/Y7Z7-3N7K> (last visited Apr. 29, 2018) (explaining that drivers are covered by Uber's insurance policy in certain situations while driving, but not when driving for personal use).

38. Isaac & Scheiber, *supra* note 36.

39. Joanna Penn & John Wihbey, *Uber, Airbnb and consequences of the sharing economy: Research roundup*, JOURNALIST'S RESOURCE (June 3, 2016), <https://perma.cc/V4CE-FC6Z>.

40. Biz Carson, *How 3 guys turned renting an air mattress in their apartment into a \$25 billion company*, BUS. INSIDER (Feb. 23, 2016), <https://perma.cc/UP2R-UHJK>.

41. Rani Molla, *Uber is the most valuable U.S. startup, with Airbnb and WeWork following far behind it*, RECODE (Aug. 8, 2017), <https://perma.cc/VN9P-RQX4>.

42. See generally *How to travel*, AIRBNB, <https://perma.cc/3J9C-H6M4> (last visited Jan. 28, 2018) (discussing the basics of Airbnb booking for potential customers).

43. See Elaine Glusac, *Hotels vs. Airbnb: Let the Battle Begin*, N.Y. TIMES, July 20, 2016, at TR3.

interested guests.⁴⁴ The hotel manager is now simply the owner and operator of his or her own dwelling.⁴⁵ While this model may at first seem like simply a young vacationer's dream, recently it was reported that 31% of people who use Airbnb have actually used it for business.⁴⁶

Airbnb in its terms and services specifies that the company "does not own, create, sell, resell, provide, control, manage, offer, deliver, or supply any Listings or Host Services."⁴⁷ Therefore, hosts are responsible for their own listings.⁴⁸ Instead of hosts sending the renters a contract and waiting to receive a signed copy, "[w]hen members make or accept a booking, they are entering into a contract directly with each other."⁴⁹ Airbnb specifies that it is not an agent, but that it "may" help facilitate dispute resolution.⁵⁰ Additionally, Airbnb does not guarantee "the existence, quality, safety, suitability, or legality of any listing," nor the "truth or accuracy of any Listing descriptions."⁵¹

There are a variety of distinctions between the different models of short-term rental properties, but one important distinction is "owner-occupied" property versus "non-owner-occupied" property.⁵² Owner-occupied involves a residence associated with the principal resident on the same lot.⁵³ Airbnb itself goes further in options, providing the distinctions of "shared rooms," "private rooms," and "entire homes/apartments."⁵⁴ "Shared rooms" and "private rooms" are usually part of the owner-occupied model, in which the rental is not of the entire house or apartment, but rather a single room of the resident's dwelling.⁵⁵

It is worth noting that there are still hundreds of different listing sites for short-term rentals.⁵⁶ While Airbnb has arguably become the most well-known, Booking.com, HomeAway, and TripAdvisor are considered major

44. *See generally* *How to be an Airbnb host*, AIRBNB, <https://perma.cc/UN8G-WLER> (last visited Jan. 28 2018) (giving hosts a broad overview of how to begin using their residence as a short-term rental property with Airbnb).

45. *See generally* *id.*; *Local destinations for a global community*, AIRBNB, <https://perma.cc/F7KH-Z3EP> (last visited Jan. 28, 2018) (both discussing general host and guest features of using Airbnb).

46. Glusac, *supra* note 43, at TR3.

47. *Terms of Service*, AIRBNB, <https://perma.cc/8GL8-YMJS> (last visited Jan. 28, 2018).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *See* NASHVILLE, TENN., SUB. ORDINANCE NO. BL2016-492 (Feb. 22, 2017), <https://perma.cc/NS37-WXH6>.

53. *Id.*

54. *What does the room type of a listing mean?*, AIRBNB, <https://perma.cc/D7C9-QX26> (last visited Jan. 28, 2018).

55. *Id.*

56. *Third Party Distribution Channels: The Changing Landscape of Third Party Booking Channels*, VRM INTEL (Jan. 29, 2016), <https://perma.cc/6TFK-QREM>.

competitors.⁵⁷ Booking.com allows people to book “everything from apartments, vacation homes, and family-run B&Bs, to 5-star luxury resorts, tree houses, and even igloos.”⁵⁸ In 2006, HomeAway purchased Vacation Rentals by Owner (VRBO), another short-term rental website, and thus commands a large share of the market.⁵⁹ However, according to HomeAway’s CEO, the company does not consider Airbnb direct competition because HomeAway focuses on renting houses “based on an annual homeowner subscription model,” which requires renters to pay a yearly fee to keep their property listed, while Airbnb is a “platform for people looking to scrape together a few extra bucks from renting a room[.]”⁶⁰ TripAdvisor, which used to be part of Expedia.com before, includes much more than just home rentals, such as restaurant reviews, ability to book flights or rental cars, and more.⁶¹ TripAdvisor purchased FlipKey in 2008, which performs similar services to Airbnb.⁶²

Yet, with the rapid growth of short-term rentals, some cities are facing novel issues unique to the industry, and there has thus been much more reason to suddenly regulate this market.⁶³ Additionally, some places that have had restrictions on short-term rental properties for much longer have suddenly started seeing more enforcement.⁶⁴ For example, the vacation rental market has existed in Venice, California “since there was a Venice,” but actual enforcement of restrictions really started with complaints over Airbnb.⁶⁵ Similarly, areas like Tampa Bay that have historically had a lot of tourism before the smart phone era are now seeing changing regulations to deal with the new problems that Airbnb and similar companies are bringing.⁶⁶

57. *Id.*

58. *About Booking.com*, BOOKING.COM, <https://perma.cc/ED6H-GUMR> (last visited Jan. 28, 2018).

59. Peter Lane Taylor, *Watch Out, HomeAway and Airbnb: Here’s Why TripAdvisor May Be Your Biggest Competition*, FORBES (Dec. 7, 2016), <https://perma.cc/5HWG-DTFP>.

60. *Id.*; see also *How much does a subscription cost?*, VRBO, <https://perma.cc/EZ52-EGDD> (describing both the costs and the benefits of a VRBO subscription).

61. Will Ashworth, *Trip Advisor Continues Its Buying Binge*, INVESTOPEDIA (May 10, 2013), <https://perma.cc/5MN4-NAQD>; see also *FlipKey vs. Airbnb*, TRIPPING, <https://perma.cc/G6GB-RL6W> (last visited Jan. 28, 2018).

62. *Id.*

63. *Vacation Rental Market Growth: Eye-Watering Projections*, SMARTHOSTS, <https://perma.cc/E76Y-RUWB> (last visited Jan. 28, 2018) (“[Y]ear-on-year growth in the vacation rental market has averaged 3.6% between 2011 and 2016.”).

64. See Nancy Scola, *How 60 Years of Progressive Organizing History is Shaping the Short-Term Rental Market*, NEXTCITY (Dec. 2, 2013), <https://perma.cc/G2T2-3GPZ>.

65. *Id.* (“The vacation rental business has been part of Venice since there was a Venice . . . but it has only been with the rise of airbnb.com and related websites that complaints have risen to the point where [the L.A. Department of Building and Safety] has started enforcement.”).

66. See generally Sarah Hollenbeck, *Battle brewing over short-term vacation rentals*, ABC ACTION NEWS, WFTS TAMPA BAY (Mar. 15, 2017), <https://perma.cc/9C43-NUKM> (discussing concerns over proposed regulations in beach cities that have historically been tourist destinations).

Regardless of the individual cities' previous experience or lack thereof in vacation and short-term rentals, there are numerous problems potentially worth addressing.

II: EXISTING PROBLEMS

While there are many different aspects of short-term rentals which require regulation, there are five main problems which are the most pertinent for cities to address, some of these actually acknowledged by Airbnb.⁶⁷

The first problem is health and safety. The sharing-economy startups do not have the same level of regulation as their industry counterparts (i.e., taxi-services compared with Uber, or hotel industry compared with Airbnb).⁶⁸ This can result in a lack of strictly enforced health and safety standards.⁶⁹ Health and safety is a broad category but includes topics such as cleanliness, parking, fire prevention, and other aspects that would likely be present if one were to rent with a hotel as opposed to a short-term rental property.⁷⁰ There is a concern with short-term rental properties not being inspected or maintained for cleanliness as a hotel would be regularly.⁷¹ One of the primary benefits of being in a hotel is having a contact person there at all times, and certain cities have addressed the local contact aspect that is missing with short-term rental properties.⁷² Even though Airbnb has suggestions to keep the home safer, as well as general safety requirements, some cities have passed more extensive regulations directly targeting health

67. See *What regulations apply to my city?*, AIRBNB, <https://perma.cc/R8QG-UZJ7> (last visited Jan. 28, 2018); see also *5 Key Arguments in Tennessee's Debate Over Short-Term Rentals*, NASHVILLE PUB. RADIO (Sept. 16, 2016), <https://perma.cc/2K36-6M2L>.

68. See Jeff John Roberts, *Airbnb Faces Scrutiny Over Secret Tax Deals With Cities*, FORTUNE (Mar. 7, 2017), <https://perma.cc/HEU2-3DEG> (quoting a report on city's concessions to Airbnbs about how "[s]ecrecy allows lodging operators to run hotels that violate zoning laws, avoid public health and safety standards, and reduce the current housing supply for long-term residents"). See generally David Kemp, *Don't Regulate Uber, Deregulate Regular Taxis*, NEWSWEEK (Sep. 28, 2017), <https://perma.cc/7GDH-UUA6>; Maya Kosoff, *The story of a man who died in a freak accident during an Airbnb stay reveals a huge safety problem the startup still needs to solve*, BUS. INSIDER (Nov. 9, 2015), <https://perma.cc/2XYV-2UAC>.

69. See generally Kosoff, *supra* note 68. But see *Your safety is our priority*, AIRBNB, <https://perma.cc/A3XM-A7LQ> (last visited Apr. 29, 2018) (giving generalized safety requirements that Airbnb is "always working to make sure [are] enforced," such as "require[ing] that [hosts] refrain from endangering or threatening anyone" and "ask[ing] hosts] to respect others' property, information, and personal belongings").

70. See *Responsible hosting in the United States*, AIRBNB, <https://perma.cc/KP4C-P73J> (last visited Jan. 28, 2018); see also *I'm a host. What are some safety tips I can follow?*, AIRBNB, <https://perma.cc/WL3J-CPAS> (last visited Jan. 28, 2018).

71. Kosoff, *supra* note 68.

72. See CHI., ILL., MUN. CODE § 4-14-040 (2018), <https://perma.cc/959V-TT33>; DOUGLAS CTY., NEV., CODE § 5.4.100 (2018), <https://perma.cc/T72N-2N36>.

and safety concerns, such as Chicago's requirements of sanitizing and cleaning dishes after rentals.⁷³

The next problem is how to zone short-term rental properties. While some cities allow for short-term rental properties practically everywhere, other cities restrict these properties to certain zones.⁷⁴ Some only allow owner-occupied in certain zones.⁷⁵ Some cities do not allow short-term rental properties altogether.⁷⁶ While zoning law has developed over the years and become engrained as part of United States property law, zoning law was originally justified in part by looking at the concept of nuisances.⁷⁷ Therefore, when considering potential nuisances, without any kind of zoning restrictions on short-term rental properties, quiet neighborhoods suddenly have short-term rental properties popping up next door with strangers coming and going.⁷⁸

A third problem is putting proper permitting systems in place to restrict the number, and potentially location, of short-term rental properties. While this is somewhat tied to the second issue, many of the owner's requirements to get a permit to rent their home as a short-term rental are distinct from just zoning.⁷⁹ This section will also focus on the owner-occupied versus non-owner-occupied distinction certain cities have raised, which has led to litigation.⁸⁰ Furthermore, the section also touches on the notice requirement, with some cities requiring a short-term rental property owner notify the neighbors when applying for a permit.⁸¹

73. See CHI., ILL., MUN. CODE § 4-14-040 (2018), <https://perma.cc/6ZJX-XED5>; *Helping Hosts Make Their Homes Safer*, AIRBNB, <https://perma.cc/XTL6-MPYJ> (last visited Jan. 28, 2017); *Your safety*, *supra* note 79.

74. See Steven Leigh Morris, *Airbnb is Infuriating the Neighbors. Is it Time for New Rules?*, LA WEEKLY (Jan. 22, 2015), <https://perma.cc/2VYF-RLRT>.

75. NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (Feb. 26, 2015), <https://perma.cc/A9E6-E3TE>.

76. See generally Lori Weisberg, *Short-term rentals not allowed in San Diego, city attorney says*, THE SAN DIEGO UNION-TRI. (Mar. 16, 2017), <https://perma.cc/PWF3-N6GT>.

77. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387-88 (1926) (“A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.”).

78. See Joel Grover, Matthew Glasser & Cole Sullivan, *Short-Term Rentals Turn Into Nightmares Next Door*, NBC L.A. (Mar. 1, 2017), <https://perma.cc/5WL5-J33V> (quoting neighbors lamenting that “[they]’ve lived here for several years now and the last three weeks, [they]’re suddenly living next to a hotel”).

79. CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6.2 (2018), <https://perma.cc/53R8-F99S>.

80. See *Anderson v. Metro. Gov’t of Nashville & Davidson Cty. TN*, No. M2017-00190-COA-R3-CV (Tenn. Ct. App. Jan. 23, 2018).

81. CITY OF PORTLAND, OR., PLANNING AND ZONING CODE § 33.207 (2017), <https://perma.cc/Y68W-4HDE>.

Permitting prevents what the hotel industry refers to as “illegal hotels.”⁸² Nearly 30% of Airbnb revenue is collected from full-time hosts.⁸³ According to one study, there are 2,675 full-time operators who have properties available to rent more than 360 days a year.⁸⁴ Additionally, hosts who have two or more units available to rent account for nearly 40% of the revenue on Airbnb.⁸⁵ Requiring permits is one potential way to attempt to limit this problem.⁸⁶

The fourth problem is taxation of short-term rental properties and hosts. This issue really comes down to cities’ relationship with Airbnb.⁸⁷ Airbnb is willing to collect hotel taxes in certain instances, but some cities require more information about the guests than Airbnb is willing to provide, leading to some cities completely forgoing the hotel tax except for self-reporting citizens.⁸⁸ However, foregoing this tax opportunity is hard for cities, because Airbnb already collects over \$40 million in tax revenue for cities that are willing to partner with the company.⁸⁹

A final problem that also serves to tie all of these together is enforceability. While all of these areas may not individually seem overly difficult to regulate, cities must create restrictions that are actually enforceable.⁹⁰ This also means that these restrictions must pass legal scrutiny and not be deemed unconstitutional or against state law, which will primarily be addressed in Section IV.⁹¹ Additionally, these restrictions must not be overly complex or overly burdensome on agency officials, allowing them the ability to actually monitor and enforce these restrictions.⁹²

82. Christopher Elliott, *Airbnb Runs ‘Illegal Hotels,’ Hotel Industry Study Claims*, FORTUNE (Jan. 20, 2016), <https://perma.cc/5A3L-597Q>.

83. Dr. John W. O’Neill & Yuxia Ouyang, *From Air Mattresses to Unregulated Business: An Analysis of the Other Side of Airbnb*, P.A. STATE UNIV. 2 (2016), <https://perma.cc/E85M-Q9M8> (“A growing number of hosts are using the Airbnb platform to operate an unregulated, full-time business”).

84. *Id.* at 3.

85. *Id.*

86. *See* Elliott, *supra* note 82.

87. Kai Kokalitcheva, *Airbnb to Cities: Cooperate and We’ll Get You Tax Revenue*, FORTUNE (Jan. 22, 2016), <https://perma.cc/M9A7-GLB4>.

88. *Id.*

89. Cecilia Kang, *Airbnb Takes Its Case to U.S. Mayors Conference*, N.Y. TIMES, Jan. 21, 2016, at B1.

90. *See generally* BRIAN BGUYEN ET AL., DESIGNING ENFORCEABLE REGULATIONS FOR THE ONLINE SHORT-TERM RENTAL MARKET IN LOS ANGELES, UCLA LUSKIN SCHOOL OF PUBLIC AFFAIRS (2016).

91. *See* La Park La Brea A LLC v. Airbnb, Inc., 285 F. Supp. 3d 1097 (C.D. Cal. 2017); Airbnb, Inc. v. City & Cty. of S.F., 217 F. Supp. 3d 1066 (N.D. Cal. 2016).

92. *See generally* Tim Logan, *Can Santa Monica—or anyplace else—enforce a ban on short-term rentals?*, L.A. TIMES (May 13, 2015), <https://perma.cc/9A9L-KBZJ>.

III: EXAMPLES OF EXISTING CITY ORDINANCES

Cities have addressed these problems in many different ways. While some cities' regulations have somewhat matched each other, some regulations are vastly different city to city.

A. Health and Safety

One of the main differences between a short-term rental unit and a hotel is the amount of time spent by a staff focusing on health and safety. However, some cities have addressed this extensively in their regulations.⁹³ Chicago, Illinois is one of the best examples of a city having in-depth requirements for its operators.⁹⁴

Chicago Municipal Code section 4-14-040 discusses the legal duties of operators, many of which relate to health and safety.⁹⁵ First, each shared housing unit must provide its guests with soap, clean individual bath cloths and towels, and clean linen.⁹⁶ All of these must be kept in good repair and must be changed between guests.⁹⁷ Additionally, the host is required to clean and sanitize all dishes, utensils, pots, pans, and other cooking utensils between guests.⁹⁸ Any leftover food, beverages, and alcohol left by the previous guests must also be disposed of.⁹⁹ If the host provides food to any guests, the host is required to comply with all applicable food handling and licensing requirements of the Chicago Municipal Code and the Board of Health regulations.¹⁰⁰

Additionally, Chicago requires that each host ensure that the shared housing unit is in compliance with applicable laws regarding the installation and the maintenance of functioning smoke and carbon monoxide detectors.¹⁰¹ An evacuation diagram identifying all means of egress from the shared housing unit and the building is required to be posted in a conspicuous place near the entrance of the shared housing unit.¹⁰²

Another important aspect of health and safety is the listing itself. Chicago requires descriptive information on the listing.¹⁰³ First, the listing must state the short-term residential rental provider's cancellation and check-in and check-out policies.¹⁰⁴ Second, it must provide a statement on whether

93. See CHI., ILL., MUN. CODE § 4-14-040 (2018), <https://perma.cc/9GFX-BRMF>.

94. § 4-14-040.

95. § 4-14-040.

96. § 4-14-040(a)(1).

97. § 4-14-040(b)(1).

98. § 4-14-040(b)(2).

99. § 4-14-040(b)(2).

100. § 4-14-040(b)(7).

101. § 4-14-040(b)(5).

102. § 4-14-040(b)(6).

103. § 4-14-040(a).

104. § 4-14-040(a)(1).

or not the rental is wheelchair or ADA accessible.¹⁰⁵ In addition to this, it must state whether there is any parking and what restrictions there are, as well as the availability of any recreational facilities or other amenities.¹⁰⁶ Third, there must be a description of the unit, specifying the number of sleeping rooms, the number of bathrooms, and what portion of the house is available to rent.¹⁰⁷ Finally, it must provide the short-term residential rental provider's city license or registration number.¹⁰⁸ This registration process will be discussed more in depth in the third part of this section related to permitting.

Hotels additionally have the added benefit of having a contact person or manager within the building. In Chicago, each shared housing host is required to post in a conspicuous place near the entrance the name and telephone number of a local contact person.¹⁰⁹ This "local contact person" is defined as "a person authorized as an agent of the shared housing host who: (1) is designated for service of process; (2) is authorized by the shared housing host to take remedial action and to respond to any violation of this Code; and (3) maintains a residence or office located in the city."¹¹⁰

Boulder, Colorado increases this local contact requirement and requires the name and telephone number of two local contacts on the application form.¹¹¹ These local contacts must be "capable of responding to the property within sixty minutes."¹¹² However, the other safety restrictions are much more relaxed, only requiring a "certification that the dwelling unit is equipped with operational smoke detectors, carbon monoxide detectors and other life safety equipment as may be required by the city manager."¹¹³

San Francisco, California's requirements are less specific than Chicago's.¹¹⁴ The only specific requirement in the code in terms of health and safety is just that the residence needs to demonstrate the property is not "subject to any outstanding Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or Planning Code enforcement."¹¹⁵ However, similar to Chicago, the owner must post a "clearly printed sign" providing information regarding the "location of all fire extinguishers in the unit and building, gas shut off valves, fire exits, and pull fire alarms."¹¹⁶

105. § 4-14-040(a)(2)(i).

106. § 4-14-040(a)(2)(ii-iii).

107. § 4-14-040(a)(3).

108. § 4-14-040(a)(4).

109. § 4-14-040(b)(6).

110. § 4-14-010.

111. BOULDER, COLO., MUN. CODE § 10-3-19(c)(5) (2018), <https://perma.cc/4P9F-X66Q>.

112. § 10-3-19(c)(5).

113. § 10-3-19(c)(4).

114. S.F., CAL., ADMIN. CODE § 41A.5(H) (2018), <https://perma.cc/QV98-NAWG>.

115. § 41A.5(H)

116. § 41A.5(2)(D).

While the codes in Chicago and San Francisco are directly in response to the rise in short-term rentals, some other spots such as Douglas County, Nevada, home of Lake Tahoe, have had ordinances related to vacation rentals for a longer time.¹¹⁷ However, it is easy to see many of the similarities in the codes. In Douglas County, the vacation home rental must have a clearly visible and legible notice posted within the unit on or adjacent to the front door which contains health and safety information.¹¹⁸

This notice first has to contain the name of the agent, local contact person, or owner of the unit with a telephone number at which that party may be reached on a 24-hour basis.¹¹⁹ The definition of local contact person is similar to Chicago.¹²⁰ However, it is worth noting that while Chicago requires this local contact person's information to be available, Douglas County lists three different options with the only stipulation being that any of those parties must be reachable on a 24-hour basis.¹²¹

Furthermore, this notice must list the maximum number of occupants permitted to stay in the unit, the maximum number of vehicles allowed to be parked on the property, and the location of on-site and assigned parking spaces.¹²² Something that Douglas County requires that Chicago does not is information regarding the trash pick-up day and notification that the trash may not be stored on the exterior of the property except for certain times.¹²³

Some cities, such as San Francisco, require the hosts to carry some kind of liability insurance.¹²⁴ While this issue is somewhat alleviated for Airbnb hosts by the company's Host Protection Insurance program, which can cover up to \$1 million per occurrence of third party claims of bodily injury or property, Airbnb's insurance program does not cover intentional acts, loss of earnings, fungi or bacteria, as well as other exclusions.¹²⁵ However, it is worth noting that not all short-term hosting platforms provide liability insurance coverage, so the issue is still relevant in drafting an ordinance to the extent that some owners may still need to get coverage.¹²⁶

117. See generally Amy Alonzo, *Douglas County vacation rental ordinance to see updates*, THE RECORD-COURIER (Mar. 23, 2017), <https://perma.cc/4T8Z-BKDH> (pointing out that the last update to the code occurred in 2005).

118. DOUGLAS CTY, NEV. CODE § 5.40.090 (2018), <https://perma.cc/3TGV-SK98>.

119. § 5.40.090.

120. § 5.40.100.

121. § 5.40.090.

122. § 5.40.090.

123. § 5.40.090.

124. S.F., Cal., Admin. Code § 41A.5(g)(1)(D) (2018), <https://perma.cc/4DM6-BTRD>.

125. *What is Host Protection Insurance?*, AIRBNB, <https://perma.cc/TL4E-C59U> (last visited Jan. 28, 2018).

126. Stephen Fishman, *Understand insurance and liability issues when you rent out your home on Airbnb*, NOLO, <https://perma.cc/SD54-7Y3N> (last visited Jan. 28, 2018) (“Instead, HomeAway recommends that hosts obtain their own short-term rental coverage from the insurer[.]”).

B. Zoning

Another issue that is prominent in short-term rental regulation is which zones permit these short-term rentals. It is valuable in the case of zoning to start with broader zoning regulations and move to progressively more narrow zoning regulations. Portland, Oregon has one of the broadest.¹²⁷ Portland allows short-term rentals in all zones.¹²⁸ However, in zones where Retail Sales and Service uses are allowed, these short-term rentals may be regulated as either Retail Sales and Service uses or as short-term rentals.¹²⁹ “This decision is up to the applicant.”¹³⁰

Chicago adds the idea of “restricted residential zones.”¹³¹ A restricted residential zone is defined as:

a precinct within which, in any combination: (1) all new or additional shared housing units or vacation rentals, or both, have been ordained as ineligible for licensing or registration under Chapter 4-14 [“Shared Housing Units”] or Section 4-6-300 [“Vacation Rentals”] of this Code; or (2) all new or additional shared housing units or vacation rentals, or both, that are not their owner’s primary residence have been ordained as ineligible for licensing or registration under Chapter 4-14 or Section 4-6-300 of this Code.¹³²

The legal voters of any precincts that contain residentially zoned property may petition their local alderman to introduce an ordinance to prohibit all new or additional shared housing units, vacation rentals, or both.¹³³ The ordinance can be a general ban, or it can ban only those units that are not their owner’s primary residence.¹³⁴

This petition requires the signatures of at least 25% of the registered voters of the precinct.¹³⁵ The alderman must assess relevant factors, which include the precinct’s geography, density and character, the prevalence of residentially-zoned property, current shared housing units and vacation rentals in the precinct, and the prevailing viewpoint with regard to the issue raised in the petition.¹³⁶ Once these factors have been assessed, the alderman

127. CITY OF PORTLAND, OR., PLANNING AND ZONING CODE § 33.207.030 (2018), <https://perma.cc/RZP6-6LU7>.

128. § 33.207.030.

129. § 33.207.030.

130. § 33.207.030.

131. CHI., ILL., MUN. CODE § 4-17-010 (2018), <https://perma.cc/LRP2-QUZ5>.

132. § 4-17-010.

133. § 4-17-020.

134. § 4-17-020.

135. § 4-17-020.

136. § 4-17-020.

may introduce an ordinance which creates a restricted residential zone in that precinct.¹³⁷

Charleston, South Carolina allows for short-term rentals in various zones and provides an overlay map to help potential owners know whether or not they live in an area that allows for short-term rentals.¹³⁸ While Charleston is in the process of conducting an evaluation of potential changes in regard to their short-term rental property ordinance, as it stands, the City of Charleston Department of Planning, Preservation & Sustainability provides a Short-term Rental Overlay map that shows which properties are eligible for short-term rentals.¹³⁹ The Short-term Overlay Zone in the ordinance allows for short-term rentals as conditional uses in certain zone districts as long as the “use satisfies” various conditions.¹⁴⁰ These include not being an affordable housing unit, a prohibition on exterior signs, and compliance with all business license and revenue collection laws of the City of Charleston.¹⁴¹

One interesting aspect of Charleston’s zoning ordinance as it relates to short-term rentals is the number of units permitted on one lot.¹⁴² Whereas some ordinances such as St. Helena, California only allow for one short-term rental unit per lot,¹⁴³ Charleston allows for “[n]o more than nine (9) short-term rental units . . . on one (1) lot.”¹⁴⁴ Additionally, the ordinance provides that for ten or more accommodations use is possible.¹⁴⁵ This accommodation makes it so renters in apartment buildings could potentially rent out their apartments as short-term rental units.

Finally, Miami, Florida has a much stricter zoning definition. In a memorandum from the City of Miami Planning & Zoning Department Office of Zoning, the definitions of residential areas in the zoning code are interpreted.¹⁴⁶ Under this interpretation, “using a Single Family residence or Two Family-Housing (a duplex) within a T3 [residentially zoned area] to provide rental accommodations per night, week or anything less than one

137. § 4-17-020.

138. CHARLESTON, S.C., ZONING CODE § 54-227(a) (2018), <https://perma.cc/UQ4C-XGYZ>.

139. *Short Term Rental Task Force*, CITY OF CHARLESTON, S.C., <https://perma.cc/A4EV-YBZ7> (last visited Jan. 28, 2018); *Short Term Rental, ST Overlay*, CITY OF CHARLESTON, S.C., <https://perma.cc/JM7V-DH7K> (last visited Jan. 28, 2018).

140. § 54-227(a) (“Short term rentals may be permitted in the CT, LB, GB, UC, MU-1, MU-1/WH, MU-2, and the MU-2/WH zone districts within the Short Term Rental, ST Overlay Zone as a conditional use if the use satisfies, as evidenced by an application, a site plan and floor plans of the property. . . .”).

141. § 54-227(a).

142. § 54-227(a).

143. ST. HELENA, Cal., MUN. CODES § 17.134.040(A) (2018), <https://perma.cc/H4JP-JQL2>.

144. § 54-227(a) (2018), <https://perma.cc/4768-H43Z>.

145. § 54-227(a).

146. Chabeli Herrera, *Miami puts plan for strict short-term rental rules on hold – for now*, MIAMI HERALD (Feb. 28, 2017), <https://perma.cc/3XTQ-BCU6>.

month would constitute an activity in violation of Miami Ordinance 21.”¹⁴⁷ This interpretation essentially outlaws short-term rentals in suburban areas.¹⁴⁸

C. Permitting

The majority of cities regulating short-term rental properties now require that the host acquire some sort of license or permit in order to operate.¹⁴⁹ This helps the cities monitor who is renting the properties, where they are renting, and whether or not hosts are keeping up with the health and safety regulations.¹⁵⁰ However, monitoring these permits is a difficult task, which will be addressed below in Section III(E), regarding problems with enforceability.¹⁵¹ Some cities, such as Philadelphia, Pennsylvania require no permit as long as the residence is rented 90 days or less in a calendar year.¹⁵²

However, many cities that have sought to regulate short-term rental properties do require permitting.¹⁵³ Santa Fe, New Mexico shows some of the standard requirements cities utilize in applications for short-term rental permits.¹⁵⁴ First, an application to get a permit for a residential unit requires proof of ownership of the unit.¹⁵⁵ This can be shown with a deed or the latest property tax record.¹⁵⁶ Additionally, an owner must submit a site plan with a scale showing of all buildings and parking.¹⁵⁷ The owner must have a floor plan to scale showing all bedrooms.¹⁵⁸ Furthermore, the owner must have

147. Letter from Irene S. Hegedus, Zoning Administrator, City of Miami Planning & Zoning Department, to Francisco J. Garcia, Dir. of Planning and Zoning, City of Miami (Aug. 11, 2015), <https://perma.cc/P8CN-VTV2>.

148. Herrera, *supra* note 146.

149. See CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6-2(A)(5)(b)(ii) (2018), <https://perma.cc/7XTZ-5GWM>; NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (Feb. 26, 2015), <https://perma.cc/65PB-9225>.

150. See generally *Short Term Rental Property*, METRO. GOV'T OF NASHVILLE & DAVIDSON CTY., TENN., <https://perma.cc/5RFL-DU2Y> (last visited Jan. 28, 2018) (discussing the permitting requirements and process in Nashville).

151. See generally HOST COMPLIANCE, <https://perma.cc/XM9J-DYXH> (last visited Jan. 28, 2018) (discussing the difficulty cities face regulating short-term rentals).

152. *Short Term Home Rental*, LICENSES + INSPECTIONS, CITY OF PHILA., <https://perma.cc/87JK-QT6L> (last visited Jan. 28, 2018).

153. See generally *Short-Term Rentals Regulation in 10 US Cities*, BNB SHIELD, <https://perma.cc/QR9H-XRP3> (last visited Aug. 17, 2018) (showing multiple major cities require permitting).

154. CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6-2 (2018), <https://perma.cc/VE6S-N32P>.

155. § 14-6-2.

156. *Short Term Rental Permit Application*, CITY OF SANTA FE, <https://perma.cc/3M29-Q4SB> (last visited Jan. 28, 2018).

157. *Id.*

158. *Id.*

proof of property insurance.¹⁵⁹ There must also be proof that the short-term rental unit has had all required inspections.¹⁶⁰

This application also must have the name and number of the owner or operator where he or she is available twenty-four hours a day, seven days a week in order to respond to any complaints.¹⁶¹ The application must be signed by the owner, indicating that he or she will operate the short-term rental unit in compliance with any applicable laws.¹⁶² This application is submitted with a \$100 nonrefundable fee.¹⁶³ Once all the required inspections have been approved, an owner will be notified that the unit is eligible for a short-term rental permit.¹⁶⁴

While different cities have different renewal procedures, Santa Fe requires a yearly renewal.¹⁶⁵ This renewal process starts with a notification in December that renewal is required.¹⁶⁶ The permit holder then has until March 15 to submit a renewal application and payment.¹⁶⁷ Under this method, the owner makes yearly payments to keep the permit active and continue operating a short-term rental.¹⁶⁸

Some cities have different permitting requirements depending on whether a property is owner-occupied or non-owner-occupied.¹⁶⁹ Owner-occupied requires that “the owner of the property permanently resides in the [short-term rental property] or in the principal residential unit with which the [short-term rental property] is associated on the same lot.”¹⁷⁰ Nashville, Tennessee originally allowed non-owner-occupied short-term rental properties but would only grant permits in three percent of the single-family or two-family residential units within each census tract.¹⁷¹ However, Nashville subsequently passed a new ordinance that seeks to phase out all non-owner-occupied short-term rental properties by June of 2020.¹⁷²

159. *Id.*

160. CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6-2(A)(5)(d)(iii) (2018), <https://perma.cc/59WU-9DRZ>.

161. § 14-6-2(A)(5)(d)(i).

162. § 14-6-2(A)(5)(d)(ii).

163. § 14-6-2(A)(5)(d)(vii).

164. *Short Term Rental Permit Application*, *supra* note 156.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (Feb. 26, 2015), <https://perma.cc/XBY5-VALH>; METRO. GOV'T OF NASHVILLE, *Short Term Rental Property Permit Information*, NASHVILLE.GOV (last visited Aug. 19, 2018), <https://perma.cc/WUR8-DU53>.

170. *Id.*

171. *Id.*

172. Joey Garrison, *Nashville's short-term rental vote: What it does, doesn't do, and why it's a big deal*, TENNESSEAN (Jan. 25, 2018), <https://perma.cc/Z5SF-M7TK>.

This is similar to what New York City already required, prohibiting short-term rentals unless they are in an owner-occupied unit.¹⁷³ Under New York's Multiple Dwelling Law, there are two types of dwellings.¹⁷⁴ Class A dwellings are residential buildings that are occupied for 30 days or more, and Class B dwellings are buildings that are occupied for less than 30 days.¹⁷⁵ This law was amended to provide that Class A dwellings must have the same person or family rent for at least 30 consecutive days.¹⁷⁶ The amendment prevents landlords from taking advantage of the price disparity between people renting long-term and the amount of money that can be generated by a short-term vacation rental.¹⁷⁷

Under this law, a person can only rent to a guest if the owner also occupies the dwelling.¹⁷⁸ While this law was not specifically targeting online short-term rentals, this law as applied to short-term rentals makes it illegal in New York to rent non-owner occupied short-term rental properties.¹⁷⁹ Moreover, not only must the host be on the premises, but the guest must also have access to the entire unit.¹⁸⁰

Another issue in permitting, besides just the application for the different types of permits, is the requirement of notice. Portland, Oregon requires the owner of the short-term rental to notify the neighborhood association and the District Coalition of Neighborhoods.¹⁸¹ Additionally, the owner must notify all property owners with properties abutting and directly and diagonally across from their residence.¹⁸² This is a simple notice requirement, and the neighbors are not required to sign or send back anything specifying that they have received this notice.¹⁸³ Portland provides a sample letter that can be filled out and sent to neighbors.¹⁸⁴

173. David Pfeffer, *The Conundrum With Short-Term Rentals in NYC*, LAW 360 (Feb. 6, 2017), <https://perma.cc/Z7Q8-KGHG>.

174. N.Y. STATE, MULTIPLE DWELLING LAW § 194 (McKinney 2018).

175. N.Y. STATE, MULTIPLE DWELLING LAW §§ 4(8)(a)(1)(A), 4(9).

176. § 4(8)(a)(1)(A).

177. Pfeffer, *supra* note 173.

178. *Id.*

179. *Id.*

180. *To Airbnb or not to Airbnb: New York's Restrictions on Short-term Rentals*, ROSEN LAW LLC (Oct. 10, 2017), <https://perma.cc/JHM6-3HHP>.

181. CITY OF PORTLAND, OR., PLANNING AND ZONING CODE § 33.207(C) (2018), <https://perma.cc/F3BB-AFA6>; see CITY OF PORTLAND OR., *Neighborhood Notice Accessory Short-Term Rental Permit – 1&2 Dwelling Structure*, BUREAU OF DEV. SERVS. (last visited Aug. 19, 2018), <https://perma.cc/RQ5C-PRHT>.

182. § 33.207(C).

183. § 33.207(C).

184. *Neighborhood Notice*, CITY OF PORTLAND, <https://perma.cc/RQ5C-PRHT> (last visited Jan. 28, 2018).

D. Taxation

Hotels are generally required to pay transient occupancy taxes, which are charged to travelers when they stay in accommodations for fewer than thirty days.¹⁸⁵ But what about people who instead stay in short-term rental properties? Airbnb provides on its website information about occupancy taxes for travelers.¹⁸⁶ According to the help page, Airbnb “expect[s] all hosts to familiarize themselves with and follow their local laws and regulations.”¹⁸⁷ At the bottom of the page, Airbnb states that “[it will] let you know if an occupancy tax related feature becomes available for your listing.”¹⁸⁸

While allowing Airbnb to collect and remit taxes to cities may seem like a win-win for both hosts and cities, there is more to this issue than meets the eye.¹⁸⁹ Many cities are worried about allowing Airbnb to collect and remit the taxes without certain concessions to the city, such as the addresses of where the taxes are being remitted from.¹⁹⁰ However, a recent report which was prepared with support from the American Hotel and Lodging Association says that some cities are willing to make these concessions.¹⁹¹ Even though the hotel industry is an obvious critic of Airbnb because of Airbnb’s growing share of the market, the report does point out some unusual concessions on the part of tax agencies.¹⁹²

One of the biggest concessions is that these agreements do not “guarantee accountability for the proper payment of lodging taxes because tax agencies cede a substantial control of the payment and audit processes to Airbnb.”¹⁹³ Airbnb does not share direct data about either hosts or listings, making it more difficult for city officials to police residents breaking short-term rental local laws.¹⁹⁴ Why might a city be willing to concede such an important aspect of tax collection?

185. See NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (Feb. 26, 2015), <https://perma.cc/DTU8-CM5R>.

186. *What is occupancy tax? Do I need to collect or pay it?*, AIRBNB, <https://perma.cc/XC2F-HRAD> (last visited Jan. 28, 2018).

187. *Id.*

188. *Id.*

189. See Alison Griswold, *Why Airbnb Desperately Wants to Pay Hotel Taxes*, SLATE (Feb. 13, 2015), <https://perma.cc/C5BP-MYJT>; Roberts, *supra* note 68.

190. Griswold, *supra* note 189 (“[I]t would effectively sanction an operation that local regulations make largely unlawful”); Kokalitcheva, *supra* note 87 (“[m]any municipalities across the U.S. have criticized Airbnb for the opacity of its hosts’ activities through the service, often violating local regulations on short-term rentals”).

191. DAN R. BUCKS, AIRBNB AGREEMENTS WITH STATE AND LOCAL TAX AGENCIES 2-3 (2017), <https://perma.cc/293F-JVRE>.

192. Roberts, *supra* note 68 (“[f]or instance, the deals do not permit the cities to audit Airbnb’s books or identify the addresses of the hosts”).

193. Bucks, *supra* note 191, at 2.

194. Kokalitcheva, *supra* note 87.

For example, in Lexington, Kentucky, 2016 data showed that tourism officials could get an additional estimated \$150,000 in revenue from Airbnb each year.¹⁹⁵ The company itself estimated that through partnering with the fifty largest American cities, the company could have provided \$200 million in tax revenue in 2015.¹⁹⁶ However, according to the author of the report, these cities should be cautious not to undermine the democratic process and “provide special treatment to Airbnb.”¹⁹⁷

There are other taxes, such as sales tax, that can be collected in regard to short-term rentals but, according to a 2017 Survey of State Tax Departments, there is a split on who should be responsible for these taxes.¹⁹⁸ Fifteen states impose tax collection obligations on Airbnb.¹⁹⁹ Twenty-five states put the responsibility of collecting sales tax on the property owner.²⁰⁰ Some states make the property owner and the company jointly liable.²⁰¹ Some states take an entirely different approach, such as New Jersey, which requires no remittance of taxes.²⁰² A bill was recently vetoed by the governor that would have imposed taxes on Airbnb rentals, despite having support from both the hotel industry and Airbnb itself.²⁰³

E. Enforceability

Despite a great deal of passed and proposed regulations in cities and municipalities, these regulations mean nothing if they are not enforceable.²⁰⁴ The difficulty of enforcing any regulations, along with previous lengthy battles with other sharing economy companies such as Uber, have led some cities to not even attempt to regulate short-term rentals.²⁰⁵

195. Beth Musgrave, *Lexington Airbnb hosts made \$1.8 million in 2016. Now the city will get its cut.*, LEXINGTON HERALD LEADER (Dec. 5, 2017), <https://perma.cc/L4CH-7GSR>.

196. Kokalitcheva, *supra* note 87.

197. Roberts, *supra* note 68 (“Bucks said cash-strapped cities often agree to concessions because Airbnb offers a carrot in the form of a big check, and because they lack the resources to conduct long-running investigations into the company and its software”).

198. Gerald B. Silverman, *Airbnb Free of New Jersey Sales, Hotel Tax*, BLOOMBERG BNA (Jul. 21, 2017), <https://perma.cc/Z6RJ-2WUG>. *See also 2017 Survey of State Tax Department*, BLOOMBERG BNA (2017), <https://perma.cc/6CYK-UNEE>.

199. *2017 Survey of State Tax Department*, BLOOMBERG BNA S-6 (2017), <https://perma.cc/ZP8T-ZZAT>.

200. *Id.*

201. *Id.* (“Several states, including Colorado, Iowa and North Carolina, noted that the owner and third party are jointly liable for the collection of sales tax.”).

202. Silverman, *supra* note 198.

203. *Id.* (“We are extremely disappointed the governor decided to veto a bill that would have generated millions of dollars for Garden State residents without raising taxes,” Airbnb said in a statement.”)

204. *See* Christine Van Geyn, *Slapping new regulations on Airbnb won’t cure cities’ housing woes*, CBC NEWS (July 10, 2017), <https://perma.cc/XA4H-63PW>.

205. *See* Mark Reagan, *No Rules: Will San Antonio Regulate Airbnb and Homeaway?*, SAN ANTONIO CURRENT (Feb. 18, 2015), <https://perma.cc/9T7Y-X8U5> (“San Antonio is still smarting over the city’s bitter fight against popular ride-sharing services Uber and Lyft.”).

Some cities attempt to make violating the law frightening to a homeowner by levying fines for non-compliance that would deter most homeowners from violating the law.²⁰⁶ Miami takes this idea to the extreme, imposing fines for short-term rental violations that are up to twenty times higher than the maximum fine for a first-time drunk driving conviction.²⁰⁷ The city's \$20,000 fine only increases with multiple violations, reaching a total of \$100,000 for a fifth violation.²⁰⁸

Miami has the most extreme penalties for short-term rental violations in the United States.²⁰⁹ However, some cities with lower fines, such as Portland, Oregon, are increasing their fines to make renting without a permit less appealing.²¹⁰ Nashville, Tennessee imposes a fifty dollar fine per day for each day of operation without a permit.²¹¹ These fines add up, resulting in a \$10,500 fine for a Nashville resident who continued to operate a short-term rental after the Board of Zoning Appeals had suspended his permit.²¹²

Another perhaps more pressing issue is who is going to enforce these restrictions. San Francisco has created an entire Office of Short-Term Rentals.²¹³ But other cities, such as Asheville, North Carolina, have only hired a single employee.²¹⁴ This employee is responsible for processing applications, issuing permits, and issuing notices of violations and citations.²¹⁵ Santa Monica, California falls in between, hiring two code enforcement officers and a data analyst.²¹⁶ These analysts are hired from revenue collected from home-sharing tax.²¹⁷

This difficulty in monitoring and enforcing short-term rental properties has even led to start-up companies forming to take over these

206. See John Kartch, *\$20,000: Miami Beach Short-Term Rental Fines Are USA's Highest*, FORBES (Oct. 26, 2017), <https://perma.cc/P9EL-HKXW>.

207. *Id.* ("Violations of this city's restrictive short-term rental law can result in fines of \$20,000 or more . . . In Florida the maximum fine for a first-time drunk driving conviction is \$1,000.")

208. *Id.*

209. *Id.*

210. *Portland to raise fines for operating Airbnb rental without permit*, KGW8 NEWS (FEB. 16, 2017), <https://perma.cc/H8WQ-NDMH> ("Currently, fines for operating without a permit . . . range from roughly \$700 to \$1,400. [L]ate next month, the city will raise fines to between \$1,000 and \$5,000.")

211. NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (Feb. 26, 2015), <https://perma.cc/98DZ-5Q5P>.

212. Kevin Trager, *Judge issues \$10,500 fine for Airbnb host, man rents home anyway*, WSMV (Nov. 16, 2017), <https://perma.cc/UR4K-6VHP>.

213. S.F. OFFICE OF SHORT-TERM RENTALS, <https://perma.cc/DGU8-TAW3> (last visited Jan. 28, 2018).

214. *Asheville's homestay and short-term rental regulation program progressing*, ASHEVILLE CITY SOURCE (July 13, 2016), <https://perma.cc/6K73-62VN>.

215. *Id.*

216. Logan, *supra* note 92.

217. *Id.*

responsibilities.²¹⁸ On their homepage, Host Compliance announces that the company “makes it easy for municipalities to implement and enforce fair and effective short-term rental rules.”²¹⁹ Around 110 cities are listed as using the services of Host Compliance.²²⁰ The fact that other start-up companies are emerging to help regulate Airbnb, a start-up company itself, shows how difficult to regulate some of these problems have become.

IV: LEGAL ISSUES

Regulating these short-term rental properties without violating existing law is difficult, and some of these regulations are already being challenged in court.²²¹ In various courts across the United States, short-term rental property challenges have been raised on grounds such as anti-monopoly concerns, contractual issues, freedom of speech violations, ambiguity, and vagueness.²²²

A. Anti-Monopoly

Nashville, Tennessee passed an ordinance providing that no more than three percent of non-owner occupied single-family or two-family residential units would be granted short-term rental permits in each census tract.²²³ The Anderson family challenged this for, among other things, violating the anti-monopoly clause of the Tennessee State Constitution.²²⁴ Article I, Section 22 states that “perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed.”²²⁵ This provision is similar to other states’ constitutions related to monopolies.²²⁶

In *Anderson v. Metropolitan Government of Nashville & Davidson County*, the Andersons moved from Chicago to Nashville and obtained an owner-occupied permit.²²⁷ Upon receiving a promotion that required moving,

218. Heather Kelly, *Meet the Airbnb police*, CNN TECH (Oct. 1, 2016), <https://perma.cc/E95F-YFVW>.

219. HOST COMPLIANCE, <https://perma.cc/S6WQ-VFL5> (last visited Jan. 28, 2018).

220. *Id.*

221. *See* *Dunn v. Aamodt*, 695 F.3d 797 (8th Cir. 2012); *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F. Supp. 3d 1097 (C.D. Cal. 2017); *Airbnb, Inc. v. City & Cty. of S.F.*, 217 F. Supp. 3d 1066 (N.D. Cal. 2016); *Vera Lee Angel Revocable Tr. v. Jim O’Bryant & Kay O’Bryant Joint Revocable Tr.*, 537 S.W.3d 254 (Ark. 2018); *Anderson v. Metro. Gov’t of Nashville & Davidson Cty.*, No. M201700190COAR3CV, 2018 WL 527104 (Tenn. Ct. App. Jan. 23, 2018).

222. *Id.*

223. *Anderson*, 2018 WL 527104, at *2.

224. *Id.* at *2-3

225. *Id.* at *17 (citing TENN. CONST. art I, § 22).

226. N.C. CONST. art. I, § 34 (“Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.”); TEX. CONST. art. 1, § 26 (“Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed. . . .”).

227. *Anderson*, 2018 WL 527104, at *2.

the Andersons kept the Nashville residence and applied for a non-owner-occupied permit.²²⁸ This application was denied because the three percent cap had already been reached in the Andersons' census tract.²²⁹

The Andersons challenged the Nashville ordinance, claiming among other things that it provided an unlawful monopoly to those existing three percent of owners.²³⁰ The Andersons further contended that the cap had “no legitimate relation to any valid public purpose.”²³¹ The trial court found that the three percent cap did not constitute granting of a monopoly, and even if it did the cap would still be permissible.²³² In deciding this, the trial court emphasized that the granting of a monopoly is not prohibited if such a monopoly “has a reasonable tendency to aid in the promotion of the health, safety, morals and well-being of the people.”²³³

The Tennessee Court of Appeals decided that the three percent cap was a granting of a monopoly, but that this determination was not dispositive in answering whether the cap was invalid under the Tennessee Constitution.²³⁴ The court believed that the protection of residential character implicated the public's well-being, even to the extent that such protection might be considered to partially promote aesthetic considerations.²³⁵ The court recognized the residential concerns of allowing unlimited non-owner-occupied short-term rentals in any particular neighborhood.²³⁶ Apparently, in the neighborhood in question, 20% of the homes were non-owner occupied short-term rentals.²³⁷ Nashville passed a new ordinance on the same day the *Anderson* opinion was issued by the Tennessee Court of Appeals, which plans to phase out non-owner-occupied short-term rental properties by 2020.²³⁸

B. Contractual Issues

Many homeowners' associations (“HOAs”) and lease agreements have provisions that restrict the renters or home owners from renting out their homes on Airbnb, but that raises the question of whether Airbnb has any

228. *Id.* at *3.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.* at *8.

233. *Id.* at *6 (citing *Checker Cab Co. v. City of Johnson City*, 216 S.W.2d 335, 337 (Tenn. 1948)).

234. *Id.* at *8.

235. *Id.* at *10.

236. *Id.* at *9 (“The reason we want limits on the non-owner-occupied houses on our street is the same reason you don't want to live in a hotel. There is an increased number [of] transient strangers, and there is [a] decreased sense of community. [M]y children's friends have been replaced by bachelorette parties.”).

237. *Id.*

238. *Id.* at *1; Garrison, *supra* note 172.

responsibility to monitor or report users that do.²³⁹ Airbnb has created a “Friendly Buildings Program” as a way for landlords, property managers, and HOAs to let people in their building host short-term rentals.²⁴⁰ By participating, landlords, residents, and HOAs share portions of the reservation income, and Airbnb helps create specific hosting rules.²⁴¹ Despite this, Airbnb has still been sued multiple times by groups alleging that, by publishing the properties available for rent, Airbnb is responsible for monitoring and policing these agreements and, consequently, would fall outside of the Section 230 immunity of the Communication Decency Act (“CDA”).²⁴²

Section 230 of the CDA states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”²⁴³ An “information content provider” is defined as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through Internet or any other interactive computer service.”²⁴⁴

This issue came up in *Airbnb v. San Francisco*, where Airbnb challenged San Francisco’s then existing ordinance, which made it a misdemeanor to collect a fee for providing booking services for the rental of an unregistered unit within the city.²⁴⁵ Airbnb argued that the ordinance was preempted by Section 230 of the CDA, and that the ordinance would require it to monitor and police listings by third parties.²⁴⁶

The district court rejected this argument, stating that the ordinance did not create any obligation on Airbnb to monitor, edit, withdraw, or block the content supplied by hosts.²⁴⁷ San Francisco apparently even emphasized in its briefs and at oral argument that “[Airbnb is] perfectly free to publish any listing [it gets] from a host and to collect fees for doing so—whether the unit is lawfully registered or not—without threat of prosecution or penalty under the Ordinance.”²⁴⁸

239. See Edvard Pettersson, *Airbnb Defeats Aimco Lawsuit Over Unauthorized Subleases*, BLOOMBERG TECHNOLOGY (Jan. 2, 2018), <https://perma.cc/FZN7-U9QX>.

240. *What’s the Airbnb Friendly Buildings Program?*, AIRBNB, <https://perma.cc/8JHQ-FQME> (last visited Jan. 28, 2018).

241. *Id.*

242. *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F. Supp. 3d 1097, 1102-04 (C.D. Cal. 2017); *Donaher v. Vannini*, No. CV-16-0213, 2017 WL 4518378, at *3 (Me. Super. Ct. Aug. 18, 2017).

243. 47 U.S.C. § 230(c)(1) (2017).

244. 47 U.S.C. § 230(f)(3) (2017).

245. *Airbnb, Inc. v. City and Cty. of S.F.*, 217 F. Supp. 3d 1066, 1071 (N.D. Cal. 2016).

246. *Id.* at 1072.

247. *Id.*

248. *Id.* at 1073.

This came up again more recently in *La Park La Brea v. Airbnb*.²⁴⁹ Here, the plaintiffs, Aimco, were owners and operators of apartment buildings in Los Angeles, California.²⁵⁰ The lease agreements contained an anti-subleasing clause, providing that the “[r]esident shall not sublet the Apartment or assign this Lease for any length of time, including . . . renting out the Apartment using a short-term rental service such as [Airbnb].”²⁵¹ Aimco contacted Airbnb to obtain information about how it could prevent unlawful subleasing, received information about the Friendly Buildings Program, and provided Airbnb the lease agreements.²⁵² Airbnb then advised Aimco that it does not review lease agreements or mediate disputes between hosts and property owners regarding leases.²⁵³

Aimco argued that Airbnb was an information content provider as opposed to being immune under the CDA Section 230.²⁵⁴ However, the district court rejected this argument.²⁵⁵ Despite requiring hosts to include specific information about the property and themselves, collecting payments and commissions, and offering ancillary services, the court determined that Airbnb was not an information content provider.²⁵⁶ As the court stated, “Airbnb hosts—not Airbnb—are responsible for providing the actual listing information[,]” and Airbnb is merely providing a framework which can be utilized both properly and improperly.²⁵⁷ This case cited at length *Donaher v. Vinnini*, a Maine state court case, which held that merely processing payments does not strip a provider of immunity under the CDA.²⁵⁸

While this decision once again holds that a suit against Airbnb for violation of lease agreements is unlikely to be successful based on CDA Section 230, Aimco has appealed this case to the Ninth Circuit Court of Appeals.²⁵⁹ However, as the court pointed out, the Ninth Circuit analyzes whether or not a content provider is the creator of challenged content by determining if the provider merely encouraged the creation of the content or if it instead actually required another to create the content.²⁶⁰ As discussed in

249. *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F. Supp. 3d 1097, 1099-1100 (C.D. Cal. 2017).

250. *Id.* at 1100.

251. *Id.*

252. *Id.* at 1101.

253. *Id.*

254. *Id.* at 1103.

255. *Id.* at 1104.

256. *Id.*

257. *Id.* at 1105.

258. *Id.* at 1104 (citing *Donaher v. Vannini*, No. CV-16-0213, 2017 WL 4518378, at* 3-4 (Me. Super. Ct. Aug. 18, 2017) (“The Maine state court held that ‘the processing or receipt of payments associated with posts does not strip a provider or user of an interactive computer service of immunity under the CDA’ and granted Airbnb’s motion to dismiss”).

259. Dennis Lych, *Aimco appeals court case against Airbnb over LA apartment rentals*, THE REAL DEAL (Jan. 26, 2018), <https://perma.cc/573A-H5VD>.

260. *See Fair Hou. Council of San Fernando Valley v. Roommates.com LLC*, 521 F.3d 1157, 1171 (9th Cir. 2008).

Section I, the evolving model of the sharing economy might provide an interesting analysis of this issue, but that is a lengthy discussion beyond the scope of this note.²⁶¹

C. Freedom of Speech

Between the *Anderson* trial court opinion and the *Anderson* decision being released by the Court of Appeals, Nashville amended the zoning code as it related to free speech and signage.²⁶² However, when the case was at the trial level, Nashville's zoning code still prevented homeowners from advertising their property as a short-term rental without first obtaining a permit.²⁶³ Additionally, even once a permit was obtained, homeowners were not allowed to display signs or other advertising on the property that indicated the unit was being utilized as a short-term rental property.²⁶⁴ The Andersons argued that this abridged their free speech rights.²⁶⁵

As previously mentioned, between the trial court decision and the court of appeals decision, Nashville amended the ordinance.²⁶⁶ This amendment altered the advertising ban to provide that "[a]ny sign . . . on a property used as a short-term rental property shall be governed by the provisions of [Metro Code] Sign Regulations."²⁶⁷ The trial court, upon motion from the City of Nashville, entered an agreed order dismissing the Andersons' free speech claim as moot.²⁶⁸ While this issue was therefore not addressed at the appellate court level, the court of appeals did note that the trial court believed there was a substantial likelihood of success with respect to the free speech claim.²⁶⁹

Furthermore, based on the Supreme Court's decision in *Reed v. Town of Gilbert*, "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed."²⁷⁰ The Court went on to state that a content based law is subject to strict scrutiny "regardless of the government's benign motive,

261. See generally Sundarajan, *supra* note 27 (discussing the sharing economy at length).

262. *Anderson v. Metro. Gov't of Nashville & Davidson Cty.*, No. M201700190COAR3CV, 2018 WL 527104, at *5 (Tenn. Ct. App. Jan. 23, 2018).

263. *Id.* at *1.

264. *Id.*

265. *Id.* (The parties cited both *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) and *Los Angeles v. Patel*, 135 S. Ct. 2443 (2015)).

266. *Id.* ("In 2016, however, Metro took steps to amend the ordinances related to the Andersons' free speech . . . claim [], citing both *Reed* and *Patel* as a basis for its action.").

267. *Id.* at *3.

268. *Id.*

269. *Id.* at *14.

270. *Reed*, 135 S. Ct. at 2226 (quoting *Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653, 2664 (2011) ("This commonsense meaning of the phrase 'content based' requires a court to consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys.")).

content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.”²⁷¹ Based on this, a code that restricts short-term rental advertisement to only those that have received permits would likely have to survive the gauntlet of strict scrutiny, and therefore, freedom of speech is a legal issue worth keeping in mind.²⁷²

D. Unconstitutional Vagueness and Ambiguity

While this was another issue deemed moot in the *Anderson* case, it is worth quickly noting.²⁷³ Prior to passage of a new ordinance, the definition for short-term rental property in Nashville was “a residential dwelling unit containing not more than four (4) sleeping rooms that is used and advertised for rent for transient occupancy by guests. . . .”²⁷⁴ The definition went on to exclude hotels, motels, and other similar establishments, which the Andersons argued would overlap and render the ordinance unconstitutionally vague.²⁷⁵ The trial court agreed.²⁷⁶ However, Nashville passed a new ordinance to alter this definition that the trial court declared unconstitutionally vague.²⁷⁷ The ordinance does not exempt the other establishments but rather defines them separately.²⁷⁸ The court of appeals decided that this issue was moot as well.²⁷⁹

However, the Eighth Circuit Court of Appeals and Arkansas Supreme Court have recently had an opportunity to address definitions of residential property in terms of ambiguity.²⁸⁰ In *Dunn v. Aamodt*, a restrictive covenant restricted sites for “residential purposes,” yet the Aamodts rented their property to friends and others as a vacation home.²⁸¹ The Eighth Circuit agreed with the Aamodts that the phrase “residential purposes” in the

271. *Id.* at 2228 (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993)).

272. *See generally id.*

273. *Anderson v. Metro. Gov’t of Nashville & Davidson Cty.*, No. M201700190COAR3CV, 2018 WL 527104, at *3 (Tenn. Ct. App. Jan. 23, 2018).

274. *Id.* at *5.

275. *Id.* (“[For example,] the Andersons’ home fits the definition of a hotel. Their home is a structure. They furnish accommodations to transients for a consideration. Their home is occupied and intended for occupancy by transients for dwelling, lodging or sleeping purposes. While their home is a residential dwelling unit, an element of [a short-term rental property], the hotel definition does not exclude residences from the definition. There is no clear line of demarcation between the terms.”).

276. *Id.* at *4.

277. *Id.* at *5.

278. *Id.*

279. *Id.*

280. *See Dunn v. Aamodt*, 695 F.3d 797 (8th Cir. 2012); *Vera Lee Angel Revocable Tr. v. Jim O’Bryant & Kay O’Bryant Joint Revocable Tr.*, 537 S.W.3d 254 (Ark. 2018).

281. *Dunn*, 695 F.3d at 798-99.

restrictive covenant was ambiguous and did not prohibit short-term rental of the property.²⁸²

This opinion was cited in another Arkansas case, *Vera Lee Angel Revocable Trust v. Jim O'Bryant and Kay O'Bryant Joint Revocable Trust*.²⁸³ There, a restrictive covenant prohibited a house in a subdivision from being used for "any commercial purpose," including purposes such as "motels" and "hotels."²⁸⁴ The Arkansas Supreme Court found that even with the specific uses listed, it was not "clearly apparent" that short-term rentals were prohibited.²⁸⁵ Therefore, based on these two cases together, leaving as little ambiguity as possible in the ordinances is important.²⁸⁶

V: PROPOSED MODEL ORDINANCE

Listed below is a proposed model ordinance based on the concerns raised in Section II. The model ordinance incorporates various approaches that cities have used in response to these problems as demonstrated in Section III, while also taking into account various legal concerns discussed in Section IV. Unfortunately, many of the actual ordinances are more recent, and it is thus difficult to determine the long-term effect of all these restrictions. However, in reviewing the problems faced in regulating short-term rental properties and looking at the ways that cities are already seeking to address these problems, it is possible to combine some of the ideas into a potentially effective model ordinance. While some cities are already addressing these problems, the proposition below could potentially be implanted in harmony with any already existing strategies. The model ordinance below seeks to take some of the best ideas and combine them into a generalized, cohesive proposal.

(1) Definitions. The following definitions apply through this section.

(a) "Short-term rental property" is any residential dwelling unit that is used and advertised for rent for transient occupancy by guests for less than 30-days. This definition is specific to this section and other

282. *Id.* at 801 (citing *Scott v. Walker*, 645 S.E.2d 278, 283 (Vir. 2007) ("[T]he restrictive covenant does not by express terms prohibit the short-term rental of the [subject] lot,' and that '[i]n the absence of language expressly or by necessary implication prohibiting nightly or weekly rentals, we find that the [defendants'] short-term rental of their property did not run afoul of the restrictive covenant at issue.'")).

283. *Vera Lee Angel*, 537 S.W.3d at 256.

284. *Id.* at 255.

285. *Id.* at 258-59 ("Certainly, if the drafters of the bill of assurance intended to prohibit renting of property in the subdivision, they could have done so with an express provision.").

286. See generally *Dunn*, 695 F.3d at 797; *Vera Lee Angel*, 537 S.W.3d 254.

entities, such as “hotels,” “motels,” and “bed and breakfasts,” are defined elsewhere in this code.²⁸⁷

(b) “Local Contact” is an individual available for guests to communicate with in the city. This individual needs to be able to respond to the property within 30 minutes.²⁸⁸

(c) “Owner-occupied” requires that the homeowner reside in the residence at least 260 days in a calendar year.

(d) “Non-owner-occupied” is a residence that the homeowner does not reside in the residence 260 days in a calendar year.

(e) “Homeowner” is the individual who owns legal title to the residence.

(2) Zoning. Short-term rental properties will only be available in certain commercial and residential zones. A zoning map with the available areas for short-term rentals overlaid will be posted on the city’s website.²⁸⁹ There can be no more than one short-term rental property per lot without specifically appealing to the zoning board.²⁹⁰

(3) Permit. Before operating a short-term rental property, the homeowner must apply to the city for a permit. This application will include:²⁹¹

287. This is an attempt to avoid the vagueness problem presented in *Anderson v. Metro. Gov’t of Nashville & Davidson Cty.*, No. M201700190COAR3CV, 2018 WL 527104 (Tenn. Ct. App. Jan. 23, 2018).

288. This is an alteration of multiple cities’ requirement that there be a local contact. Unlike BOULDER, COLO., MUN. CODE § 10-3-19(c)(5), there needs to be only one contact instead of two, but they need to be within 30 minutes travel time as opposed to 60. This is more specific than the requirement in CHI., ILL., MUN. CODE § 4-14-010 that the contact maintain a residence or office located in the city, but it does similarly require that the contact information be placed in a conspicuous place.

289. This is based on CHARLESTON, S.C., ZONING CODE § 54-227(a). The ambiguity in the “certain” commercial and residential zones is purposeful and will be addressed in the explanation section.

290. This is an alteration of CHARLESTON, S.C., ZONING CODE § 54-227(a), meant to address the concerns raised in Elliott, *supra* note 82.

291. This section is very similar to the application process in CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6-2.

- (a) proof of ownership of the unit
- (b) a site plan showing all buildings and parking
- (c) floor plan showing all bedrooms and bathrooms
- (d) proof of property insurance
- (e) proof that short-term rental unit has had all required inspections as required by the city code
- (f) contact information, including but not limited to full name, address, phone number, and email address for both the local contact and the owner, as well as signatures from both
- (g) whether the property is to be used as an owner-occupied or non-owner-occupied short-term rental property

(4) Permit Fee. For owner-occupied short-term rental properties, a one-time nonrefundable permit fee of \$100 will be assessed. For non-owner-occupied short-term rental properties, a one-time nonrefundable permit fee of \$150 will be assessed.²⁹²

(5) Permit Renewal for owner-occupied. Once a homeowner has been approved for an owner-occupied short-term rental property, he or she must renew the short-term rental permit every 3 years.²⁹³ This fee will be \$50.

(6) Permit Renewal for non-owner-occupied. Once a homeowner has been approved for a non-owner-occupied short-term rental property, he or she must renew the short-term rental permit every 2 years. This fee will be \$75.

(7) Notification. An owner must notify all property owners with properties abutting and directly and diagonally across from his or her residence. This can be done by a letter form,

292. This is also similar to CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6-2 but differentiates between owner-occupied properties and non-owner-occupied properties similar to NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951.

293. This is less frequent than required in CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6-2.

which is provided on the city's website. There is no requirement for notified property owners to respond.²⁹⁴

(8) Penalty. The penalty for operating a short-term rental property without a license will be a fine of \$50 per day of operation and an injunction from continuing operation. Subject to judicial discretion, the subsequent issuance of a permit to the rental owner can potentially eliminate all or part of the daily fines and/or lift the injunction.²⁹⁵

(9) Basic Health and Safety Concerns. The owner of the property shall certify that the residence is not subject to any outstanding Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or Planning Code enforcement or violation.²⁹⁶

(10) Fire. The short-term rental property must be equipped with smoke detectors, carbon monoxide detectors, and a fire extinguisher. The location of the fire extinguisher must be obvious.

(11) Insurance. Hosts must obtain liability insurance either through a provider or, if applicable, through the short-term hosting platform, of at least \$500,000. This insurance policy does not have to cover intentional acts.²⁹⁷

(12) Posting. There shall be posted in a conspicuous place near the entrance of the dwelling a diagram identifying all means of egress from the dwelling and building (if an apartment), as well as the location of the fire extinguisher(s) and the contact information of the local contact.²⁹⁸ This sign should also have information related to the nearest medical center and the address of the short-term rental property.

(13) Sanitization. The host must clean and sanitize all dishes, utensils, pots, pans, and other cooking utensils

294. Similar to the requirements in CITY OF PORTLAND, OR., PLANNING AND ZONING CODE § 33.207.

295. This is an alteration to the punishment in NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (seeking to give judges more flexibility to allow for remedial action by the offender to possibly lessen the length of injunction).

296. This language is incredibly similar to S.F., CAL., ADMIN. CODE § 41A.5(g).

297. Cf. S.F., CAL., ADMIN. CODE § 41A.5 (2018), <https://perma.cc/2Q2R-BWAA> (requiring hosts to carry liability insurance).

298. Cf. CHI., ILL., MUN. CODE § 4-14-040 (2018), <https://perma.cc/E95A-WKXG> (requiring hosts to post a diagram identifying all means of egress).

between guests. Additionally, any leftover food, beverages, and alcohol left by a guest must be disposed of before a new guest stays in the residence.²⁹⁹

(14) Linens. Housing units must provide guests with clean individual bath cloths and towels and clean linens. These must be kept in good repair between guests.³⁰⁰

(15) Description of Unit. The listing for the unit must include the following information:³⁰¹

(a) cancellation and check-in and check-out policies

(b) a statement on whether or not the rental is wheelchair or ADA accessible

(c) parking and any related restrictions

(d) the number of sleeping rooms, the number of bathrooms, and the size/portion of the home that is available to rent

(16) Advertising. A homeowner may not advertise on any short-term rental listing site without first obtaining a permit. Any physical signage present on the property itself must follow all standard restrictions on sign regulation according to the city code.³⁰²

(17) Taxation. Homeowners are required to collect and remit Transient Occupancy Tax.³⁰³

(18) Short-Term Rental Office. The permitting fees, permit renewal fees, and fines collected for operating a short-term rental property shall be used to fund the Short-

299. See *supra* text accompanying note 98–99.

300. See *supra* text accompanying note 96–97.

301. Cf. § 4-14-040 (requiring similar specific listing requirements).

302. This is in response to the free speech challenge in *Anderson v. Metro. Gov't of Nashville & Davidson Cty.*, No. M201700190COAR3CV, 2018 WL 527104 (Tenn. Ct. App. Jan. 23, 2018).

303. Since a city has the choice whether or not to contract with Airbnb to collect taxes, this Model Ordinance does not attempt to definitively sway that decision one way or the other. The benefits and concerns are listed in Section II.

Term Rental Office. This office is charged with processing applications and enforcing these restrictions.³⁰⁴

VI: REASONING FOR PROPOSED MODEL ORDINANCE

While some of the pieces of the above proposed Model Ordinance (“M.O.”) are not directly related to any of the above issues presented, as a whole this proposal is designed to address these various problems that have arisen.

A. Health and Safety

An important aspect of the health and safety issue is addressed in the definitions, and that is the local contact.³⁰⁵ While there were different requirements in different cities for the local contact, M.O. section 1(b) requires the local contact be only 30 minutes away instead of 60 minutes, which would be beneficial and a particularly wise tradeoff with allowance of non-owner-occupied rentals.³⁰⁶ It is likely that any life threatening emergencies will be called in to 9-1-1, which has an average emergency response time nationwide of 15 minutes, 19 seconds.³⁰⁷ Other emergencies and concerns that would require calling the local contact person should reasonably be able to be addressed in double that time, making 30 minutes a good standard for local contact distance.³⁰⁸

In addition to just being available, the local contact individual is required to sign the application along with the homeowner. This is to ensure that the person submitting the application makes sure that the local contact is aware of the responsibilities they will have as the local contact.³⁰⁹ Additionally, the contact information for this local contact person must be on a sheet placed in a conspicuous place close to the entryway of the home.³¹⁰ This is a good safety policy from the Chicago ordinance, because in a situation where an individual needs to get in touch with the local contact, it is easier for the guest to access contact information if it is printed and available in a set location where it will be accessible.³¹¹

304. Cf. S.F., CAL., ADMIN. CODE § 41A.5 (2018), <https://perma.cc/V42B-9JK9> (discussing an Office for Short-Term Rentals and its duties).

305. See, e.g., BOULDER, COLO., MUN. CODE § 10-3-19(c)(5) (2018), <https://perma.cc/2KL9-QXJT>.

306. See CHI., ILL., MUN. CODE § 4-14-040 (2018), <https://perma.cc/FKT5-SYW2>; BOULDER, COLO., MUN. CODE § 10-3-19(c)(5).

307. *Emergency Response Times Across the U.S.*, AUTOINSURANCE CENTER, <https://perma.cc/DR2N-XRQ3> (last visited Jan. 28, 2018).

308. Note that the restriction requires the individual only needs to “be able” to respond to the property within 30 minutes, not that the person has to.

309. See § 4-14-040.

310. § 4-14-040.

311. § 4-14-040.

Furthermore, this posted sign requires a diagram identifying all means of egress from the dwelling and building and the location of the fire extinguishers in the residence.³¹² There were 1,345,500 house fires in 2015 resulting in over 3,000 deaths and 15,700 injuries.³¹³ Having information available related to various escape routes could potentially help reduce the number of fire deaths and injuries in short-term rental properties.³¹⁴ While the exits in most standard homes might be more obvious, this map of egress from the building would be particularly helpful with short-term rentals in apartment buildings, which also contribute to the number of deaths and injuries from fire.³¹⁵ Additionally, even though the requirement of having fire extinguishers was not present in Chicago's sweeping health and safety ordinance, based on the possibility of house fires, it would be a good addition to the Model Ordinance.³¹⁶

Moreover, both the location of the nearest medical center and the address of the short-term rental property are required to be added to this posted sign. While neither of these were required in any of the listed ordinances, both could additionally help to prevent emergencies. Knowing the exact address of the location of an emergency is incredibly important when seeking emergency assistance.³¹⁷ Furthermore, since it is possible that in an emergency situation, individuals would forget the exact location of the short-term rental property, having this information easily viewable would be beneficial.³¹⁸

Despite Airbnb providing liability insurance up to \$1,000,000, this is not true of all the short-term rental hosting companies.³¹⁹ Therefore, it is included in M.O. section 11 that hosts must obtain liability insurance, which is similar to what is required by San Francisco's ordinance.³²⁰ This insurance requirement is admittedly vague as written, since cities might have very different homeowner's insurance requirements to rent out a building, and the insurance requirement is meant to be a general and adaptable rule without a specific set monetary amount.

In relation to the general health and safety guidelines, M.O. section 9 adopts almost the identical broad language of San Francisco's ordinance.³²¹

312. § 4-14-040.

313. *U.S. fire statistics*, U.S. FIRE ADMINISTRATION, <https://perma.cc/5MMC-XU9R> (last visited Jan. 28, 2018).

314. *See generally* § 4-14-040.

315. *See generally Apartment structure fires*, NAT'L FIRE PROT. ASSOC., <https://perma.cc/7QFA-RZKQ> (last visited Apr. 29, 2018).

316. *See* § 4-14-040; *see also* KNOXVILLE, TENN., ORDINANCE O-245-2017 (Nov. 21, 2017), <https://perma.cc/VXM4-CMBE> (an ordinance that was recently passed and will require fire extinguishers).

317. *See generally Top 10 Tips for Calling 9-1-1*, NENA, <https://perma.cc/QL22-MUHC> (last visited Jan. 28, 2018).

318. *Id.*

319. Fishman, *supra* note 126.

320. *See* S.F., CAL., ADMIN. CODE § 41A.5 (2018), <https://perma.cc/PGS4-2WD2>.

321. *Id.*

This is because many cities already govern parking, electrical, plumbing, and other requirements separately, so allowing the existing entities to do their jobs as opposed to imposing new additional specific requirements for short-term rental properties seems the best route for many general matters. However, certain home concerns such as smoke detectors and fire extinguishers are properly regulated more extensively for short-term rentals, as in Chicago and Knoxville.³²²

Also similar to Chicago's ordinance is the M.O. section 15's requirement of an accurate listing, including information related to parking, ADA accessibility, and number of rooms.³²³ This helps to prevent inaccurate or deceptive listings on the site, which is a commonly occurring issue.³²⁴

Finally, Chicago's requirements related to sanitization and linens are recreated in M.O. sections 13 and 14 respectively.³²⁵ These requirements, while perhaps seeming excessive for hosts, will help prevent issues and mitigate common cleanliness complaints of guests.³²⁶ Even if a homeowner is renting a residence as a non-owner-occupied rental, there are cleaning services in most major cities that will take over the cleaning of short-term rental properties.³²⁷ All of these health and safety requirements, while not perfect, help alleviate some of the concerns raised in Section II(A).

B. Zoning

M.O. section 2 is purposefully vague here. Even though many cities still use some form of zoning, there are many different techniques implemented, and thus it would be difficult to make a model rule with regard to zoning.³²⁸ However, finding out whether a certain property is eligible for a short-term rental property is potentially difficult, so utilizing the Charleston overlay-style map for users seemed like a great technique to encourage here.³²⁹ While zoning maps are generally easily accessible, for a potential host who is perhaps not familiar with reading zoning maps and zoning code texts together, the overlay system makes an easy system to find whether or not a specific property is eligible to be rented.³³⁰

322. See § 4-14-040 (2018), <https://perma.cc/3RVB-VYNC>; KNOXVILLE, TENN., ORDINANCE 16-612(2)(c) (July 30, 2017), <https://perma.cc/6G2X-SCLD>.

323. See CHI., ILL., MUN. CODE § 4-14-040.

324. See Sarah Schlichter, *7 Airbnb Problems and How to Solve Them*, SMARTERTRAVEL (June 19, 2017), <https://perma.cc/53H2-KTLP>.

325. See § 4-14-040.

326. See Ryan Holiday, *Airbnb Etiquette: A Wake-Up Call to Unprofessional Hosts*, OBSERVER (Mar. 19, 2014), <https://perma.cc/2VG6-3FZS>.

327. *5 Ways to Effectively Improve Your Airbnb Cleaning*, LEARN AIRBNB, <https://perma.cc/7QTH-ARUU> (last visited Jan. 28, 2018).

328. *Property Topics and Concepts*, THE AM. PLANNING ASSOC., <https://perma.cc/S4M5-BDSR> (last visited Jan. 28, 2018).

329. See CHARLESTON, S.C., ZONING CODE § 54-227 (2018), <https://perma.cc/ZRB5-WR4Z>.

330. See generally § 54-227.

One thing left off of M.O. section 2 is Chicago's neighborhood petition to local alderman to introduce an ordinance which creates a restricted residential zone.³³¹ While this could mitigate some potential neighborhood issues, having the city decide the zoning for itself seemed like a better idea since the city is the entity creating and maintaining an Office for enforcement of these rules.³³²

C. Permitting

M.O. sections 3 through 7, which relate to permitting, are, for the most part, adaptations of the Santa Fe ordinance.³³³ However, there are some differences. Almost all of the required items in M.O. sections 3(a) through (g) are the same as what is required in Santa Fe.³³⁴ The first distinction is the requirement in M.O. section 3(f), which requires the contact information and the signatures for both the local contact and the owner. The reasoning for this was addressed in the Health and Safety section.

The next difference, which runs through a lot of this section, is in M.O. section 3(g), which requires the applicant to state whether the property is owner-occupied or non-owner-occupied.³³⁵ Even though some cities, such as Nashville, are phasing out non-owner-occupied rentals in residentially-zoned neighborhoods, this Model Ordinance embraces them, but adds more requirements for homeowners wanting to run this type of short-term rental property.³³⁶ The one-time permit fee is more expensive for a non-owner-occupied property. Additionally, the permit renewal for a non-owner-occupied property is both more frequent and more expensive than for an owner-occupied property. The increased expense is for two reasons. First, because it costs more to obtain a non-owner-occupied permit, this will make permits for non-owner-occupied rentals more difficult to obtain and potentially less appealing. Second, restrictions on non-owner-occupied rentals may be more difficult to enforce since the owner of the property will rarely if ever be on the property, so charging more for these permits will help support the office mentioned in M.O. section 18.

Finally, there is a similar notification method to Portland's ordinance in M.O. section 7.³³⁷ While there is no requirement for the neighbors to

331. See CHI., ILL., MUN. CODE § 4-17-040 (2018), <https://perma.cc/MAD9-RNWD>; see also *supra* text accompanying notes 131–37.

332. See § 4-17-040; S.F., CAL., ADMIN. CODE § 41A.5 (2018), <https://perma.cc/Y6ZZ-3D7V>.

333. See CITY OF SANTA FE, N.M., LAND USE DEVELOPMENT CODE § 14-6-2 (2018), <https://perma.cc/CC4E-D62G>.

334. § 14-6-2

335. See NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (Feb. 26, 2015), <https://perma.cc/NQ4U-ANH9>.

336. *Id.*; Garrison, *supra* note 172.

337. See CITY OF PORTLAND, OR., PLANNING AND ZONING CODE § 33.207 (2018), <https://perma.cc/6Y2F-BX8H>.

respond, at least informing the neighbors what is going to be occurring at the rental property will hopefully prevent some surprise when strangers are in the neighborhood.³³⁸ This section seeks to unambiguously specify which neighbors must be informed to avoid any vagueness or ambiguity issues.³³⁹

Additionally, under M.O. section 16, advertising on the property is permitted to the extent that it would already be allowed in the city's sign code. Since this issue was deemed moot in *Anderson* based on changes in the code between the filing of the complaint and the court addressing the various challenges, this provision is likely enough.³⁴⁰ Whether or not the sign code itself can pass freedom of speech strict scrutiny is outside of the scope of this note and would depend on the specifics of the city code, so this Model Ordinance only seeks to address problems with content differentiation between short-term rental signage and other signage.³⁴¹

D. Taxation

The taxation section, similar to the zoning section, is relatively vague as it is written. A lot of the issue with taxation depends on a city's willingness to negotiate with Airbnb and other companies, and as mentioned in Section III, this potentially involves a lot of sacrifices.³⁴² Therefore, whether or not a city is willing to make these sacrifices for tax revenue is up to the city, and it is thus hard to make a Model Ordinance section about taxation that can be applied to any city. That being said, if a city is not willing to negotiate with Airbnb to receive tax remittance, requesting owners to remit and self-report related taxes would likely be in the cities' best interest.

E. Enforceability

One of the goals of the Model Ordinance was for it to be simple enough that not only do potential hosts know what is required of them, but that it is easy to tell when somebody is violating the short-term rental laws. In regard to definitions, after seeing the challenge of unconstitutional vagueness in Tennessee, terms such as "hotel" and the like are left to be defined elsewhere in the city code.³⁴³

Additionally, the amount of fines varies greatly. While Miami is going the extreme route, M.O. section 8 is more akin to what Nashville is doing and providing a daily fine for operating without a permit.³⁴⁴ The

338. § 33.207

339. *See generally* *Anderson v. Metro. Gov't of Nashville & Davidson Cty.*, No. M201700190COAR3CV, 2018 WL 527104 (Tenn. Ct. App. Jan. 23, 2018).

340. *Id.*

341. *Id.* *See generally* *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015).

342. *See* Griswold, *supra* note 189.

343. *Anderson*, 2018 WL 527104.

344. *See* NASHVILLE, TENN., SUB. ORDINANCE NO. BL2014-951 (Feb. 26, 2015), <https://perma.cc/5ATB-7LPG>; Kartch, *supra* note 206.

additional phrase that “[s]ubject to judicial discretion, the subsequent issuance of a permit to the rental owner can potentially eliminate all or part of the daily fines and/or lift the injunction” is to prevent a situation where fines build up over time to reach Miami levels before going in to court.³⁴⁵

The idea of having a short-term rental office as opposed to a few employees is similar to San Francisco’s ordinance.³⁴⁶ While this might be impractical in a smaller city, in a larger city this would be a good solution, so it would allow a group of people to specialize in short-term rental enforcement.

VII: CONCLUSION

There are many issues going forward related to regulating short-term rental properties, and it is impossible to address them all in anything short of a textbook. However, the above proposed solutions to some of the problems presented show that cities are slowly making progress. While no one city has completely revolutionized the way that short-term rental properties are regulated, nor has any one city been entirely successful with regulating this market, almost all of the Model Ordinance provisions are based in some part on many of the listed cities’ ordinances.

Some of the presented issues are dependent on cities and Airbnb cooperating—in particular, taxation and enforcement. Both sides may have to concede things that neither are currently willing to concede. Other issues like zoning will be dependent on the city’s existing ordinances. However, some problems such as how to address health and safety concerns, as well as methods of providing permits, are more easily addressed broadly by the Model Ordinance.

Finally, there will continue to be legal issues presented with almost any regulation that is passed. Nashville, Los Angeles, and San Francisco have all recently been faced with Airbnb-related lawsuits that have brought up unique legal issues.³⁴⁷ Going forward, it will be interesting to see what issues continue to arise in both the short-term rental industry and the sharing economy as a whole. As this market continues to grow and change, so must the ways cities approach regulating it. While there may not truly be any long-term solutions to this short-term rental problem, there has certainly been progress.

345. See Kartch, *supra* note 206; Trager, *supra* note 212.

346. See S.F., CAL., ADMIN. CODE § 41A.5 (2018), <https://perma.cc/3VTU-9WX4>.

347. As of the date of publication of this article, Airbnb is currently suing New York City over a new law that requires sharing host information. See Glenn Fleishman, *Airbnb Sues New York Over Law That Demands Host Information*, FORTUNE (Aug. 24, 2018), <https://perma.cc/5XG8-PXAM>.

Section X.XX - Short Term Vacation Rental Use

X.XX.1 Purpose and Intent

The purpose of this Section is to establish regulations for the use of privately owned residential dwellings as short-term vacation rentals (STVRs) to safeguard the public health, safety and general welfare of the community, ensure neighborhood compatibility, and maintain the Town's residential character while supporting diverse accommodation options for visitors.

X.XX.2 Definitions

- A. "Short Term Vacation Rental" (STVR) means a dwelling unit, or portion thereof, that is rented for periods of less than thirty (30) consecutive days.
- B. "Owner-Occupied STVR" means a short-term vacation rental where the property owner maintains their primary residence at the property and is physically present during the rental period.
- C. "Non-Owner-Occupied STVR" means a short-term vacation rental where the property owner does not maintain their primary residence at the property.
- D. "Strike" means a documented violation of this Section that has been verified by Town staff.
- E. "Party" or "Special Event": Any gathering that exceeds the maximum permitted occupancy of the STVR unit; or any gathering that includes non-registered guests engaging in activities such as, but not limited to: weddings, receptions, banquets, fraternity/sorority events, corporate events, celebrations, reunions, retreats, or similar organized events. Regular social gatherings of registered guests within permitted occupancy limits shall not be considered parties or special events.
- F. "Legal Non-Conforming Status" means a legal status granted to existing permitted non-owner occupied STVRs that were lawfully established prior to the effective date of this ordinance.
- G. "Primary Residence" means the dwelling unit where a person resides for more than six (6) months of the calendar year. This rule is used by lenders and the IRS to determine what is a primary residence.
 - 1. Evidence of primary residence shall include the following:
 - a. Valid driver's license or state identification showing the address
 - b. Voter registration

X.XX.3 Permit Requirements

- A. Permit Types and Limitations
 - 1. Short-term vacation rentals shall only be permitted when the property is owner-occupied as the owner's primary residence.
 - 2. The number of short-term vacation rentals that may operate at any one time, shall be no more than 3 percent of the total number of housing stock in the Town. The number of housing stock shall be based on the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's office.
 - 3. No person, whether a natural person or legal entity, shall hold more than one (1) STVR permit of either type.
 - 4. Permits are non-transferable and non-assignable.

5. Permits expire March 31st of each year regardless of issue date.

B. Legal Non-Conforming Status

1. Existing non-owner occupied STVR licensees who held valid permits as of 12/31/2024 shall retain legal non-conforming status
2. All legal non-conforming STVRs must comply with all new operational standards, requirements, and fees established
3. Legal non-conforming status shall terminate upon any of the following:
 - a. Failure to maintain an active STVR license
 - b. The property is available on the STVR rental market less than six (6) months a year
 - c. Transfer of property ownership
 - d. Cessation of STVR use for 12 consecutive months
 - e. Violation of three or more provisions within any 12-month period
 - f. Failure to remit taxes for two or more consecutive months

C. Application Requirements

1. Complete applications for new permits or renewals shall only be accepted in the enrollment period from January 1- February 14 for the year.
2. Applications shall include:
 - a. Proof of ownership
 - b. For Owner-Occupied permits, evidence of primary residence as defined in Section X.XX.2.G
 - c. Site plan showing all parking spaces and outdoor amenities
 - d. Property management plan as required by Section X.XX.4
 - e. Proof of one-million-dollar (\$1,000,000) insurance policy covering STVR use
 - f. Payment of all applicable fees
 - g. Safety inspection report from the Fire Department
 - h. Signed affidavit acknowledging all requirements of this Section

X.XX.4 Property Management Requirements

A. Management Plan Required Elements

1. 24/7 contact information for property owner or designated manager
2. Written policies addressing:
 - a. Guest check-in/check-out procedures
 - b. Maximum occupancy enforcement
 - c. Parking requirements
 - d. Trash management
 - e. Noise restrictions
 - f. Outdoor fire and amplified sound restrictions
 - g. Pet policies
 - h. Emergency procedures

B. Notification Requirements

1. Property management plan must be:
 - a. Provided to all properties within 300 feet
 - b. Must include contact information for property owner or property manager
 - c. Posted in a clearly visible way inside the rental unit
 - d. Updated within 24 hours of any change in contact information
2. Town shall be notified of any changes to management plan within 24 hours

X.XX.5 Operating Standards

A. Occupancy and Use Limitations

1. Maximum overnight occupancy shall not exceed:
 - a. Two (2) persons per legal bedroom
2. Maximum daytime occupancy shall not exceed:
 - a. Two (2) persons per legal bedroom
3. Maximum permitted noise levels are subject to Municipal Code Sec. 10-226
4. No outdoor amplified sound at any time
5. No food service to guests
6. No commercial events or activities
7. No alterations that would reduce residential character
8. No physical signs, placards, postings, or other visual displays identifying the property as a vacation rental shall be permitted
9. Property owner must be on site during rentals. For non-owner-occupied rentals a designated manager must reside within twenty-five (25) miles of the property
10. No Parties and Special Events:
 - a. Parties and special events, as defined in Section X.XX.2.E, are strictly prohibited at all STVR properties
 - b. Advertising an STVR for parties or special events is prohibited
 - c. All rental property management plans must include acknowledgment of no-party policy

B. Parking Requirements

1. Minimum of one (1) off-street parking per two (2) legal bedrooms
2. Maximum of one (1) on-street parking space where permitted
3. No parking on landscaped areas or sidewalks
4. Parking plan must be provided to guests

X.XX.6 Taxes and Fees

A. Required Taxes

1. All STVRs shall be subject the Town occupational lodging fee and any applicable state or county lodging taxes
2. Tax Remittance:

- a. All taxes and fees must be collected and remitted monthly per Municipal Code Sec. 6-56
 - b. Late remittance subject to penalties per Municipal Code Sec. 6-61
 - c. Failure to remit taxes for two consecutive months constitutes grounds for permit revocation
3. Record Keeping
 - a. Owner must maintain complete booking records for three (3) years per Municipal Code Sec. 6-56
 - b. Records must be available for audit upon request by Town
 - c. Records must include:
 - i. Dates of occupancy
 - ii. Number of rooms occupied
 - iii. Taxes and fees collected

B. Required Fees

1. Annual permit fees are required for Owner-Occupied STVRs and for legal non-conforming Non-Owner-Occupied STVRs
2. Business license fee. Under Municipal Code Section 6-55, any license holder who remits occupancy tax in an amount greater than the annual business license fee is exempt from paying the business license fee. While the fee is waived, the business must still maintain an active business license.
3. Late renewal fee if applied within thirty (30) days of expiry

C. Tax and Fee Compliance

1. Proof of tax compliance required for permit renewal
2. Outstanding taxes or fees constitute grounds for:
 - a. Denial of permit renewal
 - b. Immediate suspension of permit
 - c. Placement of lien on property
3. Fraudulent tax returns constitute grounds for immediate permit revocation

X.XX.7 Enforcement and Penalties

A. Complaint Processing

1. Initial complaints shall be directed at the property owner/manager
2. Municipal complaints must include:
 - a. Photo or video evidence of violation
 - b. Date and time of occurrence
 - c. Complainant contact information
3. Anonymous complaints shall not count toward strikes but will be considered at renewal

B. Strike System

1. Strikes may be issued for:
 - a. Verified violations of the Land Development Code or Municipal Code

- b. Failure to maintain current contact information
- c. Non-response to Town notices
- d. Law enforcement incidents
- e. Code violations
2. Strike Penalties:
 - a. First Strike: Fine plus written warning
 - b. Second Strike: Fine plus required management plan update
 - c. Third Strike: Fine plus permit revocation
3. Strikes remain active for twelve (12) months from date of issuance
4. Appeals to the Planning Commission must be filed within ten (10) business days
5. Upon third strike:
 - a. Owner permanently ineligible for STVR permit
 - b. Property ineligible until transfer of ownership

C. Unlicensed Operation

1. Notice of violation requiring compliance within 72 hours issued by the Town of Palisade Code Enforcement Officer
2. If compliance is not obtained:
 - a. Fine per day of continued operation
 - b. Property lien for unpaid fines after 30 days
 - c. Permanent ineligibility for both owner and property

X.XX.8 Existing Permits

- A. All existing STVR permits shall expire on March 31, of each year
- B. Existing permits must renew in the enrollment period defined in Section X.XX.3.C Permit Requirements but have up to thirty (30) days after application enrollment closes to renew with a late fee; failure to renew within this window results in permit expiration, with no automatic renewals or legal non-conforming status of existing permits.

X.XX.0 Severability

If any provision of this Section is held invalid, such invalidity shall not affect other provisions that can be given effect without the invalid provision.

PROPOSED FEE SCHEDULE

Annual STVR Permit	\$200
Late Renewal Fee	\$100
First Strike Fine	\$250
Second Strike Fine	\$500
Third Strike Fine	\$750
Unlicensed Operation	\$1,500 per day of continued operation

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