



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

December 3, 2024

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. Palisade Olde Fashioned Christmas Parade** will be on Friday, December 6, 2024, at 5:30 pm in downtown Palisade. The parade will follow the standard Town of Palisade parade route and street closures.
- B. Palisade Chamber of Commerce Olde Fashioned Christmas** will be on Saturday, December 7, 2024. For a complete list of events, please visit <https://palisadecoc.com/ofc/>
- C.** This is the only **Planning Commission meeting** for the month of December, and the Board of Trustees will have only one meeting, which will be held on December 10, 2024, at 6:00 pm.
- D. Town Hall Will be Closed** on December 24 & 25 in observance of the holidays. Town Hall will also be closed on January 1, 2025, in observance of New Year's Day.

VI. TOWN MANAGER REPORT

VII. CONTINUED BUSINESS

A. Review of Residential Zoning and the Uses

To evaluate and update the residential zoning map and permitted uses across residential zones, focusing on housing accessibility while preserving neighborhood character.

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 – *Direct staff to research current use patterns and development trends and analyze comparable jurisdictions' approaches to use tables and zoning, or draft a model ordinance based on the discussion & packet items presented.*

VIII. NEW BUSINESS

A. **Review of Short-Term Vacation Rentals (STVR's)**

To evaluate and update the zoning map and permitted uses across zones, focusing on housing accessibility while preserving neighborhood character.

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, further evaluate licensing/permit fee structures, or draft a model ordinance based on the discussion & packet items presented.*

IX. 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.

X. ADJOURNMENT



PALISADE PLANNING COMMISSION
Agenda Item Cover Sheet

Meeting Date: December 3, 2024
Presented By: Devan Aziz, Community Development Director
Department: Community Development & Planning
Re: Land Development Code Update

SUBJECT:
Review of Residential Zones and Uses

SUMMARY:
The Planning Commission will consider a comprehensive evaluation of the city's residential zoning classifications and permitted uses. This review has become necessary as our current zoning framework requires assessment to better align with evolving housing needs across the community. The primary objective is to examine ways to increase housing accessibility while maintaining the distinct character of our existing neighborhoods.

There are several critical areas for discussion and analysis. These include a thorough examination of current residential zones and their permitted uses, as well as the identification of specific areas where zoning modifications could enhance housing opportunities.

DIRECTION:
Direct staff to research current use patterns and development trends and analyze comparable jurisdictions' approaches to use tables and zoning, or draft a model ordinance based on the discussion & packet items presented.



American Planning Association

Creating Great Communities for All

Equity in Zoning Policy Guide

Approved by APA Delegate Assembly on December 15, 2022.

Ratified by Board on December 20, 2022.

planning.org/policy

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Introduction and Overview

1.1 Goals of the Policy Guide

In 2019, after an inclusive two-year effort by its members, the American Planning Association (APA) adopted its [Planning for Equity Policy Guide](#), which articulates the organization’s advocacy positions on that topic. That Policy Guide reviews the pervasive impacts of both overt and unintended planning practices that result in racial, ethnic, gender, mobility-based, and ability-based bias and exclusion in many plans and policies adopted by local governments throughout America. It also reviews the complex web of institutional practices beyond the planning profession that reinforce the inequitable outcomes of these practices, and the ways in which they collectively disadvantage large segments of the American public. It addresses the serious lack of diversity and inclusion in the planning and zoning professions, along with the role and responsibility of planners to undo the unfairness woven into many current planning practices. Every planner, planning official, or elected official interested in making their communities more equitable should carefully read and follow that Policy Guide and implement its recommendations.

In addition, APA has adopted recent Policy Guides that set forth its advocacy positions on [Hazard Mitigation](#) (2020), [Climate Change](#) (2020), [Housing](#) (2019), [Surface Transportation](#) (2019), and [Healthy Communities](#) (2017), each of which recommends changes that would improve equitable practices and outcomes in our profession.

This Policy Guide does not repeat and restate any of that work, but builds on it and focuses on the ways in which planning bias is reinforced and implemented through zoning. Equitable planning is essential to

The goal of this Policy Guide is to identify specific ways in which the drafting, public engagement, application, mapping, and enforcement of zoning regulations can be changed to dismantle the barriers that perpetuate the separation of historically disadvantaged and vulnerable communities.

eliminate those zoning and design regulations that disproportionately burden Black, Latino/a/x, Tribal, Indigenous, and other communities of color, older adults, persons experiencing disabilities, persons of different national origins or religious faiths, and the lesbian, gay, bisexual, transgender, queer/questioning, intersex, and asexual/ally (LGBTQIA) community — which are often referred to in this document as “historically disadvantaged and vulnerable” communities and individuals. Where zoning rules or

procedures have a particularly negative impact on one or more of the communities included in that phrase, they are sometimes identified separately.

This work is also necessary because in many states plans are only advisory, while zoning is the law. Even in those states that mandate comprehensive or land use planning and require that zoning be consistent with those plans, there is always a gap between the aspirational language of the plan and what parts of that vision become the law governing development and redevelopment of property.

The goal of this Policy Guide is to identify specific ways in which the drafting, public engagement, application, mapping, and enforcement of zoning regulations can be changed to dismantle the barriers that perpetuate the separation of historically disadvantaged and vulnerable communities. While acknowledging the importance of dramatic changes in plans and policies, this Policy Guide focuses on identifying and removing those (often facially neutral) zoning laws and regulations that implement and perpetuate inequitable planning policies. This includes addressing “Redlining,” which has historically been used to disadvantage many racial and ethnic groups, including persons of Asian, Mexican, and Japanese ancestry, and that continues to be particularly harmful to the Black community. It sets forth APA’s advocacy positions to improve equity in zoning and calls on all practicing planners, planning officials, and elected officials to support these positions. History shows that efforts to protect disadvantaged and vulnerable Americans often produce broad (and sometimes unexpected) benefits to our communities as a whole.

Throughout this document, we use the term “city” to include other forms of municipal government such as villages and towns, and we use the term “county” to include other forms of sub-county governments created by state law, as each of those terms is defined in the applicable state law.

The case for state and federal intervention on zoning reform

Zoning reform is a local responsibility; however, both state and federal governments should exercise their authority to promote local planning efforts and empower community planners to overhaul exclusionary regulatory barriers to housing choice and production when possible.

APA urges states to review and update enabling statutes for zoning and housing policies. APA chapters are working closely with state legislatures to do so.

APA urges Congress to pass bipartisan bills like the Housing Supply and Affordability Act which would enable planners to reform zoning, create housing action plans, and put plans into action with dedicated planning and implementation grants.

1.2 The Need for Local, State, and National Action

Because most zoning decisions are made by local governments, this Policy Guide focuses on actions that could and should be taken by city and county governments to improve the equity of their zoning systems. However, local zoning authority sometimes operates within a regional governance structure, and in those cases the changes recommended in this document are addressed to those regional entities as well.

More importantly, local zoning authority almost always operates within the limits established in state constitutions and zoning enabling legislation. In many cases, the changes recommended in this Policy Guide would be accelerated if state governments acted to prohibit the exclusionary use of zoning powers, and some states have already moved in that direction. While some of the recommendations may not be legal in some states today, zoning enabling acts can and, in many cases, should be changed. Amending state zoning legislation to reduce or prohibit exclusionary residential zoning would be particularly helpful. In addition, or as an alternative, states could offer financial incentives or condition access to other state funds on local government implementation of some or all these recommended changes.

The federal government also has an important role in promoting more equitable zoning. Congress should authorize the U.S. Department of Housing and Urban Development (HUD) to take a closer look at the exclusionary and discriminatory zoning rules of those local governments to which it allocates funds, and to condition receipt of HUD funds on actions taken to remove the barriers to equitable housing and economic opportunity identified in this Policy Guide. Congress should also allocate additional funds to help local governments revise their local zoning controls and should incentivize local efforts to better align land use, transit, housing, and jobs—particularly in historically disadvantaged and vulnerable neighborhoods.

1.3 Cross-Cutting Issues That Compound the Impacts of Zoning

Before focusing on how to make zoning more equitable, it is important to acknowledge the many systems that reinforce discrimination and systems of privilege, and that thwart better opportunities and outcomes for many American households. The intertwined impacts of these

systems all tend to compound the unfair intended or unintended impacts of zoning—and will continue to do so even if zoning is “fixed.” While fairer, more inclusive zoning alone cannot end systemic racial and ethnic segregation, prevent the erosion of cultural communities that wish to remain intact, or dismantle long-established systems of privilege, it can be used as a tool to help achieve all those goals. Because zoning is law, many other financial and economic institutions point to and use existing zoning as the reason they cannot or need not reform their own practices. Fixing zoning can promote broader change to reduce the human costs and impacts of racist and exclusionary practices throughout the economy and the nation.

A. Lack of Diversity in the Profession

Like other parts of the planning profession, the drafting, application, mapping, and enforcement of zoning regulations remains an overwhelmingly white and largely male occupation. Most of the people determining what types of development are allowed in different parts of the community often have little experience living or working in historically disadvantaged and vulnerable communities, and little understanding of how zoning might impact them differently. Members of these communities remain significantly underrepresented in all

Congress funds new ‘YIMBY’ Grants for Zoning Reform

As part of its sweeping omnibus spending bill in 2022, Congress established a new \$85 million grant program to help regional planning organizations and local governments identify and remove barriers to housing production and preservation.

[Learn more](#) about criteria and eligibilities for the new funding.

aspects of zoning practice, and until that changes many zoning rules will be drafted and decisions made without sufficient regard for the interests of those highly diverse communities. This problem is so serious that, in APA as an organization and in local planning departments, current staff and leadership may not be the best people to decide which sources of inequity to tackle and how to address them. It may be more productive to appoint a more representative group with significant representation from historically disadvantaged and vulnerable communities to make these threshold decisions. APA’s Equity, Diversity, and Inclusion Steering Committee, Advisory Committee, and its population-based Divisions and Interest Groups are pursuing a number of strategies to increase the visibility of the profession and access to the profession within under-represented populations. Ideally, the local government staff, appointed officials, and consultants engaged in drafting, applying, and enforcing zoning should reflect the demographic makeup of the neighborhoods where the zoning will be applied.

B. Real Estate, Property Appraisal, and Lending Practices

For generations, portions of the real estate, appraisal, and banking industries have followed practices that favor lending to, constructing, and selling properties in whiter and wealthier neighborhoods while discouraging those activities in communities with more Black, Latino/a/x, Tribal, Indigenous, or other non-white households. The federal government has systematically supported those efforts through a variety of mechanisms, including

Federal Housing Administration (FHA) regulations favoring single-household suburban housing “occupied by the same racial and social classes;” funding and locating highways and other public improvements in locations that divide Americans by income, race, or ethnicity; making it difficult or impossible for returning Black soldiers to qualify for the G.I Bill; and making mortgage interest deductible for those who were able to buy homes. While the federal government has taken some steps to mitigate some of the impacts of past decisions through legislation like the Fair Housing Act and the Community Reinvestment Act, federal support for some of these policies remains in place. Current lending and sales practices continue to make it more difficult for historically disadvantaged and vulnerable communities to access some of the increased opportunities that better zoning can create. Working together, these practices are a very distressing form of embedded racism.

C. Infrastructure and Public Facility Location and Financing

The equity and opportunity available in America’s neighborhoods are heavily influenced by the location of infrastructure, streets, sidewalks, schools and pre-schools, parks, trails, and open spaces, which are largely determined not by zoning but by local government and school district

decisions about where to spend available funds and where to use eminent domain. Federal environmental justice policy prohibits denying, reducing, or significantly delaying environmental benefits to disadvantaged communities, but does affect many local government investment decisions. While developers can be required to mitigate their impacts on each of these public facilities, individual developers generally cannot be legally required to do “more than their fair share” through zoning to make up for systemic injustices of the past. Importantly, zoning generally cannot be used to force the replacement or upgrading of infrastructure or amenities unrelated to a proposed development, or to force the local government to allocate discretionary funding in specific neighborhoods.

D. Private Covenants

Many neighborhoods in America have a second level of legal protection against types of structures and land uses that they do not want to see in their neighborhoods—the restrictive covenants that buyers agree to when they purchase their homes, and that are enforced by homeowner’s associations that may not share the goals of equitable zoning reform. Covenants are “private law” among property owners to which the city or county government is often not a party, and that may have been created before the land was annexed to a city. Local governments generally do not enforce restrictive covenants, and do not modify their zoning to match private covenants. Although enforced through private lawsuits, covenants can be and often are just as effective as zoning in preventing affordable housing, innovative types of housing, rental units, accessory dwelling units (ADUs), or social services from entering a neighborhood. Zoning does not have the power to rescind private covenants; that generally requires action by the homeowners subject to the covenants or by state or federal government to declare specific types of covenants unenforceable. State or federal action to prohibit the use of exclusionary residential covenants—similar to that prohibiting the use of exclusionary racial covenants -- would be particularly helpful. For all these reasons, the

aims of equitable zoning reforms are often thwarted by private covenants.

E. Serious Income Disparities

One of the most important structural challenges that leads to racially or ethnically segregated communities is the fact that American law does not prohibit many forms of discrimination against low-income populations. Since a disproportionate percentage of low-income households are headed by Black people, Latinos, Tribal, Indigenous, or other communities of color, or by women, older adults, or persons experiencing disabilities, laws and regulations that tend to make land, houses and other goods more expensive have especially harmful impacts on the very groups we try to protect through anti-discrimination laws. While federal laws like the Fair Housing Amendments Act and the Americans with Disabilities Act prevent some forms of discrimination, they do not require that equivalent housing or facilities be made equally available to the poor who are not part of a protected class of citizens at prices they can afford.

As Richard Rothstein demonstrates in *The Color of Law*, when the Supreme Court invalidated overt racial zoning, many communities realized that zoning based on permitted forms of housing or minimum lot size could achieve the same result by making many neighborhoods less affordable

to less white, less abled, and less wealthy households. While originally adopted as a successor to overtly racial exclusion targeting Black and Asian people, zoning has had the effect of excluding much broader segments of the American population from many residential areas and job opportunities. Zoning cannot change the fact that anything that makes housing, education, transportation, health care, or childcare more expensive will tend to perpetuate the disadvantages faced by historically disadvantaged and vulnerable communities as well as other low-income Americans.

While zoning regulations do not grant or withhold development permission based on the race, ethnicity, color, national origin, or religious faith (and only rarely based on the gender, age, or disability) of the property owner or occupant, they often have disparate impacts based on the income of the occupant. Large lot zoning, minimum house size requirements, higher parking minimums, and higher open space requirements make property more expensive and limit the number of low-income households who can afford to use, own, or occupy neighborhoods with those benefits.

Over the last 70 years, the combination of zoning, banking, appraisal, and real estate practices, infrastructure decisions, and private covenants have tended to reinforce each other in ways that have created vast disparities in wealth and education between households headed by persons of color, women, those experiencing disabilities, older adults, and other American households. The generational impacts on education and wealth between Non-Latino White, Black, and Latino/a/x households has been particularly well documented. Zoning has been a complicit—and in some cases intentional—part of the systemic reinforcement of inequity and should be reformed to remove the rules and practices that create and perpetuate it. Zoning reform alone cannot “fix” the overlapping institutions that reinforce racism and segregation, but that is not a reason for inaction—it just highlights the importance of fixing the part of the problem that is often within local government control through better zoning regulations.

Large lot zoning, minimum house size requirements, higher parking minimums, and higher open space requirements make property more expensive and limit the number of low-income households who can afford to use, own, or occupy neighborhoods with those benefits.

F. The Need for Complementary Non-Zoning Solutions

Many of the impacts of zoning on historically disadvantaged and vulnerable communities can only be mitigated by actions that are not part of zoning regulations. Effective mitigation of negative zoning impacts may require, for example:

THE EXECUTION OF Community Benefit Agreements (i.e., an agreement between the developer and a community organization in which the developer agrees to provide amenities, or employment, or something else of value to the neighborhood where the development will be built);

1. INTRODUCTION AND OVERVIEW

PRIORITIZING the construction, repair, or upgrading of parks or other community amenities or infrastructure in historically disadvantaged neighborhoods;

REQUIRING developers to offer compensation for or providing a right-of-return for residents displaced by new development at prices those residents can afford;

CREATING OR SUPPORTING a land bank, land trust, housing voucher, or other forms of financial support to stabilize and reinforce the existing culture and economy of a neighborhood without encouraging gentrification;

REVISING building codes to reduce barriers to needed forms of housing and investment, while still protecting public health and safety;

REDUCING OR SUBSIDING application or development impact fees for projects that improve neighborhood equity and opportunity; and

EDUCATING the public about the high community-wide costs of using zoning in ways that perpetuate segregation and discrimination.

Because the specific impacts of each development on each neighborhood are unique and typically different, it is usually difficult to agree in advance about what types of offsets or benefits need to be offered, but it does seem clear that there is a growing need for non-zoning agreements and commitments to accompany zoning actions if the equity of zoning outcomes is going to improve.



What is Equity in Zoning?

Image courtesy of University of Manitoba Archives & Special Collections.

2. What is Equity in Zoning?

At the start, it is important to define what is meant by zoning equity, and that requires revisiting the difference between equity and equality. Equality requires that everyone be given the same opportunities to participate in and benefit from a project or program. But different people have different abilities to participate in or influence zoning rules and procedures. Equal opportunity often leads to unequal outcomes, and in America those outcomes are often disproportionately felt by Black people, Latinos, members of Tribal and Indigenous groups, women, those experiencing disabilities, and other historically disadvantaged and vulnerable individuals. Equity in zoning means that those who write, administer, or enforce zoning regulations take clear steps to avoid or “undo” unfair outcomes and mitigate the unequal ability to participate in or influence all parts of the zoning process. Several of the Aspirational Principles in Section 1 of the *AICP Code of Ethics and Professional Conduct* underscore this duty, and this Policy Guide identifies specific steps to do that.

This is difficult because zoning is inherently designed to exclude. Zoning is very good at preventing individual property owners from making investments in property, building structures, or engaging in activities that the local government has decided should not occur in a certain location. While it can prevent money from being spent in ways that are not in the community’s interest, zoning is much less effective in making investors build things they do not want to build or to use properties in ways they do not want to use them. Zoning can seldom force investors to invest where they do not want to invest, unless it subsidizes or incentivizes the outcome it wants. Zoning can condition approvals on the developer’s willingness to do some things the community wants, but if those conditions make the investment unprofitable and the local government does not agree to make up the difference, the investor can decide to walk away.

The exclusionary nature of zoning is a fact that harms historically disadvantaged or vulnerable communities more than others. As zoning is used to selectively exclude

unwanted types of buildings and land uses from some neighborhoods (or to allow them in some neighborhoods while excluding them from others), some areas become more attractive to investors than others, and the same is true for residents and business owners. Those with more time to participate in the system have more ability to influence the rules, and those with more money have more ability to buy property, operate businesses, and live in the neighborhoods that best meet their needs.

Equity in zoning means that those who write, administer, or enforce zoning regulations take clear steps to avoid or “undo” unfair outcomes and mitigate the unequal ability to participate in or influence all parts of the zoning process.

2.1 Ending Disproportionate Exclusionary Impacts

To identify those specific steps to end disproportionate exclusionary impacts, this Policy Guide focuses on the substantive zoning rules that govern what can be built or not built, what activities can be conducted or not conducted, what incentives the community offers builders to build what it needs, how it drafts those rules and incentives, how it drafts maps to apply those rules, who participates in drafting the rules or changing the rules, how well they know the likely impacts of those rules and changes on their neighborhoods, how the rules are enforced, and how all of those decisions are made.

Because the Planning for Equity Policy Guide addresses the drafting and implementation of more equitable plans, this Policy Guide assumes that plans consistent with those policies are already under discussion or have already been adopted, and focuses instead on how zoning rules, maps, and procedures can be changed to implement those plans. This document identifies ways in which planners can look beyond the facially neutral text of zoning rules to focus on the disproportionate impacts of those rules on some individuals and neighborhoods, and then redraft and remap zoning to reduce those impacts.

While zoning can be revised to be less exclusive, the impacts of any changes may be very different when mapped in different neighborhoods. A change that could allow new types of housing that reduce exclusion from wealthy residential neighborhoods (for example, removing a ban on “missing middle” housing

or rental housing) could open new opportunities to build the same types of housing in low-income neighborhoods, sometimes on a speculative basis, and often leading to displacement and gentrification. For that reason alone, zoning needs to be better tailored based on its human impacts in different neighborhoods and may need to include stronger anti-displacement conditions than it has in the past. It also needs to carefully consider whether each zoning change will increase or decrease opportunities or protection for historically disadvantaged or vulnerable populations.

This Policy Guide also addresses how apparently neutral zoning rules may need to be carefully tailored and mapped to avoid unintended consequences. In many cases, this will require unique zoning tools to be applied in different neighborhoods of similar size, scale, and character, opening some neighborhoods to new types of development while protecting others from the same type of development. In many cases, these

distinctions may need to be based largely on whether the change will have a positive or negative impact on those most seriously harmed by past zoning practices and decisions, and to prevent similar practices from arising in new forms in the future.

2.2 Three Kinds of Equity in Zoning

Removing the disproportionate impacts of zoning on historically disadvantaged and vulnerable communities involves close examination of three different aspects of zoning:

EQUITY IN THE “RULES” OF ZONING: *what* the substantive rules of zoning allow, prohibit, or incentivize in different parts of the community.


EQUITY IN THE “PEOPLE” IN ZONING: *who* is involved in drafting the rules and incentives, who is notified and engaged in whether to change those rules for different areas of the community, and who is involved in enforcement of the rules.

EQUITY IN THE “MAP” OF ZONING DISTRICTS: *where* the rules are applied through zoning maps and whether that reduces or reinforces exclusion and segregation in America.

Each of these topics is addressed in the next three chapters of this Policy Guide.

Advancing Zoning Reform

The policy ideas endorsed in this guide prioritize reversing and alleviating the disproportionate impacts of zoning on historically disadvantaged and vulnerable communities through three aspects of zoning: rules, people, and mapping.



The Rules: Equity in Substantive Zoning Regulations

Photo by © 2022 Celeste Noche.

3. The Rules — Equity in Substantive Zoning Regulations

This chapter addresses the substantive rules and incentives in zoning regulations—as distinguished from the procedural rules about how zoning is drafted, applied, and enforced (addressed in Chapter 4) and the map that applies zoning rules to geographic areas of a community (addressed in Chapter 5). Substantive rules include all the complex and cross-cutting land use regulations limiting the size and shape of lots and buildings, how those lots and buildings can be used, and the physical design of those lots and buildings.

In many cases, a change that could be achieved by changing the rules could also be achieved by remapping lands into a different zoning district where different rules apply (as discussed in Chapter 5). For most communities, there is no “right” way. For example, a change to the zoning ordinance text that would allow more diverse housing in a given zoning district (a rule change) could also be achieved by remapping the area to allow those same types of housing in a specific area (a map change). The right way is the one that produces outcomes that undo past harms and avoids creating new harms to historically disadvantaged and vulnerable communities, and for which planners can gain the political support necessary to make the change. While each community will need to identify its historically disadvantaged and vulnerable communities based on its unique context, some relevant factors may include race and ethnicity, household composition and size, average median income, concentrations of substandard public facilities and infrastructure, poor access to good jobs and services, and other available historical data.

There are six major equity concerns directly impacted by substantive zoning regulations:

1. PUBLIC HEALTH. Land use patterns are linked to public health by influencing the opportunity to live

in affordable and appropriate housing; the provision of green open space; the distribution and quality of public schools, health care and rehabilitation services; the accessibility for people of all ages and abilities; the availability of affordable, healthy, and culturally appropriate food; and access to places of nature, recreation, and physical activity. APA’s [Healthy Communities Policy Guide](#) provides more detail on this important topic.

2. ENVIRONMENTAL JUSTICE.

Environmental justice is achieved when all people maintain “the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.” Communities of color in particular have long been exposed to higher levels of environmental and health hazards due to zoning

Communities of color in particular have long been exposed to higher levels of environmental and health hazards due to zoning that permits housing near pollution from major highways and waterways as well as regulations that permit or concentrate hazardous industries and facilities in certain neighborhoods. Climate change will exacerbate these impacts by increasing the frequency and intensity of flood and fire events.

that permits housing near pollution from major highways and waterways, as well as regulations that permit or concentrate hazardous industries and facilities in certain neighborhoods. Climate change will exacerbate these impacts by increasing the frequency and intensity of flood and fire events.

3. FAIR ACCESS TO ATTAINABLE HOUSING. Fair access to housing goes beyond the ability for any resident, regardless of income, to afford the mortgage or rent payments required for the available housing in their community. It also considers the ability of residents to live near their place of employment, schools, and services, in their preferred housing and ownership type, and in communities with a shared culture or identity if they so choose. The APA [Housing Policy Guide](#) provides much more detailed policy guidance on this topic.

4. FAIR ACCESS TO ECONOMIC OPPORTUNITY AND SERVICES. The ability to use, create, or reach a place to earn a living, to form and expand a business, and to access quality education, civic institutions, child and adult care, and other public services is also strongly influenced by zoning through permitted use controls, design controls, and the length and complexity of zoning procedures.

5. AGING IN PLACE. As the population of older Americans increases, the accessibility, affordability, functionality, and safety of the built environment becomes increasingly important. Opportunities for “aging in place” and multi-generational living, development regulations related to

Universal Design, and connectivity requirements are all components of standard zoning regulations that effectively determine if an adult can stay in the same community as they age. APA’s [Aging in Community Policy Guide](#) addresses this topic in more detail.

6. CULTURAL PRESERVATION. Zoning regulations can help retain and preserve culturally important sites and connections by incorporating provisions that protect certain uses, geographic areas, or design elements that are supported by and unique to that community to ensure cultural cohesion, even as development patterns change.

For the purposes of this Policy Guide, the recommendations have been organized to follow the structure of a traditional zoning ordinance. Due to the interwoven nature of zoning regulations, many recommendations are intended to address more than one of the larger themes described above, even if only one particular theme is highlighted.

Although the rules discussed in this chapter often appear in the zoning ordinance, some of the rules may instead appear in design standards or guidelines in separate documents. Often these documents are referred to in the zoning ordinance, and property owners are required to comply with them just as if they were part of the zoning ordinance. To fully remove the sources of zoning inequities, they will need to be addressed in both the zoning ordinance itself and in related development and design standards and guidelines.

3.1 Zoning Districts

Most zoning ordinances divide their communities into districts based on the forms of buildings permitted (form-based zoning), based on mitigating the specific impacts of proposed development (performance zoning), or based on the permitted uses of land and buildings in the district (use-based or Euclidean zoning), or a mix of these three approaches. These types of controls are sometimes approved as a negotiated Planned Unit Development unique to a specific property. While the labels form-based or use-based generally describe the primary focus of the regulations, in practice almost all zoning districts regulate both the form and use of land and buildings within their boundaries. While some form-based districts have more flexible regulations on the use of property and eliminate or minimize the need for public hearings about land uses, others retain use controls very similar to those in use-based zoning (particularly for lower density residential neighborhoods). Similarly, while use-based zoning districts often have relatively simple building form controls (like maximum heights and minimum/maximum building setbacks), others include much more detailed building form and design standards. Over-regulation of building forms, site performance, and permitted uses can all create barriers to opportunities for historically disadvantaged and vulnerable communities. This chapter will address sources of inequitable zoning

3.79 million

The number of housing units the United States needs to create to address our housing supply crisis.

Source: APA-Sponsored
*Up for Growth Housing
Underproduction Report*

arising from both building form and use regulations, regardless of the Euclidean, performance-based, form-based, Planned Unit Development, or other label attached to the zoning district.

In most communities, implementation of the policies described below will require careful consideration of the demographics, economics, economic and social vulnerability, and potential for displacement of the existing population. The same zoning change that may expand opportunities for better housing, livelihoods, and services in one part of the community may lead to speculative investments and displacement of historically disadvantaged and vulnerable households and businesses in another.

We address base zoning districts first because overlay districts operate in relation to base districts. In some cases, however, overlay districts may be more important to protect the culture and integrity of historically disadvantaged and vulnerable communities than the base districts they modify.

A. Base Zoning Districts

ZONING DISTRICT POLICY 1. Establish new residential zoning districts or amend existing residential districts to allow more types of housing by right. Avoid districts limited to only single-household detached dwellings when that will limit housing opportunities for historically disadvantaged and vulnerable populations. Evidence shows that single-household only residential zoning has a disproportionate impact on the ability of historically disadvantaged and vulnerable groups to access attainable housing and quality schools and services. Revise zoning to allowing a broader range of building forms, lot sizes, lot widths, and residential types in low-density residential neighborhoods. However, if the residents of historically disadvantaged and vulnerable neighborhoods want to preserve single-household zoning to discourage speculative investment and displacement, those desires should be respected. More detailed information on this topic is available in the APA Housing Policy Guide.

ZONING DISTRICT POLICY 2. Establish new mixed-use zoning districts or allow a wider mix of residential and non-residential uses in existing zoning districts. Districts that allow a mix of appropriately-scaled housing, commercial, and service uses can increase opportunities for historically disadvantaged and vulnerable populations to live closer to sources of quality employment, goods, and services. Cities and counties should consider existing conditions and demographics to identify neighborhoods that would benefit from additional access to opportunities provided through an expanded list of permitted uses. Take care not to introduce new uses that could distort housing markets and lead to forced displacement of existing residents.

B. Overlay Zones

ZONING DISTRICT POLICY 3. Where supported by a historically disadvantaged or vulnerable community, consider establishing specialized overlay zones to help

Evidence shows that single-household only residential zoning has a disproportionate impact on the ability of historically disadvantaged and vulnerable groups to access attainable housing and quality schools and services.

preserve business districts that have historically served and been focused on the needs of these communities. In many communities, traditional business, entertainment, or service centers serve as sources of jobs, revenue, and pride for the historically disadvantaged and vulnerable areas they serve. This is particularly true when businesses primarily serve racial, ethnic, Tribal, Indigenous, or religious groups or the LGBTQIA community that want specific goods and services in a context not often provided by the broader economy. An overlay district or legacy business zone designation can be used to recognize and preserve their cultural and economic contribution to the community, as well as allow additional flexibility in building forms and uses needed to accommodate current activities and to strengthen the image of the area for the future. These types of overlay districts acknowledge that it is not always a unique building

or architectural style that fosters a unique sense of place, but rather a collection of businesses, residential dwellings, and/or civic uses that establish a shared community identity.

ZONING DISTRICT POLICY 4. Where supported by a historically disadvantaged or vulnerable communities, consider establishing specialized overlay zones to help protect residential areas that are affordable to low- and moderate-income households, but are not protected from speculative development pressures by any local, state, or federal program. This can be done by defining and protecting established building forms, by prohibiting the demolition of more affordable types of housing, or by limiting the amount by which existing single-family homes can be expanded within a given time period. Preserving the existing scale and fabric of smaller and more affordable housing can help slow or prevent the replacement of smaller, affordable housing with much larger and more expensive homes in those neighborhoods that want to preserve current levels of affordability. This tool should be used only with the clear understanding that restricting private investment will mean that the existing housing stock may age and may remain substandard compared to surrounding areas unless funding for structural improvements or interior remodeling is made available. In addition, this tool should be clearly limited to disadvantaged and vulnerable neighborhoods and should not be used to create islands of housing in neighborhoods of wealth and privilege.

ZONING DISTRICT POLICY 5. Establish specialized overlay zones to improve health outcomes and environmental justice by preventing concentration of pollution or environmental hazards, including hazards related to climate change, especially near historically disadvantaged and vulnerable populations. A key element of pursuing environmental justice is balancing strategies that prevent hazards from being created with those that mitigate the impacts of pollution or

hazards already existing. An overlay zone can accomplish both by severely restricting the expansion of existing harmful industrial uses, requiring larger setbacks and more intensive buffers from residential uses, requiring environmental remediation, protection of existing trees, and/or requiring sound walls during redevelopment. These types of zoning districts should be developed in close collaboration with the surrounding communities so that concerns about health, the environment, and employment reflect the values of the community.

ZONING DISTRICT POLICY 6. Where supported by historically disadvantaged or vulnerable communities, establish specialized overlay zones to protect culturally significant sites, even if they may not qualify for designation as historic districts or landmarks. Sites or areas that are culturally important to historically disadvantaged or vulnerable communities are often undocumented and unprotected. A cultural preservation overlay zone can protect those sites or areas the community values and provide more flexibility in the design and development of surrounding properties to honor these locations.

3.2 Lot and Building Form and Design Standards

Building form and design standards were first established to advance public health, safety, and welfare during a time when overcrowded urban housing was spreading disease and increasing fire risk. More recently, building form and design standards have focused on public welfare (rather than health and safety) with regulations that protect neighborhood character, advance sustainability, and improve development quality. Each of these regulations has impacts on both development costs and human opportunities, and many of those negative impacts are disproportionately borne by historically disadvantaged and vulnerable communities. Cities and counties should consider how building form and design standards may increase the cost of building and maintaining properties, create barriers to access, and encourage or discourage investment and livelihoods in these communities.

A. Lot and Building Dimensional Standards

The most common form of zoning regulation influencing building form are those establishing minimum lot sizes, minimum setbacks from streets and other buildings, maximum building coverage, and maximum building heights.

FORM AND DESIGN POLICY 1. Reduce or remove limits on single-household minimum lot size requirements for different types of housing and eliminate minimum dwelling size and maximum floor area ratio standards

that effectively require construction of more expensive homes that are less affordable to historically disadvantaged and vulnerable communities. While large minimum lot sizes are often defended on the basis of preserving neighborhood character or property values, their impact has been to perpetuate patterns of economic and demographic segregation of historically disadvantaged and vulnerable communities. There are many examples of neighborhoods with broad mixes of lot sizes and housing that maintain very high qualities of life without perpetuating those exclusionary impacts. Establish lot and building standards that accommodate less expensive “missing middle” housing (a range of multiple-unit housing types similar in scale and form to detached single-family homes, such as townhouses, tri- and four-plexes, cottage housing developments, and accessory dwelling units (ADUs)) plus manufactured and modular housing. In addition, consider limiting the ability to consolidate small lots into larger ones that facilitate development of larger homes or multi-household development

“Cities and counties should consider how building form and design standards may increase the cost of building and maintaining properties, create barriers to access, and encourage or discourage investment and livelihoods in these communities.”

FORM AND DESIGN POLICY 2. Reduce or remove limits on multi-household development density, minimum dwelling unit sizes, or maximum dwelling units per acre that tend to force the construction of fewer, larger, more expensive dwelling units within these buildings. In addition to limiting the ability of households to live closer to needed schooling, childcare, employment, and services, these types of artificial limits make it difficult for America’s aging population to “age in place” in the neighborhoods they love. Regulations that focus on the form, size, and placement of these types of buildings, rather than the number of dwelling units in them, should be considered. If larger units are needed to accommodate growing populations of larger households, regulations may better promote construction of the needed housing by requiring more units with more bedrooms.

B. Lot and Building Form and Design Standards

As noted earlier, form-based zoning regulations generally focus more on ensuring that building forms fit their context while offering increased flexibility for the permitted uses of those buildings. While careful building form and design controls can help ensure that new development preserves traditional patterns of development in historically disadvantaged and vulnerable neighborhoods, it is important to ensure that these standards do not make it difficult and expensive to develop and redevelop properties in those neighborhoods.

FORM AND DESIGN POLICY 3. Consider adopting building form and design standards that protect the quality and character or historically disadvantaged or vulnerable households and businesses, and that do not impose undue cost burdens. Form and design standards that increase development costs while producing only marginal public benefits can prevent disadvantaged households from moving into a new neighborhood, creating a business in that neighborhood, or making improvements to their property.

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The number of ADU applications Salt Lake City, Utah, received within 10 months of its 2018 update to the city’s ADU regulations. Current regulations permit all ADUs by right in most residential districts except for single-family only zoning districts. The city recently proposed new updates to make ADUs easier to build and to increase and diversify the places where they are legal.

Source: AARP and APA’s Expanding ADU Development and Occupancy: Solutions for Removing Local Barriers to ADU Construction Report

FORM AND DESIGN POLICY 4. Add standards to allow those with reduced mobility or without access to a motor vehicle to easily access and circulate in all neighborhoods. These include standards requiring Universal Design or other accessibility programs that go beyond the minimum requirements of the Americans with Disabilities Act (ADA), to ensure that neighborhoods function for older adults as well as those experiencing disabilities. Because compliance with some of these requirements may increase development and housing costs, they should be accompanied by other zoning changes or incentives that balance out overall development costs.

FORM AND DESIGN POLICY 5. Except in designated historic districts and cultural overlay zones, avoid drafting or allowing the use of architectural style design standards that have negative connotations among communities of color and vulnerable populations. For example, antebellum and Spanish Colonial styles may discourage Black, Latino/a/x, or Native American households from feeling welcome in a neighborhood or community due to the historical use of these architectural styles to assert power over these communities. Other defined styles may create similar reactions from Asian or Pacific Islander communities.

FORM AND DESIGN POLICY 6. Remove or modify restrictions on specific building or site features that are commonly found and disproportionately limited in historically disadvantaged and vulnerable neighborhoods. Examples of development standards that place disparate burdens include bans on window-mounted air-conditioning units, outdoor clothes lines, parking of a single commercial vehicle, basketball hoops, or carports. If necessary, limits or prohibitions on these types of typical site features should be based on documented negative outcomes developed in collaboration with those neighborhoods most likely to be affected by them.

3.3 Property Use Regulations

Use regulations identify the types of uses allowed by-right, conditionally, with discretionary review, or as accessory or temporary uses in different zoning districts, and often include standards to mitigate potential impacts of those uses. Whether they appear in form-based or use-based zoning districts, use regulations can disproportionately affect historically disadvantaged and vulnerable populations in several ways. Narrowly defined uses that focus on the name of the activity rather than its land use, traffic, or environmental impacts sometimes single out additional restrictions for negatively perceived forms of retail, sales, or production activities that are frequent sources of employment for these communities. The same is true for strict limits on home occupations based on their names rather than their impacts on the neighborhood, since these communities are more likely to need to use their homes to generate income to live and raise their families. Requirements for public hearings and discretionary approvals for specific uses also tend to have disproportionate impacts on these households, since they are often less able to invest the time and energy necessary to complete those procedures. The large number of use-related recommendations in this

Prioritizing Housing Choice

From counties to cities and everywhere in between, communities are changing their build form and use controls to make room for missing middle housing. Accessory Dwelling Units, duplexes, triplexes and more are giving people more housing options that meet their unique needs.

portion of the Policy Guide is indicative of the wide range of ways in which permitted use controls have created inequitable zoning results.

A. Residential Uses

Most of the land in most American communities is zoned for residential development and use. Historically, many zoning districts are grounded in idealized concepts of a small, nuclear, two-generation family that is no longer the norm. Many of these districts permitted only single-household, detached houses (and sometimes supporting civic uses like schools and places of worship). The wide use of these practices has contributed significantly to rising housing prices and the inability of historically disadvantaged and vulnerable households to find quality affordable housing in areas with quality schools and services and has led to long-standing demographic and income segregation in many communities.

In many cities and counties, making a wider range of diverse forms of housing available will require changes to both building form and use controls. This section should be read together with the APA [Housing Policy Guide](#), which includes several other policies related to housing, including APA's position on inclusionary zoning requirements.

PERMITTED USE POLICY 1. Where supported by historically disadvantaged and vulnerable populations, expand the list of residential use types permitted in those neighborhoods to include one or more of the following forms of non-traditional and “missing middle” housing that is more available to America’s diverse, aging population. Types of housing that are missing from many zoning ordinances—or only available following a public hearing—include cottage or courtyard dwellings, duplexes, triplexes, fourplexes, attached single-household homes (townhouses or stacked townhouses), co-housing, tiny houses, live-work dwellings, single-room occupancy (SRO), manufactured/modular housing, and both attached and detached accessory dwelling units (ADUs). By including appropriate standards on these uses, they can often be made available “by-right” in a wide range of residential zoning districts without the need for a public hearing or negotiated approval. To support the viability of ADUs, co-housing, and multi-generational living, a second kitchen that meets building code standards should generally be permitted.

PERMITTED USE POLICY 2. Allow accessory dwelling units (ADUs) without the need for a public hearing, subject to only those conditions needed to mitigate potential impacts on neighboring properties. ADUs are complete, smaller, secondary dwelling units that are located within a principal dwelling or in a detached accessory structure. Administrative approval of ADUs significantly decreases the time, cost, and risk of the development review process for applicants and encourages property owners to use their own resources to increase housing diversity. While ADUs may support the stability of existing

neighborhoods by accommodating extended families or creating an opportunity to generate revenue from tenants, they can also spur speculative investment that displaces current residents, particularly when ADUs are used as short-term rentals. Where allowing short-term rentals may lead to displacement, it may be necessary to limit them to properties where the primary dwelling unit is the owner’s primary residence.

PERMITTED USE POLICY 3. Allow manufactured and modular homes in many residential districts, protect existing manufactured housing parks, and allow the creation of new manufactured housing parks with quality common open space and amenities. Redevelopment of manufactured housing parks can create unusual hardships if the residents cannot afford to move their units or cannot find affordable replacement housing. Cities and counties should allow the installation of individual manufactured homes in a variety of residential districts, as well as the creation of new manufactured home parks in desirable residential areas. Where risks of natural disasters create disproportionate risks for occupants of these units, additional public safety regulations for these types of housing, including but not limited to an engineered tie-down system or reinforced concrete or masonry foundation, may be appropriate. They should also protect

3. THE RULES: EQUITY IN SUBSTANTIVE ZONING REGULATIONS

existing manufactured housing parks that meet public health and safety standards from displacement by limiting options for redevelopment without the approval of the elected officials.

PERMITTED USE POLICY 4. Treat assisted living facilities, congregate care communities, retirement villages, and supportive housing types as residential (not commercial) uses and allow them in a wide variety of residential zoning districts where the scale of the facility is similar to other permitted uses in the district.

Although supportive housing facilities often include commercial activities such as providing healthcare or other support services, they function as residential facilities and should be treated as such. Classifying supportive housing types as residential uses and reducing the need for public hearings and conditional approvals also expands opportunities for older adults to “age in place.”

PERMITTED USE POLICY 5. Treat housing with supportive services for people with disabilities the same as similarly sized residential uses.

Group homes or supportive housing for those with physical and mental disabilities are protected by the federal Fair Housing Amendments Act (FHAA), and the required broad reading of the FHAA means that zoning should not treat group homes any differently than similar sized homes for people not experiencing disability. Ensure that the zoning regulations allow small group homes wherever single-household homes are permitted and allow large group homes wherever multi-household buildings of the same size are permitted.

PERMITTED USE POLICY 6. Replace zoning references to “family” with a definition of “household” that includes all living arrangements that function as a household living unit or define residential units without reference to a family or household.

The definition of “family” is an important, and often overlooked, part of zoning regulations when it comes to disproportionate impacts

on historically disadvantaged and vulnerable communities. Many definitions related to household composition are based on outdated assumptions about small, nuclear families and a largely white culturally-specific concept of family life that excludes other ways of living. Common exceptions to these assumptions include Asian and Latino/a/x multi-generational living and LGBTQIA partnerships. Ensure that the definition includes people related by adoption, guardianship, or foster placement, and accommodates larger groups of unrelated individuals living as single households in a cooperative community. As an alternative, define a residential unit as consisting of self-contained rooms located in a building or structure used for residential purposes and containing kitchen and bathroom facilities intended for use of that unit only. If the definition includes a maximum number of unrelated persons, ensure that it is no lower than the number of related persons that would be permitted in the same size residential home.

PERMITTED USE POLICY 7. Allow administrative approval of “Reasonable Accommodations” for persons experiencing disabilities.

The FHAA requires that requests for reasonable variations and exceptions to zoning rules to accommodate persons experiencing disabilities (such as a request for a wheelchair

ramp that extends into a required setback) be considered and that decisions on those requests be reasonable. Establish a clearly defined administrative process for approval of requests for Reasonable Accommodation (perhaps in consultation with a caretaker or representative of persons experiencing disabilities). As opposed to the typical and sometimes lengthy variance process, an administrative process avoids a public hearing that will call attention to the disability of the applicant and may create public pressure on decision-makers to deny or condition approval of the request in ways that place an additional burden on the person experiencing disability.

PERMITTED USE POLICY 8. Adopt Universal Design requirements for a significant share of new housing construction to better accommodate the needs of older adults and persons experiencing disabilities.

While the Americans with Disabilities Act (ADA) generally does not require accessible design for single-household homes, Universal Design requirements ensure that key features (like doorways wide enough to accommodate wheelchairs and at least one at-grade entrance) are incorporated into single-household dwellings. If the building code does not already require these elements in a percentage of new homes constructed, incorporating them into development regulations can substantially expand the ability to “age in place.” Any increased costs for Universal Design should be addressed by zoning changes or incentives to offset those costs.

B. Commercial Uses

Commercial uses, including retail, personal, and medical services, are not only a large source of employment, but they also provide necessary goods and services for community residents and drive many local and regional economies. Historical practices in commercial zoning have resulted in inequitable patterns of development and a lack of fair access to employment and basic necessities. Limiting expansions of telecommunications systems tends to perpetuate the “digital divide” and can

limit the ability of disadvantaged neighborhoods to access economic opportunities and prevent older adults from accessing needed services. The recommendations below are intended to dismantle the negative stereotypes of some commercial uses, expand the provision of essential goods and services into historically disadvantaged and vulnerable neighborhoods, and increase access to employment opportunities.

PERMITTED USE POLICY 9. Evaluate the permitted uses regulations applied to small-scale commercial uses and eliminate restrictions and standards that are not based on documented public health, safety, economic, or other land use impacts on surrounding areas.

Businesses such as plasma clinics, laundromats, nail salons, social clubs, and tattoo parlors are often limited or prohibited in many commercial zoning districts even though they have similar operating characteristics and land use impacts as other commercial uses like banks, personal services, and urgent care clinics. In many communities, these uses serve as significant providers of goods, services, and employment in the surrounding areas, as well as important gathering places for historically disadvantaged and vulnerable communities. Restrictions on small-scale commercial uses should be based on documented

The recommendations below are intended to dismantle the negative stereotypes of some commercial uses, expand the provision of essential goods and services into historically disadvantaged and vulnerable neighborhoods, and increase access to employment opportunities.

land use impacts and should be adopted only after collaboration with the business communities that will be affected to balance those impacts with potential employment opportunities and to avoid over-concentration of those uses in historically disadvantaged and vulnerable neighborhoods. Defining broader and more flexible permitted use categories generally reduces barriers to small business formation and competitiveness.

PERMITTED USE POLICY 10. Allow small-scale child and elder care and outpatient medical and health support facilities in a wide variety of zoning districts to allow convenient access by all residents and treat non-residential addiction services like other outpatient treatment facilities. America’s aging population will require increasing amounts of medical and dental care, physical and occupational therapy, and other supportive services located conveniently to the neighborhoods where they “age in place.” In addition, serious shortages of convenient childcare have a disproportionate impact on single-parent, often female-headed, households. Outpatient addiction treatment centers operate similarly to other types of outpatient facilities and should be treated as such. Because substance addiction is a growing medical and mental health challenge that affects all demographics, these facilities should be allowed with few restrictions in a wide variety of commercial zoning districts and should not be subject to public hearing or development standards that are not also applied to other types of outpatient treatment facilities. For each of these uses, avoid regulations that add costs or repeat state regulations or licensing requirements.

PERMITTED USE POLICY 11. Ensure access to healthy food by allowing grocery stores, local cuisine restaurants, and artisanal food producers with limited operational impacts within and near low-density residential neighborhoods and in food deserts. Grocery stores and local food producers are important contributors to public health and are needed in almost every part of the community on a daily basis. Zoning regulations and procedures that create barriers to these uses should be removed or revised to allow wider access to healthy food in residential neighborhoods at scales consistent with established development. Revise permitted use regulations to reverse the overconcentration of convenience stores, cannabis outlets, safe injection sites, and other facilities that provide easy access to health compromising substances like alcohol and tobacco in historically disadvantaged and vulnerable communities.

C. Industrial Uses

Due to a long history of zoning practices that located or allowed environmentally harmful or polluting

uses in or near historically disadvantaged and vulnerable neighborhoods, Black, Latino/a/x, and Asian communities in particular, have suffered disproportionate burdens from air and water pollution, lack of safe or clean open and green space, and other environmental hazards. While current environmental regulations sometimes prohibit the creation of new hazardous or polluting uses, existing sources of environmental risk often remain in place and are protected by their legal nonconforming status. The recommendations below can reduce the disproportionate impacts from environmental hazards on these communities.

PERMITTED USE POLICY 12. To improve environmental justice, prohibit the location of new industrial uses and the expansion of existing industrial uses that do not meet current public health and environmental safety standards. Where existing environmentally harmful uses continue to operate as legal nonconforming uses, prohibit expansion of those uses unless the expansion will result in reduction and remediation of existing risks to public health and safety, particularly when they are located near schools, health care facilities, and other facilities serving vulnerable populations. Create incentives to spur redevelopment of hazardous and polluted sites near historically disadvantaged and vulnerable populations. Where permitted by law and supported by the surrounding community, use amortization powers to terminate hazardous nonconforming land uses.

PERMITTED USE POLICY 13. Classify and clearly define low-impact and artisan manufacturing uses as commercial uses and allow them in more zoning districts. While the term “industrial” is typically associated with large facilities with large neighborhood impacts, there are many small-scale assembly, processing, and fabrication activities with few or no negative impacts on the surrounding area. Because these uses are often grouped with the more intense industrial uses, there are often unnecessary limits on where they can be

located. Allowing small-scale artisanal production and retail sale of their products in the same building lowers the barriers to economic activity to those without the resources to maintain different properties to make and to sell their products. Where residential and small-scale commercial uses occur in the same neighborhood, ensure that commercial sites are designed to protect the safety of vulnerable residents, particularly children and older adults.

D. Agricultural Uses

Agricultural use regulations, especially those related to urban agriculture, are an integral component of sustainable and equitable access to healthy, safe, and affordable food. Local production of food is increasingly allowed in many zoning districts but is particularly important in and near those historically disadvantaged and vulnerable neighborhoods where access to healthy food is limited. The recommendations below can help to not only increase access to healthy food sources but to empower and strengthen local food producers and connect them to local and regional food systems.

PERMITTED USE POLICY 14. Allow small-scale urban agriculture — including but not limited to community gardens, greenhouses,

beekeeping, and poultry raising — in a wide variety of zoning districts, including residential districts, and allow light processing, packaging, and sales of products grown on the property. To protect public health, ensure that soil on urban agriculture sites is not contaminated or that raised beds with clean soil are used, particularly when the site has been previously used for commercial or industrial purposes. Reduce noise impacts by prohibiting roosters and ensure households properly dispose of animal waste. Remove barriers to construction of supporting facilities needed to protect plants due to climate or soil conditions and reduce standards, such as the number of beehives allowed per lot, that significantly limit many properties from operating those uses. Do not allow large-scale or high-impact agricultural uses to locate near historically disadvantaged or vulnerable populations.

PERMITTED USE POLICY 15. Allow farmer’s markets and other facilities for local food distribution in a wide variety of zoning districts, including residential districts, as either temporary or permanent uses. Easy public access to healthy food is as important as the ability to produce healthy food, particularly for those who do not have the ability to grow it themselves.

E. Home Occupations

Zoning regulations often severely limit the types of revenue earning activities that can be conducted from a house or apartment, which has a significant impact on those who do not have the resources to rent a separate business location, including but not limited to historically disadvantaged and vulnerable communities. In some cases, zoning limits are based on stereotypes regarding the activity rather than its impacts on the neighborhood. Removing prohibitions or overly restrictive requirements on home-based businesses are of particular benefit to single-parent or guardian households or other households with small children, older relatives, or other dependents by allowing them to run a business or be

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The number of states with a housing underproduction problem as of 2019. The housing crisis is no longer just a coastal problem.

Source: APA-Sponsored
Up for Growth Housing Underproduction Report

employed without the additional costs of childcare, eldercare, or commuting.

PERMITTED USE POLICY 16. Update home occupation regulations to broaden the types of activities allowed to be conducted from dwelling units of all types.

Ensure that any restrictions on home occupations are based on documented neighborhood impacts and eliminate special permit requirements where possible. Regulations should allow those who occupy housing as their primary residence to also use that home as an economic asset to participate the “gig” economy. Regulations should focus on preventing negative impacts on the surrounding area rather than trying to list specific permitted home businesses. Limits on the use of accessory buildings, prohibitions on employment of even one person from outside the household, additional requirements for off-street parking, and prohibitions on cottage food operations all create significant barriers to economic activities and likely have a disproportionate impact on historically disadvantaged and vulnerable communities.

F. Temporary Events

PERMITTED USE POLICY 17. Reduce zoning barriers for temporary events, entertainment, and outdoor sales, including garage/

yard sales, “pop-up retail” sidewalk sales, street vending, and mobile food vendors where those barriers are likely to hinder social and economic opportunities for historically disadvantaged and vulnerable individuals. Temporary uses are often heavily restricted due to perceived or potential traffic and noise impacts, even though those impacts will be short-lived. Temporary events are often tied to cultural celebrations that foster a sense of community within a neighborhood and offer additional sources of temporary employment without the need to invest in a permanent place of business. Temporary use restrictions should be based on balancing the short-term impacts of these events with the social, economic, and cultural benefits they create. Larger temporary events should be required to be accessible to those using mobility devices such as wheelchairs and walkers, and to provide accessible support facilities such as parking and restrooms.

3.4 Site Development Standards

Site development standards address the physical layout and design of the lots and parcels on which buildings are built and activities are conducted, including access to the site, the number of parking spaces (if any) required, the amount of landscaping (if any) required, what kinds of outdoor lighting fixtures are permitted, and what types of signs are permitted. The recommendations below address several major elements of site development standards and how they can be used to improve equity for historically disadvantaged and vulnerable communities.

A. When is Compliance Required

Because site development standards can add significant costs to new development or redevelopment, it is important to clarify what level of investment triggers

the need to comply with those standards. Smaller investments generally require only partial compliance, or are exempt altogether, while larger investments require full compliance. Site development regulations are often tailored to allow additional flexibility for infill and redevelopment projects and can also be tailored to allow additional flexibility to allow needed investment and employment in historically disadvantaged and vulnerable neighborhoods.

SITE DEVELOPMENT POLICY 1.

Draft thresholds for compliance with specific site development standards to avoid disproportionate impacts on historically disadvantaged and vulnerable neighborhoods.

The triggers for compliance with different types of site development standards should be developed after close consultation with the affected neighborhoods so that they reflect a good balance between the desire to maintain and upgrade the quality of the neighborhood with the need to sustain investment and employment by existing businesses and the affordability of housing to area residents.

B. Access and Connectivity

Access and connectivity standards address internal circulation within a site, connections between development sites, and

multiple modes of mobility to and throughout the site. Connectivity standards accommodate the many individuals who rely on public transit, walking, and biking as alternatives to travel by car, those who must rely on mobility aids, those using strollers for small children, and children who need safe routes to school. Fire and emergency response times are often longer in historically disadvantaged and vulnerable neighborhoods, and improved connectivity can shorten those response times.

SITE DEVELOPMENT POLICY 2. Require high levels of accessibility and connectivity for pedestrians, bicycles, and motor vehicles in all new development and significant redevelopment. Require that bicycle routes, sidewalks, internal walkways, and pedestrian crossings are safe and usable by all people, including persons experiencing disabilities. Ensure existing pedestrian routes are preserved to the maximum extent practicable when new development is proposed, and require off-site enhancements such as improved crosswalk markings, protected bicycle lanes, and enhanced transit stops. Consider requiring Complete Streets, going beyond the standard requirements of the Americans with Disabilities Act, and requiring compliance with federal Public Right-of-Way Accessibility Guidelines. Prohibit the creation of new “gated communities” with single or limited points of access that lengthen walking, bicycling, and motor vehicle trips and are a significant contributor to exclusionary development patterns. Consider requiring large projects with multiple buildings to incorporate low vision, blind-supportive, and deaf-friendly design features such as wide sidewalks, raised crosswalks,

and other tactile markers to differentiate pathways.

C. Required Parking

Minimum off-street parking regulations raise the cost of housing and other development and often make redevelopment of older infill sites difficult or impossible, which likely has a disproportionately negative impact on historically disadvantaged and vulnerable neighborhoods. Often these minimum requirements far exceed what is needed to achieve their original purposes, which were to protect public health and safety by reducing street congestion, to prevent overflow parking and related traffic from commercial uses in adjacent residential areas, and to prevent parking on yards and sidewalks. Average temperatures are often higher in historically disadvantaged and vulnerable neighborhoods, and reducing parking reduces the impervious surfaces that create urban heat islands and increase risks of flooding. Reducing or eliminating parking minimums can also increase the amount of land available to build

Minimum off-street parking regulations raise the cost of housing and other development and often make redevelopment of older infill sites difficult or impossible, which likely has a disproportionately negative impact on historically disadvantaged and vulnerable neighborhoods.

housing, parks and open space, or other community-supporting uses.

SITE DEVELOPMENT POLICY 3. Eliminate or reduce minimum off-street parking requirements in areas where those requirements serve as significant barriers to investment and are not necessary to protect public safety of pedestrians, bicyclists, motorists, older adults, or persons with disabilities. Minimum parking requirements are often based on suburban development models that are not applicable to denser, urban contexts or redevelopment projects. Reducing minimum parking requirements is particularly important for Transit-oriented Development and other areas with meaningful mobility options. However, because of poor public transit access to employment opportunities, some historically disadvantaged and vulnerable households may have no choice but to own a motor vehicle (or more than one) to reach more dispersed work opportunities. Some employers may need more off-street parking because their workforce arrives from widely dispersed neighborhoods not served by other forms of transportation. Reductions in parking requirements should be based on careful consultation with affected neighborhoods and employers to balance the affordability and walkability benefits of less parking with the need to accommodate vehicles used for employment without compromising public health and safety.

SITE DEVELOPMENT POLICY 4. Do not require minor building expansions, minor site redevelopment projects, or adaptive reuse of existing buildings to provide additional parking unless the change will create significant impacts on public health or safety. A major barrier to opening a small business or operating a restaurant or personal service use is additional parking requirements triggered when the intensity of use increases. This can disproportionately impact historically disadvantaged and vulnerable business owners who have more constrained sites and who may lack the

resources to make significant site improvements to accommodate a relatively small change in use. Often, the time involved in evaluating incremental parking requirements for small changes in property use far outweighs the benefits of those parking adjustments to public health and safety.

D. Landscaping, Open Space, and Tree Canopy

Many historically disadvantaged and vulnerable neighborhoods have lower levels of vegetation, landscaping, and open space for outdoor gatherings and activities that promote public health and well-being. They often have less tree canopy to cool properties and offset heat island effects, which make many of these neighborhoods significantly warmer than others and creates health challenges for older adults and persons experiencing disabilities. Some of these discrepancies are caused by zoning regulations that do not require the same levels of private investment applicable to private property in other neighborhoods. Tailored site design standards can help reverse these shortcomings over time.

SITE DEVELOPMENT POLICY 5. Draft zoning standards that require or incentivize new development and redevelopment to increase the amount of landscaping, open space, and tree canopy in those

neighborhoods that currently have less of these site design features. Higher levels of these important amenities are particularly important where development intensity is increased. These requirements should be drafted in close collaboration with those most affected by the change, so that increases in these features are balanced with the need to preserve the affordability of housing and the viability of existing businesses. Ensure that new landscaping is located and sized to avoid obscuring sight lines for pedestrians, bicyclists, and motor vehicles that would increase risks to public health and safety, particularly children, older adults, and those reliant on public transit. The added costs of open space and tree canopy in these neighborhoods can be offset by additional flexibility other development standards, provided that the amount of open space per dwelling is increased.

E. Lighting for Public Safety

Because many historically disadvantaged and vulnerable neighborhoods are located in older areas of our communities, they often contain properties that were developed before minimum lighting standards to protect public safety were adopted. Nighttime safety is important to all residents of the community, but particularly important to vulnerable populations, including older adults, persons experiencing disabilities, women, children, and those relying on public transit.

Smaller communities choose redevelopment over parking

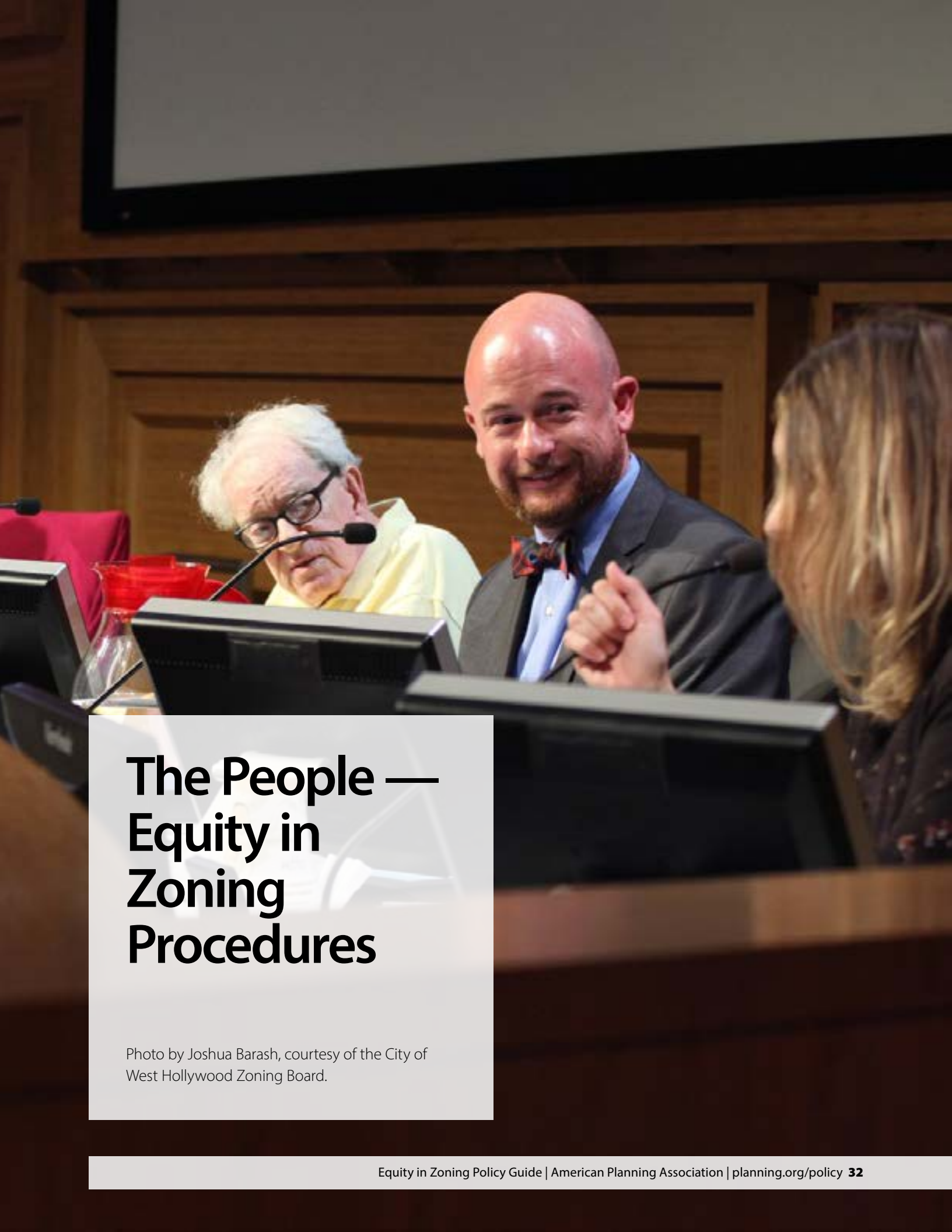
In **Fayetteville, Arkansas**, reducing the required spots from more than 30 to eight allowed one small business to turn a vacant building into a buzzy downtown hot spot.

In **Sandpoint, Idaho**, dropping parking minimums encouraged tech company Kochava to renovate an old lumber storage facility, resulting in a tax value assessment increase of more than \$2 million.

Source: Planning Magazine

SITE DEVELOPMENT POLICY 6.

Require adequate levels of lighting of sidewalks, crosswalks, walkways, public transit stops, and parking lots to protect the health and safety of vulnerable populations. Through shielding requirements, “dark sky” fixtures, limits on uplighting, and better light trespass standards, lighting needed for public safety can be readily balanced with community desires to “see the stars.” Because excessive lighting standards have sometimes been used to increase surveillance of Black, Latino/a/x, and other persons of color, lighting standards should be drafted after careful consultation with the residents and businesses in the neighborhoods where they will be applied, so that they balance public safety for all residents and visitors.



The People — Equity in Zoning Procedures

Photo by Joshua Barash, courtesy of the City of West Hollywood Zoning Board.

4. The People — Equity in Zoning Procedures

While community participation has long been emphasized when creating planning documents, it is not always a priority when drafting and implementing zoning regulations, possibly because zoning is perceived as a technical topic. That omission is a serious mistake, however, because informed participation is as critical to eliminating racism and discrimination in zoning as it is in planning. Equity in zoning requires that communities ensure diverse, inclusive, and effective participation in writing and changing the zoning rules; drawing and changing the zoning map; applying the zoning ordinance to development applications; and deciding how the rules will be enforced.

The continuing need to achieve much greater diversity and maximum participation in the planning profession was addressed both in the Planning for Equity Policy Guide and in Chapters 1 and 2 of this Policy Guide so that discussion is not repeated here. On the ground outreach and community development work by planning staff, including efforts such as surveys, canvassing, and long-term relationship-building, are critical to expanding community participation. It is not enough to identify underrepresented groups and invite their participation. Pro-active efforts to recruit, engage, educate, and empower these individuals, and to mobilize their communities and community-based organizations for effective engagement are also vital. Education should focus not only on how zoning works and how to influence zoning decisions, but also on consensus-building and compromise, which are essential ingredients of all zoning reform efforts.

4.1 Capacity Building

Effective public education on what zoning is and what zoning does can be a crucial element in enabling

participation from broader and more representative groups of citizens. Cities and counties that have offered zoning 101 or zoning academy events and programs often report a significant increase in public understanding of the most effective ways to make their wishes known and understood throughout the zoning process. In addition to explaining how zoning works, these programs should address the need for diverse participation by making accommodations for non-traditional work schedules, participants' needs to bring children to learning events, and those with limited English proficiency.

CAPACITY-BUILDING POLICY 1.

Design and offer events or classes to help historically disadvantaged and vulnerable communities understand and participate in zoning procedures, and to help

staff learn from members of those communities how current zoning procedures affect their neighborhoods, businesses, and quality of life. Events offering public education or seeking public input should be offered both virtually and in-person, at varying hours, at locations where participants normally gather, and in commonly used languages that avoid “legalese”. They should create working partnerships among neighborhood residents, businesses, trusted community-based organizations, and planners. If possible, they should offer childcare, meals, and stipends to recognize the value of participants’ time. These efforts need to go beyond traditional capacity building and “zoning 101” training to include collaborative community development, mobilization of residents, and encourage more elementary and high school students to understand planning and zoning and to enter the profession.

CAPACITY-BUILDING POLICY 2. Ensure that planners and elected and appointed officials receive diversity, equity, and inclusion (DEI) training. As the planning profession works to build diversity over time, planners should work to enhance their sensitivity and knowledge of issues and concerns relevant to historically disadvantaged and vulnerable populations and neighborhoods, as well as the perspectives of their co-workers who are members of these communities. Regardless of background, those working to draft and apply zoning should become aware of the history and negative impacts of past zoning policies while striving to improve present conditions and future outcomes by directly collaborating with those in the community who will be most affected by their actions.

4.2 Equity in Advisory and Decision-Making Boards

Although the ultimate authority to adopt and apply zoning regulations is almost always held by elected officials, appointed boards are often authorized to make recommendations or to make certain types of decisions. Examples include Planning Boards, Zoning Commissions, Historic Preservation Committees, Zoning Appeals Boards, and Hearing Officers. This Policy Guide has previously noted that the planning profession remains a predominantly white profession that often does not reflect the diversity of the communities it serves, and the same is frequently true of appointed zoning-related boards and officials. Some of the inequities in drafting, applying, and enforcing zoning regulations discussed in Sections 4.3 through 4.6 below may not be fully addressed until these boards truly reflect the diverse populations of our cities and counties.

Cities and counties should consider how building form and design standards may increase the cost of building and maintaining properties, create barriers to access, and encourage or discourage investment and livelihoods in these communities.

APPOINTMENT POLICY 1. The composition of non-elected boards and committees should reflect the community, including proportionate representation from historically disadvantaged and vulnerable communities. While expertise in zoning, planning, real estate development, and real estate markets have often been the key criteria for appointment to these boards, that approach often results in memberships that do not reflect the makeup of the community. Professional expertise is important, but these boards also need to include significant local community expertise and lived experience. Their members need to bring different kinds of knowledge that can be conveyed by diverse voices that better understand the impacts of zoning decisions on historically disadvantaged and vulnerable neighborhoods. Announcements of opportunities to serve on boards should be disseminated broadly, appointment procedures should be transparent, and classes should be offered to provide training and information about the roles and responsibilities of board(s) members. Communities should consider offering support services like transportation or childcare to members who agree to serve on boards and committees.

4.3 Writing and Changing the Zoning Rules

While full rewrites of a zoning ordinances are relatively rare, amendments to the current zoning rules occur frequently. This section addresses both large-scale and more targeted changes to the text of the zoning regulations. Two equity considerations arise when communities draft or update zoning regulations: (1) Who is writing or amending the rules, and (2) Who will be affected by the proposed changes. To the greatest extent possible, the task forces, consultants, and advisory committees involved in writing or amending zoning rules should reflect the demographic makeup of the

community. Staff or advisory groups should also include individuals living, educating, or doing business in the areas that will be affected by the new rules under consideration.

In addition, zoning rewrite projects must include significant outreach efforts to ensure they reflect input from diverse groups in the community, and particularly from historically disadvantaged and vulnerable communities. The rewrite process should include input from a standing advisory committee reflective of the community, and any proposed changes should be subject to public review and feedback long before there is an actual hearing on adopting those changes. Many of the outreach policies in the Planning for Equity Policy Guide apply to zoning rewrites as well.

Just as importantly, the zoning drafting process should include specific opportunities to evaluate the potential impact of revised zoning regulations on all of our diverse neighborhoods. It may be appropriate to perform an equity audit of the current zoning regulations based on the recommendations in this Policy Guide in order to identify potential changes and any unintended consequences of those changes.

DRAFTING POLICY 1. Those framing, writing, and/or reviewing the zoning rules should reflect the demographic composition of

the community and should include representatives from historically disadvantaged and vulnerable communities. Input from these groups should occur at least twice: once before amended language is being drafted, and again before that language is presented to a decision-making body. If changes are not incorporated based on public input prior to the hearing, discussion of that input and the reasons for not reflecting it in the proposed rules should become part of the public hearing.

DRAFTING POLICY 2. Ensure that drafting efforts include business and residential tenants, as well as property owners. This is important because historically disadvantaged and vulnerable communities generally have a higher percentage of renters than the overall population, and because the zoning changes can lead to gentrification and displacement that particularly impact tenants.

DRAFTING POLICY 3. Ensure that there are multiple opportunities for review of potential zoning impacts on historically disadvantaged and vulnerable communities. This could include developing indicators of neighborhood vulnerability and modeling the impacts of potential developments against these indicators. These reviews need to happen with sufficient time to receive and incorporate meaningful and equitable input before public hearings on the proposed regulations begin.

DRAFTING POLICY 4. Avoid overly complicated regulations and legalistic language and speak to the community in the language(s) they understand. Complicated regulations, and those that require detailed supporting documentation, make it difficult for residents (particularly those with limited English proficiency) to engage effectively in the drafting process. They also discourage zoning applications from those who do not

Zoning rewrite projects must include significant outreach efforts to ensure they reflect input from diverse groups in the community, and particularly from historically disadvantaged and vulnerable communities.

have the resources to hire professional help to get through the zoning process. Communities with significant populations of persons with limited English proficiency should provide zoning and application materials in commonly spoken languages as well.

DRAFTING POLICY 5. Draft clear and objective, equity-based standards and review criteria. Similar to overly complicated regulations, vague and subjective standards are difficult and time-consuming to interpret and often allow historical biases to enter the decision-making process. Overly subjective standards also make it easier for individuals familiar with the public process (who are typically wealthier and often white) to oppose zoning text and map changes that could produce more equitable development. Draft zoning approval criteria that prevent or mitigate displacement or further fragmentation of historically

disadvantaged and vulnerable communities. Because zoning criteria based on preserving neighborhood character and protecting property values have often been used to block the expansion of housing opportunity and variety in historically privileged neighborhoods, use of those terms and regulations related to them should be avoided. As alternative, define community character objectively so the term can be applied consistently across all neighborhoods. Outcomes from these changes should be periodically assessed to ensure that decision criteria are not perpetuating patterns of segregation.

4.4 Applying the Zoning Rules to Individual Properties

Although the drafting of zoning rules discussed in Section 4.2 and the adoption of area-wide zoning maps discussed in Section 5.1 are very important, most zoning administration involves the application of zoning rules that have already been drafted and adopted. The activities discussed in Sections 4.2 and 5.1 are often called “legislative” actions because they affect large areas of a community, they are almost always approved by elected officials, and those officials have wide discretion to do what they think is best for the entire community within the limits of state and federal law.

In contrast, most zoning activity involves actions that affect only one or a few properties. These types of decisions can include changing the zoning map for one or a few properties (often called a “rezoning”), or approving a conditional use permit, development permit, demolition permit, or variance from the strict terms of the zoning rules, as well as many other actions. In most communities, these include:

DECISIONS MADE BY STAFF to confirm whether a

A National Partnership for Zoning Reform

APA is partnering with the National League of Cities to improve local capacity, identify critical solutions, and speed zoning reforms that enable communities to meet housing needs at the local level.

The Housing Supply Accelerator will bring together local governments, planners, builders, financial institutions, housing policy associations and state and federal partners to develop, align and advance solutions for housing supply challenges.

development application complies with the adopted rules (often called an “administrative” or “ministerial” action, because it involves little or no discretion),

DECISIONS BY AN APPOINTED BODY

that involve some level of discretion as to whether a development application meets standards and criteria stated in the zoning code (sometimes called a “quasi-judicial” decision, because the appointed body is acting similarly to a judge who applies the law to the facts of a specific case), and

DECISIONS BY THE CITY COUNCIL OR COUNTY COMMISSIONERS

regarding an application covering one or a few properties (which are categorized as “quasi-judicial” actions in some states and “legislative” actions in others).

A. Administrative and Ministerial Decisions

Administrative and ministerial decisions are generally made by a community's planning staff. Because these decisions do not require staff to exercise discretion or judgment, the key to equity is to ensure that the zoning rules themselves do not have disproportionate impacts on historically disadvantaged and vulnerable communities (See Section 4.3 above). Because staff are often trained to make the same decision in the same way for similar applications, without knowledge of the applicant's race, ethnicity, national origin, religious affiliation, gender, sexual orientation, or level of physical or mental ability, some of the opportunities for inequity introduced in the public hearing process are removed. The "applicant neutrality" of this type of decision-making has led some communities to focus on making as many zoning decisions as possible administrative decisions.

B. Decisions That Require a Public Hearing

While requiring a public hearing before making a zoning decision can increase opportunities for members of historically disadvantaged and vulnerable groups to be heard before decisions are made, they also create opportunities for inequities to enter the zoning decision-making process. In addition to the common use of vague or subjective criteria, inequity can enter the hearing process because of (1) how the public is notified of those hearings; (2) the time and location of the public hearing, which may require significant travel, arranging time off from work, and arranging child care; (3) the ways in which the public is permitted to participate in the hearing; (4) limited English proficiency; and (5) limits on how the least mobile members of the public can participate in the hearing. Equitable public hearings require that each of these barriers be removed as much as possible.

C. Notifying the Public

The importance of effective public notification, and improved ways to do that, are addressed in APA's Planning for Equity Policy Guide, and those same

recommendations apply in the zoning context. Traditionally, written notice has been provided to property owners within a defined radius of the proposed development project. There are several inherently inequitable aspects to this practice.

A significant and growing percentage of Americans rent their housing, so limiting notification of public hearings to property owners effectively disenfranchises those residents from zoning decisions that affect them. Since historically disadvantaged and vulnerable communities have higher rental occupancy rates than the population as a whole, mailed notice requirements that ignore renters introduce significant bias into the public hearing process. Because property owners are by and large, older, whiter, and wealthier than other segments in a community, notice may be received by a disproportionately large number of these households. In areas with significant Tribal or Indigenous populations, effective engagement of those groups requires notice in well understood language when developments are proposed on adjacent lands.

The way that notice is given can also introduce bias. Depending on the type of decision being made, many zoning ordinances require mailed notice (sometimes certified), published notice in a newspaper, and/or posted signs on the potential

development site. Posted signs are a particularly effective means of reaching a broad audience, but only if passersby can read the sign. To minimize this barrier, any community with significant numbers of residents with limited English proficiency should require signs in commonly spoken languages.

The limitations of publishing zoning notices in a newspaper of record are also significant. This type of notice is not likely to be seen by younger residents who rely on electronic media for news and information, and unlikely to reach or be understood by those with limited English proficiency.

Local governments have access to several types of communication that can more readily reach a diverse audience, including the city or county website, community bulletin boards, social media, and e-mail or text notices. Many communities are already making use of these tools, but relatively few have codified these practices into zoning regulations or put them on a par with required mailings, newspaper notices, or posted signs.

The amount of time that notice must be given before the public hearing introduces a final form of potential bias. The shorter the notice given, the less likely those with children or other dependents to care for, those working multiple jobs, and those with fixed work schedules will be able to participate. Those individuals often include a disproportionate number of historically disadvantaged and vulnerable persons.

ZONING NOTIFICATION POLICY 1. Review, update, and expand traditional notification procedures to reach a wider range of possible participants. Where mailed notice is required, notices should be sent to tenants as well as property owners. If the neighborhood where the property is located has a significant population with limited English proficiency, notices should be sent in multiple languages, or should at least indicate how non-English speakers can follow up to learn more. Expand posted notice requirements to apply to more

types of applications, including those that do not require a public hearing. Translate notices into languages commonly spoken in the neighborhood and make them accessible to persons with visual impairments. If responsibility for notices is placed on the applicant, the city or county should confirm that it has been done accurately and should periodically evaluate the effectiveness of notice procedures in reaching historically disadvantaged and vulnerable populations.

ZONING NOTIFICATION POLICY

2. Formalize and expand requirements to use newer means of notification. The range of media where published notices appear should be expanded beyond newspaper notice to include new and expanding sources of information. This should certainly include notice on the city or county website, distribution by email to individuals who have signed up to receive notification, and the use of English and non-English language social media where those are in common use by the public. Every application should be available for review on the city or county website, even for administrative decisions that do not require a public hearing. When a public hearing will be held, the website should allow the public to submit project-related comments through the website, rather than requiring them to send a separate


letter or email message. Staff should identify interested community members and groups (housing authorities, tenants unions, community activist groups) and maintain updated lists of their contact information. While not everyone can receive electronic notices, this is a valuable and increasingly widespread means of communication for many groups and individuals and should become a mandatory form of notice.

D. Conducting the Public Hearing


As noted above, requiring a public hearing introduces a predictable source of bias into zoning administration. While most residents care about their neighborhoods, some have a greater understanding of zoning laws and regulations, how to engage with their local government, and how to express themselves in English in ways that can influence zoning decisions. Historically disadvantaged and vulnerable communities are often less able than others to engage effectively in public hearings.

When public hearings are required, they should be conducted with as few barriers to participation as possible. Limiting public comment to a fixed time of day (particularly during working hours) and at a fixed location automatically disadvantages those who have inflexible work or family obligations at that time or lack the mobility to attend. Fortunately, many communities are offering expanded opportunities for virtual engagement in public hearings. Others are requiring staff reports to be posted on local government websites a week or more in advance of the hearing and then offering the ability to write or record comments that are then replayed and made a part of the record during the public hearing itself.

Because there is still a serious “digital divide” as well as a “language divide” in many communities, new electronic notice requirements should supplement but not replace other forms of notice. Those who do not have high-speed internet access from home or have limited English proficiency are very often the same groups that have typically been disenfranchised by traditional methods of participation.



Reform zoning requires also reform the public processes surrounding it: limit hearings, maximize participation, and bridge the divides.



PUBLIC HEARING POLICY 1. Only require public hearings when there is a genuine need to use discretion in applying zoning criteria and standards to the facts of a specific development proposal. Where a decision can be made based on clear and objective standards in the zoning ordinance, an administrative decision will often reduce opportunities for bias to enter the decision-making process. When discretionary decisions require a public hearing, draft objective standards and criteria that avoid unintended negative impacts on historically disadvantaged and vulnerable individuals and neighborhoods.

PUBLIC HEARING POLICY 2. Maximize the ways in which individuals can participate in public hearings and avoid limiting engagement to a specific time and place.

Allowing public comment for a period before the hearing itself, and allowing virtual participation, can significantly increase participation from historically disadvantaged and vulnerable communities.

PUBLIC HEARING POLICY 3. Bridge the digital, language, and ability divides.

After expanding public notice, provide ways for public comments to be received through verbal conversations with staff or in writing. Make materials related to the hearing available in commonly spoken languages other than English, and in a format accessible to those experiencing visual impairment. This could include distribution of a short information sheet on the rules and procedures for conducting and effectively participating in public hearings. Provide interpretation and translation services for those languages commonly spoken in the neighborhood where the property is located.

4.5 Enforcing the Zoning Rules

Once the zoning rules and maps are adopted and decisions about proposed developments have been made, zoning needs to be enforced. This is another area where unfairness can enter the process. Because most local governments have limited zoning enforcement staff, they often cannot investigate every alleged zoning violation, and zoning administrators often have significant flexibility to decide which alleged violations are most serious and create the greatest threats to public health, safety, and welfare.

Historically disadvantaged and vulnerable communities are often less familiar with what zoning requires, the need to apply for zoning approvals, or the need to maintain their property in compliance with zoning standards. Because these communities often have

lower incomes and limited English proficiency, they may also be less able to respond quickly to bring their properties into compliance with zoning standards.

Zoning enforcement procedures need to be particularly sensitive to issues surrounding nonconformities, which are buildings and activities that were legally created but have become out of compliance with zoning rules due to a change in those rules, or for some other reason that was not caused by the property owner or tenant. Nonconformities are situations that happen to property owners and tenants, often without their knowledge or understanding, and where particular flexibility in enforcement while still protecting public health and safety is necessary.

ZONING ENFORCEMENT POLICY

1. Ensure that local government discretion to enforce zoning rules is not disproportionately focused on historically disadvantaged and vulnerable neighborhoods unless the residents of the neighborhood itself have requested higher levels of zoning enforcement.

In some cases, disadvantaged neighborhoods request additional enforcement to address negligent landlords, tenants, or poor maintenance that creates public health and safety risks for the surrounding area. Those requests should be respected, but with a

focus on assisting owners to bring their properties into compliance rather than imposing penalties.

ZONING ENFORCEMENT POLICY 2. Adopt a wide range of ways to bring violations into compliance with zoning requirements and allow adequate time and support for property owners to do so. Keep in mind that residents of historically disadvantaged and vulnerable neighborhoods may not have as much time or money to resolve violations quickly, or the same ability to obtain loans or hire workers needed to bring the property into compliance. They may also need assistance from interpreters to understand the nature of the violation, timeframes for compliance, and paths to compliance.

ZONING ENFORCEMENT POLICY 3. When nonconformities are discovered, focus enforcement efforts on those that create significant threats to public health and safety. Allow wide latitude to continue using buildings and engaging in activities that do not create risks of injury, death, or damage to surrounding properties. Because many historically disadvantaged and vulnerable communities have fewer options about where to live and how to earn a living, the ability to continue to use existing buildings and to continue to operate existing businesses that do not create risks to others is particularly important. Consider allowing buildings in residential neighborhoods that have at some point been physically converted for use as corner stores and other low-impact commercial uses to be deemed conforming, to continue in operation, and to resume operations after they have been discontinued for a period of time.



The Map — Equity in Zoning Maps

Photo by Monica Almeida/*The New York Times*

5. The Map — Equity in Zoning Maps

Regardless of how fair the zoning rules are, and regardless of who wrote them, zoning rules do not exist in a vacuum. They are applied through zoning maps, and those maps can embed and perpetuate disproportionate impacts on historically disadvantaged and vulnerable communities just as effectively as unfair rules and procedures. More specifically, many current zoning maps reflect the damaging overuse of Urban Renewal powers in some neighborhoods, the location of freeways to divide neighborhoods based on race or ethnicity, and initial reliance on “redlining” maps that discouraged investment in Black, Latino/a/x, and Asian neighborhoods, among others. Even communities without formal redlining have often been subject to economic and social forces and

policies that could produce similar results. More recently, zoning maps have been revised to implement planning for climate resilience, to increase residential densities to promote affordability, and to respond to the removal of outdated freeways, but each of these changes also has the potential to create disproportionate impacts on historically disadvantaged and vulnerable communities. Amending zoning maps to promote social, climate, or economic equity is difficult work because each action carries with it the likelihood of unintended consequences. This chapter addresses ways to think about and minimize those consequences.

In many cases, a change that could be achieved by changing the zoning map as recommended in this chapter could also be achieved by changing the rules that apply in the existing zoning district (as discussed in Chapter 3). For most communities, there is no “right” way to change zoning outcomes; the right way is the one that produces outcomes that are more equitable for these communities, and for which planners can gain the political support necessary to make the change.

Zoning maps can institutionalize inequitable opportunities and outcomes in one of four ways. They can:

CONSTRAIN land supply for needed types of development;

CONCENTRATE polluting and harmful land uses and facilities in some neighborhoods;

LIMIT access to key public services and facilities; and

PERPETUATE separation of populations based on old “redlining” maps.

Each of these sources of inequity are discussed separately on the following page.

5.1 Drawing and Changing the Area-wide Zoning Maps

While community-wide replacements of a zoning map are relatively rare, many communities amend their current zoning maps regularly, sometimes on a monthly or weekly basis. This section addresses all types of zoning map changes—those affecting the entire community, or a large area of the community, as well as those affecting only one or a few properties.

Initiatives to consider community-wide or area-wide changes to the zoning map raise the same kinds of challenges to effective engagement as changes to zoning rules. Because they affect large numbers of property owners and renters, it is particularly important that consultants, advisory groups, and assigned staff reflect the makeup of the areas to be affected as much as possible. In addition, because historically disadvantaged and vulnerable populations are particularly affected by the impacts of map changes, it is particularly important that the proposed changes be reviewed for potential impacts on affordability, gentrification, and environmental justice.

In almost all revisions of zoning maps, Drafting Policies 1, 2, and 3 described in Section 4 (The People) above, also apply. In the context of zoning map actions, those policies are:

ZONING MAP POLICY 1. Those recommending neighborhood-wide or area-wide changes to the zoning map should reflect the demographic composition of the community and should include representatives of historically disadvantaged and vulnerable communities.

ZONING MAP POLICY 2. Ensure that procedures to change zoning maps notify both residential and business tenants as well as property owners.

Amending zoning maps to promote social, climate, or economic equity is difficult work, because each action carries with it the likelihood of unintended consequences.

ZONING MAP POLICY 3. Ensure that there are multiple opportunities for review of potential zoning impacts on historically disadvantaged and vulnerable communities.

This may require developing new tools to describe the impact, such as a specific equity or vulnerability assessment or report card to aid decision-making.

5.2 Making Land Available for Needed Types of Development

Because historically disadvantaged and vulnerable communities tends to have lower-than-average incomes, members of these communities may be more likely to live in particular types of housing and to earn their livings in different types of employment. In many communities, they are more likely to live in apartments, in smaller houses on smaller lots, or in homes with a particular layout, such as a traditional “shotgun” house or mill village.

In many communities, they are more likely to live in apartments, in smaller houses on smaller lots, or in homes with a particular layout, such as a traditional “shotgun” house or mill village. Zoning maps that designate too little land for these types of housing have a serious disproportionate impact on these communities by driving up the cost of housing.

Zoning maps that designate too little land for these types of housing have a serious disproportionate impact on these communities by driving up the cost of housing.

The same disparity can often be found in the businesses owned and operated by members of historically disadvantaged and vulnerable communities, as well as the industries, services, and establishments that employ members of these communities. In many communities, these individuals are more likely to work in personal service, food service, hospitality, heavy commercial, construction, or industrial jobs, or rely on home occupations as first or second jobs. Zoning maps that make too little land available for these types of needed and often essential workplaces tend to make it harder for these individuals to form, grow, or be employed in the work needed to support their households.

While it is important to zone enough land to accommodate each of these activities, it is equally important to ensure that the locations of those lands do not perpetuate segregation based on race, ethnicity, national origin, or religion. In addition to revising zoning rules to allow these forms and types of housing and workplaces in more zoning districts, these disparities can be addressed by remapping more areas of the community into zoning districts that allow them.

ZONING MAP POLICY 4. Apply zoning districts that make adequate amounts of land available in locations that do not perpetuate historic patterns of segregation.

Analyze local conditions to determine development

types that correlate with homes, businesses, services, and other land uses needed by and affordable to historically disadvantaged and vulnerable communities. Use GIS and on the ground evaluations to identify sites with the potential to support equitable zoning goals.

ZONING MAP POLICY 5. Avoid mapping that perpetuates over-restrictive or highly detailed zoning regulations. Apply mapping that allows a wider range of property owners and investors to develop in ways that reflect the existing fabric and scale of the community. Where rezoning occurs as a part of a development application, and the development could be built under multiple zoning districts, apply the district that permits the greater variety of alternative development forms that could provide housing, employment, and service opportunities for historically disadvantaged and vulnerable communities.

5.3 Removing Disparities in Neighborhood Health Risk

A second way in which zoning maps can create or perpetuate disproportionate impacts on Black, Latino/a/x, Asian, and other communities of color is by concentrating polluting or harmful land uses, or the forms of structures that can accommodate them, in or close to the neighborhoods where these populations live. Because of their potential impacts on health and property values, these types of uses are sometimes referred to as locally unwanted land uses (LULUs). There is dramatic evidence that individuals exposed to polluting industries, highways, noise, air pollution, or other activities for extended periods of time have significantly higher health risks and shorter life expectancies, and that pre-existing health conditions are made worse through that exposure.

Fixing this situation is more difficult than it sounds, however, for a variety of reasons. Some types of facilities logically need to be located in particular locations. Water treatment plants generally need to be near a river, and trucking terminals often pollute the community less when located near the highways used by the truckers.

In addition, the relocation of LULUs leads to re-sorting of the population. Those with more resources tend to move away from unpopular facilities and developments, which can lower land values and make housing more affordable to lower-income populations, which then move in. Since historically disadvantaged and vulnerable communities tend to have lower-than-average incomes, the proximity of these households to LULUs may tend to re-establish itself over time.

Finally, some LULUs are important sources of employment to individuals who do not have many employment options, and making it difficult for those businesses to continue in operation in their current locations can result in loss of jobs and livelihoods. However, the fact that zoning cannot prevent market responses to zoning changes does not imply that zoning should reinforce existing patterns of exposure to harmful environmental forces, and it clearly should not.

ZONING MAP POLICY 6. Revise zoning maps to avoid the future location of polluting or environmentally harmful facilities and other locally unwanted land uses in neighborhoods that already contain a disproportionate share of those uses and facilities. Ensure that zoning maps allow practical locations for these and future similar uses in other areas of the community where they will not exacerbate health impacts on populations that have already been exposed to these uses. This analysis should consider how long existing nonconforming uses are likely to operate and how that affects the concentration of uses in different neighborhoods.

ZONING MAP POLICY 7. Where zoning district standards include protections from the potential negative effects of development in adjacent districts, revise zoning maps to avoid shifting the potential negative impacts onto historically disadvantaged and vulnerable communities in districts without the same protections. Ensure that zoning districts containing significant populations of color include the same protections from the impacts of nearby development as those containing whiter and more wealthy residents.

ZONING MAP POLICY 8. Avoid map changes that increase residential development potential in areas near sources of pollution, hazards, or climate risks, particularly in historically disadvantaged and vulnerable neighborhoods, as much as possible. Where residential intensity is increased near major highways and other sources of pollution, evaluate potential health risks, and ensure that buffering and other measures to mitigate risks and public health impacts are included.

5.4 Removing Disparities in Access to Key Services and Facilities

A third way in which zoning maps can create or perpetuate disproportionate negative impacts on historically disadvantaged and vulnerable communities is by making it difficult for those individuals to access open spaces or public or private health, educational, religious, or civic facilities or services. While needs differ for each neighborhood, these often include childcare centers, health clinics, hospitals, mental health facilities, good schools, places of worship, recreation centers, and sources of healthy food. In many cases, these types of needed facilities are built and/or operated by private companies or non-profit organizations, and the local government has little control over their strategies to provide and expand (or contract) their services. Zoning cannot force any of these service providers to budget more money to close these gaps more quickly, but it can ensure that the uses are permitted and easy to develop where they are needed.

One way to address the shortage of needed facilities is to revise the zoning rules to allow or incentivize them in high need areas. However, where cities, or counties require approval of a public facility base or overlay zoning district to locate new facilities, the answer may include revised zoning maps.

Ensure that zoning districts containing significant populations of color include the same protections from the impacts of nearby development as those containing whiter and more wealthy residents.

ZONING MAP POLICY 9. Revise zoning maps to ensure that needed health, educational, religious, and civic facilities or services are permitted and simple to establish in or near all residential areas of the city, including historically disadvantaged and vulnerable neighborhoods. In many cases this simply involves removing prohibitions on specific uses based on outdated stereotypes about the impacts of the facility or the clientele that may need these services.

5.5 Removing Historic Segregation through Mapping

A fourth way in which zoning maps create inequity is by perpetuating zoning boundaries that were initially designed to separate historically disadvantaged and vulnerable communities from other

While zoning generally cannot force a local government to spend money to remove those barriers, it has a lot to do with whether the zoning maps reinforce those barriers, as well as what happens when and if the barrier comes down.

neighborhoods. In recent years, there has been increasing attention on the origins of the zoning maps used in American communities. More specifically, attention has focused on the fact that traditional zoning emerged after the U.S. Supreme Court invalidated overtly racial zoning in *Buchanan v. Warley* and appears to have been aimed at least in part on the same goal of separating different parts of the population from each other. There is a strong correlation between historically disadvantaged and vulnerable populations and lower-than-average incomes, so zoning that separates people based on income levels has the indirect effect of also separating them based on race, ethnicity, gender, and ability.

Increasing attention has also been focused on the federal mortgage insurance system, which historically often led lenders to “redline” neighborhoods with high levels of Black households. Many current zoning maps look surprisingly like those redlining maps. Together, these discussions have led to a stronger understanding of how today’s zoning maps very often reflect older institutionalized dividing lines based largely on race and ethnicity, even if historically disadvantaged and vulnerable persons are no longer prohibited from buying property or obtaining a loan on either side of those lines.

In some cases, the zoning boundaries that formalized these separations were reinforced by public investments, like the location of a highway, park, or open space to create a physical and psychological wall between different populations, and there have been calls for local governments to remove those highways and barriers to “re-knit” the divided urban fabric. While zoning generally cannot force a local government to spend money to remove those barriers, it has a lot to do with whether the

zoning maps reinforce those barriers, as well as what happens when and if the barrier comes down.

One possible response to redline-based zoning maps is simply to remap both divided neighborhoods to the same zoning district to try to equalize the opportunities for investment and development on both sides of the line. But that solution has potentially serious consequences. The effect of redline-based zoning maps was often to decrease the value of land in the historically disadvantaged and vulnerable neighborhood and increase it in the neighborhood next door or across the highway. Adopting the less permissive zoning district in both areas may well make many or most properties in the disadvantaged neighborhood nonconforming, making it more difficult for those residents to obtain improvement loans. Depending on the local housing market, it may also spur new investment that leads to gentrification and displacement of some of the most disadvantaged and vulnerable neighborhood residents. On the other hand, applying the more permissive zoning often used in

disadvantaged neighborhoods to the adjacent non-redlined neighborhoods may result in the construction of new housing that is still not affordable to residents in the formerly redlined areas and does little to improve their housing options.

ZONING MAP POLICY 10. Analyze zoning map boundaries based on discriminatory lending policies or the construction of divisive public works, and revise maps to remove those historical boundaries if doing so would increase the economic health and welfare of the historically disadvantaged and vulnerable community.

These changes should open up neighborhoods formerly favored by redlining to allow more diverse and affordable forms of housing, and to allow more affordable forms of housing to locate closer to good jobs, services, and schools. Do not remove those zoning boundaries when they are desired by the existing residents and businesses to discourage speculative investment, gentrification, or displacement of residents. Removal of redline-based barriers should only be done after close consultation with the affected community to balance increased economic opportunity with the preservation of desired cultural or community character. Map changes may be more effective

if paired with sustained technical and financial assistance to the residents of formerly redlined neighborhoods, so that the residents can remain in their neighborhoods of choice and become their own advocates to remove physical and regulatory barriers. Overlay zones can also be used to reduce displacement (See Zoning District Policy 3).

ZONING MAP POLICY 11. Where zoning map changes have potential impacts on historically disadvantaged and vulnerable neighborhoods, consider the use of non-zoning agreements and commitments to offset those impacts or offer compensating benefits to the neighborhood.

This may involve the creation of a revolving loan fund to expand the resources available to current residents, or other agreements requiring that developers share the new opportunities created by remapping through employing or partnering with existing tenants, property owners, and business owners in the neighborhood. It could also include granting a “right of return” allowing existing residents displaced by redevelopment to own or rent housing or business locations within the new development. Because historically disadvantaged and vulnerable communities are often less familiar with the process of negotiating these agreements, cities and counties may need to offer support or facilitation during the negotiation process.

Make zoning reform a reality in the communities you support

Thinking of amending your community’s land use regulations? Consider whether these proven reforms are right for your community:

- Increasing density
- Reducing minimum lot sizes
- Creating transit-oriented development zones
- Streamlining or shortening permitting processes
- Expanding by-right multifamily zoned areas
- Allowing ADUs on lots allowing only single family homes
- Eliminating or relaxing residential property height restrictions
- Eliminating or reducing off-street parking restrictions

[Learn more](#) about what APA is doing to advance zoning reform and housing choice at the federal and state levels.

6. Related Policy Guides

[Aging in Community \(2014\)](#)

[Climate Change \(2020\)](#)

[Community Residences \(1997\)](#)

[Environment: Waste Management \(2002\)](#)

[Factory Built Housing \(2001\)](#)

[Food Planning \(2007\)](#)

[Hazard Mitigation \(2020\)](#)

[Healthy Communities \(2017\)](#)

[Historical and Cultural Resources \(1997\)](#)

[Homelessness \(2003\)](#)

[Housing \(2019\)](#)

[Planning for Equity \(2019\)](#)

[Provision of Child Care \(1997\)](#)

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PLANNING MAGAZINE

5 Practical Zoning Hacks for Missing Middle Housing

These thoughtful tweaks can help promote housing diversity and density in communities of all sizes.

[INNOVATIONS \(/PLANNING/SECTION/INNOVATIONS/\) ZONING](#)



Images of different housing types can help minimize resistance to increased density. The site Missing Middle Housing offers images and videos to help educate your community on what to expect. Courtesy of Opticos Design, Inc.

March 21, 2022

By KATI WOOCK

One-third of American households are made up of a single individual. Up to 85 percent of households will not include children by 2025. By 2030, one in five Americans will be over the age of 65.

These statistics add up to a simple fact: Demand is high for smaller homes, lower living costs, walkable neighborhoods, and places for people to age in place. Yet zoning across the U.S. largely discourages these features.

Zoning reforms for affordable, diverse housing

That's because codes tend to be based on residential density, which is measured in dwelling units per acre, and most prioritize single-family housing. In 2019, *The New York Times* found that "it is illegal on 75 percent of the residential land (<https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html?mtrref=en.wikipedia.org&assetType=PAYWALL&mtrref=www.nytimes.com&assetType=PAYWALL>) in many American cities to build anything other than a detached single-family home." Not only are large multifamily buildings banned from many neighborhoods, but so are smaller housing types that cost less than a single-family home: side-by-side and stacked duplexes, triplexes, townhouses. These constitute "missing middle housing," or "house-scale buildings that just happen to have multiple units in them," says Daniel Parolek (<https://opticosdesign.com/about/staff/daniel-parolek/>), principal and CEO of Opticos Design, who coined the term in 2010 (<https://missingmiddlehousing.com/about/>).

In the past few years, Oregon (<https://www.sightline.org/2021/08/13/eight-ingredients-for-a-state-level-zoning-reform/>), Minneapolis (<https://www.pbs.org/newshour/show/how-minneapolis-became-the-first-to-end-single-family-zoning>), California (<https://nlihc.org/resource/california-legislature-passes-bills-limit-exclusionary-zoning-and-increase-density>), and other states and cities have launched zoning reform efforts to better promote housing affordability, diversity, and density. But if your community lacks the political will to make these kinds of sweeping changes, a few thoughtful tweaks can still make a big impact. Try these five zoning hacks — and a bonus tip — recommended by Parolek.

1. REDUCE MINIMUM LOT SIZE

Does your code require two lots to build a duplex or a fourplex? If a builder must aggregate multiple lots to build a small multiunit building, your minimum lot sizes are too big. Instead, replace minimum lot sizes with minimum lot widths and tie types of buildings to the lot's width, not its square footage.

2. ALLOW FOR MORE HOUSING TYPES AND REVISIT STRUCTURE SIZES

As Joe Zehnder, chief planner for Portland, Oregon's Bureau of Planning and Sustainability, says, "if the house size is the same, why do you care how many units are in there?" In Portland, zoning changes now allow someone building on a 5,000-square-foot lot to construct up to four units divided between a main building and detached accessory dwelling units. Five or six units are allowed if half of them are affordable to low-income residents.

3. LEVEL THE PLAYING FIELD FOR SMALLER UNITS

More density doesn't always mean bigger buildings. In Santa Barbara, California, an average unit size ordinance provides for increased density as the average unit size decreases. This enables missing middle housing by allowing for greater density, even in smaller structures.

4. REDUCE OR ELIMINATE PARKING MINIMUMS

Parking expert Professor Donald Shoup, FAICP, of UCLA estimates that the U.S. has set aside two billion parking spaces for just 250 million cars and light trucks, resulting in far more land dedicated to cars than housing.

"If you want missing middle [housing], you need to fix your parking standards," says Parolek. "We've done a better job delivering houses for cars than we have delivering houses for people." If you require more than one off-street parking space per unit, it's not economically viable or physically possible to create missing middle housing on infill lots. Instead, opt for one parking space — or even none — per unit and no guest parking.

In suburban or rural areas, like Beaufort County, South Carolina, driving might be a fact of life. Try being creative about how you design parking so it can become an extra unit in the future, if factors like demand or public transit change.

5. ALLOW MISSING MIDDLE HOUSING EVERYWHERE (IF POSSIBLE)

Is more than 20 percent of your land area zoned exclusively for single-family housing? Then you need to change the boundaries limiting missing middle housing to deliver it effectively and equitably. In Portland, Oregon, planners proposed allowing middle housing types in all districts across the city unless there is a physical limitation, like flooding or landslide hazards.

In response to displacement concerns, Zehnder says, "the more places where we allow this to happen, the less it's going to overwhelm any individual place." And development won't happen all at once: Portland planners estimate an add of 4,000 new units over the next 15 years. But if a single house in a wealthy neighborhood is replaced with three units, that alone can help take the pressure off demolitions in an area with lower incomes, Zehnder says.

BONUS TIP

Frame the conversation. When you're presenting your ideas to the community, especially those resistant to change, it can be helpful to avoid terms that might have negative connotations to some, like "density," "multifamily," or "upzoning." Present zoning changes as a way to offer new housing choices or options. Focus on form and scale, not density metrics. Imagery can help community members understand how missing middle types could look in their neighborhoods, too — check out missingmiddlehousing.com (<https://missingmiddlehousing.com>) for resources.

Kati Woock is a freelance editor and writer based in Michigan. This was adapted from a 2019 National Planning Conference session by [Daniel Parolek](https://opticosdesign.com/about/staff/daniel-parolek/) (<https://opticosdesign.com/about/staff/daniel-parolek/>), principal and CEO of Opticos Design.

RECOMMENDED ARTICLES

Use Table Gap Analysis

Use tables from the following municipalities were reviewed in comparison to the current use table for the Town of Palisade.

- City of Montrose
- City of Fruita
- Town of Parachute
- City of Grand Junction

This analysis is intended to identify gaps that exist in the Town of Palisade's use table in relation to other municipalities in the region to identify opportunities for amending Palisade's use table.

City of Fruita

Household Living

Residential uses are identified as "household living" in the City of Fruita's use table. The following uses are included in the City of Fruita use table and absent from the Town of Palisade's use table.

- **Business Residence** – Fruita land use code defines business residence as the following, "A single residential dwelling unit, accessory to, and located on the same lot, as a structure primarily devoted to business or commercial uses." This is distinguished from "home occupation" as it is specific to a dwelling unit that is secondary to a business.
- **Single-family Attached** – Palisade use table covers this as "townhome".
- **Mobile Home Park**
- **Mobile Home-** "A factory-built single-family dwelling constructed prior to the enactment of the HUD Code on June 15, 1976. The term "mobile home" shall only include those units designed and intended for use as a permanent residence and shall not include office trailers, manufactured homes, travel trailers, camp trailers, or other recreational type vehicles designed for temporary occupancy"
- **Caretaker Dwelling-** "A dwelling designed for a resident to oversee a commercial or industrial establishment."
- **Home Occupation-** "A commercial or business use within a dwelling unit by the residents thereof, which is incidental or secondary to the principal use of the dwelling for residential purposes."
- **Cultivation of Medical Marijuana by Patients and Caregivers in Residential Dwelling Units-** Medical Marijuana cultivation is permitted as accessory to any permitted residential use

Institutional & Civic

The following uses are included in the City of Fruita use table and absent from the Town of Palisade's use table.

- **Public Safety and Emergency Response Services**
- **Art Galleries**
- **Opera Houses**
- **Jails**
- **Community Corrections Facilities** - Defined as "
 - 1. A facility providing residential or non-residential services operated under the direction of a Community Corrections Program, as defined by Sections 17-27-101, et. seq., C.R.S.; or
 - 2. A facility providing residential or non-residential services substantially similar to that described in Section 17-27-102(3), C.R.S., although not being administered pursuant to Sections 17-27-101 et. seq., C.R.S., which is operated by a private individual, partnership, corporation or association.
- **Cemetery**
- **Boarding schools**

Commercial

The following uses are included in the City of Fruita use table and absent from the Town of Palisade's use table.

- **Office with Drive-in Facilities**
- **Colleges and Universities**
- **Shooting Range (Indoor and Outdoor)**
- **Drive-in Theater**
- **Riding Academy, Roping or Equestrian Area**
- **Zoo**
- **Movie Theater** – “theater” is covered in Palisade use table under “Indoor recreation”
- **Skating Rink**
- **Arcade**
- **Animal Boarding**
- **Bar**
- **Nightclub**
- **Farmer's Market**
- **Pawn Shop**
- **Truck stop/Travel Plaza/Truck Parking Area**

Industrial

The following uses are included in the City of Fruita use table and absent from the Town of Palisade's use table.

- Junk Yard
- Impound Lot
- Storage (warehouse, freight movement, & distribution)
- Dairy
- Bus/Commuter Stops
- Bus/Railroad Depot
- Oil or Gas Drilling
- Sand or Gravel Extraction or Processing
- All other mining, extraction

City of Grand Junction

Residential

The following uses are included in the City of Grand Junction use table and absent from the Town of Palisade's use table.

- **Single-family Attached** – Palisade use table covers this as “townhome”.
- **Dwelling, cottage court**- “[*cottage court*](#) means a residential development, including co-housing developments, that combines a group of small individually owned or rented single-family dwelling units, including tiny homes, on a single parcel of land that are oriented around a shared open space for communal use by the residents of the development and may include a shared parking area and/or a shared community building.”

Public, Institutional, and Civic Uses

The following uses are included in the City of Grand Junction use table and absent from the Town of Palisade's use table.

- Community corrections facility
- Jail
- Meeting, banquet, event, or conference facility
- Parking, public
- Safety service facility
- Boarding school
- College or university

Commercial

The following uses are included in the City of Grand Junction use table and absent from the Town of Palisade's use table.

- Animal care, boarding, or sales, indoor operations only
- Bar or tavern
- Farmers' market
- Dairy operations or feedlot

- **Mobile food vendor**
- **Mobile food vendor court**
- **Riding academy, roping, or equestrian area**
- **Zoo**
- **Shooting range, indoor**
- **Shooting range, outdoor**
- **Flea market**
- **Parking garage, commercial**
- **Parking lot, commercial**
- **Transportation depot**
- **Truck stop**

Industrial

The following uses are included in the City of Grand Junction use table and absent from the Town of Palisade's use table.

- **Mining and extraction**
- **Oil and Gas Drilling**
- **Junkyard or salvage yard**

City of Montrose

Residential

The following uses are included in the City of Grand Montrose use table and absent from the Town of Palisade's use table.

- **Home Occupation**
- **Mobile Homes**
- **Mobile Home Parks**
- **Modular Housing** – “means single-family, duplex or multi-family housing substantially or entirely manufactured in a factory which are moved on site in substantial component parts, are placed on a permanent foundation, are not self-propelled and which meet or exceed, on an equivalent engineering basis, standards established by the City's building code. The homes will bear an insignia labeled as "Factory Built Unit Certification" which are typically found under the kitchen sink.”
- **Public transportation facilities**
- **Parking facilities**

Public, Institutional, and Civic Uses

The following uses are included in the City of Montrose use table and absent from the Town of Palisade's use table.

- **College or other place of adult education**
- **Daytime social service activities by a social service provider**, to include food storage; food distribution without monetary remuneration as a food pantry and/or food service without monetary remuneration as a soup kitchen; laundry facilities not for profit; showers; and counseling to include alcohol and/or substance abuse counseling. This use by right expressly excludes the overnight sheltering of people. For the purposes of

this use by right authorization, "daytime" shall mean from 6:00 a.m. to 6:00 p.m. Mountain Standard Time. "Night" shall mean from 6:00 p.m. to 6:00 a.m. Mountain Standard Time.

Commercial

The following uses are included in the City of Montrose use table and absent from the Town of Palisade's use table.

- **Taverns**

Industrial

The following uses are included in the City of Grand Montrose use table and absent from the Town of Palisade's use table.

- **Above ground storage facilities for hazardous fuels**

Town of Parachute

Residential

The following uses are included in the Town of Parachute use table and absent from the Town of Palisade's use table.

- **Employee Housing** – “means a dwelling unit that contains no more than four hundred fifty (450) square feet of gross floor area, located within the same structure as a nonresidential use and above, adjacent to, or behind the nonresidential use, in which the use of the dwelling units is secondary and subordinate to the nonresidential use and restricted for occupancy only by the employees of the nonresidential use.”

Commercial

The following uses are included in the Town of Parachute use table and absent from the Town of Palisade's use table.

- **Bar, Tavern, or Nightclub**
- **Riding Academy, Stable**
- **Parking lot; Parking garage**

Public, Institutional, and Civic Uses

The following uses are included in the Town of Parachute use table and absent from the Town of Palisade's use table.

- **Solar Energy Facility**

Industrial

The following uses are included in the Town of Parachute use table and absent from the Town of Palisade's use table.

- **Sand and gravel, stone, and mineral extraction and processing**

Temporary Uses

The following uses are included in the Town of Parachute use table and absent from the Town of Palisade's use table.

- **Food trucks**
- **Farmer's market**
- **Temporary construction facilities**
- **Temporary real estate office**



PALISADE PLANNING COMMISSION
Agenda Item Cover Sheet

Meeting Date: December 3, 2024
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 policy options regarding owner-occupied versus non-owner-occupied short-term vacation rentals (STVRs). Current regulations do not differentiate between these two operating models, but growing community concerns about housing availability and neighborhood impacts necessitate policy review. Owner-occupied STVRs demonstrate distinct advantages through maintained permanent resident presence, consistent local economic participation, and natural oversight of guest behavior. These properties typically preserve long-term housing stock while helping homeowners afford their properties through supplemental income. In contrast, non-owner-occupied STVRs can create increased neighborhood impacts through lack of on-site supervision and remove entire housing units from the long-term residential market. Many municipalities have addressed these differences through varied zoning requirements, permitting processes, and occupancy limits based on owner presence.

DIRECTION:
Provide staff with direction to bring forward comparative policies from similar communities, further evaluate licensing/permit fee structures, or draft a model ordinance based on the discussion & packet items presented.

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

* Belmont University College of Law (2019). Thank you to Professor Jeffrey Usman for his help throughout the writing and editing process of this note. Additional thanks to Professor Elizabeth Usman for teaching me how to write, Professor Amy Moore for continually frightening me into becoming a better writer, Professor Travis Brandon for encouraging my interest in property law, and Professor Lynn Zehrt for your continual mentorship. Thank you to Margaret Darby, Emily Lamb, and Cate Pham for inspiring my interest in this topic. Thank you to the staff members who worked diligently on this note, particularly Sarah Martin, Sara Diehl, Marisa Garcia, and Grace Cooley. Sallie and Sammy Swor, Lauren LeStourgeon, and Joseph Kiley all deserve extra thanks for their continual support and for listening to me talk about short-term rentals endlessly for months. Dedicated to Daniel Wiseman Rochester.

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>.

Primary Occupancy Vacation Rental License Details:

Is the primary occupancy license right for you?

Do you live in or long-term rent your Crested Butte home for a minimum of six months a year, or do you live in your home year-round want to vacation rent a single room in it?

Yes

No

Key Primary Occupancy License Regulations

- Must sign an affidavit stating the property is long term occupied of a minimum six months per year
- Exempt from zone district or block face limitations, must comply with all other regulations
- Cannot rent for more than 90 total nights in a year
- A primary occupant may be an owner or long-term lessee
- No cap on the total allowed number of licenses

Try The Unlimited License

You might be eligible for the unlimited license option, for more info return to

<https://www.crestedbutte-co.gov/vacationrentals>

Regulations for both types of licenses:

- No license will be issued to any property subject to a deed restriction or private covenant prohibiting vacation rental or short-term rental use
- License must be held by a natural person
- One license per person (you may not have one of each)
- Must meet all applicable Town regulations including but not limited to zoning.
- Must provide the minimum amount of parking required by the zoning code
- License valid for one year, January 1-December 31
- Renewals/new applications only accepted from October 1-31 for the upcoming year
- Licenses are non-transferable
- Must collect and remit sales tax and 7.5% vacation rental excise tax
- License may be revoked based on a three-strike violation policy
- Property must have a 24/7 local contact representative

Application & Renewal Information:

New Applicant Information:

- Applications are only accepted from October 1-31 for the upcoming license year
- To be eligible, applicants must sign a declaration of compliance confirming compliance with all applicable town codes, all properties are subject to inspection prior to approval or entry to the lottery
- Licenses are only issued to natural persons
- If your property is owned under an LLC, corporation, trust, or partnership any person with more than a 10% ownership interest in the property can apply for and put their name on the license
- Evidence that the property is not subject to a deed restriction or private covenant prohibiting vacation or short-term rentals must be provided
- Current license fee is \$250 annually, for primary occupant license type
- Licenses are non-transferable
- You must provide evidence of long-term occupancy, either a signed affidavit or proof of long-term rental through a signed lease agreement
- No wait list, there is no cap on the number of primary occupant licenses issued

License Renewal Information:

- The annual renewal window is October 1-31
- To renew the owner must sign a declaration of compliance confirming continued compliance with all applicable town codes
- Any renewal property is subject to inspection as determined by the Town
- To be eligible for renewal the licensed property must be in good standing. The Town reserves the right to deny a renewal based on complaint history regardless of a citation or not, failure to timely pay taxes, failure to meet criteria the forth in the Town Code, and the seriousness of any violation prosecuted under section 6-6-120
- In addition to renewing the vacation rental license, you must also renew the Town of Crested Butte business license annually
- Must provide evidence that the property was not rented more than 90 nights during the previous year
- Must provide evidence of long-term occupancy, either a signed declaration of compliance or proof of long-term rental through a signed lease agreement

Additional Vacation Rental License Regulation Details:

Legal Non-Conforming Licenses:

- Any unlimited license active prior to November 21st, 2022, shall be exempt from the following until the time that the license is not renewed, terminated through the sale of the property, or is revoked for any reason
 - Two per block face concentration limit
 - One license per person regulation
- For the 2024 license year legal non-conforming licenses must comply with all other renewal regulations

Local Contact Requirement:

- All vacation rental licenses must have a registered local contact representative who is available 24/7 anytime the home is being rented and are accountable for the following

- Must have physical access to the rental property
- If not the owner, the local contact must be able to make decision about the property on behalf of the owner
- Must physically respond to and amend any complaint filed against the rental property within one hour of the initial attempt to register the complaint

Tax Collection:

- All vacation rentals must collect and remit the following taxes for every night of rental based on listing price
 - 1% Gunnison County Sales Tax
 - 2.9% State of Colorado Sales Tax
 - 1% Rural Transit Authority Sales Tax
 - 4% Local Marketing District Tax
 - 4.5% Town of Crested Butte Sales Tax
 - 7.5% Town of Crested Butte Vacation Rental Excise Tax – Directly funds affordable housing projects
- Failure to honestly remit taxes will result in the revocation of your license

Maximum Occupancy:

- Maximum occupancy for vacation rentals equals two person per bedroom plus two additional occupants
- The maximum occupancy of any vacation rental is ten people
- Failure to adhere to maximum occupancy will result in revocation of your license

Good Neighbor Guide:

- All vacation rental properties must prominently display the Good Neighbor Guidelines within the home in a clear and visible location
- The good neighbor guidelines can be found here([insert link](#))

Required Parking:

- All vacation rental properties must provide and be approved for the minimum amount of off-street parking required by the Town zoning code
- All off street parking must be cleared and maintained year-round
- Failure of rental tenants to adhere to the approved parking plan can result in fineable violation and or the justification to deny license renewal

License Suspension and Revocation:

- Any violation of Section 16-14-90 of the Code can result in the denial of a vacation rental license for the property subject to the offense for a period of two years.
- License holders may be subject to fines up to the maximum allowed pursuant to Section 1-4-20, a separate fine can be issued for each day that the violation persists. Specific violations include:
 - Failure of the 24/7 local contact to respond to an inquiry or complaint within one hour
 - Failure to prominently display vacation rental license number in any advertisement for the rental of the property
 - Failure to adhere to maximum occupancy limits
 - Failure of occupants to not adhere to the buildings approved parking plan
 - Failure to prominently display the “Good Neighbor Guide” within the home
 - Failure to remit sales tax

- **Three Strike Policy**

- If any license holder or owner receives three ticketed violations issued by the marshals department in any single calendar year, the Town will revoke the license and the license holder or any other owner of the property will be banned from receiving a license for a period of two full years



Home-Sharing & Short-Term Rentals Regulations **FAQs**

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Q: What Are Short-Term Rentals?

A: A short-term rental (also called a vacation rental or STR) is most often defined as a rental of a residential dwelling unit or accessory building for periods of less than 31 consecutive days. In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, short-term vacation rentals or resort dwelling units.

Short-term rentals are often divided into:

	OWNER OCCUPIED DWELLINGS (To be considered owner-occupied, a home must often be a designated homestead by the owner at least 51% of the time.)	NON-OWNER OCCUPIED DWELLINGS
ENTIRE HOMES	Example: An owner living in their residence most of the time but renting out the entire home for a few days or weeks (up to consecutive 30 days) a year.	Example: An absentee-owner who rents out his/her property in increments of less than 30 days one or more times per year.
ACCESSORY DWELLINGS	Example: An owner who rents out a garage apartment or back cottage on the same property as their primary home for short periods is operating an accessory dwelling STR.	Example: An absentee-owner who rents out an accessory dwelling on his/her non-primary residence in increments of less than 30 days one or more times per year.
ROOMS	Example: An owner who rents out one or more rooms in his/her primary home in increments of less than 31 days.	Example: An absentee-owner who rents out one or more rooms in his/her non-primary residence in increments of less than 30 days one or more times per year.

In addition some jurisdictions make further distinctions between:

- Short-term rental properties that are classified as single-family homes vs. properties that are classified as multi-family homes.
- Short-term rental properties located in areas zoned as residential vs properties located in in areas zoned as commercial or multi-use areas.
- Short-term rentals for which the owner is present during the entire rental period (as is often the case for rooms rented in owner-occupied dwellings) vs. short-term rentals for which the owner is not present (as is the case when entire homes are rented).

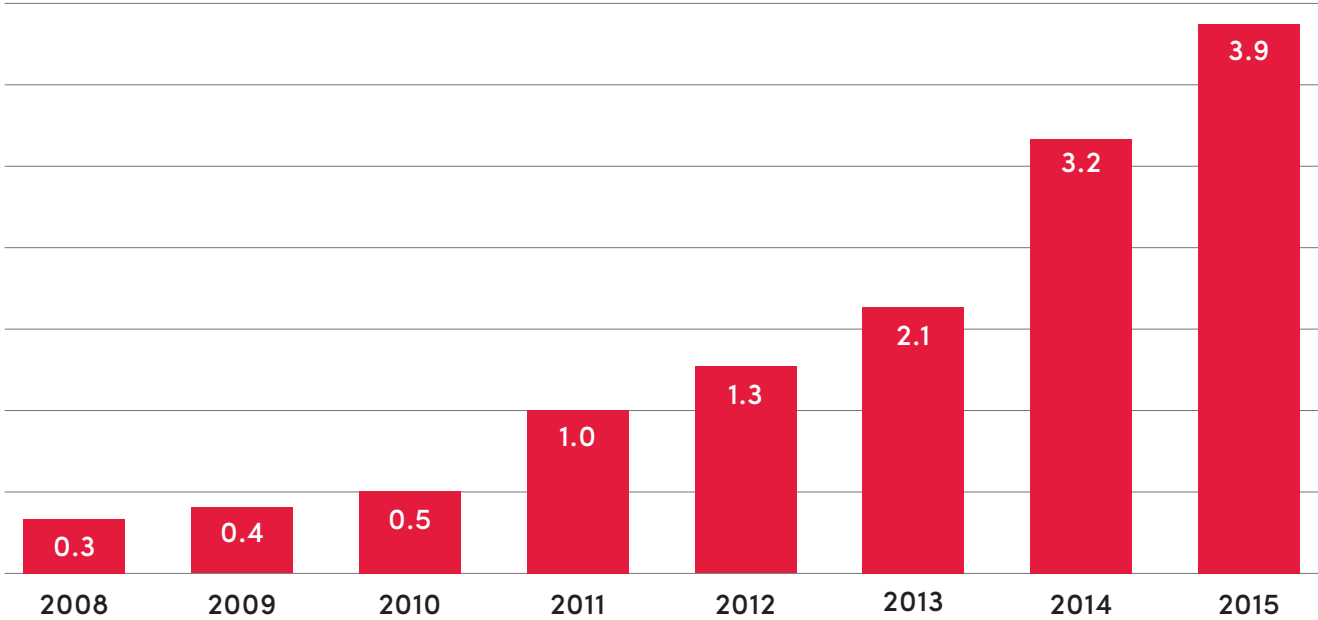
Q: What Is Occupancy Tax?

A: Occupancy tax is a tax on the rental of rooms that state or local governments may require. In many places this is known as an occupancy tax, but may also be known as a transient occupancy tax, lodging tax, a room tax, a bed tax, a sales tax, a tourist tax, or a hotel tax. Occupancy tax rates and rules vary by city, county and state,. They're generally owed on the accommodations price plus any fees for other items, like cleanings or extra guests. In some places, occupancy tax is required on a per person, per night basis. There are typically long-term stay exceptions that exempt stays over a certain number of nights (i.e. 30 nights). Occupancy tax is generally paid by the guest, but the obligation to remit the taxes to the government usually falls on the short-term landlord / host.

Q: Aren't Short-Term Rentals Just A Vacation Town Or Big City Phenomenon?

A: No, the emergence of Airbnb, VRBO, FlipKey and 100's of other short-term rental websites have created a global boom in short-term rentals of personal residences and contrary to in the past, these rentals are spread all over the country. Traditional residential non-tourist communities that have never had to deal with the consequences of transient populations are therefore now suddenly being forced to deal with new opportunities and challenges, and the problem is not going away. Indeed, the number of short-term rentals have grown at a 45% annual rate over the past 5 years and there is no reason to believe that the growth will slow down in a foreseeable future.

Millions of homes listed on top 4 short-term rental websites



Q: How Many Short-Term Rental Websites Are There?

A: As of January 2016, there were more than 100 short-term rental websites operating in the U.S. alone. Here are the top 30 sites listed in alphabetical order: 9flats.com, Agoda.com, Airbnb.com, Alterkeys.com, Aluguest.com, atraveo.com , Booking.com, Casamundo.com, couchsurfing.com, Craigslist.com, Dwellable.com, FlipKey.com, Holiday Lettings, HomeAway.com, Housetrip.com, Interhome.com, Kidandcoe.com, Niumba.com, Only-apartments.com, Rentalspot.com, Roomorama.com, Sleepout.com, Travelmob.com, tripvillas.com, vacationrentals.com, VRBO.com, webchalet.com and Wimdu.com. The list of websites dedicating to short-term rentals is growing and changing constantly and keeping up with all of the sites requires constant monitoring.

Q: How Many Short-Term Are There In My City / Town / County?

A: If you would like to request a free analysis of the short-term rental market in your city / town / county, please email us on info@hostcompliance.com or fill out this form on our website and we will get back to you within 24 business hours.

Q: Is The Existence Of Short-Term Rentals In My Community A Cause For Concern?

A. The answer to this question depends on the characteristics of your community and whether the short-term rentals operating there are doing so respectfully and not negatively impacting the community directly or in-directly. That said it is often hard to get conclusive evidence to indicate whether this is the case or not.

As an example police call logs, code enforcement activity reports, and prosecutorial records seldom specify whether documented incidents are attributable to short-term rental properties or renters. The reason being that most local governments have never kept good records of short-term rental properties in their jurisdiction and police and code-enforcement personnel have generally not been trained to collect and record this type of information. It is also worth noting that many people who have been negatively affected by neighboring short-term rentals, may not have reported the issues they experienced out of fear from ruining their relationship with their neighbors. In many cases affected neighbors may also not know where to report their observations of misconduct related to short-term rentals. All in all, it is therefore very unlikely that one will be able to obtain accurate and/or conclusive evidence to indicate whether short-term rentals are in fact a cause for concern or not without conducting a public hearing or other process for local citizens to speak out on the topic.

Q: Why Regulate Short-Term Rentals In The First Place?

A: There are many good reasons why local government leaders are focused on finding ways to manage the rapid growth of short-term rental properties in their communities. To name a few:

- 1.** Increased tourist traffic from short-term renters has the potential to slowly transform peaceful residential communities into “communities of transients” where people are less interested in investing in one another’s lives, be it in the form of informal friend groups or church, school and other community based organizations.
- 2.** Short-term renters may not always know (or follow) local rules, resulting in public safety risks, noise issues, trash and parking problems for nearby residents.

3. So-called “party houses” i.e. homes that are continuously rented to larger groups of people with the intent to party can severely impact neighbors and drive down nearby home values.
4. Conversion of residential units into short-term rentals can result in less availability of affordable housing options and higher rents for long-term renters in the community.
5. Local service jobs can be jeopardized as unfair competition from unregulated and untaxed short-term rentals reduces demand for local bed & breakfasts, hotels and motels.
6. Towns often lose out on tax revenue (most often referred to as Transient Occupancy Tax / Hotel Tax / Bed Tax or Transaction Privilege Tax) as most short-term landlords fail to remit those taxes even if it is required by law.
7. Lack of proper regulation or limited enforcement of existing ordinances may cause tension or hostility between short-term landlords and their neighbors.
8. The existence of “pseudo hotels” in residential neighborhoods (often in violation of local zoning ordinances etc.) may lead to disillusionment with local government officials who may be perceived as ineffective in protecting the interests of local tax-paying citizens.

Q: Do Local Governments Have The Authority To Regulate (And Restrict) Short-Term Rentals Within Their Jurisdiction?

A: Yes. The reasons are as follows:

1. **U.S. local governments have the authority to regulate land use within their jurisdiction (except for in Florida)**

In general, short-term rental restrictions are typically adopted under the specific authority of a state zoning enabling statute or the general police power delegated to local governments by the state constitution, or by statute. Zoning regulations that restrict short-term rentals in residential areas have been upheld where the restrictions are found to be substantially related to land use impacts in the area. Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the zoning power. However, in 2011 the Florida State Legislature enacted legislation that specifically limits the authority of local governments to regulate or prohibit short-term rentals. Enacted as Chapter No. 2011-119 on June 2, 2011, the Florida law (entitled —"An act relating to public lodging establishments and public food service establishment") states:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

As of January 2016, Florida appears to be the only state to have enacted legislation limiting the authority of local governments to regulate or prohibit short-term rentals. It is conceivable, however, that the Florida law may become a model for other states. This would appear to be the most likely in those states where short-term rentals comprise a meaningful segment of the tourist lodging industry. short-term rentals. Enacted as Chapter No. 2011-119 on June 2, 2011, the Florida law (entitled —"An act relating to public lodging establishments and public food service establishment") states:

2. Restricting short-term rentals does not constitute "taking of property"

It is well established that a land use regulation that is excessively restrictive may constitute a taking of property for which compensation must be paid under the state constitution and the Fifth and Fourteenth Amendments to the United States Constitution. The prevailing test for determining whether a regulatory taking has occurred was established in the landmark case of Penn Central Transportation Co. v. City of New York, decided by the United States Supreme Court in 1978.

The Penn Central test requires a balancing of the public and private interests involved in each case, weighing the following three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner's —distinct investment-backed expectations; and (3) the character of the governmental action (i.e., physical invasion v. economic interference). The application of the Penn Central —balancing test is illustrated in an Oregon case that concerned a takings challenge to a short-term rental ordinance. In that case rental property owners challenged a City of Cannon Beach, Oregon ordinance that prohibited the creation of new transient occupancy uses and required existing transient occupancy uses to end by 1997. The petitioners claimed that Ordinance 92-1 constituted a taking of property without just compensation under the Fifth and Fourteenth Amendments. The Supreme Court of Oregon, however, upheld Ordinance 92-1, focusing ultimately on the economic impact of the restrictions:

We next consider whether Ordinance 92-1, by prohibiting transient occupancy, denies property owners economically viable use of their properties. We conclude that it does not. On its face, Ordinance 92-1 permits rentals of dwellings for periods of 14 days or more. The ordinance also permits the owners themselves to reside in the dwellings. Although those uses may not be as profitable as are shorter-term rentals of the properties, they are economically viable uses.

As the court's analysis indicates, plaintiffs who challenge a short-term rental restriction as a taking of property face an uphill battle. As a practical matter, it is difficult to argue that a short-term rental prohibition denies the owner of all economically viable use of his land, particularly where longer-term rentals are still allowed.

Q: Is Regulating And/Or Enforcing Short-Term Rental Regulation Worth The Time And Resources?

A: Regulating and enforcing short-term rental regulation is most often revenue positive for municipalities as the incremental licensing and tax revenue easily offset the additional enforcement costs if done thoughtfully. That said, regulating short-term rentals should not just about revenue, but rather about minimizing the many negative side effects associated with the uncontrolled growth of short-term rentals in residential neighborhoods. The economic questions are therefore only half of the equation, and the non-economic benefits are often much more important to the local citizens than the incremental revenue.

Q: What Does It Take To Effectively Enforce Short-Term Rentals Regulation Manually?

A: A lot. In general most local governments find it practically impossible and/or prohibitively expensive to manually enforce their local ordinances covering short-term rental properties without dedicated staff or help from specialized firms such as Host Compliance. There are several reasons for this:

1. Rental property listings are spread across 100s of different websites, with new sites popping up all the time.
2. Manually monitoring 100s or 1,000s of properties is practically impossible as listings are constantly added, changed or removed.
3. Address data is hidden from listings, making it time-consuming or impossible to locate the exact properties to enforce permitting requirements.

4. Law enforcement and local government staff have no legal basis to evict problematic short-term renters even if several ordinances are violated.
5. It is practically impossible to manually collect Transient Occupancy Taxes as there is no easy way to find out how often the individual properties are rented and for how much.

Q: Is It Necessary To Conduct Audits To Get Short-Term Rental Property Landlords To Comply With Permitting And Lodging / Hotel / Transient Occupancy Tax Requirements?

A: No, audits are not required to get people to do the right thing as just the fact that short-term landlords know that their local government knows who they are (and monitoring their short-term rental activities) will result in a large number of them voluntarily getting a business license and paying their taxes when due. In fact, academic studies estimate that almost 9 out of 10 tax-payers will pay their taxes when due if there is some level of 3rd party reporting or monitoring. As for the remaining 10% it is luckily possible to easily identify the biggest violators so local government officials can decide to audit or pursue legal avenues to collect what it is due. To learn more about the science and data of tax compliance, here is a good short [article from the New York Times](#) that summarizes a lot of the research on the topic.

Q: Is It Possible And Cost-Effective To Outsource The Enforcement Of Short-Term Rental Regulation On The Local Government Level?

A: No, it is easy to cost-effectively outsource most of the short-term rental regulation compliance monitoring and enforcement work to new innovative companies (such as Host Compliance) that specializes in this area and have developed sophisticated "big data" technology and deep domain expertise to bring down the compliance monitoring and code enforcement costs to a minimum. In many situations, these companies can even take on all the work associated with managing the enforcement of the short-term rental regulation in return for a percentage of the incremental permitting fees, tax revenue and fine revenue that they help their local government partners collect. Adopting short-term rental regulation and outsourcing the administration and enforcement can therefore be net-revenue positive for the local government, while adding no or little additional work to the plates of internal staff. What's more, getting started generally requires no up-front investment, long-term commitment or complicated IT integration.

Q: Is It Necessary To Require Short-Term Rental Property Owners To Be Registered Or Licensed In Order To Effectively Manage Short-Term Rental Activity In The Community?

A: Yes, virtually all effective short-term rental ordinances require owners who intend to offer their property for use as a short-term rental to obtain a license or permit prior to commencing the use. In general, licensing and registration requirements enable local governments to create and maintain a database of dwelling units being operated as short-term rentals for code enforcement and transient occupancy tax collection in jurisdictions authorized to collect such taxes.

Q: Is It Necessary To Physically Inspect All Properties That Are Applying For A Short-Term Rental Permit?

A: Generally no. While many communities require short-term rental properties to pass certain inspections prior to the issuance or renewal of a short-term rental permit. However, mandatory inspection requirements arguably do not advance a community's interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a short-term rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

That said, mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants.

However, even if a mandatory inspection requirement can be justified, the scope of the inspection program should be limited to the initial permit issuance and thereafter only on a reasonable periodic basis.



About the Author

Ulrik Binzer founded Host Compliance LLC (now Granicus), the industry leader in short-term rental compliance monitoring and enforcement solutions for local governments.

Ulrik got the idea to found Host Compliance when he was serving on a committee appointed by his local town council to study possible ways to regulate short-term rentals in the local community. In preparation for his work on the committee, Ulrik spent countless hours researching how other municipalities had approached the regulation of short-term rentals, and it became evident that enforcing the regulations and collecting the appropriate taxes without the support of sophisticated technology was virtually impossible. As a result, Ulrik set out to build those tools and make them available to municipalities of all sizes at a fraction of the cost of what it would cost them to build and run such technology internally.

Prior to founding Host Compliance, Ulrik served as Chief Operating Officer of Work4 Labs - an 80 person Venture Capital backed technology company with offices in Silicon Valley and Europe, and Soligent Distribution LLC - the largest distributor of solar equipment to local governments and businesses in the Americas.

Before assuming executive management roles in technology companies, Ulrik served as Vice President of the private equity firm Golden Gate Capital, as a strategy consultant at McKinsey & Company and as an Officer in the Danish Army where he commanded a 42-person Platoon and graduated first in his class from the Danish Army's Lieutenant School.

Ulrik received his M.B.A. from Harvard Business School where he was as a Baker Scholar (top 5% of his class) and earned his Bachelor of Science degree in International Business from Copenhagen Business School and New York University.

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GRANICUS

granicus.com

City of Colorado Springs

Short Term Rental License Annual Affidavit

(Owner Occupied)

All rental properties located within the City of Colorado Springs must have a valid short term rental license issued by the City of Colorado Springs and must abide by the city's rental licensing requirements prior to leasing any rental property, or room(s) within a property, to another person or persons (City Code Section 7.5.1704).

According to Ordinance 19-101, short-term rental units in single-family zone districts must be the operator's principal residence and the operator must be on the deed to property on which the dwelling unit to be rented is located. An owner occupied permit is defined as the primary place of residency of the owner for not less than 185 days per year, with exceptions for military personnel.

By signing below, I, _____ (Printed Name), swear under penalty of perjury that I am the owner or beneficiary of the property and **this is my primary residence** as defined above: _____ (address of STR). **I acknowledge that I am to notify the City of Colorado Springs Planning Department within three (3) days if I move and this address is no longer considered my primary address.** I understand that my short term rental license may be revoked at any time if I am found to not be in compliance with City Code Section 7.5.1706.

I acknowledge that this Affidavit is a "public record" and if I make a false entry or representation in this Affidavit, then I will commit a violation of City Code Section 9.3.104. I have carefully considered the contents of this Affidavit before signing. I affirm that the contents are true to the best of my knowledge.

Owner Signature: _____

Owner Printed Name: _____

Date: _____

Subscribed and sworn to me before me this _____ day of _____, 20_____.

My Commission Expires: _____

Notary Public