

Regulating Short-Term Rentals

IT HAS BEEN LESS THAN A DECADE since short-term rentals came onto the municipal scene, but the impacts of allowing them have reverberated through cities nationwide.

At face value, STRs look like a win-win-win. Hosts can use the rental income to pay down mortgages, pay their property taxes, and improve their quality of life; guests get a nice room, often for a lower price than a hotel, and chambers of commerce cite increased tourists' positive effect on the local economy.

But it's more complicated than that, particularly for planning departments and elected officials, who are responsible for code compliance, land-use and zoning conflicts, and budgetary concerns associated with enforcement and taxes. (See "Could You

BnB My Neighbor?": planning.org/planning/2016/feb/bnb.htm).

Finding middle ground

While some cities are trying to prohibit STRs, for most there is simply too much voter pressure to ban them outright. The boldest reaction has been from New York City, which uses state law prohibiting advertising to outlaw STRs, but the room rental differentials between hotels and private residences make evasion very tempting.

More recently the conversation has turned to how the various interests may be accommodated. Cities have a few options when looking to effectively—and legally—regulate short-term rentals.

LICENSING. Requiring STRs to be licensed, and establishing a process for the withdrawal of that licensing, not only allows the city to track STRs and collect regulatory fees to operate the program, but also makes enforcement of zoning, city codes, and reporting—possibly the biggest challenge cities face—easier.

In order to ensure the success of a licensing program, it is essential that online purveyors like Airbnb and VRBO report local STR activities to the city. This can be difficult because the company is not physically located in the city (and perhaps not even the state).

Larger cities like San Francisco and Vancouver, B.C. have investigated the issue and have either come to an agreement with purveyors for reporting and cooperation or are moving in that direction. Options for smaller cities include providing uniformity through state legislation (as is proposed in Oregon) or using the precedent established in litigation efforts of larger cities.

FEES. STRs often do not pay city taxes and fees like their hotel and bed-and-breakfast counterparts. This can be problematic because those fees are often used to support the local tourism

industry or raise revenue for the city. One solution is for the online purveyor to report rentals and include (and collect) city fees as part of the rental. This has been accomplished more often as part of settlement agreements following litigation. However, both online purveyors and home owners typically seek to avoid this obligation.

LAND-USE CONTROL. Renting out rooms in a residential zone essentially allows commercial use in an area that prohibits that type of use. It is up to the city whether to ignore the zoning inconsistency, prosecute the landowner, or amend regulations to allow the use, perhaps with uniform limitations. Some municipalities allow one or two rooms to be rented but require the owner to notify neighbors and the neighborhood association; prohibit STRs unless they are within an owner-occupied dwelling; or require that STRs be accompanied by a conditional use or special exception, zone change, or design review. Cities may also place limitations on the number of STRs within a certain radius.

STRUCTURAL, FIRE, AND LIFE SAFETY CODES. A municipality must decide whether it will allow STRs in residential dwellings with or without compliance with these codes, which are often different from those for hotels and B&Bs. Cities may not want to impose upgrade costs on home owners who rent out rooms, but that may change if a fatal fire or structural failure occurs. Many cities have ignored full compliance, while others have taken a selective approach. Portland, Oregon, requires a minimal inspection to resolve more apparent problems, but none of the cities that allow short-term rentals currently require upgrades to hotel standards.

INSURANCE. Requiring insurance that guards the host (and sometimes the city) against liability for bodily injury or property loss is another issue best decided at the outset. If a guest slips and falls at the rental site or is attacked by the host or the host's dog, the guest should have some resort for injuries. More importantly, that resort should not ordinarily be the city.

Each of these regulatory approaches is legally recognized, but before planners can act, they and city attorneys must ensure that the city has home rule or statutory authority to regulate. The city must then determine whether it wishes to regulate and, if so, under what circumstances it will undertake that activity.

If properly done, short-term rental guests and hosts can find each other, the online purveyors can thrive, and the city can ensure the health and safety of guests and will have a revenue stream to cover costs and raise revenues for tourism or general city purposes.

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