



Estes Park, CO 2015: Short-Term Vacation Rentals

Presented to the Estes Park Town Board and Larimer County Board of County Commissioners
by:

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INTRODUCTION

Is the burgeoning vacation home market in the Estes Valley contributing to the severe shortage of available rental housing? Are these rentals unraveling the social fabric of residential neighborhoods or simply filling the growing niche of families not interested in traditional hotels? This paper attempts to answer these and other questions through the context of government processes and policies.

The intended audience for this paper is both elected officials and community members. The paper provides a summary of vacation rentals in the Estes Valley (both inside and outside the Town of Estes Park limits), a primer on current regulations and finally, a menu of policy and procedural options that aim to effectively regulate the vacation home market while also preserving neighborhood character. The challenge of managing short-term rentals is something most resort communities grapple with today.

The goal of this paper is to spur an informed community discussion of vacation home rentals that ultimately leads to positive and equitable changes in governmental policies and processes.

VACATION HOMES BY THE NUMBERS

The first rental cabins in Estes Park were purchased in 1867 by Griff Evans. These cabins were built by Joel Estes and “had a lasting and profound effect on the economy of the valley and the subsequent formation of the town of Estes Park” (Jessen 2011). Vacation homes have since grown to be an important part of the local economy, offering guests a convenient and comfortable alternative to traditional hotels and motels.

account for the largest share with 132 lodging facilities providing 3,983 units or rooms. Over a quarter of these accommodation units are located at the YMCA of the Rockies Estes Park (827), which consists of 217 cabins, 10 reunion cabins and 600 lodge rooms. Other amenities are also available for guests seeking non-traditional lodging: 732 RV spaces and 255 tent spaces are available in the Valley.

Traditional Hotels and Motels

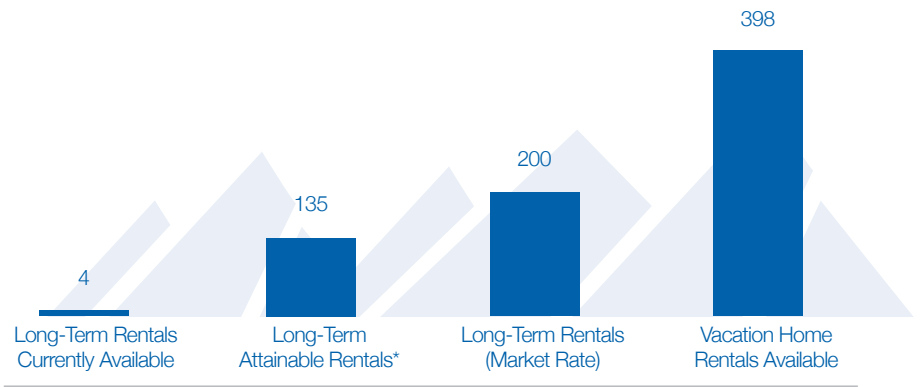
There is a stark contrast among traditional hotels/motels, vacation homes and long-term rentals in the Estes Valley. Hotels, motels and cabins

Vacation Rentals

Vacation rentals make up a sizeable portion of the housing market. Depending on which online source is used, the number of vacation homes range anywhere from 164 to upwards of 400;

54%

of the estimated rental housing stock consists of short-term vacation rentals



RENTAL UNITS IN THE ESTES VALLEY

A recent survey of available listings indicated four long-term rentals on the market and 398 vacation home rentals on the market. 135 of the 335 market rate units are considered Attainable Housing and managed by the Estes Park Housing Authority. The occupancy rate for market rate and attainable homes are estimated to be between 98% and 100%.

*Exclusively managed by the Estes Park Housing Authority.

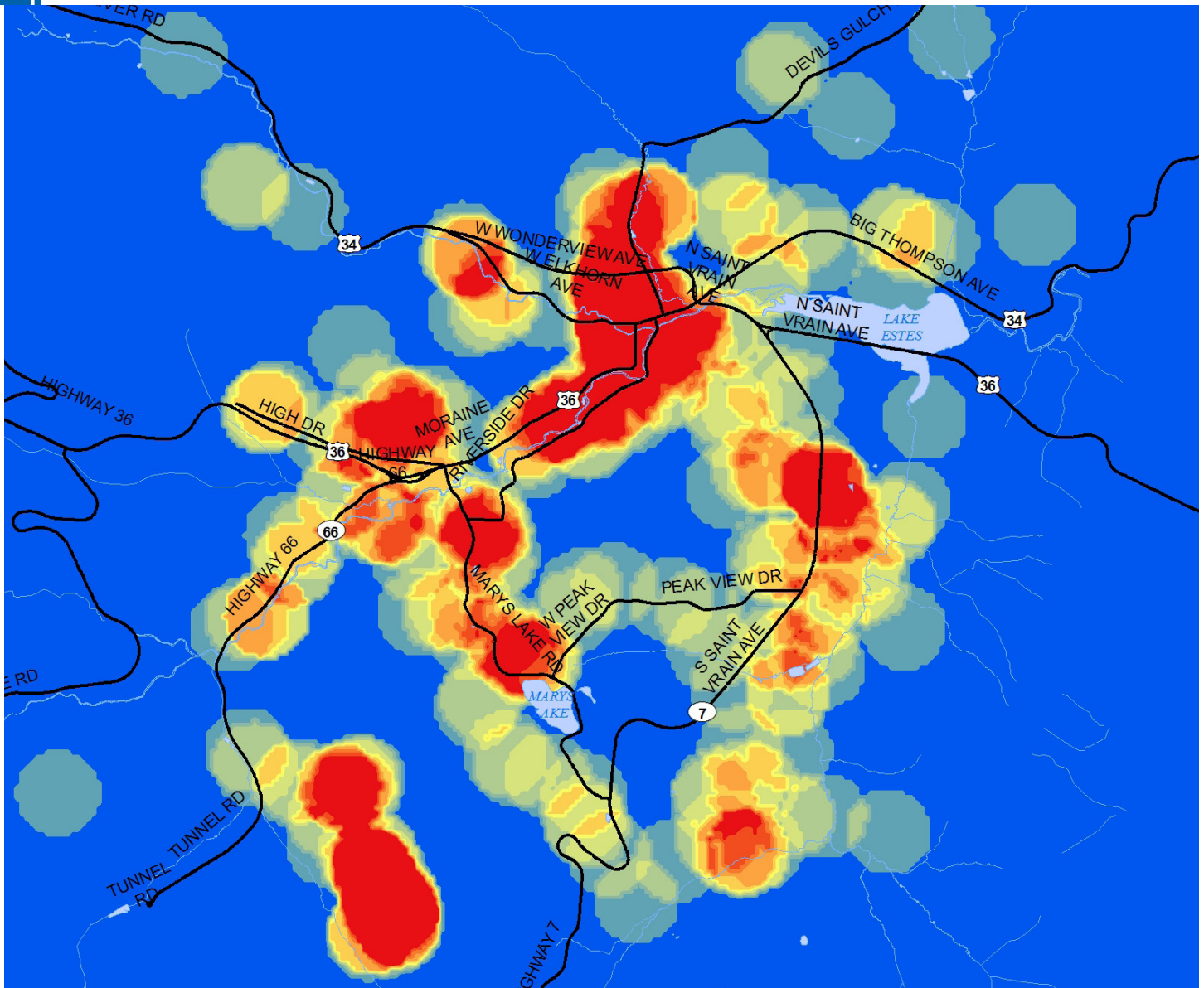
the actual number of vacation homes is likely on the higher end of this spectrum. As expected, vacation homes are generally distributed throughout traditional residential neighborhoods. The North End (Dry Gulch and Devils Gulch Roads) and along Fall River Road have the lowest number of rentals, likely due to low density and abundant hotel/motels respectively. The heat map on the following page shows areas of the Valley with the highest concentration of vacations homes shown in red.

Long-term Rental Housing

There are estimated to be over 200 long-term, market-rate rentals available in the Valley, most of which are managed by professional property managers. However, very few of these long-term rentals are available, with the occupancy rate at 98% to 100%.

On November 17, 2014, there were four long-term rentals listed in the Valley, each ranging from \$600 to \$2,500 per month. Another four rentals were available up to the summer months (presumably to then be rented as vacation homes). There were no online listings for roommates or sublets.

The Estes Park Housing Authority manages long-term housing for low- to moderate-income households. In total, the Housing Authority activity manages 135 units. Given the high demand for such housing, there are currently no attainable housing rentals available for rent. Waiting lists for two- and three-bedroom units are generally between six months to one year, and one bedroom units have a waiting list of multiple years.



This heat map illustrates the density of licensed vacation home rentals. Red areas have the highest concentration of rentals. The downtown and Riverside Drive areas have the highest number rentals, with the North End and Fall River areas having the least.

GOVERNMENT INVOLVEMENT

State of Colorado

Colorado State Statutes assign a tax code for lodging and residential properties. Residential properties (including vacation homes) are taxed at a rate of 7.96%, while commercial properties are taxed at a higher rate of 29%. According to the Larimer County Tax Assessor's Office, a

vacation home can be taxed at a commercial rate if one entity owns more than four lodging units.

Land Use: Estes Valley Development Code

Prior to 2010 vacation homes were allowed in the Town as an accessory use to single family homes. An accessory use refers to the use of land that is clearly incidental and subordinate

to the primary use of land. An example of an accessory use is a hotel pool or restaurant that is primarily used by the on-site guests.

In 2010 the Town Board and County Commissioners opted to allow vacation homes as a principle use throughout the Estes Valley. To achieve this, the regulations needed to be transferred from the Estes Park Municipal Code to the Estes Valley Development Code. Larimer County prohibited vacation homes prior to these 2010 changes.

The Estes Park Municipal Code defines a Vacation Home as “a residential dwelling unit that is rented, leased or occupied for accommodations purposes for the compensation of terms less than thirty (30) days.”

Recognizing the likely continued growth of vacation homes, several regulatory steps were also taken in an effort to preserve residential character throughout the Valley. In other words, these policy decisions aimed to strike a balance by allowing vacation homes as a use by right, but attempting to protect nearby properties with operational restrictions.

A major difference between establishing regulations in the Municipal Code versus the Development Code is the issue of “grandfathering”. Grandfathering, or a “nonconforming use”, refers to a use that was legally established prior to a change in the rules. Land use changes in the Development Code allow grandfathered uses to continue indefinitely, while changes in the Municipal Code do not.

Vacation rentals have increased each year since the changes in 2010, bringing with them ancillary services such as local marketing websites and professional property managers.

The continued rise in local vacation home rentals is not surprising given the national trend moving in that direction. Many vacationers prefer the comfort and convenience of renting a home rather than bunking together in a hotel room. Not surprisingly, websites connecting vacationers with vacation home owners have become very popular.

This market force has also helped shape a new pattern of local accommodations development. The A Accommodations zone district was originally contemplated for traditional hotels and motels, with individual cabins being encouraged in the less intense A-1 Accommodations district. Many “A” zoned properties are now being designed as a “vacation home village,” offering a single-family style home for guests.

The intent of the current land use regulations is to allow the short-term use of rentals while taking steps to preserve residential neighborhood character.

These regulations apply to all residential neighborhoods within the Estes Valley, both inside and outside the Town limits, and generally include:

- Operating Limitations: Rentals cannot be designed or operated in a manner that is out of character with a single family residential use. All guest rooms must be integrated within the vacation home.
- Exterior Appearance: The only change to the exterior appearance of the building is a small identification sign (up to four square feet).
- Parking: No more than three vehicles may be parked outside at any one time and on-street parking is prohibited.
- Deed-Restricted Housing: Workforce or attainable housing cannot be rented as a vacation home.
- Accessory Dwelling Units: Lots with an accessory dwelling unit are generally not allowed to be rented as a vacation home.
- Occupancy Limitations: No more than eight individuals may occupy a vacation home at any one time. The occupancy is further limited by a maximum of two individuals per bedroom plus two individuals. Only one group or party may rent a vacation home at any given time. Homeowners cannot occupy the home at the same time as any party.

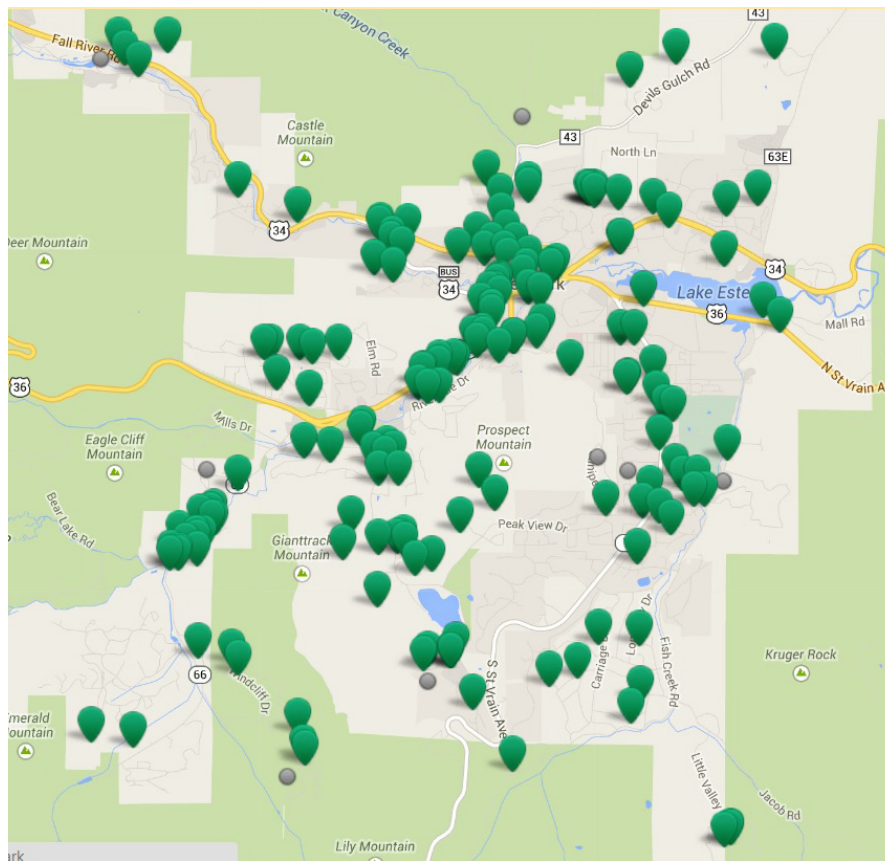
- Home Occupations: Home occupations cannot be included with the vacation home.

in addressing issues relating to development of the Estes Valley. The Plan set numerous policies to guide decision-making, some of which relate to this housing discussion:

Licensing through the Estes Park Municipal Code

The Estes Park Municipal Code Section 5.20.110 establishes licensing of vacation homes in Estes Park. All vacation homes must obtain a Business License from the Town Clerk if operating within Town limits, or an Operating Permit if located in the unincorporated Estes Valley. The major difference

between the Town and County permits is the fee: \$150 is charged for a Town license and there is no charge for County permits. Business Licenses and Operating Permits need to be obtained from the Town Clerk each year and must list a local property manager that is available around the clock to address operational issues (e.g. broken water heater) or neighborhood disruptions.



Vacation homes advertised

- Policy 5.2: Encourage housing for permanent residents of all sectors of the community that is integrated into and dispersed throughout existing neighborhoods.

- Policy 5.3: Establish a balanced program of incentive, and public and private actions, to provide affordable housing.

- Policy 5.8: Regularly evaluate regulation and eliminate unnecessary requirements.

Enforcement

The Town Code Compliance Officer manages enforcement efforts of vacation homes regulations. Once a violation is verified, the Officer generally attempts to work with the property owner to address the issues without formal enforcement action. Formal enforcement efforts can eventually lead to Town properties having their license revoked and/or a hearing at the Estes Park Municipal Court. County violations are brought before the Board of County Commissioners, who may then direct the County Attorney to pursue the issue in District Court.

Local Marketing District Tax

All vacation home rentals in the Estes Valley and beyond must pay a 2% Local Marketing District Tax. The revenue of this voter-approved tax is directed to Visit Estes Park.

Estes Valley Comprehensive Plan

The Estes Valley Comprehensive Plan was adopted in 1996 to serve as a long-term guide

Table: A brief snapshot of vacation home policies and changes in the Estes Valley.

Use	Prior to 2000	2000 - 2010	2010 - 2014
Allowed?	No, but not enforced	Yes	Yes
Accessory Use	No	Yes	Yes, in CD and A-1 zone districts
Principal Use	No	No	Yes
Permit/License Required?	No	In Town: Yes (License, \$150) Outside Town: No (no fee)	In Town: Yes (License, \$150) Outside Town: Yes (no fee)
Limit on Number of Persons per Unit	No, but not enforced	No	Yes, in entire Estes Valley

Given the limited time and high volume of complaints, a common practice is to be proactive on some topics and reactive (i.e. complaint-driven) for others. A benefit of this approach is that staff can work proactively on issues most important to the community. During the spring of 2013 the Town held a series of community meetings to receive feedback on code compliance priorities. Vacation home issues rank high on the priority list. Because of this the Town began devoting more proactive time on the topic, both in enforcement and in evaluating the impacts to Town revenue.

Enforcement efforts recently focused on the occupancy limit of eight people and licensing. Town staff contacted 44 rentals in the Valley that advertised accommodations for eight or more individuals; more than half of those listings were also unlicensed.

RESOURCE AND FINANCIAL IMPACTS

Short-term vacation rentals have been a part of Estes Park's history and will continue to influence the local economy for years to come. As with any segment of the economy that generates notable economic benefits, there are undoubtedly trade-offs to consider. Some of these trade-offs are described below.

Protecting Residential Character

Most complaints about vacation homes assert that the rental is out of character with the surrounding neighborhood - possibly because of too many cars, excessive noise, trespassing or vacant homes. The Estes Valley Development Code defines "character" as those attributes, qualities and features that make up and distinguish a development project and give such project a sense of purpose, function, definition and uniqueness.

The number of vacation home complaints is not overwhelming given the total number of rentals in the Valley. However, most neighbors that are negatively impacted by vacation homes feel that the consistent visitor traffic transforms their residential neighborhood into

an accommodations district. The disruptions to those residents are very real and substantial, causing them to strongly recommend that others not move to their neighborhood (or in some cases, cause them to move away). Over time, such negative experiences have the potential to erode the character of Estes Park.

Lost revenue through unlicensed rentals

In 2013 Staff examined the possible impact to local tax revenue from non-licensed vacation homes. Through collaboration with the Association for Responsible Development it was estimated that there are roughly 400 rental properties advertised online. Further analysis suggested that 79% of the 400 rental properties were not licensed with the Town. This equates to a 4% loss of sales tax and 2% loss of Local Marketing District tax (or \$37,363 and \$33,600 respectively).

Inefficient license revocation process

The current process for revoking a vacation home license is time-consuming and in some ways, not inclusive of all parties. There are multiple steps in this process:

1. Enforcement Action. The Community Development Department coordinates the enforcement process through the Code Compliance Program. Once a violation is confirmed by the Code Compliance Officer, the Town Clerk's Office is notified.
2. Revocation of License. Once notified of a Code violation, the Town Clerk sends a written notice as a warning to the homeowner or his or her representative. If any subsequent violation is verified within two years of the date of the first written warning the Town Clerk may revoke the Business License for a period of one year. Any property owner or representative may appeal a written warning of violation or revocation of his or her Business License. All appeals will be heard before the Town Clerk.
3. Revocation of County Permits. These violations must be taken to the Board of County Commissioners and then if not

resolved, District Court. To date, all County violations have been resolved prior to this step.

Given the different enforcement and administrative "tracks" for this process, the license revocation is at the discretion of the Town Clerk, while code enforcement takes place simultaneously in Municipal or District Court.

Impacts on the availability of long-term rental housing

The high number of vacation homes may prevent some long-term rentals from entering the market. Three general scenarios for vacation home rentals include:

1. The Local Renter: Some permanent Estes Valley residents purchase a second home while also living in the Estes Valley. These homes are generally rented through the summer months as vacation homes and used in other way throughout the remainder of the year (e.g. family gatherings, month-to-month rentals).
1. The Prospective Retiree: Many part-time residents plan to retire in Estes Park and rent their homes to vacationers until that transition. These homes tend to be larger in size to accommodate family gatherings. Over half of vacation home owners are likely in this category.
1. The Entrepreneur: Residents and non-residents own vacation homes with the primary goal of renting as many days a year as possible. These larger homes typically have amenities such as outdoor fireplaces and hot tubs.

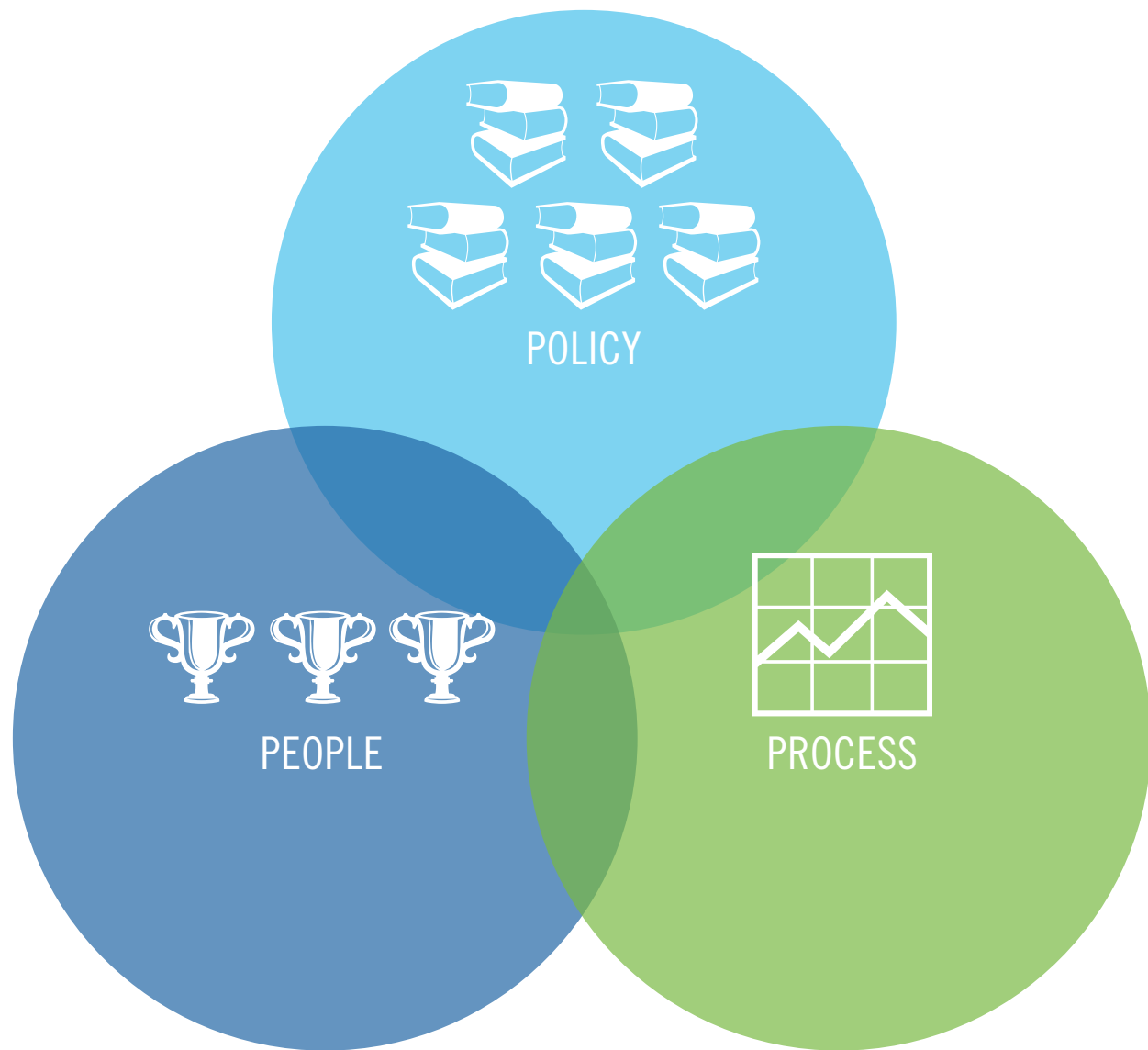
In some cases it is generally more financially practical to rent a property on a long-term basis rather than as a vacation home because of the short rental season. Many of the "Prospective Retirees" are not merely renting the home for profit, but to also have a mountain getaway available to them throughout the year that wouldn't be possible if renting their home twelve months a year. The recent development boom

along the Front Range has likely played a role by providing a vacation getaway only a short car trip away.

However, the availability of long-term rentals has declined as the availability of short-term rentals has increased. Many vacation homes owned by the “Entrepreneur” are often larger homes in neighborhoods with a relatively high percentage of absentee owners; these homes are generally not suitable for long-term rentals. On the other hand, many of the homes owned by the “Local Renter” and “Prospective Retiree” are in neighborhoods comprised predominantly of local homeowners. It is these two later scenarios that likely impact the long-term housing stock, since these units are most suitable for long term rentals (e.g. Ranch Meadow Condos along Big Thompson Avenue).

Occupancy: Building Code, Fire Code and Land Use Issues

Vacation rentals are allowed a maximum of eight occupants regardless of the house or property size. The intent of this limit was to align with the State and local definition of a Small Group Home and Household (see definitions section), and to help preserve the character of residential neighborhoods.



LEADERSHIP AND POLICY ALTERNATIVES FOR THE FUTURE

The Town and County have taken a balanced approach in regulating vacation homes. Establishing regulations that are too onerous may simply drive otherwise legal rentals to an “underground market,” avoiding taxes and operating restrictions altogether. Conversely, very loose regulations may lead to the unraveling of residential character in certain areas, greater impacts to available long-term rentals and other unintended consequences (such as impacts to workforce availability or school enrollment). To that end Town staff recommends finding a middle ground by balancing the markets growth with other interests. In the end a policy determination must be reached that sets a clear goal for

managing vacation rentals. The possible areas of consideration in this section are categorized into three categories: Policy, People and Process.

The Town Administrator has engaged numerous members of the community for input on this topic and recommends an approach that balances the markets growth with other interests. In the end a policy determination must be reached that sets a clear goal for managing vacation rentals. The possible areas of consideration in this section are categorized into three categories: Policy, People and Process. Each recommendation will require additional staff analysis and public outreach prior to Board consideration.



POLICY

Use and Intensity of Use

Need: A pattern of land uses that respects private property rights, yet safeguards residential character.

Challenge: Will require a moderate level of community engagement and may require code amendments.

Recommended Strategies:

Consideration of the following operational restrictions:

1. Establish an occupancy limit that is a function of house size, lot size and/or zone district, which would require an amendment to the Estes Valley Development Code. There is currently an eight-person limit for vacation home rentals, regardless of zoning district or home size. The following may be considered:

The maximum allowable occupancy shall be limited by a maximum of two (2) individuals per bedroom plus two (2) individuals.

No more than two (2) individuals per bedroom plus two (2) individuals, or no more than ten (10) individuals if the housing unit is less than five (500) feet from another housing unit, shall occupy a vacation home at any one time in Residential Zones RE and RE-1. Visitors and associated vehicles not listed by the designated local representative or responsible party on check-in are permitted on the property for a limit of four (4) hours and not after ten o'clock p.m.

Further analysis is needed to determine the possible implications of increasing this limit

beyond eight people. For example, some larger homes may need retrofitted septic systems or fire sprinkler systems due to the increase in occupancy.

2. Vacation Home rentals shall pay Town of Estes Park commercial utility rates.
3. Every rental unit should have a butt-extinguishing receptacle outside. Customers routinely smoke even at non-smoking properties. A properly charged and tagged ABC-type extinguisher should be outside near the butt receptacle
4. Require posting of rules inside the vacation home rental, such as:

"No open wood fires are allowed on this property at any time. No charcoal fires are allowed on this property at any time. Fireworks are never allowed in Estes Park except for public presentations by officials only. It is your responsibility to check for and abide by any fire restrictions or fire bans in effect at any time in Estes Park. Information is available at www.estesvalleyfire.org or by phone (970) 577-0900. If you go into Rocky Mountain National Park, it is your responsibility to check for and abide by any fire restrictions there, also. Information can be found at <http://www.nps.gov/romo/naturescience/restrictions.htm>.

This is a residential neighborhood. Please be respectful of people that live and work here. This includes noise (Estes Park Municipal Code Chapter 8.06). The maximum speed limit is XX mph, but neighbors inform you that the following locations to/from this house commonly or occasionally have children at play (list intersections or blocks), so please drive slow and be extra careful there. No trash shall be stored outside except in a bear-proof container."

Depending on policy direction, a public process and project scope would be drafted and presented to the Town Board and County

Commissioners. The process for any code amendments would involve community input, a review by the Estes Valley Planning Commission, and approval through the Town Board and County Commissioners.

Fees

Need: A vacation home license fee that adequately covers staff time to process and track each home, especially when code violations occur.

Challenge: The \$150 fee for Town licenses and no fee for County permits often does not adequately cover staff time to process and track each home.

Fees are generally varied throughout similar resort communities:

- **Grande Lake** requires a one-time application fee of \$150, with a subsequent annual fee of \$400. The application fee covers the cost of mailing certified letters to all neighbors notifying them of the application. If there is any objection by neighbors, it must go before their Planning Commission or Town Board. The application requires a site plan showing items such as vehicle parking and trash storage (may be hand drawn).
- **Breckenridge** assess a fee based on the number of rooms for the proposed vacation home: \$100 for one bedroom, \$125 for two bedrooms, \$150 for three bedrooms and \$175 for four bedrooms.
- **Vail** does not currently license vacation homes. However, this is an upcoming Town Board agenda item.
- **Grandby** does not require a vacation home license, but does require that owners obtain and a pay sales tax license and lodging tax through Grande County.
- **Aspen** requires a vacation home permit and business license, which totals \$150 plus sales tax. The Town staff includes a Sales Tax Auditor dedicated to tracking vacation rentals to ensure sales tax compliance.

- **Manitou Springs** requires a business license for applications proposing up to four units. Fees include \$44 for new applications and and a \$39 renewal fee. Owners must also pay a local lodging tax.
- **Steamboat Springs** requires a one-time \$500 application fee for the administrative review of the application, and a \$50 annual renewal fee.

Recommended Strategies:

1. Increase fees in Town to the following:
 - 1 bedroom - \$150/year
 - 2-4 bedroom \$300/year
 - 5+ bedrooms \$400/year
2. Work with the county to implement the same fees at the county level.
3. Vacation homes charged a commercial utility rate
4. Work with Larimer County to establish the same fee outside the town limits



Increased Code Compliance

Need: A pattern of land uses that respects private property rights, yet safeguards residential character.

Challenge: Identifying and following up with vacation home rentals is time-consuming, but likely to yield positive results for both licensing compliance and neighborhood disruptions. Should vacation home compliance become a high priority, others must become a lower priority.

Recommended Strategies: Strengthen code compliance process to include:

1. 1st violation in a year: owner receives a

warning

2. 2nd violation – suspension of licenses for 30 days
3. 3rd violation – suspension of license for year

Violations should include:

1. Non-payment of taxes
2. Non-payment of commercial utility rates
3. Exceeding maximum occupancy
4. Violation of fire code
5. Violation of any current town ordinance, such as:
 - Trash
 - Noise
 - Animal control
 - Lighting - rentals should comply with the lighting ordinances. Many old rentals are “grandfathered” but this could be a condition of the annual permit.



Engage Property Managers

Need: Minimum qualifications for local vacation home property managers and penalties for non-responsive managers.

Challenge: Local property managers are required for all vacation home applications. The property managers play the critical role of being available night and day to handle any issue, from midnight water heater replacements to complaints about excessive noise. Many of these property

managers agree to this work as a side job, not a primary career focus.

At this point there are no minimum qualifications for property managers (neither locally nor through the State) or penalties for non-responsive managers. Neighbors of adjacent vacation homes have complained about non-responsive property managers. While many property managers are responsive (particularly the professional managers), further steps should be taken to ensure that they are held accountable for the management of their vacation homes.

Recommended Strategies: Require property managers to be located within the Estes Park Planning area and be responsive 24 hours per day. All adjacent property owners should be supplied with the contact information for the property manager. Any property manager, other than the owner, must have a business license and supply proof of commercial insurance for the property. It has been noted that commercial insurance is not required of any business. In the alternative, it is recommended that the Town insert a BOLD TYPEFACE notice on the permit application that if the owner uses their property for short term rentals that their residential insurance coverage may not cover losses.

Non-responsive management should result in code enforcement action that includes fines and license revocation.

License Revocation

Need: A more streamlined and public process for vacation home license revocations.

Challenge: There are opportunities to streamline the license revocation process when continual violations occur. The current process does not align with others, such as that of liquor licenses.

Recommended Strategies: Revise the license revocation process to allow for public hearings, similar to liquor licenses.

DEFINITIONS

ESTES VALLEY DEVELOPMENT CODE

Accessory Use shall mean a use of land or a building that is customarily and clearly incidental and subordinate to the principal use of the land or building and that is ordinarily located on the same site or lot as such principal use.

Accommodations Use shall mean a commercial, visitor-serving facility that provides temporary lodging in guest rooms or guest units, for compensation, and with an average length of visitor stay of less than thirty (30) days. Examples of accommodations uses include motels, hotels, bed and breakfast inns, resort lodges and hostels. A principal “nightly rental” use of a dwelling unit in the A-1 or CD zoning districts, as more specifically described in §13.2.C.2 of this Chapter, is an accommodations use. On the other hand, an accessory short-term “nightly rental” use of a dwelling unit in a residential zoning district, as allowed by §5.2.B.2.g of this Code, is not an accommodations use.

Character shall mean those attributes, qualities and features that make up and distinguish a development project and give such project a sense of purpose, function, definition and uniqueness.

Household shall mean a family unit related by blood, marriage or adoption, or eight (8) or fewer unrelated individuals (including resident and nonresident caregivers) living together in a single dwelling unit, with common access to and common use of all living and eating areas and all facilities for the preparation and serving of food within the dwelling unit.

ESTES PARK MUNICIPAL CODE

Bed and breakfast inn means a detached single-family residential dwelling unit that is rented, leased or occupied for accommodations purposes and is operator-occupied on a full-time basis.

Vacation home means a residential dwelling unit that is rented, leased or occupied for accommodations purposes for compensation for terms of less than thirty (30) days.

ATTACHMENTS

1. Estes Valley Development Code and Estes Park Municipal Code Sections Relating to Vacation Homes
2. National Association of Realtors White Paper, Prepared by Robinson & Cole, LLP

CHAPTER 5. USE REGULATIONS

§ 5.1 SPECIFIC USE STANDARDS

This Section contains regulations that apply to specific uses or classes of uses.

A. **Adult Business.** All adult business uses shall be subject to special review and shall also comply with the following standards:

1. No adult business use shall be located within five hundred (500) feet of any residentially zoned or used property.
2. No adult business use shall be permitted within five hundred (500) feet of any school, place for religious assembly, public park, playground, other adult business use or liquor store.
3. Adult business use buildings, entries, windows and other openings shall be located, covered or screened to prevent a view into the interior from any public area, including sidewalks, bike/pedestrian paths and streets.

B. **Bed and Breakfast Inn and Vacation Home. (Ord. 02-10 §1)**

1. All bed and breakfast inns and vacation homes shall be subject to the following (see §5.1.B.2 and §5.1.B.3 for additional regulations):
 - a. Annual Operating Permit.
 - (1) All bed and breakfast inns and vacation homes shall obtain an operating permit on an annual basis. If the property is located within Town limits, the business license shall be considered the permit. If the property is within the unincorporated Estes Valley, a permit shall be obtained from the Town of Estes Park Town Clerk's Office.
 - (2) The permit shall designate a local resident or property manager of the Estes Valley who can be contacted and is available twenty-four (24) hours per day, with regard to any violation of the provisions of this Section. The person set forth on the application shall be the representative of the owner for all purposes with regard to the operation of the bed and breakfast inn or vacation home.
 - (3) State Sales Tax License. A condition of issuance of the annual operating permit shall be proof of a current sales tax license.
 - b. Estes Park Municipal Code. Properties located within the Town of Estes Park shall comply with all the conditions and requirements set forth in the Town of Estes Park Municipal Code, Chapter 5.20.
 - c. Residential Character. Bed and breakfast inns and vacation homes shall not be designed or operated in a manner that is out of character with residential use of a dwelling unit by one household. This includes, but is not limited to, the following:
 - (1) Except in the CD district, design shall be compatible, in terms of building scale, mass and character, with low-intensity, low-scale residential use.
 - (2) Guest rooms shall be integrated within the bed and breakfast inn or vacation home.

Estes Valley Development Code

- (3) Kitchen facilities shall be limited to be consistent with single-family residential use. No kitchen facilities or cooking shall be allowed in the guest rooms.
 - (4) Accessory buildings shall not be used for amenities beyond a gazebo or similar outdoor room.
 - (5) No changes in the exterior appearance shall be allowed to accommodate each bed and breakfast inn or vacation home, except that one (1) wall-mounted identification sign no larger than four (4) square feet in area shall be permitted.
 - (6) Vehicular traffic and noise levels shall not be out of character with residential use.
 - d. Parking.
 - (1) Minimum Required Parking. Except in the CD Downtown Commercial zoning district, the number of parking spaces available to a dwelling unit housing a bed and breakfast inn or a vacation home shall not be reduced to less than two (2).
 - (2) Maximum Allowed Parking. No more than three (3) vehicles shall be parked outside at any one (1) time. Vehicles enclosed within a garage do not count towards this maximum. On-street parking shall be prohibited. Refer to §5.2.B.2.f, which may further limit the number of vehicles permitted on site.
 - e. Employee Housing Units. Employee housing units shall not be rented, leased or furnished for tenancies of less than thirty (30) days. (See §5.2.C.2.a).
 - f. Attainable Housing Units. Attainable housing units shall not be rented, leased or furnished for tenancies of less than thirty (30) days. (See §11.4.E).
 - g. Accessory Dwelling Units. Bed and breakfast inns and vacation homes shall not be permitted on residential lots containing an accessory dwelling. (See also §5.2.B.2.a, which prohibits rental of accessory dwelling units regardless of the length of tenancy).
 - h. CD District. In the CD Downtown Commercial zoning district, such use shall not be located on the ground floor of a building fronting on Elkhorn Avenue.
 - i. Density. Only one (1) vacation home or bed and breakfast inn shall be permitted per residential dwelling unit.
2. All bed and breakfast inns shall also be subject to the following:
- a. Occupancy.
 - (1) Maximum Occupancy. No more than eight (8) guests shall occupy a bed and breakfast inn at any one time. This maximum allowable occupancy shall be further limited by a maximum of two (2) guests per bedroom plus two guests.
 - (2) Number of Parties, Bed and Breakfast Inns. Bed and breakfast inns may be rented, leased or furnished to one (1) or more parties.
 - b. Home Occupations. Home occupations may be operated on the site of a bed and breakfast inn. Bed and breakfast inns may also offer limited ancillary services to guests, such as performing small weddings or offering classes/workshops to guests, provided they are in character with residential use.

Estes Valley Development Code

- c. Meal Service. Bed and breakfast inns may provide meals service to registered guests; however, meals shall not be provided to the general public.
- 3. All vacation homes shall also be subject to the following:
 - a. Occupancy.
 - (1) Maximum Occupancy. No more than eight (8) individuals shall occupy a vacation home at any one time. This maximum allowable occupancy shall be further limited by a maximum of two (2) individuals per bedroom plus two (2) individuals.
 - (2) Number of Parties. Vacation homes shall be rented, leased or furnished to no more than one (1) party, occupying the vacation home as a single group. Owners of the vacation home shall not be permitted to occupy the vacation home while a party is present.
 - b. Home Occupations. Home occupations shall not be operated on the site of a vacation home, nor shall vacation homes offer ancillary services to guests. (See §5.2.B.2.d). (Ord. 02-10 §1)
- C. **Commercial Recreation or Entertainment Establishments.**
 - 1. All commercial recreation or entertainment establishments shall be subject to the following standards:
 - a. The use of firearms shall not be permitted as a part of user activities.
 - b. A traffic impact study shall be submitted that assesses the impacts of the proposed use on existing roads, intersections and circulation patterns, and that demonstrates compliance with the traffic facility standard set forth in §7.12 of this Code, and/or sets forth mitigation measures to eliminate or substantially reduce such impacts.
 - 2. In addition to the standards set forth in paragraph C.1 above, riding academies, livery stables and roping or equestrian areas shall be subject to the following standards:
 - a. The minimum lot or parcel size for such uses shall be five (5) acres.
 - b. The Applicant shall submit a plan for the management of odor, dust and waste as part of the application for special review or development plan approval.
- D. **Construction Storage Yards, Salvage Yards, Industrial Services (Repair or Storage).** The following standards shall apply to all salvage yards and heavy equipment and industrial storage yards that abut an arterial street, a residential use or a residential zone district boundary, unless the subject use and related activities are entirely enclosed within a building:
 - 1. Such uses shall be screened with a solid (100% opaque) wall or fence with a minimum height of eight (8) feet.
 - 2. No outdoor storage area shall be placed or maintained within a required building or yard setback.
 - 3. Stored items shall not project above the fence or wall used to screen the material.
 - 4. It shall be unlawful to store or otherwise have, maintain or allow on a single parcel of land or on contiguous parcels under common ownership more than one (1) nonfarm vehicle not having current Colorado license plates or registration unless the vehicle is

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B. Table 4-1: Permitted Uses: Residential Zoning Districts.

Table 4-1
Permitted Uses: Residential Zoning Districts

Use Classification	Specific Use	Zoning Districts								Additional Regulations (Apply in All Districts Unless Otherwise Stated)
		"P" = Permitted by Right "S" = Permitted by Special Review "–" = Prohibited								
		RE-1	RE	E-1	E	R	R-1	R-2	RM	
RESIDENTIAL USE CLASSIFICATIONS										
Household Living	Single-family dwelling	P	P	P	P	P	P	P	P	In R-1, §4.3.D.4 applies (Ord. 18-01 §13)
	Two-family dwelling	–	–	–	–	–	–	P	P	(Ord. 15-11 §1)
	Multi-family dwelling	–	–	–	–	–	–	–	P	§5.1K (Ord. 02-10 §1)
	Mobile home park	–	–	–	–	–	–	–	S	§5.1I
Group Living Facility, Large	Senior care facility	–	–	–	–	–	S	S	S	§5.1I
	Large group living facilities	–	–	–	–	–	S	S	S	§5.1I
Group Living Facility, Small		P	P	P	P	P	P	P	P	
INSTITUTIONAL, CIVIC AND PUBLIC USES										
Day Care Center (Ord. 6-06 §1)		S	S	S	S	S	S	S	S	§5.1F
Family Home Day Care, Large (Ord. 6-06 §1)		S	S	S	S	S	S	S	S	§5.1F; As accessory to a principal residential use only
Government Facilities	Public Safety Facilities	P	P	P	P	P	P	P	P	§3.13, Location & Extent Review
	Trail/Trail Head	P	P	P	P	P	P	P	P	§3.13, Location & Extent Review
	Utility, Major	–	–	–	–	–	–	–	–	§3.13, Location & Extent Review
	Utility, Minor	P	P	P	P	P	P	P	P	§3.13, Location & Extent Review; Use shall not include office, repair, storage or production facilities
	All other Government Facilities	P	P	P	P	P	P	P	P	§3.13, Location & Extent Review

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Hospital		–	–	–	–	–	–	–	S	
Park and Recreation Facilities		P	P	P	P	P	P	P	P	§3.13, Location & Extent Review
Park and Ride Facilities		–	–	–	–	–	P	P	P	
Religious Assembly		–	–	–	–	–	–	S	S	§5.1.O (Ord. 19-11 §1)
Schools		–	–	–	–	–	–	S	S	§3.13, Location & Extent Review (Ord. 19-11 §1)
Senior Institutional Living	Continuing Care Retirement Facility	–	–	–	–	S	S	S	S	§5.1.I
	Congregate Housing	–	–	–	–	S	S	S	S	§5.1.I
	Skilled Nursing Facility	–	–	–	–	–	–	–	S	§5.1.I
Transportation Facility Without Repairs		–	–	–	–	–	P	P	P	§3.13, Location & Extent Review
ACCOMMODATION USES										
Low-Intensity Accommodations	Bed and Breakfast Inn	–	–	–	–	–	–	S	P	§5.1B
	Vacation Home	P	P	P	P	P	P	P	P	§5.1B (Ord. 02-10 §1)
COMMERCIAL/RETAIL USES										
Wireless Telecommunication Facilities	Attached and concealed (stealth) antennas	P	P	P	P	P	P	P	P	§5.1T
	Antenna towers, microcells	P/S	P/S	P/S	P/S	–	–	P/S	P/S	§5.1T
RECREATION USES										
Golf Course		P	S	S	S	–	–	–	–	§5.1C
ACCESSORY USES: SEE §5.2 "ACCESSORY USES AND ACCESSORY STRUCTURES."										
TEMPORARY USES; SEE §5.2, "TEMPORARY USES AND STRUCTURES."										

(Ord 18-01 §13; Ord. 6-06 §1; Ord. 02-10 §1; Ord. 15-11 §1; Ord. 19-11 §1)

C. Density/Dimensional Standards.

1. *Density Calculation.* (See also Chapter 1, §1.9.C.)

- a. Net land area. Net land area shall be determined by subtracting from the gross land area the following:
 - (1) Eighty percent (80%) of lands located in the 100-year floodplain;
 - (2) Eighty percent (80%) of lands located above the elevation serviceable by the Town of Estes Park water system;

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recommended in the Comprehensive Plan. This district should accommodate the majority of the larger, freestanding commercial and retail buildings to meet future demand in the community.

- c. O Office Zoning District. This zoning district is established to implement the “Office” future land use category recommended in the Comprehensive Plan. The intensity of future office development will be controlled through district standards setting forth a maximum floor area ratio (FAR) and building height maximum.
- d. CH Heavy Commercial Zoning District. This zoning district is intended to provide for heavy commercial uses, including vehicle repair services, construction trades and bulk goods retailing. It shall be limited to areas within the Estes Valley that already contain some of these types of heavy commercial uses, and shall not include areas fronting the Valley’s highways or arterial streets. Permitted uses shall include utility facilities and installations, repair services, bulk storage and limited manufacturing. Most of these uses shall be permitted by right, but subject to specific size limitations. Larger facilities shall be subject to special review.

3. *Industrial Zoning Districts.*

- a. I-1 Restricted Industrial Zoning District. This zoning district implements the “Restricted Industrial” land use category recommended in the Comprehensive Plan. Permitted uses shall include a relatively wide variety of industrial uses, as reflected in the existing mix of industrial land uses, including several concrete/asphalt plants, propane distributors, construction trade yards and gravel mining and crushing facilities. However, to discourage future conflicts, residential uses shall not be permitted in this zoning district. An important element of development in this industrial zone district shall be compliance with performance standards to protect adjacent uses from adverse impacts of industrial development.

B. **Table 4-4: Permitted Uses: Nonresidential Zoning Districts.**

Table 4-4
Permitted Uses: Nonresidential Zoning Districts

Use Classification	Specific use	Nonresidential Zoning Districts							Additional Regulations (Apply in All Districts Unless Otherwise Stated)
		“P” = Permitted by Right “S” = Permitted by Special Review “_” = Prohibited							
		A	A-1	CD	CO	O	CH	I-1	
RESIDENTIAL USE CLASSIFICATIONS									
Household Living (Ord. 15-11 §1)	Single-family dwelling	P	P	P	–	P	–	–	<ul style="list-style-type: none">•In CD, such use shall not be located on the ground floor of a building having frontage on Elkhorn Avenue•In O, such use shall not be located on the ground floor of a building

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	Trail/Trail Head	P	P	P	P	P	P	P	§3.13, Location & Extent Review
	Utility, Major	–	–	–	S	–	S–	S	§5.1.L; All structures shall be located at least 200 feet away from a residential zone district boundary; §3.13, Location & Extent Review
	Utility, Minor	P	P	P	P	P	P	P	§3.13, Location & Extent Review
	All Other Government Facilities	P	P	P	P	P	P	P	§3.13, Location & Extent Review
Government Offices		P	P	P	P	P	P	P	§3.13, Location & Extent Review
Maintenance and Service Facilities		–	–	–	–	–	P	P	§5.1.L
Park and Recreation Facilities		P	P	P	P	P	–	–	§3.13, Location & Extent Review
Park and Ride Facilities		P	P	P	P	P	P	P	§3.13, Location & Extent Review
Religious Assembly (Ord 19-11 §1)		P	–	–	P	–	–	–	§5.1.O
Schools (Ord 19-11 §1)		P	–	–	P	–	–	–	§3.13, Location & Extent Review
Senior Institutional Living	Continuing care retirement facility	–	–	–	S	–	–	–	§5.1.I
	Congregate housing	–	–	–	S	–	–	–	§5.1.I
	Skilled nursing facility	–	–	–		–	–	–	§5.1.I
Transportation Facility Without Repairs		–	–	P	P	P	–	–	§3.13, Location & Extent Review
ACCOMMODATION USES									
Low-Intensity Accommodations	Bed and breakfast inns	P	P	P	–	–	–	–	§5.1.B. In CD, such use shall not be located on the ground floor of a building fronting on Elkhorn Avenue

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	Hotel, Small	–	P	P	–	–	–	–	In CD, such use shall not be located on the ground floor of a building fronting on Elkhorn Avenue.
	Vacation Home	–	P	P	–	–	–	–	§5.1.B. In CD, such use shall not be located on the ground floor of a building fronting on Elkhorn Avenue. (Ord. 02-10 §1)
	Resort lodge/cabins, low-intensity	–	P	–	–	–	–	–	(Ord. 19-10 §1)
High-Intensity Accommodations	Hostel	P	–	P	–	–	–	–	In CD, such use shall not be located on the ground floor of a building fronting on Elkhorn Avenue.
	Hotel/Motel	P	–	P	–	–	–	–	§5.1.J. In CD, such use shall not be located on the ground floor of a building fronting on Elkhorn Avenue.
	Recreational vehicle park/campground	S	–	–	–	–	–	–	§7.15
	Resort lodge/cabins	P	–	–	–	–	–	–	§5.1.P
COMMERCIAL/RETAIL USES									
Adult Businesses		–	–	–	–	–	–	S	§5.1.A
Animal Sales/Services	Animal Boarding	–	–	–	–	–	P	P	
	Animal Grooming	–	–	–	P	–	–	–	
	Animal Hospital	–	–	–	P	–	–	P	
	Animal Retail Sales	–	–	–	P	–	–	–	
	Animal Shows/Sales	–	–	–	P	–	P	P	§5.1.L
	Veterinary Office	–	–	–	P	–	–	–	
Artist Studio		P	P	P	P	P	P	P	
Bank or Other Financial Institution		–	–	P	P	P	–	–	In CD, no drive-through service shall have access from Elkhorn Avenue
Building Materials/Services		–	–	–	P	–	P	P	§5.1.L

(1) Any business, profession or occupation licensed under any other Town ordinance and paying a license fee to engage in such business, profession or occupation, other than sales tax licenses, nor to any business, profession or occupation paying another business license fee or tax to the Town.

(2) Any business, profession or occupation which consists solely of delivering goods at wholesale to other businesses, professions or occupations within the Town.

(3) Any business, profession or occupation solely conducted on property owned by the Town. (Ord. 1-91 §1(part), 1991; Ord. 19-91 §1(part), 1991; Ord. 15-97, 1997; Ord. 02-09 §12, 2009)

5.20.110 Vacation homes and bed and breakfast inns.

This Section shall apply to vacation homes and bed and breakfast inns.

(1) Restrictions on rentals. The rental, leasing or occupancy of all vacation homes and bed and breakfast inns subject to this Section shall be restricted as follows:

a. Compliance with the applicable regulations found in the Estes Valley Development Code is required.

b. The application for a business license for any vacation home or bed and breakfast inns shall designate a local resident or property manager of the Estes Valley who can be contacted by the Town with regard to any violation of the provisions of this Section. The person set forth on the application shall be the representative of the owner for all purposes with regard to the issuance of the business license, the operation of the vacation home or bed and breakfast inn and revocation of the business license pursuant to the terms and conditions of this Section.

(2) Violation. It is a violation of this Section for any owner, representative, guest and/or occupant of a vacation home or bed and breakfast inn to be convicted, including a plea of no contest, of a violation of Section 9.08.010 (Disturbing the Peace) of this Code; to fail to collect and remit all required sales tax to the State due and owing for the leasing, rental or occupation of a vacation home or bed and breakfast inn; to violate any provisions of this Section; and/or to fail to acquire and pay for a business license. For the purpose of this Section, only violations of Section 9.08.010 of this Code which occur on the premises of the vacation home or bed and breakfast inn and while a vacation home or bed and breakfast inn is being occupied as a vacation home or bed and breakfast inn shall be a violation of this Section.

(3) Revocation of license. The Town may revoke the business license of any vacation home or bed and breakfast inn for violation of the provisions of this Section as follows:

a. The Town Clerk, upon the receipt and verification of any violation of this Section, shall give written notice to the owner or representative that a violation has occurred.

b. Upon the receipt and verification of any subsequent violation of the terms and conditions of this Section, within two (2) years of the date of the written warning set forth in Subsection a above, the Town Clerk may revoke the business license by giving written notice to the owner

or representative of the revocation of the license. Said revocation shall be for one (1) year from the date of the notice.

c. Upon the receipt and verification of any subsequent violation of the terms and conditions of this Section within two (2) years after reinstatement, the Town Clerk shall revoke the business license by giving written notice to the owner or representative of the revocation of the business license. Said revocation shall be for two (2) years from the date of the notice. Upon revocation of the business license, the owner's right to operate a vacation home or bed and breakfast inn on the property shall terminate.

(4) Appeal. Any owner or representative who wishes to contest the written warning or the revocation of a business license shall be entitled to request a hearing before the Town Clerk by written notice delivered in person or by certified mail, return receipt requested, to the Town Clerk within fifteen (15) days of the date of the warning or revocation. The Town Clerk shall hold a hearing on the appeal and determine whether or not a violation of the provisions of this Section has occurred. The owner shall be entitled to present any evidence of compliance with the terms and conditions of this Section at said hearing. The decision of the Town Clerk as to whether or not the violation occurred shall be final and not subject to further appeal. (Ord. 4-04 §3, 2004; Ord. 02-10 §1, 2010)

Chapter 5.28

Beer and Liquor Sales

5.28.010 Definitions.

As used in this Chapter, the following words or phrases shall have the following meanings:

(1) *Malt liquors* means any beverage including beer obtained by the alcoholic fermentation or any infusion or decoction of barley, malt, hops or any other similar products or any combination in water, containing more than 3.2% of alcohol by weight.

(2) *Operator* means a person licensed by the Town or State to sell 3.2% beer, malt, vinous or spirituous liquors for beverage purposes at retail, and who is engaged at any time during the calendar year in such operation in the Town.

(3) *Spirituous liquors* means any alcoholic beverage obtained by distillation mixed with water and other substances in solution and includes, among other things, brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing alcohol and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except as provided in this Section shall not be construed to be malt or vinous liquor, but shall be construed to be spirituous liquor.

(4) *3.2% beer* means malt liquor as defined in this Section containing not more than 3.2% of alcohol by weight.

SHORT-TERM RENTAL HOUSING RESTRICTIONS

White Paper

PREPARED BY



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SHORT-TERM RENTAL HOUSING RESTRICTIONS

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PREFACE

This white paper on *Short-Term Rental Housing Restrictions* has been prepared by Robinson & Cole LLP in its capacity as national consultant to NAR. The paper is one in a series of white papers that NAR requests be prepared from time to time in order to focus on a particular smart growth-related issue that has arisen with sufficient frequency in communities around the country to merit a more in-depth analysis.

The analysis of short-term rental housing restrictions in this paper is provided by NAR under its Smart Growth program to help REALTORS® at the state and local level better understand the issues involved in these types of restrictions, and to tailor strategies, as appropriate, to address short-term rental housing regulatory initiatives in their communities.

Brian W. Blaesser
Robinson & Cole LLP
September 2011

SECTION 1: INTRODUCTION

1.1 PURPOSE AND SCOPE OF PAPER

This paper was prepared at the request of the National Association of REALTORS® (NAR). The purpose of this paper is to (1) explain the problem of short-term rental housing restrictions; (2) categorize and describe the different approaches taken by local governments to regulate short-term rental housing in their communities; (3) analyze the issues raised by these different regulatory approaches; (4) provide Realtors® with ways to address these issues; and (5) outline “best practices” approaches to short-term rental housing that Realtors® can use in discussing the issue with local government officials.

1.2 KEY TERMS

The term “short-term rental housing” typically means a dwelling unit that is rented for a period of less than thirty consecutive days. In general, short term rental housing differs from bed & breakfasts, hotels, motels, and other “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although bed & breakfasts often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator on-site.¹ Boarding houses differ from short-term rentals by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants.² Boarding houses also tend to be less transient than short-term rentals.³ Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office.⁴ In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, or resort dwelling units.

Terms that appear in **bold typeface** are defined in the Glossary found at the end of this paper.

SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS

2.1 PURPOSE – THE MUNICIPAL PERSPECTIVE

Many communities around the country, both vacation destination communities and non-vacation communities, have implemented some form of short-term rental housing regulation. Below is an overview of the most common reasons cited by communities for regulating short-term rental housing.

¹ See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

² See APA Report at 5.

³ See APA Report at 5.

⁴ See APA Report at 5.

2.1.1 Protection of Neighborhood Environment

The most commonly cited municipal purpose for regulating short-term rental housing is to protect the character of existing residential neighborhoods. Often these communities are responding to complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic, and other disruptive activities. Generally speaking, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being a good neighbor. This rationale is evident in the “resort dwellings” ordinance adopted by the City of Venice, Florida, which states:

[The] City council finds that resort dwelling rental activities in single-family neighborhoods affects the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship. The intent of these regulations is to prevent the use of single-family residences for transient purposes in order to preserve the residential character of single-family neighborhoods.⁵

2.1.2 Protection of Physical Characteristics

Some communities also cite the need to protect the physical characteristics of their residential neighborhoods. The underlying rationale is that short-term rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. At least, in theory, absentee property owners are presumed to be less diligent about the types of regular and routine maintenance tasks typically associated with home ownership, such as lawn maintenance, tree and shrub pruning, and exterior painting.

2.1.3 Revenue

For many communities, particularly those with a robust tourist industry, short-term rentals represent a potentially significant source of tax revenue. In Texas, for example, the Hotel Occupancy Tax statute broadly defines the term “hotel” to include any building that offers sleeping accommodations for consideration, including a “tourist home” or “tourist house,” and imposes a six percent tax on the price paid for such accommodations.⁶ Moreover, the Municipal Hotel Occupancy Tax statute authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.⁷ The potential revenue available to municipalities with authority to tax short-term rentals is exemplified by a 2011 study prepared by the city auditor for Austin, Texas, which estimated that the city could gain \$100,000 to \$300,000 annually by collecting taxes on short-term rental properties.⁸ Communities that desire to collect such taxes may impose registration or licensing requirements as a means of identifying properties that are being used for short-term rentals and are therefore subject to taxation.

⁵ Venice, FL Land Development Code § 86-151.

⁶ See Texas Code §§ 156.001, 156.052. Accommodations of “at least 30 consecutive days, so long as there is no interruption of payment for the period,” are exempt from the tax. *Id.* § 156.101.

⁷ See Texas Code § 351.003.

⁸ See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

2.1.4 Fairer Competition with Licensed Lodging

Short-term rental restrictions may also be viewed as a means of leveling the playing field between the short-term rental industry and competing overnight lodging uses that may be specifically regulated under state or local law, such as hotels and bed and breakfasts. In some cases, the hotel industry has lobbied for the adoption of such regulations on the grounds that short-term rentals are functionally the same as hotel units and therefore should either be taxed and regulated like hotels, or prohibited. At a June 2011 meeting of the Planning Board of Buncombe County, North Carolina, for example, several hoteliers cited unfair competition in arguing against the potential repeal of a ban on vacation rentals in the county's more restrictive residential zoning districts. One industry representative testified that hotels "spend many, many hours and many, many dollars abiding by all the regulations that [hotels] are required to abide by and that many do not apply to short-term rentals."⁹

2.1.5 Protection of Renter Safety

A less commonly cited reason for the adoption of short-term rental regulations is the protection of renter safety. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units. The City of Big Bear Lake, California, for example, has a "transient private home rentals" ordinance that is intended, in part, "to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions."¹⁰

2.2 TYPES OF SHORT-TERM RENTAL RESTRICTIONS

2.2.1 Prohibition

From the perspective of a short-term rental property owner, the most severe form of restriction is an outright ban on short-term rentals. A short-term rental prohibition may be limited to specific neighborhoods or zoning districts, or may be community-wide.

2.2.2 Geographically-Based Restrictions

Communities that choose to allow short-term rentals often use their zoning authority to regulate the use on a geographic basis. For example, Venice, Florida regulates short-term rental properties (referred to locally as "resort dwellings") only in the city's Residential Estate (RE) and Residential Single Family (RSF) zoning districts.¹¹ Similarly, Maui County, Hawaii permits transient vacation rentals only within certain business zoning districts and certain designated

⁹ "Buncombe planners wade into Asheville-area vacation rental issue again; County debates relaxing the rules," *The Asheville Citizen-Times*, June 6, 2011.

¹⁰ City of Bear Lake, CA Municipal Code § 17.03.310(A).

¹¹ See generally Venice, FL Land Development Code § 86-151.

“destination resort areas,” including the Wailea, Makena, Kaanapali, and Kapalua Resort Areas.¹²

2.2.3 Quantitative and Operational Restrictions

Other communities that allow short-term rentals may choose to implement a cap on the number of short-term rental permits that may be issued. Such an approach constitutes a compromise between short-term rental owners who argue that they have the right to rent their properties on a short-term basis, and opponents who argue that short-term rentals should be prohibited as an unlawful commercial use in a residential neighborhood. Quantitative restrictions may take the form of a fixed limit on the total number of short-term rental permits that may be issued at any given time. The City of Santa Fe, New Mexico, for example, authorizes the Land Use Director to issue “up to 350 short term rental permits” for residential properties that do not otherwise qualify for permits as an accessory dwelling unit, owner-occupied unit, or unit located within a “development containing resort facilities.”¹³ Similarly, the City of Cannon Beach, Oregon maintains a 92 permit cap on the number of transient rental permits that will be issued by the city.¹⁴ Alternatively, a community may implement a proximity restriction that prohibits a short-term rental property from being located within a certain distance of another short-term rental property. The “Residential Vacation Rentals” ordinance of San Luis Obispo County, California, for example, provides:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.¹⁵

Another type of quantitative restriction is that in the Mendocino County, California zoning ordinance, which requires the county to maintain a ratio of “thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”¹⁶

Many short-term rental regulations incorporate performance-type standards for the operation of short-term rental properties. Below are examples of these types of standards that are frequently incorporated into short-term rental regulations:

- **Maximum Occupancy Limits:** This standard limits the maximum overnight occupancy of short-term rental properties based on the number of bedrooms in the home (for example, the Isle of Palms, South Carolina limits overnight occupancy to two persons per bedroom plus an additional two persons¹⁷) and/or on the septic capacity of the property. In Sonoma County, California, for example, the maximum overnight occupancy of a vacation rental property on a conditional septic system is “equal to the design load of the septic system.”¹⁸

¹² See Maui County, HA County Code § 19.38.030(B).

¹³ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(i).

¹⁴ See City of Cannon Beach, OR Zoning Code § 17.77.020(F).

¹⁵ San Luis Obispo County, CA Code § 23.08.165(c).

¹⁶ Mendocino County, CA Code § 20.748.020(A).

¹⁷ See Isle of Palms, SC City Code § 5-4-202(1).

¹⁸ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(2).

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- Rental Period Restrictions: This restriction places a limit on the number of times a property may be rented for short-term occupancy. The City of Santa Fe, New Mexico, for example, limits short-term rental units to a maximum of 17 rental periods per calendar year and permits no more than one rental within a seven consecutive day period.¹⁹
- Parking Requirements: This standard may require that the short-term rented property provide more off-street parking than comparable properties that are occupied by owners or long-term tenants. Santa Fe also specifically prohibits short-term rental occupants from parking recreational vehicles on site or on the street.²⁰
- Noise Level Limits: This standard applies specific noise level limitations to activities associated with short-term rental properties. Sonoma County's vacation rental ordinance, for example, includes an "Hourly Noise Metric" table that imposes specific quantitative noise level limits on vacation rentals during "activity hours" (9:00 a.m. to 10:00 a.m.) and "quiet hours" (10:00 p.m. to 9:00 a.m.).²¹
- Required Postings: This standard requires owners to prominently display a copy of the operational restrictions and contact information for the owner, manager, or other representative of the rental property.²² Owners may also be required to incorporate the operational restrictions in all rental agreements.
- Emergency Access Requirements: If located behind a locked gate or within a gated community, short-term rental units may be required to provide a gate code or lockbox with keys to local police, fire, or emergency services departments.²³
- Mandatory Designated Representatives: This standard requires that the short-term renter provide a current 24-hour working phone number of the property owner, manager, or other designated representative to local officials and to property owners within a certain distance of the rental unit. Some communities also require that the designated representative be available during all rental periods within a certain distance (e.g., a one-hour drive) of the rental property.²⁴
- Trash and Recycling Facility Storage: This standard requires that trash and recycling bins be stored in a location that is not visible from public rights-of-way. Section 5.25.070 of the City of Palm Springs, California vacation rental ordinance, for example, states: "Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the collectors and between the hours of five a.m. and eight p.m. on scheduled trash collection days."²⁵

¹⁹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²⁰ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²¹ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(6).

²² See, e.g., Venice, FL Land Development Code § 86-151(2)(b)(1).

²³ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(14).

²⁴ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(13).

²⁵ Palm Springs, CA Municipal Code § 5.25.070(g).

2.2.4 Registration/Licensing Requirements

Owners who intend to offer their property for use as a short-term rental unit may be required to register their property with the local government. Garrett County, Maryland, for example, requires owners to register their property with the Office of Licensing and Enforcement Management and to pay a one-time fee as condition precedent to receiving a “transient vacation rental unit license” from the County.²⁶ Short-term rental licenses often are valid only for a one- or two-year period, requiring property owners to renew the licenses—and to pay associated fees—on a regular basis.

Many communities require short-term rental properties to pass certain inspections prior to the issuance of a permit, license, or renewal. Tillamook County, Oregon, for example, as a condition to the issuance of a short-term rental permit, requires property owners to obtain a certification from a certified building inspector evidencing compliance with all applicable operational standards, including minimum fire extinguisher and smoke detector requirements, emergency escape and rescue standards, and structural requirements.²⁷

2.3 ENFORCEMENT

Communities typically enforce their short-term rental regulations (a) in accordance with a generally applicable enforcement provision contained in the code of ordinances or zoning ordinance, or (b) through a specific enforcement provision incorporated into the short-term rental regulations. Article 9 of the Isle of Palms, South Carolina Code of Ordinances is one example of a short-term rental ordinance that contains no specific enforcement provision, but is enforced under a generally applicable penalty provision.²⁸ Under the Isle of Palms Code of Ordinances, violation of the short-term rental ordinance is subject to the same penalties and procedures as a violation of any other provision the zoning code. Potential penalties for a violation are established under Section 5-4-7 of the Code of Ordinances, which states:

In case a structure or land is or is proposed to be used in violation of this chapter, the Zoning Administrator may, in addition to other remedies, issue and serve upon a person pursuing such activity or activities a *stop order* requiring that such person immediately cease all activities in violation of this chapter.

Any person violating any of the provisions of this chapter shall be deemed guilty of a *misdemeanor* and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. Each day that a violation continues shall constitute a separate offense.²⁹

²⁶ See Garrett County, MD Code of Ordinances § 160.03(A).

²⁷ See Tillamook County (OR) Short Term Rental Ordinances, Sections 6 (Standards) and 9.A.b (Short Term Rental Permit Application Requirements).

²⁸ See generally Isle of Palms, SC City Code §§ 5-4-201 to -206 (Short-Term Rentals) and § 5-4-7 (Violations and Penalties).

²⁹ Isle of Palms, SC City Code § 5-4-7 (Emphasis added).

By contrast, the short-term rental ordinances of Sonoma County, California and Santa Fe, New Mexico contain specifically applicable enforcement provisions. Under Section 26-88-120(g) of the Sonoma County vacation rental ordinance, individuals who register an initial complaint about a vacation rental property are directed to the contact person identified in the zoning permit or use permit issued for the property. Subsequent complaints are addressed to code enforcement officials who are responsible for conducting an investigation to determine whether there was a violation of a zoning or use permit condition. Code enforcement may accept neighbor documentation consisting of photos, sound recordings and video as proof of an alleged violation. If code enforcement verifies that a violation has occurred, then a notice of violation is issued and a penalty may be imposed in accordance with Chapter 1 of the Sonoma County Code. In addition, under Section 26-88-120(g)(1), code enforcement officers are also given the discretion to schedule a revocation hearing with the board of zoning adjustment. If a vacation rental permit is revoked, then a new zoning or use permit for a vacation rental may not be reapplied for or issued for a period of at least one year.³⁰ Santa Fe's short term rental unit ordinance includes a specific provision that authorizes the city to revoke a short term rental permit upon conviction for a third violation of the ordinance.³¹

SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS

3.1 IMPACTS ON RENTAL PROPERTY OWNERS

3.1.1 Rental Income

For some rental property owners, the adoption of short-term rental restrictions may result in the *loss* of rental income altogether. The most obvious example is an owner of property located in a zoning district where short-term rentals are no longer allowed under a local ordinance. In areas where short-term rentals are allowed, other property owners might face the loss of rental income due to their inability, for financial or other reasons, to satisfy the requirements for obtaining a permit, such as minimum off-street parking or structural requirements. As discussed in Section 5.3.6 below, some short-term rental regulations might also cause an owner to lose rental income because of suspension or revocation of a rental permit, even if the reason for suspension or revocation is beyond the owner's control (e.g., tenant behavior).

There are several ways in which a short-term rental restriction might also result in a *decrease* in rental income. An ordinance that restricts the number of times a property may be rented per year could have a significant impact on the property's income potential. Santa Fe, New Mexico, for example, limits short-term rentals to 17 rental periods per year.³² A maximum overnight occupancy provision could also negatively affect the income potential of a rental property by reducing the number of guests to whom a home may be rented. Rental restrictions can also cause a reduction in rental income where they have the effect of narrowing the field of potential tenants or discouraging vacationers from renting a home. For example, an ordinance that prohibits

³⁰ See generally Sonoma County, CA Code of Ordinances § 26-88-120(g).

³¹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(iv).

³² See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii)(B).

short-term occupants from parking a recreational vehicle on site or on the street might deter families who travel by RV from renting a home in Santa Fe.³³

3.1.2 Property Values

Short-term rental restrictions can affect property values in different ways. Generally speaking, all else being equal, if identified negative impacts of short-term rentals in a district or neighborhood are reduced or eliminated by short-term rental housing restrictions, property values may increase. On the other hand, the added limitations on the use of properties that short-term rental housing restrictions impose may cause property values in the district or neighborhood to decrease. The precise impact that short-term rental restrictions have on property values will depend on various factors, including the general character of the community (e.g., vacation destination versus non-destination community), the precise terms of the ordinance, local and national economic conditions, and local real estate market conditions.

3.1.2.1 Existing Short-Term Rental Properties

In general, the value of a home that was used as a short-term rental prior to the adoption of restrictions, but is either prohibited or restricted from future use as a short-term rental, can be expected to *decrease*. That is particularly true in vacation destination communities, where homeowners often purchase second homes as investment properties.³⁴ These potential buyers often plan to use the second home as a short-term rental property until they retire or otherwise become able to maintain the property as their full-time residence.³⁵ Such buyers would tend to be less interested in purchasing in an area where the short-term rental market is highly uncertain or is constrained by burdensome regulations.

In some circumstances, it is conceivable that a short-term rental ordinance could increase the value of those homes that were used as short-term rentals prior to the adoption of the restrictions *and* become lawfully licensed for use under the new regulations. Under the general economic principle of supply and demand, if an ordinance has the effect of reducing the *supply* of short-term rental properties and the *demand* for short-term rental properties rises or remains constant, then the value of individual properties licensed as short-term rental properties after the adoption of regulations, can be expected to rise.

3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties

The impact of short-term rental restrictions on the value of properties that were not used as short-term rentals prior to adoption of the restrictions will also vary. The value of a property that becomes licensed as a short-term rental for the first time under a new ordinance conceivably could *increase* if the quantity of short-term rental properties on the market falls as a result of the

³³ Section 14-6.2(A)(6)(a)(ii)(E) of the Santa Fe Short Term Rental Ordinance states: “Occupants shall not park recreational vehicles on site or on the street.”

³⁴ See National Association of Realtors®, *Nearly One in Seven Homebuyers Owned or Bought A Second Home During First Quarter*, July 13, 2003 (accessed at <http://www.realtor.org/publicaffairsweb.nsf/Pages/SecondHomeReport?OpenDocument>).

³⁵ See *id.*

ordinance. In residential neighborhoods where the existence of short-term rentals is considered a negative, an ordinance that prohibits future short-term rental activity in those neighborhoods could positively affect the value of homes in these locations.

3.1.3 Operational Costs

Short-term rental regulations tend to increase the cost of owning and operating a rental property in a number of ways. The regulations typically require owners to pay an up-front registration or permit fee and may also require payment of additional licensing fees on an annual or other recurring basis. Inspection requirements also add to the cost of operating a short-term rental since, in most cases, the inspections are performed at the owner's expense. Performance standards may also require an owner to undertake costly improvements in order to obtain a short-term rental permit. An owner may be required to expand an existing driveway in order to satisfy a minimum parking requirement or to upgrade electrical or sewer systems in order to qualify for a permit. In addition, a rental property owner who resides out of state may have to hire a property manager in order to satisfy a requirement that a designated representative be available at all times and within a certain proximity of the unit during any rental period.

3.1.4 Nonconforming Use Status

A property that was used as a short-term rental prior to the adoption of an ordinance that no longer allows short-term rentals may become a **nonconforming use** under state and local zoning laws. Although state and local laws zoning laws typically allow nonconforming uses to continue, the right to alter or expand a nonconforming use is usually limited and often requires the issuance of a special permit, or an equivalent form of zoning relief, from the local planning commission or board of appeals. In addition, a nonconforming use that is discontinued for a specific period of time (typically one or two years) may be deemed abandoned, and thereafter prohibited from resuming at a future date.

3.2 COMMUNITY IMPACTS

3.2.1 Local Real Estate Market

In vacation destination communities, many property owners depend on the income gained from short-term rentals to pay their mortgages, real estate taxes, association dues, and other expenses. If that income is taken away or severely reduced by short-term rental restrictions, the only alternative for those homeowners might be to sell their homes immediately in order to avoid foreclosure or a distressed sale. A widespread ban on short-term rentals that results in a substantial number of homes being sold or foreclosed upon may flood the market, causing property values to fall and remain depressed for a period of time.

3.2.2 Tourism

Short-term rental restrictions may negatively impact local tourism in at least two ways. First, they may affect the occupancy rates of vacation rentals by increasing the per-person cost of short-term rentals because they limit the maximum occupancy of a short-term rental unit. Short-

term rental restrictions may also cause rental property owners to increase their rental rates and minimum security deposits in order to cover the increased cost of operating a short-term rental and the risk of incurring a fine or having their rental licenses revoked or suspended. All else being equal, the higher rental rates paid by smaller groups of tenants, increase the per-person cost of short-term rentals in communities with short-term rental ordinances.

Second, tourists who become aware of the new restrictions may perceive them as being motivated by, and evidence of, an “anti-tourist” sentiment among full time residents of the community. Regulations that single out short-term rentals for different treatment may implicitly brand short-term renters as being potentially disruptive even though an individual tenant may have done nothing wrong. Provisions that allow random inspections of short-term rentals without imposing reasonable restrictions on the time or manner of those inspections may be perceived as an invasion of privacy and an unreasonable disruption of a family vacation. A perceived anti-tourist sentiment may ultimately discourage tourists from vacationing in that community.

A January 2010 report prepared by the Napa Valley Vacation Rental Alliance, argued that the availability of short-term rental properties could determine where a family or groups of friends vacationing together chooses to stay. The report states:

Throughout the world, some travelers prefer private dwellings to hotels. For instance, those traveling as a family or group of friends often want spacious accommodations and kitchens. This market segment will not substitute conventional lodging if vacation rentals are not provided, they will simply go elsewhere. Thus, by eliminating vacation rentals, Napa County would deter a substantial number of visitors who currently spend on restaurants, wine, attractions and services and who would instead spend for leisure outside our County.³⁶

The 2008 study “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County”³⁷ commissioned by the Realtors® Association of Maui (the “Maui TVR Study”) reached a similar conclusion. Acknowledging that “the TVR industry is concerned about . . . the potential enactment of legislation meant to marginalize [the TVR] industry, and the potential economic consequences of such policies,” the Maui TVR Study concluded:

The extent of the loss of the TVR industry due to government regulations depends to what extent TVR visitors substitute an alternative Maui County accommodation type to TVRs if they are unavailable or not sufficiently available to meet the current and expected future demand level for their accommodation type. In a global market place with alternatives to Maui destinations offering a literal potpourri of accommodation experiences, the modern, well-informed and sophisticated visitor can find the accommodations experience that best fits their tastes and preferences.

³⁶ Napa Valley Vacation Rental Alliance (NVVRA): A Coalition of Napa County Stakeholders (prepared for Napa County by Napa Valley Vacation Rental Alliance (NVVRA), Jan. 2010) (available on-line at <http://www.white.com/nvvra/media/WHY%20CODIFYING%20VACATION%20RENTALS%20NOW%20IS%20GOOD%20PUBLIC%20POLICY.pdf>).

³⁷ “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County,” prepared by Dr. Thomas Loudat & Dr. Prahlad Kasturi for the Realtors® Association of Maui (Jan. 8, 2008) (hereinafter the “Maui TVR Study”).

Based on the increasing market share of TVRs on Maui from 2000 to 2006 relative to other accommodation types one can reasonably surmise that the modern visitor increasingly prefers a TVR or its equivalent experience. Thus, even though elimination of Maui TVRs may not result in the loss of all TVR visitors who may substitute an alternative Maui County accommodation type yet available, we would still expect a significantly negative economic impact in Maui County if TVRs are eliminated or significantly reduced.³⁸

3.2.3 Local Economy

Local economies that lean heavily on the tourist economy are more susceptible to the potential impacts of short-term rental restrictions. Even a slight impact on tourism in these communities can have a significant negative effect on the viability and success of restaurants, retail establishments, and other local businesses that provide services to tourists. The potential dollar impacts of a reduction in visitor numbers due to a short-term rental restriction is illustrated by the daily spending calculations of the Maui TVR Study, which calculated that transient vacation rental visitors spent an average of \$159.16 per day in Maui County.³⁹ Based on 2006 transient vacation rental visitor data (105,967) and a 6.85 day average length of stay, the study concluded that transient vacation rentals produced more than \$115 million in total revenue from lodging, food and beverage, entertainment, shopping, and other county businesses and services.⁴⁰

3.2.4 Tax Revenue

Short-term rental restrictions can have a positive effect on tax revenue if communities are authorized by state law to impose and collect a tax on short-term rentals. Cities, towns and villages in Texas, for example, are authorized by the Municipal Hotel Occupancy Tax statute to impose and collect a nine percent tax on the price paid for short-term rentals.⁴¹ In 2011, the City of Austin estimated that it could gain an additional \$100,000 to \$300,000 in tax revenue by taxing short-term rental properties.⁴²

At the same time, however, short-term rental restrictions that negatively affect local tourism could cause sales tax revenue to decrease if restaurant and retail sales are down due to diminished tourism.

3.2.5 Affordable Housing

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.⁴³ In some cases, allowing short-term rentals may fuel speculation in rising housing markets by allowing investors to cover the

³⁸ Maui TVR Study at 1-2.

³⁹ See Maui TVR Study at 16.

⁴⁰ See Maui TVR Study at 16-17

⁴¹ See Texas Code § 351.003.

⁴² See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

carrying costs of a house for a period of time while the property appreciates in value and then sell it for a profit.⁴⁴ Tourist communities, in particular, may be affected if the workers in low-paying service and tourism related jobs can no longer afford to live in the community or within a reasonable commuting distance.⁴⁵

3.2.6 Governmental Administrative Costs

Short-term rental restrictions create additional administrative burdens on local government, including the processing of permit, licensing and registration applications. Local building officials are likely to be faced with an increased volume of required inspections. Code enforcement personnel and the police officers may be required to assume additional enforcement duties under a short-term rental ordinance. The financial burden of administering a short-term rental ordinance may weigh heavily on vacation-destination communities, where the a high volume of short-term rental properties may require local government to hire additional staff or pay increased overtime costs to current staff in order to implement the short-term rental program.

3.3 IMPACTS ON RENTERS

3.3.1 Rental Fees

As discussed above, the adoption of short-term rental restrictions may cause rental property owners to increase rental rates as a means of recovering licensing and permit fees, inspection and other related costs. If regulations expose a property owner to the risk of incurring a fine or having the owner's rental license suspended or revoked, the owner may also increase the minimum security deposit as a means of deterring tenants from engaging in behavior that might violate the short-term rental regulations.

3.3.2 Inventory of Short-Term Rental Units

Short-term rental restrictions can also reduce the inventory of short-term rental units in a community in various ways. For example, zoning regulations may prohibit short-term rentals in single-family residential zoning districts or within certain areas or neighborhoods. An owner who successfully operated a short-term rental property without complaint prior to the adoption of licensing requirements may be barred from continuing the use if the property does not conform to the new licensing criteria. More generally, owners may simply decide they do not want to assume the increased cost and risk of continuing to use their property as a short-term rental, and withdraw their properties from the inventory of short-term rental in the community.

⁴³ APA Report at 2.

⁴⁴ *See id.*

⁴⁵ *See id.*

3.4 UNINTENDED CONSEQUENCES OF SHORT-TERM RENTAL RESTRICTIONS

3.4.1 “Underground Market” for Short-Term Rental Units

Short-term rental restrictions that impose high permit and licensing fees, onerous inspection requirements, and performance standards that are difficult or costly for owners to satisfy might have the unintended effect of creating an underground market for short-term rentals, in which owners continue to rent their properties without obtaining the required permits. Owners who depend on rental income to pay their mortgages to pay the maintenance costs of a second home may be willing to risk incurring fines and other penalties if an ordinance creates obstacles that cannot be overcome or that may make it economically infeasible to obtain a rental permit.⁴⁶

3.4.2 Uncertainty in the Short-Term Housing Market

A short-term rental regulation that authorizes the suspension or revocation of a short-term rental permit can also introduce a degree of uncertainty in the short-term rental housing market. Vacation travelers often reserve short-term housing accommodations several months in advance of a planned vacation, particularly when the stay is planned during a destination’s peak visitation period. Under those circumstances, for example, it is conceivable that a family may make a reservation and pay a deposit several months in advance of a holiday ski vacation only to discover later that the home they had reserved is no longer available because its short-term rental permit was suspended or revoked. In some cases, by the time a vacation home renter makes that discovery, it may be too late to find suitable alternative short-term housing, leaving the vacationer with a negative impression of the local community—an impression that the vacationer is likely to share with others.

SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS

4.1 AUTHORITY TO REGULATE

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.⁴⁷ Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the zoning power.⁴⁸

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.

⁴⁶ See “More destinations shut the door on vacation rentals, *USA Today*, August 6, 2010 (commenting that the ban on short-term rentals in New York City apartments, most of which are already prohibited under many condominium and co-op bylaws, “will simply go further underground”).

⁴⁷ 5 RATHKOPF’S THE LAW OF ZONING AND PLANNING § 81:11 (4th Ed 2011) (hereinafter “RATHKOPF”) (citing to *Brown v. Sandy Bd. of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998) (finding that city has authority to prohibit short-term rentals in single-family neighborhood)).

⁴⁸ RATHKOPF § 81:11 (citing *Cope v. City of Cannon Beach*, 855 P.2d 1083, 317 Or. 339 (1993) and *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (6th Dist. 1991)).

2011-119 on June 2, 2011, the Florida law (entitled “An act relating to public lodging establishments and public food service establishments”) 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, 2011.⁴⁹

As of the date of this paper, 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.

4.2 TAKINGS

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.⁵⁰ 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*,⁵¹ 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).⁵²

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 case⁵³ 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.⁵⁴ 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.

⁴⁹ The enrolled version of House Bill No. 883 is available on the Florida State Legislature’s website at: <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0883er.docx&DocumentType=Bill&BillNumber=0883&Session=2011>.

⁵⁰ PATRICIA E. SALKIN, 2 AMERICAN LAW OF ZONING § 16:1 (5th ed. 2008) (hereinafter “SALKIN”).

⁵¹ *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

⁵² SALKIN § 16:9 (citing *Penn Central*, 438 U.S. at 124).

⁵³ *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

⁵⁴ *See id.* at 1084.

Although those uses may not be as profitable as are shorter-term rentals of the properties, they are economically viable uses.⁵⁵

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.

4.3 DUE PROCESS

The Fourteenth Amendment to the U.S. Constitution prohibits any governmental action that deprives “any person of . . . liberty or property, without **due process** of law.” This clause imposes both substantive and procedural requirements. The substantive component of the due process clause, known as “substantive due process,” tests the governmental purposes implemented by land use regulations. To satisfy substantive due process, a regulation must advance a legitimate governmental purpose.⁵⁶ In general, a local land use ordinance will survive a substantive due process challenge if there exists a rational relationship between the terms of the ordinance and a legitimate governmental interest.⁵⁷ A local ordinance may be challenged on due process grounds either on its face, or as applied to a particular case. When a landowner makes a *facial* challenge to a zoning ordinance, “he or she argues that *any* application of the ordinance is unconstitutional.”⁵⁸ On the other hand, when a landowner makes an *as applied* challenge, he or she attacks “only the specific decision that applied the ordinance to his or her property, not the ordinance in general.”⁵⁹

In a California case,⁶⁰ the plaintiffs challenged the city of Carmel's transient rental ordinance on substantive due process grounds, arguing that the prohibition was “not rationally related to the goals sought to be achieved.”⁶¹ The California court of appeals rejected the substantive due process claim, finding that the ordinance was rationally related to the goals and policies set forth in the city's general plan, as well as the stated purpose of the R-1 district.⁶² In support of its conclusion, the court explained that short-term rentals were inconsistent with the residential character of the community:

It stands to reason that the “residential character” of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or even 29 days. Whether or not transient rentals have the other “unmitigatable, adverse impacts” cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They

⁵⁵ *Id.* at 1086-87 (internal citations omitted).

⁵⁶ See SALKIN § 15:2.

⁵⁷ See *id.*

⁵⁸ *WMX Technologies, Inc. v. Gasconade County*, 105 F.3d 1195, 1198-99 n.1 (8th Cir. 1997) (emphasis added).

⁵⁹ See SALKIN § 15:2.

⁶⁰ *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6th Dist. Cal. 1991).

⁶¹ *Id.* at 1596.

⁶² See *id.* at 1589.

do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.⁶³

Referring back to its discussion of Carmel’s stated goals, the court summarily concluded:

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal.⁶⁴

The California state court decision illustrates the difficulty of challenging a short-term rental restriction on substantive due process grounds. In general, a short-term rental restriction seems likely to survive substantive due process scrutiny if the local jurisdiction articulates a legitimate governmental interest (e.g., the protection of residential character in predominantly single-family neighborhoods), and can produce some findings connecting short-term rental activity to the types of neighborhood and community impacts described in Carmel’s transient rental ordinance.

4.4 EQUAL PROTECTION

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which states the basic principle that all persons similarly situated should be treated alike.⁶⁵ The general rule is that a state or local law is presumed to be valid and will be sustained if the classification drawn by the law is rationally related to a legitimate state interest.⁶⁶ If a local or state law does not involve a suspect classification (e.g., one that treats persons differently on the basis of race, alienage, or national origin) or a fundamental right (e.g., the right to vote, the right to interstate travel), then an equal protection challenge is analyzed under the rational basis test. The rational basis test is a very deferential test, under which an ordinance generally will be upheld if there is any “reasonably conceivable state of facts that could provide a rational basis for the classification.”⁶⁷ Moreover, the rational basis test does not require a legislative body to articulate its reasons for enacting an ordinance, because “[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”⁶⁸ This means that a court may find a rational basis for a law, even if it is one that was not articulated by the legislative body.

A short-term rental ordinance may be vulnerable to an equal protection challenge on the ground that it treats similar properties differently based on whether a property is occupied by short-term tenants or longer term tenants. For example, take an ordinance that generally does not impose a

⁶³ *Id.* at 1591.

⁶⁴ *Id.* at 1596.

⁶⁵ See generally *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

⁶⁶ See generally *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

⁶⁷ *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, (1980).

⁶⁸ *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096 (1993).

maximum occupancy limit on single family homes in a city's residential zoning districts, but does impose such a limit on homes that are used for short-term rentals. On its face, this ordinance treats similar properties (i.e., single family homes in the same zoning district) differently, based on whether they are used as a short-term rental. Because no suspect classification or a fundamental right is implicated, an equal protection claim against the ordinance would be reviewed under the deferential rational basis test. For the same rational basis reasons discussed above in connection with a substantive due process challenge, the short-term rental ordinance is likely to survive judicial scrutiny.

Since 2000, as a result of the U.S. Supreme Court decision in *Village of Willowbrook v. Olech*,⁶⁹ "selective enforcement" claims in land use cases may also be brought under the Equal Protection clause. Selective enforcement claims generally assert that a municipality arbitrarily applied its land use ordinance to a conditional use permit or other land use approval, or that enforcement of the ordinance was arbitrarily selective.⁷⁰ In *Olech*, the village refused to supply water to the plaintiffs unless they granted the village an easement that it had not required of other property owners. It was alleged that the village did so to retaliate for the plaintiffs having brought an earlier, unrelated suit against the village. The question before the Supreme Court was whether an individual who does not have a suspect classification or fundamental interest claim can nevertheless establish a "class of one" equal protection violation when vindictiveness motivated the disparate treatment. The Court held:

Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."⁷¹

From a plaintiff's perspective, the difficult part of the *Olech* decision is its requirement that selective enforcement claims involve intentional treatment. Moreover, it is unclear whether the intentional treatment rule requires merely an intent to do an act or, more specifically, the intent to harm or punish an individual for the exercise of lawful rights.⁷² Since *Olech*, most cases involving "class of one" equal protection claims that assert selective enforcement have not been successful.⁷³

⁶⁹ *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073 (2000).

⁷⁰ BRIAN W. BLAESSER & ALAN C. WEINSTEIN, *FEDERAL LAND USE LAW & LITIGATION* § 1:20 (Thomson-Reuters/West: 2011) (hereinafter "BLAESSER & WEINSTEIN").

⁷¹ *Olech*, 528 U.S. at 564 (citations omitted).

⁷² See BLAESSER & WEINSTEIN § 1:20.

⁷³ See generally BLAESSER & WEINSTEIN § 1:20, fn. 7.

SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS

5.1 QUESTION THE NEED FOR SHORT-TERM RENTAL RESTRICTIONS

One of the first questions that should be asked when a city or town proposes to adopt a short-term rental ordinance is whether there truly exists a need for the restrictions. In some cases, the perceived need for a short-term rental ordinance may be based solely on anecdotal evidence about the alleged problems caused by short-term rental tenants rather than on documented evidence that short-term rental tenants are causing problems. If nothing more than anecdotal evidence is provided in support of a proposed ordinance, it may allow opponents to later argue that it was adopted arbitrarily without any rational basis.

5.1.1 Empirical Analysis

Where proposed short-term rental restrictions appear to be supported solely by anecdotal evidence, Realtors[®] should question whether empirical studies using data from police call logs, code enforcement activity, and prosecutorial records have actually established the alleged adverse impacts to the community, and the degree to which those impacts are attributable to short-term rental properties. Below are some examples of the types of inquiries Realtors[®] can make of local government officials:

- What number of complaints logged by the local code enforcement and police departments were generated by short-term rentals? Does the data evidence an increase in the number of complaints attributable to short-term rentals over the last five years?
- How do the complaints concerning short-term rentals relate to the number of individuals occupying the short-term rental that is the subject of the complaint? Does the city or town have factual support to justify a proposed occupancy limit for short-term rental housing and to what extent does this limitation exceed the occupancy limits applicable to other types of housing?
- Does a specific type of complaint (e.g., noise disturbance, litter or trash, parking violations, or late night parties) constitute a large percentage of the total number of complaints recorded in the last five years? If so, does a provision of the local zoning or general ordinance already regulate the offending behavior? If it is possible to address the majority of the problems by enforcing existing nuisance regulations, rather than by imposing new maximum occupancy limits on short-term rentals, it may call into question the need for the proposed ordinance.
- Does a disproportionate number of complaints arise from a small number of rental properties? If yes, then a more appropriate response might be to adopt narrowly tailored regulations. An

example of this approach would be a regulation that would apply only after one or more violations are found on a property, rather than imposing the cost and disruption of new regulations on all owners of short-term rental property.

5.1.2 Stakeholder Input

Realtors[®] should also urge that local government officials seek and consider input from individuals and organizations with a stake in the short-term rental industry as early in the process as possible. Stakeholder groups should include representatives of local homeowner associations, rental property management associations, the local Realtor[®] associations, the chamber of commerce, local tourism bureau, and other organizations involved in the short-term rental industry.

5.1.3 Public Process

Realtors[®] should actively monitor and participate in the public hearing process. Early on, Realtors[®] should request an invitation to participate in any stakeholder groups formed by the local government prior to the public hearing process. Local governments often allow interested parties to discuss their concerns with local officials responsible for drafting and advising the local legislative body on a proposed ordinance at the beginning of the process. To the extent possible, Realtors[®] should take advantage of this opportunity to meet with the local planner or other staff members who may be drafting a proposed short-term rental ordinance.

State and local open public meetings laws generally require local legislative bodies to publish notice of scheduled public hearings, typically in the local newspaper, by posted notice at city or town hall, and/or on the official website of the city or town. If a draft of the proposed short-term rental ordinance is available prior to the public hearing, Realtors[®] should request a copy and review it thoroughly in advance of the hearing.⁷⁴ Realtors[®] should be prepared to submit written comments and/or to testify at the public hearing about their concerns with the proposal.

5.2 SUGGEST ALTERNATIVES TO SHORT-TERM RENTAL RESTRICTIONS

5.2.1 Enforcement of Existing Ordinances

Communities that wish to address the potential negative impacts of short-term rentals on residential neighborhoods likely already have regulations in place that are aimed at curtailing those types of impacts on a community-wide basis. In many cases the existing ordinances already address the types of behaviors and activity that would be the focus of short-term rental performance standards or operational restrictions. Below are some examples.

5.2.1.1 Noise Limits

Absent **preemption** by federal or state law, the control of noise is generally within the police power authority of local government. Communities commonly adopt noise control ordinances

⁷⁴ The Realtor[®] association may obtain assistance in this effort through NAR's Land Use Initiative program.

for the purpose of controlling unnecessary, excessive, and annoying noise within the community. In the City of San Luis Obispo, California, for example, the Noise Control Ordinance Noise Control Ordinance (Chapter 9.12 of the San Luis Obispo Municipal Code) expressly declares any noise in violation of Chapter 9.12 to be a **public nuisance**, punishable by civil or criminal action. The term “noise disturbance” is defined to mean:

any sound which (a) endangers or injures the safety or health of human beings or animals, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates the factors set forth in Section 9.12.060 of this chapter. Compliance with the quantitative standards as listed in this chapter shall constitute elimination of a noise disturbance.⁷⁵

Additionally, specific types of noise violations that commonly arise in residential neighborhoods are regulated under Section 9.12.050, including the following:

- Noise disturbances that are “plainly audible at a distance of fifty feet from the noisemaker, unless the noise does not penetrate beyond the boundaries of the noisemaker’s own premise.”⁷⁶
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device between the hours of 10:00 PM and 7:00 AM in such a manner as to create a noise disturbance audible across a property line.⁷⁷
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device in a manner that creates a noise disturbance at any time in excess of noise levels defined in Section 9.12.060 (measured by decibel levels and duration of the disturbance).⁷⁸

5.2.1.2 Public Nuisance

In general, cities and counties have the police power to declare and abate nuisances. The Boulder, Colorado nuisance abatement ordinance (Title 10, Chapter 2.5 of the Boulder Revised Code) defines a “public nuisance” to mean:

[A]ny condition or use of any parcel on or in which two or more separate violations of the Boulder Municipal Code have occurred within a twelve-month period, or three or more separate violations have occurred within a twenty-four month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel.⁷⁹

⁷⁵ City of San Luis, California Municipal Code § 9.12.020(U).

⁷⁶ See San Luis Municipal Code § 9.12.050(A).

⁷⁷ See San Luis Municipal Code § 9.12.050(B)(1)(a).

⁷⁸ See San Luis Municipal Code § 9.12.050(B)(1)(b).

⁷⁹ “Nuisance Abatement Information Sheet,” City of Boulder, Colorado (available on-line at http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat_info.pdf).

No violations or actions are designated as “public nuisance” acts. Instead, the determination whether a violation triggers the nuisance abatement process is made by the responding law enforcement agency. For instance, in some cases, a trash violation may trigger the nuisance abatement process, while in others the problem might be best handled with a municipal court summons. Legal remedies to abate public nuisances generally include the filing of a criminal complaint, or a civil action, or an administrative abatement.

5.2.1.3 Property Maintenance Standards

A property maintenance ordinance might be adopted for the purpose of maintaining, preserving, or improving a community’s inventory of residential and non-residential buildings. To accomplish this, property maintenance ordinances typically establish standards for the exterior maintenance of affected structures, including basic structural elements such as foundations and supporting columns, exterior finish surfaces, and doors and windows. Property maintenance standards may also require property owners to maintain existing trees, shrubs and other significant vegetation, and to keep all exterior areas sanitary free of trash and refuse.

5.2.1.4 Unruly Public Gathering Ordinance

Some communities, particularly college towns, such as Berkeley, CA and Tucson, AZ, have adopted “unruly gathering” ordinances that create significant sanctions for residents and property owners who host gatherings that create a substantial disturbance, as well as for party attendees who contribute to the problem. A significant advantage that an unruly gathering ordinance would have over a general noise ordinance or short-term rental ordinance is that the individual responsible for the disturbance is also penalized, rather than the tenant and/or property owner alone. Since the penalties for violating a noise ordinance generally apply only to the residents of the property where the violation occurs, a noise ordinance is unlikely to deter party guests from violating its terms.

5.2.1.5 Nighttime Curfew

To the extent that under-aged drinking and juvenile crime are a significant contributors to excessive noise and party disturbances in short-term rental properties in residential neighborhoods, a nighttime curfew ordinance that prohibits persons under the age of 18 years from being on or about public streets and public places during specified hours of the day could be an effective deterrent. The effectiveness of nighttime curfews is evidenced by a 2002 survey published by National League of Cities, in which 97% of communities that have nighttime curfew ordinances reported that they help combat juvenile crime. It bears noting, however, that a juvenile curfew ordinance generally would not be applicable to college students and other youthful offenders over the age of eighteen. To the extent that parties hosted and attended by college-aged young people are perceived as causing the disturbances that are of greatest concern, a curfew ordinance would probably have little, if any, effect.

5.2.1.6 Parking Restrictions

Communities often address the problem of improperly parked vehicles and excessive numbers of vehicles parked in residential neighborhoods through off-street parking regulations. These regulations may include provisions that prohibit vehicle parking within front yard setback areas in residential zoning districts and that restrict vehicle parking to hard surface driveways or designated parking areas. Regulations may also prohibit parking on grass areas, sidewalks, or within a certain distance of side property lines.

5.2.2 Adoption of Ordinances that Target Community-Wide Issues

Communities that have not adopted general community-wide noise regulations or the other regulations aimed at curtailing the types of behaviors and activities that would be regulated under a short-term rental ordinance, should be encouraged to adopt such general regulations rather than to single out short-term rental properties for regulation.

5.3 SHORT-TERM RENTAL HOUSING REGULATION BEST PRACTICES

This section presents several types of “best practice” provisions that have been implemented in jurisdictions which have short-term rental restrictions and which Realtors® may find acceptable, depending upon local market conditions. Each section begins with a brief description of the type of best practices. This description is followed by one or more examples of the best practice technique as adopted by local jurisdictions.

5.3.1 Narrowly-Tailored Regulations

An effective short-term rental ordinance should be narrowly tailored to address the specific needs of the local community. The potential for over-regulation is a legitimate concern, particularly when a proposed ordinance is driven by the vocal complaints of one or more permanent residents about their negative experiences with nearby short-term renters. Residents often complain that short-term rentals are inherently incompatible with residential neighborhoods and demand an outright prohibition against the use. In those circumstances, the concern is that elected officials, in an effort to please their constituency, may acquiesce to those demands without carefully considering: (a) whether there truly exists a need for short-term rental restrictions; and (b) if a need exists, what regulatory approach is best-suited to addressing the particular needs of the community.

Short-term rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which short-term rentals need to be regulated. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas

would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

Best Practice Example: Clatsop County, Oregon. In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into nearly forty zoning district designations, including more than a dozen residential districts.⁸⁰ The county's short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.⁸¹

5.3.2 “Grandfathering” Provisions

Short-term rentals that lawfully existed prior to the enactment of a short-term rental ordinance, but are not allowed under the newly adopted ordinance—either because the use is prohibited outright or because the applicant is unable to satisfy the criteria for obtaining a permit—should be allowed to continue (i.e., “grandfathered”) if the property owner is able to demonstrate that the short-term rental use pre-dated the ordinance. Zoning ordinances typically contain a general nonconformity provision that establishes the requirements for a use or structure to secure a legal nonconforming status. However, short-term rental ordinances may also contain specific grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

Best Practice Example: Kauai County, Hawaii. Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and -17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a nonconforming use certificate. To obtain a nonconforming use certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that:

[the] dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws . . . up to and including the time of application for a nonconforming use certificate.⁸²

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on submission of the following documentary evidence: records of occupancy and tax documents, including: State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment of deposits for reservations and fees for occupancy of the subject property by transient guests.⁸³

⁸⁰ See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010.

⁸¹ See Clatsop County, OR Ordinance No. 03-13.

⁸² Kauai County Code § 8-17.10(c).

⁸³ Kauai County Code § 8-17.10(e).

Best Practice Example: Monterey County, California. Monterey County’s short-term rental ordinance grandfathers short-term rental units that were in operation before the ordinance was adopted. Section 21.64.280 of the Zoning Ordinance provides:

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and Building Inspection and the administrative permit application is filed within 90 days of the effective date of this Section. . . . The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is no the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.⁸⁴

5.3.3 Quantitative and Operational Restrictions

Quantitative Restrictions. The use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of mitigating the impacts of short-term rentals can be viewed in two ways. On the one hand, such limitations on the number of short-term rentals allowed in a community are preferable to an outright prohibition on the use. On the other hand, for property owners desiring to enter the short-term rental market after the effective date of a short-term rental ordinance, a quantitative restriction may act as a barrier to entry. Quantitative restrictions therefore may constitute a reasonable compromise position in circumstances where community support is divided on a proposed short-term rental ban.

Jurisdictions considering a quantitative restriction should carefully consider which technique is best suited to further the needs and goals of the community. For example, if a community finds that the negative impacts of short-term rentals are manifested only when they exist in clusters or in close proximity to one another in a residential neighborhood, then a *proximity restriction* would be a more effective technique than a fixed cap or ratio. On the other hand for a community seeking to maintain a balance between its long-term housing needs and visitor-oriented accommodations, a maximum *ratio* of long term residential dwelling units to short-term rental permits would be more effective than a fixed cap or proximity restriction.

Best Practice Example: Mendocino County, California. Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.” To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved after the effective date of this ordinance, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”⁸⁵ While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until

⁸⁴ Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b).

⁸⁵ Mendocino County, CA Code § 20.748.020(A).

thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.⁸⁶

Best Practice Example: San Luis Obispo County, California. The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”⁸⁷ More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full time residents.”⁸⁸ Accordingly, rather than prohibiting vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.⁸⁹

Operational Restrictions. Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 5.2 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

5.3.4 Licensing/Registration Requirements

Virtually all 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. The procedures and criteria for obtaining a short-term rental license or permit should be clearly set out in the local ordinance. Short-term rental licensing and registration applications should be processed administratively and without need for a public hearing. Such licensing/registration requirements should not require a conditional use permit or a similar-type zoning permit.

⁸⁶ See Mendocino County, CA Code § 20.748.020(A)-(B)..

⁸⁷ San Luis Obispo County, CA Code § 23.08.165(a).

⁸⁸ *Id.*

⁸⁹ San Luis Obispo County, CA Code § 23.08.165(c).

Best Practice Example: City of Palm Springs, California. In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (a) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city’s Business Tax Ordinance for such activity. Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee “shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration].”⁹⁰

Best Practice Example: City of Encinitas, California. In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted “unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law.”⁹¹

5.3.5 Inspection Requirements

As noted in Section 3.1.3, 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.

Best Practice Examples: Douglas County, Nevada; City of Palm Springs, California; and Sonoma County, California. The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.

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. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”⁹² It stands to reason that a provision requiring inspection of transient private rental

⁹⁰ City of Palm Springs, CA Municipal Code § 5.25.060(b).

⁹¹ See City of Encinitas, CA Municipal Code § 9.38.040(A)(3).

⁹² City of Bear Lake, CA Municipal Code § 17.03.310(A).

homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

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. Provisions requiring short-term rental units to be inspected annually (typically as a condition precedent to the issuance of a permit renewal), such as Section 17.03.310(D)(2) of the Big Bear Lake ordinance, are unnecessarily burdensome on owners and the local government alike.

Best Practice Example: City of Cannon Beach, Oregon. The short-term rental ordinance adopted by the City of Cannon Beach provides an example of a more reasonable periodic inspection requirement. Under Section 17.77.040(A)(2) of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.⁹³

5.3.6 Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Tillamook County and Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.⁹⁴ By contrast, under Section 1.06.030 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

Enforcement provisions should not penalize short-term rental property owners (or their agents) for violations beyond their control. For example, if a short-term rental *tenant* violates a noise level restriction, the property owner should not be held responsible for the violation.

⁹³ See City of Cannon Beach, OR Zoning Code § 17.77.040(2)(a).

⁹⁴ See City of Palm Springs, CA Municipal Code § 5.25.090(a).

Best Practice Example: Douglas County, Nevada. Chapter 5.40 of the Douglas County Code regulates vacation home rentals in the Tahoe Township. Although the vacation home rental ordinance imposes certain operational restrictions on permitted rental units (e.g., parking and occupancy limitations and trash/refuse container rules), Section 5.40.110 states that a permit may be suspended or revoked only for a violation committed by the owner.

5.41.110 Violation and administrative penalties.

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:
 - 1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
 - 2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
 - 3. The owner has violated the provisions of this chapter; or
 - 4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code.
 - 5. Any false or misleading information supplied in the application process.

Prior to the imposition of fines or other penalties, a short-term rental ordinance should conform to the due process requirements established under state law and/or the local jurisdictions charter or code of ordinances. At a minimum, before fines or other penalties are imposed, property owners should be given notice of, and an opportunity to cure, any alleged violation, except where exigent public safety concerns exist. As demonstrated in the best practice examples below, property owners should be given the opportunity to request a public hearing and have the right to appeal a local government's decision to suspend or revoke a short-term rental permit.

Best Practice Example: City of Encinitas, California. Under Section 9.38.060 of the City of Encinitas short-term rental ordinance, penalties may be imposed and permits may be suspended only in accordance with the following provisions:

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the city clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection (A), the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more

than 45 days of receipt of request for a hearing. The City Manager or his or her designee shall preside over the hearing. The City Manager or his or her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this Chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.⁹⁵

Best Practice Example: City of Cannon Beach, Oregon. Section 17.77.050(B) of the Cannon Beach Zoning Code provides another example of the notice and public hearing process afforded to short-term rental property owners prior to the imposition of fines or the revocation of a permit.

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.⁹⁶

⁹⁵ City of Encinitas, CA Municipal Code § 9.38.060.

⁹⁶ City of Cannon Beach, OR Zoning Code § 17.77.050(B)

GLOSSARY OF TERMS

Common law: Law developed by judges through decisions of courts and similar tribunals rather than through legislation (statutes) or executive actions.

Due Process: The constitutional protections given to persons to ensure that laws are not unreasonable, arbitrary, or capricious. When such laws affect individuals' lives, liberty, and property, due process requires that they have sufficient notice and opportunity to be heard in an orderly proceeding suited to the nature of the matter at issue, whether a court of law or a zoning board of appeals. Essentially, due process means fairness.

Equal Protection: The right of all persons under like circumstance to enjoy equal protection and security in their life, their liberty, and their property and to bear no greater burdens than are imposed on others under like circumstances.

Nonconforming Use: A use that lawfully existed prior to the enactment of a zoning ordinance, and that is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated, is commonly referred to as a "nonconforming use."⁹⁷

Police Power: The power that resides in each state to establish laws to preserve public order and tranquility and to promote the public health, safety, morals, and other aspects of the general welfare.

Preemption: A doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such national, as opposed to local, character that federal laws preempt or take precedence over state laws on such matters. As such, a state may not pass a law inconsistent with the federal law. The doctrine of *state law* preemption holds that a state law displaces a local law or regulation that is in the same field and is in conflict or inconsistent with the state law.⁹⁸

Public Nuisance: At common law "public nuisance" generally consists of "an unreasonable interference with a right common to the general public, including activities injurious to the health, safety, morals or comfort of the public."⁹⁹

Zoning Enabling Statute: State legislation "authorizing local governments to engage in planning and the regulation of activity on private land."¹⁰⁰

⁹⁷ PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 12:1 (5th ed. 2010).

⁹⁸ Article VI, Section 2, of the U.S. Constitution, commonly referred to as the "Supremacy Clause," provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

⁹⁹ ZONING AND LAND USE CONTROLS § 16.02[2].

¹⁰⁰ See ZONING AND LAND USE CONTROLS, Ch. 1, Introduction and User's Guide § 1.02[2] (LexisNexis Matthew Bender) (hereinafter "ZONING AND LAND USE CONTROLS").