



CITY OF SAN RAFAEL:

Overview of leading regulatory and enforcement approaches used by local governments to achieve common short-term rental related policy objectives

Prepared by Host Compliance, LLC

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INTRODUCTION

Sharing our homes has been commonplace for as long as there have been spare rooms and comfortable couches. Whether through word of mouth, ads in newspapers or flyers on community bulletin boards, renters and homeowners alike have always managed to rent out or share rooms in their living spaces. Traditionally these transactions were decidedly analog, local and limited in nature, but with advance of the internet and 100s of websites like as Airbnb.com and HomeAway.com it has suddenly become possible for people to advertise and rent out their homes and spare bedrooms to complete strangers with a few mouse-clicks or taps on a smartphone screen. With this new technology has come rapid growth, and with this rapid growth, many communities including the City of San Rafael are experiencing an increased volume of “strangers” in residential communities. While some of these consequences are positive (increased business for local merchants catering to the tourists etc.), there are also many potential issues and negative side effects that local governments can mitigate by adopting sensible and enforceable regulations. That said, short-term rentals (“STRs”) present many regulatory and compliance monitoring and enforcement challenges and, within any city’s limited resources, these challenges can only be overcome through thoughtful designed ordinance provisions, procedures and systems. Too many cities, rushing to put in place short-term rental compliance monitoring and enforcement processes, have found themselves in untenable situations where their regulations and enforcement procedures have turned out to be hopelessly ineffective. Hence, there are many lessons and best practices that can be learned from other cities.

This document offers brief descriptions of several cities’ regulatory and enforcement approaches to short-term rentals, their respective compliance monitoring and enforcement processes, and the associated enforcement costs and results. It is worth noting that every city has a different set of priorities and a different definition of ‘success’ in regulating and enforcing STRs; some strive for permit compliance, some optimize for tax compliance, while others simply don’t want any short-term rentals to operate in their city.

The enforcement resources necessary to achieve satisfactory levels of compliance will vary dramatically depending on what the regulatory objectives are and how the resulting ordinance is written and implemented. Achieving tax compliance is for example much easier than attempting to shut down all short-term rentals. Likewise, the need for staff time and external data and

systems resources derive as much, if not more, from the wording and thoughtfulness of the short-term rental ordinance.

The main lessons from these discussions are as follows:

- A badly worded ordinance is practically impossible to enforce no matter how experienced and well-resourced the code-enforcement department is
- Compliance monitoring must be constant as hosts return to illegal renting as soon as they perceive that the city is scaling back on its enforcement efforts
- It is important to initiate enforcement activities at the same time as an ordinance is passed or amended as failure to do so can encourage non-compliance and exacerbate the problems down the road
- To increase permit compliance, cities must make it easy to apply for a permit and ideally put all permit application and tax collection forms online
- If possible, collaborating with the platforms has the potential to make enforcement significantly easier. That said, there are now more than 125 short-term rental websites operating in the U.S., and one can reasonably expect a migration of listings to non-cooperating websites as the industry evolves. Having a pro-active platform-independent compliance monitoring and enforcement strategy is therefore paramount

As mentioned there is no one-size-fits all short-term rental ordinance that will work in every community. In fact, to be effective, any local regulations dealing with short-term rentals must be crafted to address the community's specific planning objectives, economic and regulatory context. Before starting a debate about the specific provisions of potential new (or updated) short-term rental ordinance it is therefore imperative that the decision-makers reach consensus as to the community's overarching strategic goals and policy objectives. Achieving strategic alignment on the policy objectives before diving into the specifics of a new ordinance has two major benefits: a.) it makes it possible to focus the discussion on the things that really matter for the community, b.) it makes it easier to appropriately weight competing objectives if/when there is a conflict between different proposed ordinance provisions.

Below is a list of some of the most common policy objectives as it relates to short-term rentals:

1. Minimize impact on the supply and/or affordability of the long-term rental housing supply.
2. Maintain the residential character of residential communities (e.g. neighborhoods, multi-family buildings).



3. Minimize any safety risks of short-term rentals, over and above risks of long-term rentals.
4. Treat short-term rental accommodation providers – hotels, bed and breakfasts, peer-to-peer rentals – equitably.
5. Achieve broad-based compliance with the adopted regulations
6. Ensure simple, transparent, customer-oriented regulatory and enforcement processes.
7. Recover the costs of enforcement

The rest of this report is organized about these common policy objectives and will provide more information on the leading regulatory and enforcement approaches currently used in other jurisdictions to achieve these goals. After the discussion of the regulatory and enforcement best practices, the report will also profile two nearby communities – the City of Petaluma and the City of Mill Valley – who have both taken steps to incorporate certain aspects of these best practices as they have worked to achieve their goals for short-term rentals in their respective communities.



About Host Compliance

Host Compliance LLC (<https://hostcompliance.com>) is a privately held company located in San Francisco. Serving more than 115 local governments (including 47 California communities), the company is the world's leading provider of short-term rental compliance monitoring and enforcement solutions to local governments. Partnering with city regulators in staff in these communities, Host Compliance has developed a unique understanding of what works and what doesn't when it comes to analyzing local short-term rental markets and implementing effective short-term rental regulations designed to accomplish each community's specific planning and policy objectives.

This report was created by Host Compliance staff including two of North America's leading experts on the topic of short-term rental regulation, compliance monitoring and enforcement:

Ulrik Binzer

Ulrik is the Founder and CEO of Host Compliance, the industry leader in short-term rental monitoring and compliance solutions for local governments. A pioneer in the short-term rental enforcement solution space, Ulrik developed the first short-term rental compliance monitoring tools and now uses his expertise and insights to help local governments across North America implement, monitor and enforce short-term rental regulation. Ulrik previously served in a variety of leadership roles in management consulting, private equity, startups and the military and developed his strategic and analytical skill-set at McKinsey & Company and Harvard Business School.

Jeffrey Goodman

Jeffrey is an urban planner and considered one of North America's leading authorities on short-term rentals and how they impact communities. He has contracted with both the City of New Orleans and Airbnb, and advised research on short-term rentals cities including San Francisco, Victoria, Portland, New Orleans, and New York. Jeff has spoken about short-term rentals across the country, including at the APA's National Planning Conference. He graduated from Yale College and earned his Masters of Urban Planning from Harvard University. He is the author of a featured article in Planning Magazine on the topic of STRs.

Methodology

As a data and consulting services provider exclusively focused on helping local governments draft, implement and enforce short-term rental ordinances, Host Compliance has met with more than 500 cities and counties across North America to discuss their respective short-term rental related regulations and enforcement approaches. The output of these meetings has been aggregated in Host Compliance's proprietary database of short-term rental ordinances and enforcement results. This report is a distillation of this data and insights and is designed to quickly get the reader up to speed on the regulatory and enforcement best practices from communities across the U.S. and Canada. In addition to the work done on the national level, this report also contains detailed case-studies on the cities of Mill Valley and Petaluma. The information and data for these case studies was collected through a combination of public information requests, online resources and interviews with Ingrid Alverde who is the Economic Development Manager at the City of Petaluma and Lisa Newman who is a Senior Planner at the City of Mill Valley. The interviews and local research was conducted during the first 2 weeks of April 2018. The data that forms the basis for the broader best practices discussion was collected between September 2015 and April 2018.

Overview of leading regulatory and enforcement approaches used by local governments to achieve common short-term rental related policy objectives

Objective 1: Minimize impact on the supply and/or affordability of the long-term rental housing supply.

One of the biggest concerns in regulating the short-term rental market is the effect on the availability and affordability of long-term housing. On one side of this debate stand STR operators and short-term rental listing companies such as Airbnb who argue that the additional rental income generated by short-term rental hosts help local residents afford to stay in neighborhoods they would be otherwise priced out of. On the other side, local residents and housing advocates argue that STRs are taking units away from residents, advancing gentrification, and disrupting the property market. According to a recent article in the Harvard Law & Policy Review¹ the theory goes as follows: short-term rentals "reduces the affordable housing supply by distorting the housing market in two interconnected mechanisms. The first such mechanism is one of simple conversion: any housing unit that was previously occupied by a city resident, but is now listed on Airbnb year-round, is a unit that has been removed from the rental market and has essentially been added to [the community's] supply of hotel rooms. This leads to a real, but likely mild, increase in rents, an effect that is concentrated in affluent or gentrifying neighborhoods along the [community's] central core. More disconcertingly, conversion reduces [the community's] already-limited supply of affordable housing. The second mechanism is "hotelization." So long as a property owner or leaseholder can rent out a room on Airbnb for cheaper than the price of a hotel room, while earning a substantial premium over the residential market or rent-controlled rent, there is an overpowering incentive to list each unit in a building on Airbnb rather than rent to [local] residents, thereby creating "cottage hotels." This decreases the supply of housing and spurs displacement, gentrification, and segregation". This conclusion is supported by a recent paper published by researchers at the National Bureau of Economic Research, the University of California, Los Angeles (UCLA) and the University of Southern California² which concluded that on a national basis "a 10% increase in Airbnb listings leads to a 0.42% increase in rents and a 0.76% increase in house prices. Moreover, we find that the effect of Airbnb is smaller in zipcodes with a larger share of owner-occupiers, a result

¹ http://harvardlpr.com/wp-content/uploads/2016/02/10.1_10_Lee.pdf

² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006832

consistent with absentee landlords taking their homes away from the long-term rental market and listing them on Airbnb." Given that the short-term rental industry has grown by 800% since 2011, it is therefore not hard to see why many people are concerned about this industry's impact on the affordability and availability of long-term rental housing.

Given the mounting evidence of short-term rentals having a negative impact on housing affordability, many cities err on the side of long-term residents and seek to address the negative housing cost implication directly in their ordinance by adopting some or all of the following provisions:

a) Defining permitted units based on locally-relevant criteria

The most direct way to address the housing issue is in the very definition of an STR: who can rent what when? Using the mix of owners and renters, single-family vs. multi-family housing, and neighborhood needs, cities can tailor their permit requirements to ensure that certain types of uses that would negatively impact housing affordability is prohibited. There are many types of uses (occasional, seasonal, full-time) and users (speculators, couch-surfing holdovers, struggling retirees etc.) so the definition of an STR helps to segment the marketplace and only allow the uses and users sanctioned by the city. Some leading approaches:

i) Primary/Principal residency requirements

To limit the spread of commercial-style operators or those with multiple units – cities such as Denver, Kansas City (MO), and Nashville have adopted ordinances that limit STR permit eligibility to the primary/principal residence of the permit holder. By its very nature, a person's primary residence is the dwelling where he/she usually lives and as such a person can only have one primary residence at any given time. Given this, the renting of such units cannot cause the loss of long-term housing, assuming proper permitting (occupancy based on tax bill, homestead exemption, or days present) and enforcement (preventing unlicensed operators or residence fraud). The criteria for establishing primary residence varies from city to city but must be codified to be effective. As an example, the City of Pasadena's rules specify that a short-term rental permit is issued only to the primary resident(s) of the property if they reside at the property for a minimum of nine months per calendar year and that proof of primary residency is required. The proof is further defined as at least two of the following types of documents: government issued IDs, current voter registration forms, recent state of federal tax fillings or recent utility/cell phone bills. While this may seem complicated, the same exact process is often used by local governments and school districts to verify eligibility for enrollment in certain public schools.

ii) Building type restrictions

In communities with a more heterogeneous built environment, cities can place limits on the type of unit that can be permitted, with or without regard to ownership or occupancy. New Orleans' new ordinance for example has a permit category just for shotgun duplexes and accessory units with different rules than 'full-home' rental units. Likewise, Portland (OR) will not permit any structure with more than three bedrooms. The purpose of these provisions is to preserve family housing and to limit 'party houses.' In places with larger apartment buildings or condo developments some cities, like Chicago, limit STRs to a certain percentage of the units in any particular building.

iii) Annual rental limits

While limiting the number of nights in a year that a unit can legally operate as an STR is theoretically a clear and direct way to prevent housing conversion, most cities have found that such a mechanism is not as effective as envisioned. For one, if the annual rental limit is set too high, a landlord may still be able to make more money renting his/her unit as a short-term rental than he/she could make by renting out that same unit on a long-term basis. To make annual rental limits effective, the city must therefore know the exact economic breakeven point in their area. To do so requires sophisticated econometric analysis and is further complicated by the fact that the break-even point often vary from neighborhood to neighborhood and from property type to property type. As an example, one of San Francisco's planning agencies developed breakeven tables for each neighborhood in the city based on STR rates and long-term rents to determine the likelihood of long-term housing conversion in each part of the city.

More importantly, virtually no city in the country has been able to hold operators to annual rental limits. Listing companies have little incentive to aid enforcement or hold hosts to limits and even with the best 3rd party compliance monitoring software it is hard to get 100% accurate data on the actual rental activity of each rental unit. In addition, short-term rental hosts jump from listing site to listing site to avoid detection. The complex logistics of enforcing this type of provision are therefore so daunting that most cities do not consider annual rental limits as a primary mechanism to alleviate short-term rental related housing affordability concerns.

b) Neighborhood caps

Housing issues are not just confined to individual properties; they exist at different scales, from block to neighborhood to the whole city. When looking at STRs, some cities work at the neighborhood level to set a maximum level of STR density by limiting the number of permits



offered in a given area. Nashville, for example, limits the total number of STRs to 3% of all housing units in a Census tract for non-owner-occupied units. New Orleans, while relaxing rules city-wide, maintains a ban in the desirable French Quarter; the economics of converting long-term rental units into de-facto hotels would otherwise simply be too powerful to resist.

c) Affordable housing fees

To offset the impact on housing affordability, several cities have imposed fees on short-term rentals – either as an add-on to hotel and sales taxes or as annual permit fee earmarked for affordable housing initiatives. For example, Chicago adds on a 4% surcharge to every booking for its homelessness fund. New Orleans, being more host-friendly, charges a \$1 fee per booking. A resulting debate usually centers on whether to target this money in the neighborhoods that have the most STRs or to spend it citywide. Collecting this money raise a different challenge as it is often not cost effective for smaller cities to collect small dollar amounts from many individual operators.

d) Banning renter-operated units

In general, many cities are wary of permitting renters to sublet their units as short-term rentals. There are a variety of reasons for this skepticism: 1) For communities concerned with housing, the purpose of their ordinance is often to specifically prevent long-term rentals from becoming short-term rentals and the fear is that landlords, once they see how much money is being made in the short-term rental mark, will simply evict the middleman. 2) Cities with rent stabilization or subsidized housing often view that as a public good and don't want to subsidize commercial businesses. 3) Homeowners are often viewed as more reliable and invested in operating an STR legally, safely, and with regard to neighbors. 4) Cities want to simplify the permitting process, so verifying lease and landlord consent documentation is unappealing. 5) The insurance and liability issue seem too daunting to handle (more about this later).

That said, many communities still allow renters of market-rate units to operate as STRs, usually with some verification process that requires an explicit permission from the rental properties' owner(s).

Objective 2: Maintain the residential character of residential communities (e.g. neighborhoods, multi-family buildings).

Like the decline in housing availability, the loss of a residential character is a palpable worry for many residents when faced with the growth of STRs. And while it can be difficult to find a universal definition of the right ‘character,’ cities can integrate STR usage without damaging the viability of neighborhoods. Combined with targeted limitations described above, these policies can ensure only desired types of users and uses occur in residential zones.

a) Buffers

Even if individual properties are limited as STRs, the density of STRs in a given block or neighborhood can have tremendous effects on the other residents. Locals fear so-called ‘dark blocks,’ where nearly every unit is an STR filled with tourists and not neighbors. In response, some cities have added a buffer requirement to the permitting process and thus ensuring the effects of STRs are not concentrated in any one area. The distance varies: Durango (CO) set a limit of one STR per street segment, San Luis Obispo County requires at least 100 feet, Austin (TX) 1000 ft., and Ashland (OR)’s units must be within 200 ft. of a major road to reduce traffic through neighborhoods. Buffers, like area caps, help set an upper limit to the amount of STR development possible in a neighborhood.

b) Limits on signage & alterations

Residential character can often simply mean the physical look of a neighborhood and many communities have taken measures to preserve the built environment as part of their STR ordinances. Cities from Dana Point (CA) to Dania Beach (FL) specifically ban STRs from having any kind of signage or visible advertisement that would mar the neighborhood. Conversely, New Orleans actually requires all STRs to have street-visible signage to identify units to neighbors and enforcement officers.

Other cities, such as Portland (OR), go one step further and ban any alteration to the interior of the unit for the purposes of making an STR. This is usually coupled with strict limits in the size, occupancy, or type of building applying for an STR permit. (See Objective 3 for issues about safety and ADA compliance that preclude a no-alterations policy.) Cities are slightly divided when it comes to exterior alterations; some for example require commercial-style garbage cans and off-street parking that would set these houses apart from their neighbors.

c) Emergency contacts and 24/7 complaint hotlines

Even if the physical buildings do not change, short-term rentals by their very nature introduce a range of new people into a neighborhood, people who may not always behave as a neighbor would. In order to keep tourist in line, cities often work to build in inherent accountability for guests and hosts into their ordinances. At its most extreme, STR requirements are similar to B&B rules that demand not just primary residency, but also that the owner must be present during any stay. As an example, the City of Pasadena, CA's ordinance has a permit category that only allows for 'hosted' short-term rentals where the host remains on-site throughout the guest's stay (except during daytime and/or work hours). By implication this means that only partial home rentals such as room rentals are allowed (whereas traditional entire home vacation rentals are explicitly banned).

A more common tactic is to require the operator and/or a designated agent or emergency contact person to be available 24/7 to handle complaints in real-time. In fact, nearly every new ordinance from Anaheim to Nashville includes such a provision, though they differ on how quickly an agent must respond.

In addition, many cities have established dedicated hotlines for reporting illegal short-term rental properties and noise, parking, trash and other nuisance complaints pertaining to specific short-term rental properties. Those hotlines generally operate 24 hours per day, 7 days per week and can be a very effective way to shut down bad actors in real-time. As an example, the City of Nashville has received more than 1,150 complaints in the first 9 months since it went live. The complaint number is given to all neighbors at or before permitting or, in the case of New Orleans, is posted on an exterior sign. Still, no matter the complaint system, there must be a threat of being shut down or fined to make the host comply.

On the guest side, it is important to inform visitors of their role and responsibilities. This is usually accomplished by interior signage that lists emergency numbers, noise ordinances, contact information for the owner and city, parking directions, trash and recycling days, etc. Combined with limitations of occupancy or duration, this can help minimize the obvious impact on livability in neighborhoods.

Objective 3: Minimize any safety risks of short-term rentals, over and above risks of long-term rentals

Above all, the safety of host, guests, neighbors, and other community members are paramount in regulating this industry.

a) Physical Inspections

Depending on a city's permitting culture and staff availability physical inspections are a common tool to ensure building and fire safety related to short-term rentals.

An inspector would be looking for three main things: habitability, safety, and compliance. First, is this unit fit for habitation? Is it as described in a permit application, in terms of layout, bedrooms, exits, and size? Very few cities allow short-term rentals in spaces that are not allowed for long-term rentals, so it's important to keep people from claiming closets as bedrooms or tents as accessory units. (This is usually where a broader rental registry inspection begins.) Second, safety – depending on the standard (see below) an inspector would need to certify that smoke and CO detectors are in place, that exits are marked, that emergency plans are posted, that disaster kits are available, etc. This would also be the time to calculate a maximum permitted occupancy. Third, an inspector would need to look for any other aspect of ordinance compliance, whether it is quality-of-life elements like trash receptacles, parking availability, a posted code of conduct, or signage.

Additionally, different cities time their inspection process differently. On the loosest end, some cities allow hosts to self-certify that they have the mandated equipment while using the threat of spot inspections to ensure compliance. This is a streamlined process but one with potential pitfalls in terms of the existence of unsafe accommodations.

For cities looking to have an inspection as part of an initial permitting / licensing process, there are two main options. First, a city may require an inspection certification as part of a short-term rental permit application, putting the onus (and cost) on the potential host without a guarantee that the application will be accepted. The other way is to issue the permit contingent on passing an inspection, which could potentially give hosts time to remedy issues brought up in the permit process.

Also, cities that have a general rental registry will sometimes combine both short-term and long-term rental inspections, or otherwise coordinate their inspection schedules.

An inspection certificate usually lasts as long as the term of a permit or license; typically, one year but two- or three-year permits are not unheard of. Still, cities often will allow current permitholders to self-certify on renewal while reserving an ability to do random unannounced inspections. Other cities treat each permit year as a new beginning for everyone. A few even tie every permit to the same schedule, declaring that all permits will be issued on, say, May 1st, and schedule their inspections accordingly. This is not best-practice as it can lead to bottlenecks and staffing challenges.

b) Commercial vs. residential code compliance

Cities have really struggled trying to define short-term rentals in a way that meaningfully determined when a unit must meet a commercial standard of building code and when to use a more common residential code. Few cities have forced STR units and traditional lodging to use the same standard; most allow short-term residences to follow a residential code. This has enraged traditional lodging providers – especially B&B owners – who have invested thousands of dollars in sprinkler systems, wheelchair ramps, second exits, etc. while similar properties, operating at a commercial scale, avoid these responsibilities.

The issue is how to balance compliance and fairness. Most homeowners, especially the occasional host, will not alter their property to meet a commercial standard, forgoing a permit to operate illegally. (Some ordinances, such as Portland's, actually forbid physically altering a home's residential character.) At the same time, if an STR is operating full-time, or is of a certain size, the different between the STR and the traditional B&B becomes blurry; a legal distinction without a realistic difference. Many cities have tried to create a kind of continuum of code, with baseline safety rules for all and escalating responsibilities based on some relevant characteristic – usage, size, location, etc.

It is important to note here that some advocates for the disabled, the blind, and the elderly are very concerned about the erosion of Americans with Disabilities Act protections in the short-term rental marketplace. Getting input from these groups would clarify how to best accommodate these underserved populations.

c) Insurance

Nearly all new STR ordinances contain some provisions for hosts to carry insurance in order to be permitted. While some cities choose to be deliberately vague – mandating 'appropriate coverage' – the most common description is \$1M per occurrence general liability insurance that



specifically covers ‘commercial’-style activity. Depending on the values of homes and property in the area, a million dollars may or may not be anticipated to fully cover potential damages.

The downsides of requiring proof of insurance is that it becomes another hurdle that hosts must get over, an additional cost to operate, and an additional piece of paper to verify in the permitting process. Anything that makes this process slower or more complicated can affect compliance rates, as hosts roll the dice and operate illegally.

The upside is clear: mandatory insurance protects hosts, guests, the city, and neighbors from a potential apocalypse of litigation. A real-world example from New Orleans: a renter listed his unit on Airbnb to French tourists who, accidentally, started a fire.³ The tourists had to be rescued by firefighters and when the blaze was extinguished, the house and a neighbor’s property were damaged. The resulting legal fight now pits the homeowner, the renter, the French tourists, Airbnb (via their host protection policy,) the neighbor, the homeowner’s insurer, the neighbor’s insurer, and (if a firefighter had been injured) the city, and the city’s insurer against each other. Because most home insurance policies are voided by STR activity, potential hosts need to be protected.

d) Guest screening

Currently, the screening of both hosts and guests is slightly difficult to discern. As an example, Airbnb claims to run every host and guest through “certain databases of public state and county criminal records, as well as state and national sex offender registries for criminal convictions and sex offender registrations” provided they have enough information to do so.⁴ They do not mention which databases they use or what specific crimes they are looking for or when this search occurs.

This screening has limitations that Airbnb freely admits. Users may not provide enough information or accurate information to run a check. Databases may be out-of-date. Foreign offences are not flagged. Most importantly, Airbnb can only screen the individual who uses the platform: hosts could simply get a friend – or management company - to act as a front account; all the other guests besides the booker simply go unscreened.

Other platforms seem to have very little screening at all. The platforms have ‘verification,’ not screening – largely to ensure proper payment, not weed out criminals. (VRBO simply puts the

³ http://www.nola.com/crime/index.ssf/2016/02/2_rescued_from_fire_at_jackson.html

⁴ <https://www.airbnb.com/help/article/1308/does-airbnb-perform-background-checks-on-members>



onus on the guest to ensure a listing is ‘legitimate.’⁵) Even the nomenclature can be confusing; Airbnb says its ‘Verified ID’ is “not an endorsement or guarantee of someone’s identity.”⁶

To address these problems, certain cities require hosts to maintain records of all guests. That said, this is not common, and Chicago is currently facing a lawsuit about requiring hosts to record the names of every guest who stays in an STR. Given this most other cities have no guest registration requirements or have slightly less intense rules about maintaining records.

⁵ <https://help.vrbo.com/articles/How-do-I-know-that-a-property-and-owner-are-legitimate>

⁶ <https://www.airbnb.com/help/article/450/what-is-verified-id>

Objective 4: Treat short-term rental accommodation providers – hotels, bed and breakfasts, peer-to-peer rental – equitably.

a) Segmenting the lodging marketplace based on real distinctions and differences

As described earlier, the issue of industry fairness largely depends on defining the difference, legally, between STRs, B&B, hotels, motels, and long-term rentals. If the differences are not meaningful then it is very easy to end up with a system where virtually identical uses have wildly diverging regulatory requirements, compliance costs, fees, and fines.

The least contentious piece of standardizing the marketplace concerns tax remittance. Listing companies, knowing that local regulators want to follow the money, have struck deals for automatic tax collection, first in large markets like Portland and San Francisco and now in smaller towns and whole states. Only the most intransigent STR operator will contend Transient Occupancy Taxes should not apply to them.

The bigger fights are about permitting and operation. In most cities, opening a new hotel or B&B is a complicated process. There are zoning restrictions on placement, code requirements for safety equipment and ADA compliance, parking minimums, licensing fees, limits on food service and large gatherings; and through it all, meetings and meetings to get government approval. The current ‘disruption’ of the lodging industry – and what drives traditional lodgers up a wall – is that STRs often circumvent all of these issues, either legally or not.

This is where definitions with real distinctions matter so much. Cities that have created a more level playing-field do so by zeroing on what distinction make the most sense in a given community and based on community needs. Perhaps it’s occupancy (as it is in Kansas City) or location (as it is in Durango) or usage (as in New Orleans) or building type (as in Portland). Current peer-to-peer STR users and uses do not have to exist as its own separate world; it can be mapped onto a new rubric built around local issues.

b) ‘Commercialize’ peer-to-peer

On a practical level, treating the entire lodging industry equitably will mean certain existing STR situations will not be tenable, either for the host or for the broader community. Many cities look to take the most intense users – the full-time operators and speculators – and push them towards a commercial standard usually associated with a B&B or inn. For example, in New Orleans’ system, STRs in commercial zones have very different rules than those in residential or historic districts. Other communities have made full-time STRs a conditional use, subject to



that process, while seasonal hosting is simply as-a-right. And some locations, especially vacation destinations, use the fights over STRs to revamp their entire lodging code, essentially eliminating any distinction between traditional and peer-to-peer markets.

In any place where STRs have been operating illegally, nearly any concession to that industry will be met with resistance by operators who have been following the rules. Attempts to mollify these hosts through code changes need to actually provide real benefits. Eliminating an occupancy requirement for a B&B means little for someone whose business is, and has always been, also their home.

c) Temporary permits

If the most intense users are pushed to be more commercial, then regulation can also break off the least serious hosts, those that might have only one or two guests a year but otherwise will jump through no hoops. Several cities, most notably Philadelphia in the run-up to the Pope's visit, created temporary permit structures to maximize the compliance rate for this special event. While often less stringent than regular STRs or traditional lodging, temporary permits can be a powerful regulatory tool to push out the most permit fee sensitive segment of the market from day-to-day listing, allowing enforcement officers to focus on the more permanent, bigger operators.

Objective 5: Set and enforce regulatory compliance targets.

Though it seems to function cohesively, the STR industry is really made up of three interconnected types of entities: the online platforms such as Airbnb, VRBO and FlipKey, the hosts, and the guests. Cities often make the mistake of applying the same tactics to deal with each group when, really, three different – but related – regimes are needed.

In dealing with guests, the trick is to allocate code enforcement resources during the times when their services are most needed. As it relates to short-term rentals this can be tricky. Loud parties tend not to occur Monday – Friday 9am to 5pm and so in response many cities have started adjusting schedules to ensure complaints can be handled when problems occur. That said this can be expensive so in smaller cities, and in counties like San Luis Obispo, off-hours noise and parking complaints have been outsourced to avoid inundating the local sheriff with complaints about short-term rentals. By using such 3rd party services, cities can maintain high compliance and complaint response time targets while keeping costs in check.

For dealing with hosts, a city's targets should be centered around permit and tax compliance as well as a few key metrics related to usability and ease of doing business with the city. Are people making it through the permit application process? Where do they drop out – and do they stop hosting? Are there certain types of hosts who are not being permitted? San Francisco was routinely skewered by Airbnb as having an inordinately complicated approval process, one that was due largely to poorly designed bureaucracy, whose dropout problem was never iterated or examined.

Still, the topline number everyone will ask about is the percentage of active rental units with valid permits. The average city in America has virtually no compliance, while a few early-adopter cities like Portland or San Francisco hit ~25% with their old regimes. That said, things are getting better, and cities like Denver who have adopted modern compliance monitoring and enforcement software, reached 65%+ permit compliance within months of launching their best in class compliance monitoring and enforcement program. Certain major cities such as San Francisco has also been able to strong-arm Airbnb into collaborating on tax remittance and other programs. That said, it is important to note that Airbnb is only one of 125 short-term rental websites and that hosts tend to migrate their listings to other platforms if they find that doing so can subject them to less scrutiny.

Rather than fixate on a number, cities need to avoid the STR Catch-22: a city relies on permit fees to fund enforcement, but if enforcement proves ineffective then no host gets a permit, so



the city has no funding for enforcement, and on and on. Given this reaching a sustainable level of compliance quickly is very important. To do so cities often launch significant PR and education initiatives in relation to the adoption of a new ordinance, hoping to scare people in compliance. Sometimes it works – briefly. But three months, or six months, or next summer, the listings will creep back unless the city stays vigilant.

Objective 6: Implement simple, transparent, customer-oriented regulatory and enforcement processes.

a) Host coaching and outreach

In moving from one regulatory system to another, communication is key. Engaging in proactive education sessions, permit coaching, and outreach to existing hosts before a new system takes effect can greatly help improve compliance – or at least cut down on the “I didn’t know!” defense. Philadelphia, as part of their temporary permit program, held information sessions in the weeks leading up to the Pope’s arrival, where both city staff and Airbnb liaisons explained what potential hosts needed to navigate.

b) Dedicated office or staff

Depending on the level of activity or resources available, larger cities have created dedicated offices for short-term rentals. New Orleans – with seven thousand listings – budgeted a staff of six: a program manager, an IT developer, two permit processors, and two enforcement coordinators. (Neighborhood groups immediately declared this insufficient.) Still, even small towns will name a point person in the Planning Department or the Department of Safety & Permits to coordinate intake and management.

c) One-stop and online permit applications

The easier a city makes the permit process – especially how many meetings an applicant must schedule and how many forms must be filled out – the better compliance will develop. Online and mobile submission and processing can lessen the load for staff and are more convenient for hosts who cannot come to City Hall 9am-5pm. (This was a major complaint of San Francisco previously) Building a thoughtful permit application process can also have a big effect. As an example, it is more efficient for the city to inspect units as a final part of applications (which fewer hosts will naturally complete) than to have city resources go to inspections for applications that go nowhere.

Towns with long vacation rental experience like South Lake Tahoe (CA) have entire online portals for applicants including FAQs, online permit applications and online tax collection forms.

d) The violation processes



Short-term renting is, fundamentally, a commercial activity yet many cities put violators through a housing-focused violation process, one that is more opaque, complex, and slower than that for business violations.

Similarly, reducing the burden of evidence to prove illegal short-term rental operation can streamline the enforcement process. Many cities, from New York City on down, make advertising an unpermitted listing illegal and the presence of a listing is *prima facie* evidence of illegal renting. This is critically important as proving that, say, 16 people stayed in a unit is very difficult; whereas proving that a listing advertises ‘availability for parties of 16+!’ is significantly easier.

No matter how well-written the regulation, if no host actually makes it through the violation process and has judgments against him, the ordinance is essentially useless. Cities have often focused so heavily on writing new rules that they neglect thinking through the entire life-cycle of a violation, with disastrous results. New Orleans, in a year of trying to enforce a complete ban, brought only six violations – out of three thousand listings at the time - to hearing and, when faced with a lawsuit by the operators, dropped all the cases. While both Anaheim and New Orleans have threatened to turn off utilities for repeat offenders, unscrupulous operators quickly find out that this is an empty threat if the city is not willing to follow-through.

e) Complaint coordination

The complaint process needs to be clear, both for citizens and internally. Many cities struggle to link quality-of-life violations to short-term rental permits. (An infamous party house in Austin had over 50 violations without its permit being revoked.) Whatever department is tasked with responding to complaints needs to tag violations as STR-related. Having a central hotline system can greatly help as all STR related complaints will then reside in one system.

Objective 7: Recover costs of enforcement efforts.

a) Permit fees

Determining the cost of an STR permit is a delicate balancing act. On one hand, the permit fee – if it is not set by other statute – needs to be high enough to offset the cost of processing permit applications, staff, and enforcement tools. At the same time, the higher the permit fee, the greater incentive for hosts to operate illegally. Higher fees also skew the permit market towards more professional operators who can spread the cost of permitting across more intense use. That said, the goal should be to ensure that permit fees alone can fund the city's enforcement program and that no general fund funds will be needed to run the city's short-term rental enforcement program.

Roughly \$250 is the median annual permit fee nationwide, though this can vary from as little as \$50 in Nashville to over \$1,000 in St. Helena, CA. Permit fees are typically charged either as a one-time application fee (that may include an inspection fee) or as an annual fee. In general, annual permit fees are more suitable for this purpose as they ensure that there will be budget for enforcement in subsequent years. In setting permit fee amounts cities often seek to understand both the cost side of things as well as the average nightly rental rates charged in the area. This will help them better estimate what the market response will be.

Depending on local laws, there may be also additional revenue available from business licenses.

a) Taxes

In states where permit and licensing fee levels are capped by State law, transient occupancy tax is often the number one way for local governments to offset enforcement costs and economically benefit from STRs. Until recently, the payment of these taxes was squarely the responsibility of the individual host and, as many were operating illegally, tax revenues often fell far short of expectations. In recent years this has changed. First, online tax collection services have made it much easier for cities to collect taxes. Second, Airbnb, as part of their campaign to be seen as more 'city-friendly,' will now agree to automatically collect and remit taxes for local jurisdictions.

c) Citations

Enforcement will only work if it has teeth and it will only have teeth if operators consider the penalties for non-compliance large enough to deter bad behavior. Too often, cities do not

consider the amount of money operators are generating from each booking when designing a fee schedule, relying on more owner-friendly schedules designed for blight or building code violations instead of the more robust and aggressive business license violation system. Nashville – of the \$50 permit – also had \$50 fines. In a city where the average nightly rate for a short-term rental is \$200 this is not a deterrent, especially considering how long a violation process takes to work itself out – if it ever even does. West Hollywood, CA has a more suitable fine schedule. Specifically, fine amounts are calculated as a function of the advertised rental rate and begin at 400% of the advertised rental rate and go up to 800%. For purposes of West Hollywood’s ordinance, the advertised rental rate is defined as the advertised nightly rate multiplied by the minimum number of nights required to rent the dwelling or part of the dwelling. For illegal operators that do not have a listed rental price on their ads, fines range from \$1,000 to \$5,000.

There really are two different groups to consider when it comes to violations. First, the operators who actually get permits fit more neatly into standard city procedures; warn, fine, then pull their permit. Fines can escalate appropriately – Dana Point’s go from \$250 to \$500 to a thousand dollars – and ‘three-strikes’ policies like Austin (or zero-tolerance policies like Anaheim) hopefully curbs bad behavior. It’s the other group – the intransigents who refuse to get permits – that are the bigger problem. Unless fines immediately and quickly impact their business and change their calculations, there is no incentive to follow the rules. Hosts who have shown a willingness to be part of the system can be offered some tolerance; the ones who have ignored or evaded regulations deliberately may need a stronger response. As an example, the City of West Hollywood refer cases of continued non-compliance to its City Prosecutor’s Office for criminal prosecution.

d) Platform fees

Chicago has pioneered another source of income for its enforcement program: creating a license for the listing platforms themselves. The ‘Short-term Rental Intermediary’ license is \$10,000, requires recurring enforcement briefings to their planning commission, and a duty to honor the city’s black- and whitelist. Additionally, this license is a way for the city to have some leverage over the listing platforms by creating something that can be taken away, standardizing requirements across platforms, and setting expectations for the listing platforms themselves. Rather than try to strike deals with each individual listing platform, a license puts the onus on listing platforms to come into compliance. That said, it is often difficult for smaller cities to get the desired collaboration from the platforms. As an example, the City of Fort Collins, CO has



unsuccessfully tried multiple times to get Airbnb to allow Fort Collins based hosts to put their permit numbers on their ads on Airbnb. Considering that Airbnb hosts in Denver (45 minutes away) can do so, one would think that there should be no technical reason why Airbnb couldn't comply with the City of Fort Collins' regulations.

e) Enforcement fee

Another Chicago innovation related to listing platform requirements is a \$50 per listing enforcement fee. This pass-through fee, either paid by the platform or by the hosts, creates a dedicated funding stream beyond the permit fee itself.

f) Auction permits

While not necessarily allowed in all jurisdictions, several London-based economists have proposed auctioning, or dynamically pricing, STR permits in desirable or gentrifying neighborhoods. A similar scheme would allow homeowners to sell their right to short-term rent on a secondary market, like air rights. While this type of auction system may be elegant and economically efficient, it raises several practical questions and may not be easy to implement in practice.

Case studies of local communities

City of Petaluma, CA.

Population: 57,941

Last Ordinance Update: July 2015

Number of STR Units (4/2018): 95

Permit Compliance Rate: ~75%

STR-related Staff:

No dedicated staff. City contracted with Host Compliance for data and enforcement services.

Annual STR Enforcement Budget (Approx.): <\$20k

1. Summary of the adopted rules and enforcement models

In 2015, after a year of contentious debate, the City of Petaluma passed a comprehensive ordinance to address the growth of short-term rentals in town.

Using words like “balanced” and “necessary,” the city council crafted a series of rules that focused on host responsibilities and accountability more than looking at the issue from a housing or economic development perspective. Mayor David Glass, pointing out that he was not “campaigning for Airbnb,” noted the inevitability of “impacts” but that “the city is better served by having some legislation on the books.”⁷

To become a host in Petaluma, owners must acquire a short-term rental permit in addition to a business license and a transit occupancy tax registration number. To qualify for a permit, each property must have at least two off-street parking spaces - though the city can use its discretion to waive this requirement. In addition, there are specific occupancy limits: two people per bedroom, plus two. Basic safety measures are self-certified at permitting.

As mentioned much of the City’s ordinance focuses on mitigating quality of life issues by clarifying hosting requirements. A designated ‘manager,’ whether the owner or another person, must be with 45 minutes of the property to respond to complaints. After licensing, every neighbor within 100ft. must be provided with contact information and permit details. The parking and occupancy requirements were designed to contain some of the excesses of ‘party houses.’ As is the standard across California, short-term rentals must pay the same tax as local hotels.

⁷ <http://www.petaluma360.com/news/4234997-181/petaluma-adopts-rules-for-short-term?sba=AAS>



If violations occur, short-term rental hosts face fines that are double those of a regular homeowner: \$500 for first offences, \$1,000 for subsequent ones. (With average nightly rates around \$200 in Petaluma, this presents a real penalty.) Hosts can have their permits revoked with a ‘three strikes, you’re out’ policy each calendar year.

The council did address a few housing-related issues as well. Most contentiously – at least among public comments – the ordinance allows for non-hosted stays, where the owner is not present, clearing the way for the more ‘commercial’ rentals often bemoaned by neighborhood groups. In setting a 90-day limit on these homes, the council hoped to slow the conversion of long-term rental housing. (An earlier draft had a 120-day limit.) For hosted stays – where the host lives onsite – there is no day limit at all, since short-term renting would not affect housing availability.

Uniquely, Petaluma added an automatic three-year review of the ordinance, predicting, perhaps, that the industry would evolve even more.

2. Assessment of the effectiveness of the approach in achieving the stated policy objectives

Unlike in cities with deep housing pressures or large tourist economies, Petaluma focused on mitigating the negative aspects of short-term renting – quality of life concerns, mostly – with accepting the need to provide lodging options in step with the time. Part of the desire to legalize STRs when the rest of Sonoma County banned the practice was, and is, revenue in the form TOT remittances.

The strength of Petaluma’s ordinance lies in codifying the responsibilities of hosting, setting a standard that builds some accountability into an often-Wild West industry. While the issues that bother other residents – the noise, trash, and parking complaints – are not unique to short-term renting, the ordinance makes it clear that hosting is a privilege that carries a greater emphasis on being a good neighbor. Doubled fines are not just reflective of the economics of renting but a statement on the role hosts must play. And, despite other enforcement challenges, Petaluma’s planners say they have received few complaints from neighbors about short-term guests.

Coming after months of give-and-take, Petaluma put tremendous faith in a day limit as a way of limiting rental conversions. Day limits, while seemingly a simple solution, present numerous problems with enforcement, from the need for on-going cross-platform monitoring to calibrating



the breakeven point with local rental rates. Cities both large and small have not had significant success in holding hosts to day limits, or even having the means to catch scofflaws.

3. Assessment of the enforcement costs

While Petaluma's officials thought that 'reasonable' rules would bring hosts to the permit office, the city made little progress in compliance in the first years of the ordinance. By November 2016, despite over a hundred listings available online, Petaluma had issued only 21 permits.

Petaluma ran into a number of difficulties in generating permit compliance. First, city officials did not anticipate the difficulty in acquiring the location and identity of hosts, let alone the number of days they had rented. Without this information, enforcement efforts lagged.

Permit compliance is not just a regulatory issue but a financial one. By one estimate from the city attorney's office, Petaluma should have been receiving \$162,000 in annual TOT revenue; instead, it took in under \$19,000. Like many cities, Petaluma was caught in a negative feedback loop: poor enforcement lead to poor compliance, poor compliance meant a lack of enforcement funding, lack of enforcement funding created suboptimal enforcement.

To solve the data issue, in 2016 the city council approved the city attorney's recommendation to issue 'legislative subpoenas' for VRBO and Airbnb as a way to compel them to release names and addresses of hosts. This did not work. By November 2017, with over 200 listings, the permit numbers had climbed to 23.

Host Compliance was contracted at this point to develop local data, help with notifications, and bring enforcement into alignment with the marketplace. Petaluma's planners are anticipating about a 75% compliance rate in the next few months as permits trickle in through their normal intake system. (With so few STRs, hiring even part-time staff seemed "unnecessary.") Even at a time of relative budget austerity, the outside contract is justified by the additional permit fees and increased TOT revenues.

Any ordinance succeeds or fails based on enforcement. Finally, able to bring order to this industry, Petaluma's planners expect "little opposition" to extending the ordinance beyond the sunseting date this fall.



City of Mill Valley, CA.

Population: 14,350

Last Ordinance Update: 2015

Number of STR Units (4/2018): 159

STR-related Staff:

80 hours per year to manage registration and tax collection

Annual STR Enforcement Budget (Approx.): \$11k for outside contract with Host Compliance

1. Summary of the adopted rules and enforcement models

Though a small town, Mill Valley recognized the need to address its lodging rules in mid-2015 even as other communities in Marin County – seeing the growing fights across the bay in San Francisco and the possibility of statewide rules – held off on re-regulating the short-term rental industry.

The drive to craft rules for short-term rentals was partially driven by hosts walking into the planning department to get a permit for something that was not officially defined; a ‘short-term rental’ did not exist in Mill Valley’s code. For the few hosts who had come in, city officials simply offered up a \$16 business license and TOT payment instructions.

Recognizing the need for slightly greater control on the short-term rental industry, Mill Valley began developing rules that would bring hosts into alignment with other lodging providers. By creating a permit system, Mill Valley was able to add a small number of responsibilities to hosts’ operation to protect basic quality of life for neighbors.

The requirements for short-term rentals are extremely streamlined. Hosts must be permitted, licensed, and pay their tax and their units must be habitable. Guests must be informed by the hosts of basic limitations like maximum occupancy, parking locations, emergency contacts, trash disposal, and the Mill Valley Noise Ordinance. The only element approaching a housing issue is a ban on concurrently renting primary and secondary residences in single-family zoning districts.

This was the baseline Mill Valley established to bring some shape to short-term rentals. Even a local hotel owner, who had previously said, “Everyone should be subject to the same rules...”



was willing to see how a fairly hands-off system would function: “It’s a great first step,” he said, “I’m glad they are taking some action. How effective is it? We will see.”⁸

With no permission in the code, Mill Valley had around 200 short-term rental listings and four known short-term rentals permitted. Having set up an actual permit system, city officials wanted to see how many of its 400 business licenses for ‘living accommodations’ – which included everything from apartment managers to hotels to second units – were short-term rentals that could be officially permitted. So, the city simply mailed an application packet to every business licensee and waited for results.

Not surprisingly, compliance rates were not perfect. Many hosts had never registered as a business with Mill Valley and tried to keep flying under the radar. Plenty of ‘living accommodations’ owners had no interest in becoming a short-term rental. Still, permit numbers moved from four to 33, tax receipts were close to \$36,000, and permit fees another \$1,600. (By comparison, the city’s four hotels generated \$736,396 in taxes from 142 guest rooms.) The registry seemed to function - “it’s really easy,” one host said. “for me - it works.” – but had plateaued. Over two hundred units were unregistered.

In the neighborhoods, complaints were light: just five in the first year of the registry for operating unregistered short-term rentals or for noise and parking problems.

2. Assessment of the effectiveness of the approach in achieving the stated policy objectives

A year into the short-term rental registry, Mill Valley’s outreach approach had reached its limit. While a core group of hosts had registered, a data dive by Host Compliance found another 200 properties that had not ‘come in from the cold.’ The reasons for noncompliance ran the gamut: claimed ignorance as to the registry’s existence, an inability for the property to be legally registered, an unwillingness to be registered, and listings that had been orphaned but not removed.

Permit compliance issues did not stem from the rules themselves – which were pretty light by national standards – or from excessive fees - \$69/year is a fancy coffee drink per month – but

⁸ <http://www.marinij.com/government-and-politics/20150808/mill-valley-introduces-airbnb-registration>



from the way permit outreach relied on existing city databases. The short-term rental industry has brought many property owners into a type of commercial operation that has existed on the edges of the law. In this dynamic marketplace, static databases are always going to be behind.

Even with the permit compliance falling short, the system can continue with general support as long as there is a faith in the rules. Councilwoman Stephanie Moulton-Peters said at the time, “We don’t have any big problems; (we will) keep monitoring; it’s a new thing.” (Having added \$40k to the city’s coffers through mailing out a few forms maybe improved the city’s view of the effort.) The next steps would focus on fulfilling the rules’ potential.

3. Assessment of the enforcement costs

Though the system had seen some positive movement, Mill Valley was leaving money on the table by not improving their permit compliance. If the city were able to permit all their listings, one estimate put the potential windfall at nearly \$210,000, with another \$10,000 in permit fees – quintuple the current figures. Those numbers – more than the compliance percentage – drove a bigger enforcement push in 2017.

The strategy for compliance was not necessarily different than the mailings in 2015, except for one twist: instead of going out to existing business license-holders, the Mill Valley staff used Host Compliance data to target existing short-term rental units specifically. The letter itself was more forceful, requesting compliance or the removal of the listing. The effort netted 25 new applications, nearly doubling the registry, while a few dozen hosts simply removed their listings completely.

In terms of cost efficiency, for roughly 160 staff-hours over two years, Mill Valley collected \$86,854 in tax revenue and \$4,350 in registration fees. Mill Valley’s light-touch system, while not addressing all concerns, works for the small city. Both planners and city officials acknowledge that, as the industry evolves, new facets may have to be addressed in the future.