

A PRACTICAL GUIDE TO EFFECTIVELY REGULATING SHORT-TERM RENTALS ON THE LOCAL GOVERNMENT LEVEL

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Introduction: The meteoric rise of “home-sharing” and short-term rentals

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 websites such 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 from far-away with a few mouse-clicks or taps on a smartphone screen. As a result, the number of homes listed for short-term rent has grown to about 4 million, a 10 fold increase over the last 5 years. With this rapid growth, many communities across the country are for the first time experiencing the many positive and negative consequences of an increased volume of “strangers” in residential communities. While some of these consequences are arguably positive (increased business for local merchants catering to the tourists etc.) there are also many potential issues and negative side-effects that local government leaders may want to try to mitigate by adopting sensible and enforceable regulation.

How to effectively regulate home-sharing and short-term rentals has therefore suddenly become one of the hottest topics among local government leaders across the country. In fact, at the recent National League of Cities conference in Nashville, TN, there were more presentations and work sessions dedicated to this topic than to any other topic. Yet, despite more than 32,000 news articles written on the topic in recent yearsⁱ, surprisingly little has been written on how to implement simple, sensible and enforceable local policies that appropriately balances the rights of homeowners with the interests of neighbors and other community members who may only experience the negative side-effects associated with people renting out their homes on a short-term basis. This guide seeks to address this knowledge gap and offer practical advice and concrete examples of short-term rental regulation that actually works.

Why regulate home-sharing and short-term rentals in the first place?

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

1. Increased tourist traffic from short-term renters has the potential to slowly transform peaceful residential communities into “communities of transients” where people are less interested in investing in one another’s lives, be it in the form of informal friend groups or church, school and other community based organizations.

2. Short-term renters may not always know (or follow) local rules, resulting in public safety risks, noise issues, trash and parking problems for nearby residents.
3. So-called “party houses” i.e. homes that are continuously rented to larger groups of people with the intent to party can severely impact neighbors and drive down nearby home values.
4. Conversion of residential units into short-term rentals can result in less availability of affordable housing options and higher rents for long-term renters in the community.
5. Local service jobs can be jeopardized as unfair competition from unregulated and untaxed short-term rentals reduces demand for local bed & breakfasts, hotels and motels.
6. Towns often lose out on tax revenue (most often referred to as Transient Occupancy Tax / Hotel Tax / Bed Tax or Transaction Privilege Tax) as most short-term landlords fail to remit those taxes even if it is required by law.
7. Lack of proper regulation or limited enforcement of existing ordinances may cause tension or hostility between short-term landlords and their neighbors
8. The existence of “pseudo hotels” in residential neighborhoods (often in violation of local zoning ordinances etc.) may lead to disillusionment with local government officials who may be perceived as ineffective in protecting the interests of local tax-paying citizens.

In short, while it may be very lucrative for private citizens to become part-time innkeepers, most of the negative externalities are borne by the neighbors and surrounding community who may not be getting much in return. The big question is therefore not whether it makes sense to regulate short-term rentals, but how to do it to preserve as many of the benefits as possible without turning neighbors and other local community members into “innocent bystanders”. In the next sections we will explore how to actually do this in practice.

Effective short-term rentals regulation starts with explicit policy objectives and a clear understanding of what regulatory requirements can be enforced

As with most regulation enacted on the local level, there is no “one size fits all” regulatory approach that will work for all communities. Instead local regulation should be adapted to fit the local circumstances and policy objectives while explicitly factoring in that any regulation is only worth the paper it is written on if it can be enforced in a practical and cost-effective manner.

Start with explicit policy objectives!

As famously stated in Alice in Wonderland: *“If you don't know where you are going, any road will get you there.”* The same can be said about short-term rental regulation, and unfortunately many town and city councils end up regulating the practice without first thinking through the community's larger strategic objectives and exactly which of the potential negative side effects

associated with short-term rentals that the regulation should try to address. As an example, the Town of Tiburon in California recently passed a total ban of short-term rentals without thinking through the severely negative impact of such regulation on its stated strategic policy objective of revitalizing its downtown. Likewise the City of Mill Valley, California recently adopted an ordinance requiring short-term landlords to register with the city, while failing to put in place an effective mechanism to shut-down “party-houses” although there had been several complaints about such properties in the past. Such oversight was clearly unintentional but highlights the fact that the topic of regulating short-term rentals is extremely complicated and it is easy to miss the forest for the trees when it comes time to actually writing the local code. To avoid this pitfall, local government leaders should therefore first agree on a specific list of goals that the new short-term rental regulation should accomplish *before* discussing any of the technical details of how to write and implement the new regulation. Any draft regulation should be evaluated against these specific goals and only code requirements that are specifically designed to address any of those concrete goals should be included in the final ordinance. Below are a few concrete examples of what such lists of concrete policy objective could look like for various types of communities:

Example A: List of short-term rental policy objectives for an affluent residential community in attractive location

- Ensure that traditional residential neighborhoods are not turned into tourist areas to the detriment of long-time residents
- Ensure any regulation of short-term rentals does not negatively affect property values (and property tax revenue)
- Ensure that homes are not turned into pseudo hotels or “party houses”
- Minimize public safety risks and the noise, trash and parking problems often associated with short-term rentals without creating additional work for the local police department
- Give permanent residents the option to occasionally utilize their properties to generate extra income from short-term rentals as long as all of the above mentioned policy objectives are met

Example B: List of short-term rental policy objectives for an urban community with a shortage of affordable housing

- Maximize the availability of affordable housing options by ensuring that no long-term rental properties are converted into short-term rentals
- Ensure that short-term rentals are taxed in the same way as traditional lodging providers to ensure a level playing field and maintain local service jobs
- Ensure that the city does not lose out on hotel tax revenue that could be invested in much needed services for permanent residents

- Minimize public safety risks and the noise, trash and parking problems often associated with short-term rentals without creating additional work for the local police department
- Give citizens the option to utilize their properties to generate extra income from short-term rentals as long as all of the above mentioned policy objectives are met

Example C: List of short-term rental policy objectives for a working-class suburban community with ample housing availability and a struggling downtown

- Give property owners the option to utilize their properties as short-term rentals to help them make ends meet
- Encourage additional tourism to drive more business to downtown stores and restaurants
- Minimize public safety risks and the noise, trash and parking problems often associated with short-term rentals without creating additional work for the local police department
- Ensure that the city does not lose out on tax revenue that could be invested in much needed services for permanent residents

Example D: List of short-term rental policy objectives for beach town with a large stock of traditional vacation rentals

- Ensure any regulation of short-term rentals does not negatively affect the value of second homes (and thereby property tax revenue)
- Encourage increased visitation to local stores and restaurants to increase the overall availability of services and maximize sales tax collections
- Minimize public safety risks and the noise, trash and parking problems associated with existing short-term rentals without creating additional work for the local police department

Once clear and concrete policy objectives have been formulated the next step is to understand what information can be used for code enforcement purposes, so that the adopted short-term rental regulation can be enforced in a cost-effective manner.

Only adopt policy requirements that can and will be enforced!

While it may seem obvious that *only enforceable legislation should be adopted*, it is mind-boggling how often this simple principle is ignored. To give a few examples, the two California towns previously mentioned not only failed to adopt regulation consistent with their overall strategic policy objectives, but also ended up adopting completely unenforceable rules. In the case of Tiburon, the town council instituted a complete ban of all short-term rentals within its jurisdiction, but not only failed to allocate any budget to enforce it, but also failed put in place

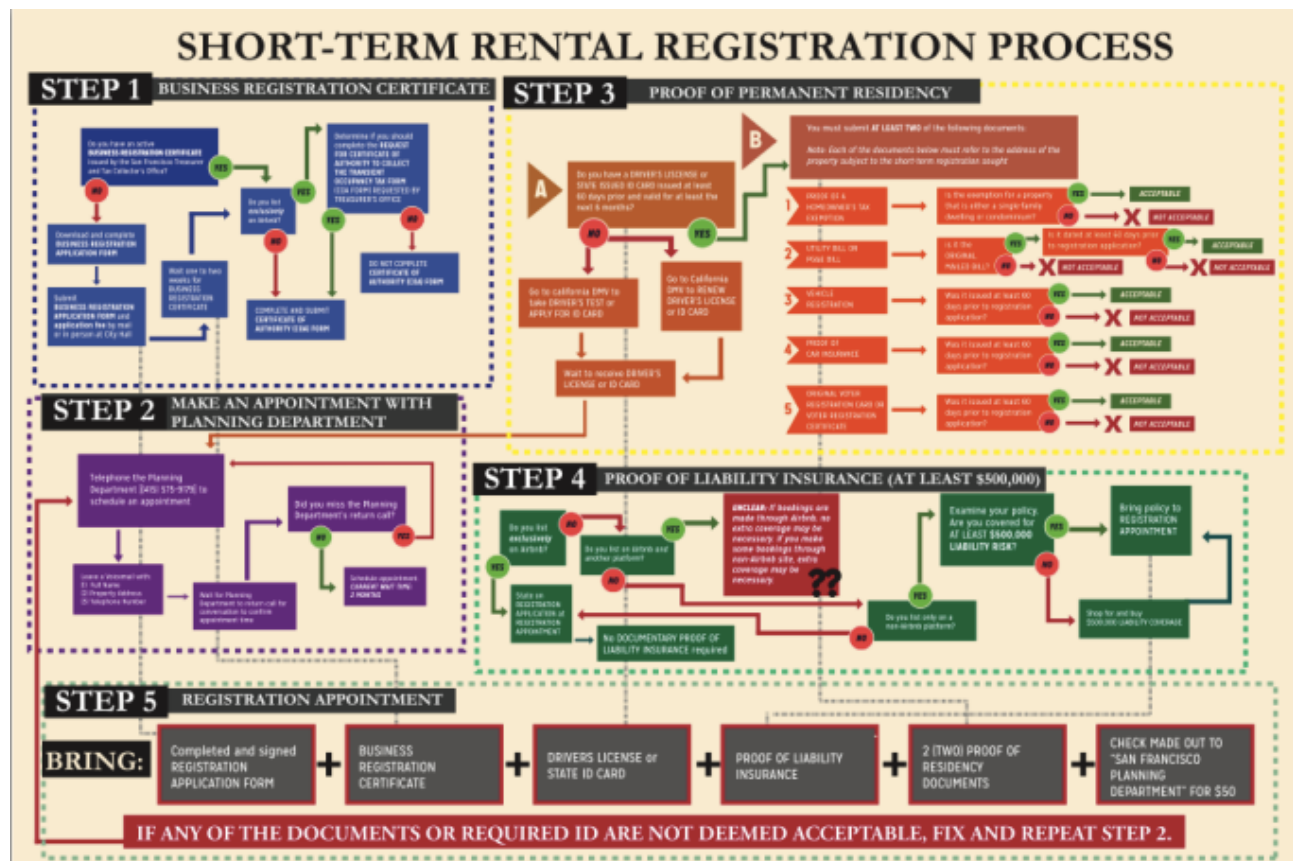
finances large enough to deter any violation of the ban. As a result, the number of properties listed for rent has remained virtually unchanged before and after the ban.

In the case of Mill Valley, the town's registration requirement turned out to be completely unenforceable as the town's personnel had neither the technical expertise, time nor budget to track down short-term landlords that failed to register. As a result, the town has had to rely exclusively on self-reporting, and unsurprisingly the compliance rate has been less than 5%.

As for local governments that require short-term rental property owners to pay tax to the local jurisdiction without allocating budget to enforcing such rules, they have found themselves in similar situations, with compliance rates in the 5% range.

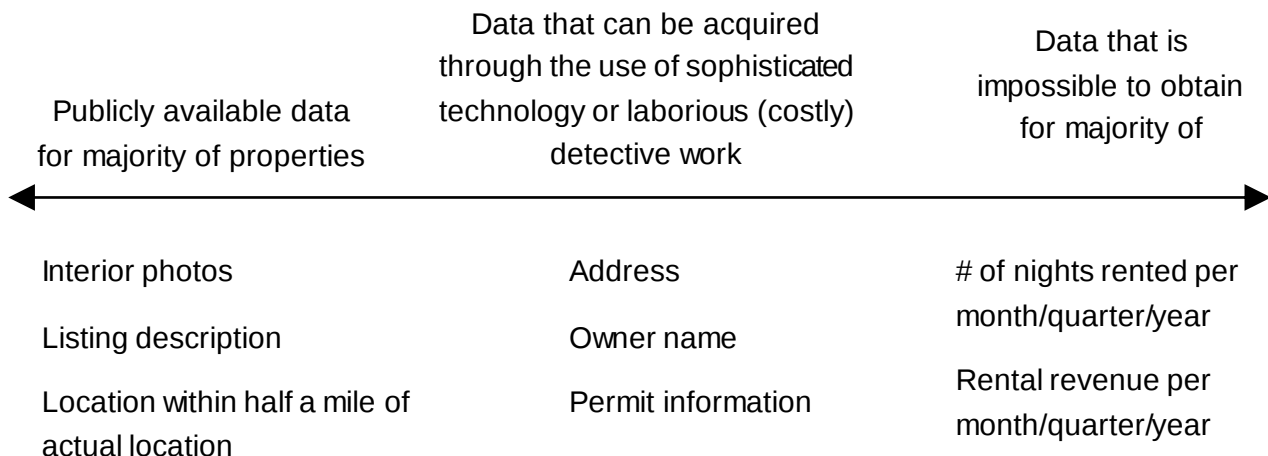
Keep it simple!

Another common mistake is for cities to adopt complicated rules that are hard for citizens to understand and follow and that require large investments in enforcement. As an example, despite setting up a dedicated department to enforce its short-term rental regulation, the City of San Francisco has only achieve a 10-15% compliance rate as its regulation is so complicated and its registration process so agonizing that most people give up before even trying to follow the rules. Below is flow-chart that illustrates San Francisco's cumbersome short-term rental registration process.



While hindsight is 20/20, it is worth noting that the registration requirements were probably well-intended and made logical sense to the council members and staff that adopted them. The problem was therefore not ill-will but a lack of understanding of the practical details as to how the various short-term rental websites actual work. As an example, San Francisco's short-term rental regulation require that property owner's display their permit number on any advertising (including online listings) whereas Airbnb's website has built-in functionality that specifically prevents short-term landlords from doing so and automatically deletes all "permit sounding" information from the listings in most locations. Likewise, San Francisco's legislation bans anyone for renting their homes for more than 90 days per calendar year, while none of the home-sharing websites give code enforcement officers the ability to collect the data necessary to enforce that rule. To make matters worse, the listing websites have refused to share any property specific data with the local authorities and have even gone as far as suing the cities that have been asking for such detailed data. Local government officials should therefore not assume that the listing websites will be collaborative when it comes to sharing data that will make it possible for local code enforcement officers to monitor compliance with complicated short-term rental regulation on the property level. Instead, local government leaders should seek to carefully understand the data limitations before adopting regulation that cannot be practically enforced. To get a quick overview of what information that can be relied on for short-term rental compliance monitoring and enforcement purposes, please see the diagram below that shows which:

1. data is publicly available on the various home-sharing websites
2. information that can be uncovered through the deployment of sophisticated "big data" technology and trained experts (or time-consuming and therefore costly detective work conducted by a town's own staff)
3. property specific details that are practically impossible to obtain despite significant investment of time and money



So where does that leave local government leaders who want to put in place enforceable short-term rental regulation? In the next section we will explore, describe, and assess the viable regulatory tools available for local government leaders to effectively address the key issues related to taxation, regulation, social equity and economic development.

Viable regulatory approaches to managing short-term rentals

As mentioned earlier, the first step to creating effective short-term rental regulation is to document and get agreement on a set of clear and concrete policy objectives. Once this has been accomplished, putting together the actual regulatory requirements can be simplified by referring to the “cheat sheet” below, which lists the regulatory levers that can be pulled to accomplish those goals in a practical and cost-effective manner while factoring in the data limitations highlighted in the previous section.

Short-term Rental Policy Objectives and the Associated Viable Regulatory Approaches		
Policy Objective	Viable Regulatory Approach(es)	Unviable Regulatory Approach(es)
Give law abiding and respectful citizens the option to utilize their homes as short-term rentals	Adopt a formal annual permitting requirement and a process for revoking permits from “trouble properties”. As an example a local government can adopt a “3 strikes rule” whereby a permit is automatically revoked for a number of years in the event the local government receives 3 (substantiated) complaints about a property within a certain time frame (i.e. a 24 month period). Alternatively, a local government can adopt a rule by which a permit is automatically revoked in the event the town receives conclusive evidence (police report, video evidence etc.) that a city ordinance has been violated.	Failing to clearly specify what rules law abiding and respectful short-term landlords and their renters must comply with. Adopting regulation that does not clearly define the criteria and process for revoking a short-term rental permit.
Ensure that speculators do not buy up homes to turn them into pseudo hotels while still giving permanent	Adopt a formal permit requirement and make it a condition that the permit holder verifies residency on an annual	Adopting a permitting process that does not formally require short-term rental permit

residents the option to utilize their homes to generate extra income from short-term rentals	basis by submitting the same documentation as is required to verify residency for public school attendance purposes	holders to verify that they are permanent residents of the permitted property
Ensure that homes are only occasionally used as short-term rentals (and not continuously rented out to new people on a short term basis)	It is unfortunately not practically possible to enforce any formal limits on the number of times or number of days that a particular property is rented on an annual/quarterly/monthly basis, but adopting a permanent residency requirement for short-term rental permit holders (see above) can ensure that there is a practical upper limit to how often most properties are rented out each year (most people can only take a few weeks of vacation each year and they are therefore practically restricted to rent out their homes for those few weeks). There is unfortunately no easy way to deal with the tiny minority of homes where the “permanent resident” owners have the ability to take extended vacations and rent out their home continuously. That said, if the above mentioned “permanent residency requirement” is combined with rules to mitigate noise, parking and trash related issues, the potential problems associated with these few homes should be manageable. Adopting a “permanent residency requirement” also comes with the additional side benefit that most people don’t want to rent out their primary residence to people who may trash it or be a nuisance to the neighbors. The “permanent residency requirement” can therefore also help minimize noise, parking and trash related issues.	A formal limit on the number of times or number of days each property can be rented on an annual/quarterly/monthly basis is not enforceable as occupancy data is simply not available without doing a formal audit of each and every property.

Ensure homes are <u>not</u> turned into “party houses”	Adopt a formal permit requirement and put in place a specific limit on the number of people that are allowed to stay on the property at any given time. The “people limit” can be the same for all permitted properties (i.e. a max of 10 people) or be correlated with the number of bedrooms. In addition, the regulation should formally specify that any advertisement of the property (offline or online) and all rental contracts must contain language that specifies the allowed “people limit” to make it clear to (potential) renters that the home cannot be used for large gatherings. While not bullet-proof, adopting these requirements will deter most abuse. In addition it is possible to proactively enforce this rule as all listing websites require (or allow) hosts to indicate their property’s maximum occupancy on the listings.	Adopting any regulation that does not clearly define what types of uses are disallowed will be ineffective and likely result in misinterpretation and/or abuse.
Minimize potential parking problems for the neighbors of short-term rental properties	Adopt a formal permit requirement and put in place a specific limit on the number of motor vehicles that short-term renters are allowed to park on/near the property. The “motor vehicle limit” can be the same for all permitted properties (i.e. a max of 2) or be dependent on the number of permanent parking spots available on the property. In addition, the regulation should formally specify that any advertisement of the property (offline or online) and any rental contract must contain language that specifies the allowed “motor vehicle limit” to make it clear to (potential) renters that bringing more cars is disallowed. As with the “people limit” rule mentioned above,	Adopting any regulation that does not clearly define a specific limit on the number of motor vehicles that short-term renters are allowed to park on/near the property.

	adopting these parking disclosure requirements will deter most abuse. In addition it is easy to proactively enforce this rule as most listing websites require or allow their hosts to describe their property's parking situation on the listing.	
Minimize public safety risks and possible noise and trash problems without creating additional work for the local police department and code enforcement personnel	1. Require that all short-term rental contracts include a copy of the local sound/trash/parking ordinances and/or a "Good Neighbor Brochure" that summarizes the local sound/trash/parking ordinances and what is expected of the renter. 2. Require that short-term rental permit holders list a "local contact" that can be reached 24/7 and immediately take corrective action in the event any non-emergency issues are reported (i.e. deal with suspected noise, trash or parking problems) 3. Establish a 24/7 hotline to allow neighbors and other citizens to easily report non-emergency issues without involving local law/code enforcement officers. Once notified of a potential ordinance violation, the hotline personnel will contact the affected property's "local contact", and only involve the local law and/or code enforcement personnel in the event that the "local contact" is unsuccessful in remedying the situation within a reasonable amount of time (i.e. 20-30 minutes).	Adopting any regulation and enforcement processes that do not explicitly specify how non-emergency problems should be reported and addressed.
Ensure that no long-term rental properties are converted to short-term	Adopt a permanent residency requirement for short-term rental permit holders (see above) to	Adopting a permitting process that does not formally require short-

rentals to the detriment of long-term renters in the community	prevent absentee landlords from converting long-term rental properties into short-term rentals.	term rental permit holders to verify that they are permanent residents of the permitted property will be ineffective in preventing absentee landlords from converting their long-term rental properties into short-term rentals.
Ensure that residential neighborhoods are not inadvertently turned into tourist areas to the detriment of permanent residents	Implement one or both of the following regulatory approaches: 1. Adopt a formal permit requirement and set specific quotas on the number of short-term rental permits allowed in any given neighborhood, and/or 2. Adopt the “permanent residency requirement” for short-term rental permit holders (mentioned above) to ensure that there is a practical upper limit to how often any property is rented out each year	Adopting a complete ban on short-term rentals, unless such a ban is heavily enforced.
Ensure any regulation of short-term rentals does not negatively affect property values or create other unexpected negative long-term side-effects	Adopt regulation that automatically expires after a certain amount of time (i.e. 2-5 years) to ensure that the rules and processes that are adopted now are evaluated as the market and technology evolves over time.	Adopt regulation that does not contain a catalyst for evaluating its effectiveness and side-effects down the line.
Ensure the physical safety of short-term renters	Adopt a physical safety inspection requirement as part of the permit approval process. The inspection can be conducted by the municipality’s own staff or the local fire/police force and can cover various amounts of potential safety hazards. As a minimum such inspection should ensure that all rentals provide a minimum level of protection to the renters who are sleeping in	Adopting a self-certification process that does not involve an objective 3 rd party.

	unfamiliar surroundings and therefore may be disadvantaged if forced to evacuate the structure in the event of an emergency.	
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In addition to the above targeted regulatory measures, local governments should adopt requirements for short-term rental permit holders to maintain books and records for a minimum of 3 years so that it is possible to obtain the information necessary to conduct inspections or audits as required. Finally, it is imperative that local governments adopt fine structures that adequately incentivizes short-term landlords to comply with the adopted regulation. Ideally the fines should be proportionate to the economic gains that potential violators can realize from breaking the rules, and fines should be ratcheted up for repeat violators. Below is an example of a fine schedule that will work for most jurisdictions:

	1 st violation	2 nd violation	3 rd violation	4 th violation
Fine for advertising a property for short-term rent (online or offline) without first having obtained a permit or complying with local listing requirements	\$200 per day	\$400 per day	\$650 per day	Upon the fourth or subsequent violation in any twenty-four month period, the local government may suspend or revoke any permit. The suspension or revocation can be appealed.
Fine for violating any other requirements of the local government's short-term rental regulation	\$250 per day	\$500 per day	\$750 per day	
Notes: (a) Any person found to be in violation of this regulation in a civil case brought by a law enforcement agency shall be ordered to reimburse the local government and other participating law enforcement agencies their full investigative costs, pay all back-owed taxes, and remit all illegally obtained short-term rental revenue proceeds to the local government (b) Any unpaid fine will be subject to interest from the date on which the fine became due and payable to the local government until the date of payment. (c) The remedies provided for in this fine schedule are in addition to, and not in lieu of, all other legal remedies, criminal or civil, which may be pursued by the local government to address any violation or other public nuisance.				

Best Practices for Enforcing Short-term Rental Regulation

To implement any type of effective short-term rental regulation, be it a total ban, a permitting requirement, and/or a tax, local governments must expect to invest some level of staff time and/or other resources in compliance monitoring and enforcement. That said, most local governments are neither technically equipped nor large enough to build the true expertise and

sophisticated software needed to do this cost-effectively. There are several reasons why this is the case:

1. Rental property listings are spread across dozens (or hundreds) of different home sharing websites, with new sites popping up all the time (Airbnb and HomeAway are only a small portion of the total market)
2. Manually monitoring 100s or 1,000s of short-term rental properties within a specific jurisdiction is practically impossible without sophisticated databases as property listings are constantly added, changed or removed
3. Address data is hidden from property listings making it time-consuming or impossible to identify the exact properties and owners based just on the information available on the home-sharing websites
4. The listing websites most often disallow property owners from including permit data on their listings, making it impossible to quickly identify unpermitted properties
5. There is no manual way to find out how often individual properties are rented and for how much, and it is therefore very difficult to precisely calculate the amount of taxes owed by an individual property owner

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

That said, while it is good to know that adopting and enforcing short-term regulation can be net revenue positive if done in partnership with an expert firm, it is important to note that the economic benefits are only a small part of the equation and that local government leaders should also factor in the many non-economic benefits associated with managing and monitoring the rapidly growing short-term rental industry in their local communities. These non-economic benefits are often much more important to the local citizens than the incremental tax revenue, so even if the incremental revenue numbers may not seem material in the context of a local government's overall budget, the problems that unregulated and/or unmonitored short-term rentals can cause for the neighbors and other "innocent bystanders" can be quite material and should therefore not be ignored. Or as Jessica C. Neufeld from Austin, TX who suddenly found herself and her family living next to a "party house" reminds us: *"We did not buy our house to be*

living next to a hotel. Would you buy a home if you knew a hotel like this was operating next door, if you wanted to set your life up and raise a family?”ⁱⁱ.

Conclusion

It is the responsibility of local government leaders to ensure that as few people as possible find themselves in the same unfortunate situation as Jessica and her family. In this white-paper we have outlined how to make it happen - in a revenue positive way. To find out more about how we can help your community implement simple, sensible and enforceable short-term rental regulation, feel free to visit us on www.hostcompliance.com or call us for a free consultation on (415) 715-9280. We would also be more than happy to provide you with a complimentary analysis of the short-term rental landscape in your local government's jurisdiction and put together an estimate of the revenue potential associated with adopting (or more actively enforcing) short-term rental regulation in your community.

About the Author

Ulrik Binzer is the Founder and CEO of Host Compliance LLC, the industry leader in short-term rental compliance monitoring and enforcement solutions for local governments.

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

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

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

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



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ⁱ Google News accessed on 1/5/2016

ⁱⁱ New York Times article: "New Worry for Home Buyers: A Party House Next Door", October 10, 2015