

AGENDA
CITY OF STURGEON BAY
CITY PLAN COMMISSION
Wednesday, August 21, 2019
6:00 p.m.
City Council Chambers
421 Michigan Street, Sturgeon Bay, WI

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from July 17, 2019 and August 6, 2019.
4. Consideration of: Comprehensive Plan Update – Timeline and Public Participation Plan.
5. Consideration of: Zoning Code sec. 20.31(4)(b) – Surfacing of parking lots.
6. Consideration of: Tourist Rooming House ordinance review.
7. Public comment on non-agenda Plan Commission related items.
8. Adjourn.

NOTE: DEVIATION FROM THE AGENDA ORDER SHOWN MAY OCCUR.

Notice is hereby given that a majority of the Common Council may be present at this meeting to gather information about a subject over which they have decision-making responsibility. If a quorum of the Common Council does attend, this may constitute a meeting of the Common Council and is noticed as such, although the Common Council will not take any formal action at this meeting.

Plan Commission Members

Mayor David Ward
Ald. Kirsten Reeths
Ald. David Hayes
Mark Holey
Jeff Norland
Dennis Statz
Debbie Kiedrowski

8/16/19
11:00 a.m.
CN

CITY PLAN COMMISSION

Wednesday, July 17, 2019

A meeting of the City Plan Commission was called to order at 6:00 p.m. by Chairperson David Ward in the Council Chambers, City Hall, 421 Michigan Street.

Roll Call: Members David Hayes, Debbie Kiedrowski, Jeff Norland, David Ward, Dennis Statz, and Mark Holey were present. Absent: Member Kirsten Reeths. Also present were Alderpersons Gary Nault, Helen Bacon, and Dan Williams, City Administrator Josh Van Lieshout, Community Development Director Marty Olejniczak, Planner/Zoning Administrator Chris Sullivan-Robinson, and Community Development Secretary Cheryl Nault.

Adoption of agenda: Moved by Mr. Norland, seconded by Mr. Holey to adopt the following agenda:

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from May 15, 2019.
4. Approval of minutes from June 5, 2019.
5. Consideration of: Conceptual Planned Unit Development (PUD) for Jeff Jahnke (Cherryland Properties) to develop mixed-use building located at 145 S. Neenah Avenue.
6. Consideration of: Conceptual Planned Unit Development (PUD) for Northpointe Development (Andy Dumke) to develop approximately 40 housing units, including converting former West Side School located at 17 W. Pine Street and new addition extending into the West Side Field property located at 37 W. Redwood Street.
7. West Waterfront Redevelopment – Recommendations from the Ad Hoc West Waterfront Planning Committee (Introduction only)
8. Status of updating the Comprehensive Plan.
9. Consideration of: Zoning code sec. 20.31(4)(b) - Surfacing of parking lots.
10. Adjourn.

Carried.

Approval of minutes from May 15, 2019: Moved by Mr. Statz, seconded by Mr. Holey to approve the minutes from May 15, 2019. All ayes. Carried.

Approval of minutes from June 5, 2019: Moved by Mr. Holey, seconded by Mr. Norland to approve the minutes from June 5, 2019. All ayes. Carried.

Chris Kellems, 120 Alabama Street, stated that the Commission needs to look at pervious surfaces for parking areas. Stormwater management needs to be looked at everywhere. She also commented on the West Side School project.

Jim Schuessler, DCEDC Executive Director, stated that since his being in Sturgeon Bay, renovating the West Side School for housing has been a priority.

Consideration of: Conceptual Planned Unit Development (PUD) for Jeff Jahnke (Cherryland Properties) to develop mixed-use building located at 145 S. Neenah Avenue: Mr. Olejniczak explained what a planned unit development is and the purpose of the conceptual review.

Jeff Jahnke, 1107 Twin Harbor Dr., Winneconne, WI, stated that he would like to raze the building at 145 S Neenah Avenue and build a mixed-use building with the first floor having two office spaces and the 2nd and 3rd floor being 1,000 square-foot three bedroom apartments. He mentioned that he is a financial planner and would use one office for himself. The apartments would have their own basement for storage. They would mirror each other and would have a view the bay. There will be two single-stall garages plus two additional parking spaces. He would like the building to be as close as possible to the street. There will be a handicap ramp that would lead up to the offices.

Mr. Olejniczak stated that this lot is 50' x 95'. Mr. Jahnke did a good job of trying to get as much as he could on the lot and still fit the neighborhood. He is comfortable with the setback being 5 feet from Neenah Avenue. The handicap ramp comes right up to the sidewalk. A suggestion would be to incorporate it into the front porch area. Another suggestion is to push the first garage so it is even with the second garage for ease of backing out. He thought that office use was a nice transition to the residential area to the south.

Impervious surface was discussed. Mr. Jahnke stated that he had spoken with City Engineer Chad Shefchik regarding restructuring where the green space would be.

After further discussion, it was moved by Mr. Holey, seconded by Mr. Statz to follow a combined preliminary/final PUD process.

Mr. Jahnke stated that he would expect the completion date to be June 2021. His estimated rents would be \$1200 to \$1300 per month, including utilities.

A vote was taken on the motion. All ayes. Carried.

Consideration of: Conceptual Planned Unit Development (PUD) for Northpointe Development (Andy Dumke) to develop approximately 40 housing units, including converting former West Side School located at 17 W. Pine Street and new addition extending into the West Side Field property located at 37 W. Redwood Street: Mr. Olejniczak provided background information on the project. The school by itself is not large enough for a viable project. Hence, the request to acquire the West Side Field softball facility for the additional units.

Mr. Dumke, 2062 Menomonee Drive, Oshkosh, stated that he had learned about the need for housing in the City. The building has character and is a beautiful building. There is a significant amount of roof leaks. He displayed photos of different projects that his company has done. He would love to save the building. There would be 10 units located within the school and possibly commercial incubator space. There would be 30 units in the addition. Of the 40 total units, there would be 25 three-bedroom units, 10 two-bedroom units, and 5 one-bedroom units. They may create a separate parcel for the future in front of the building along Pine Street.

Mr. Dumke mentioned that they are applying for section 42 housing tax credits and historic tax credits for the project. The process for the section 42 credits is that you apply one time per year in mid December and will find out in the middle of April whether or not you will receive the credits. What is needed for the application is site control for the school and adjacent property, zoning approval, and sufficient capital proving how it will be financially done.

Mr. Norland's biggest concern was the ballpark and where it could be relocated. Mr. Olejniczak responded that the Jaycee Field on the corner of 15th Avenue and Michigan Street or a field by the Justice Center are two possibilities.

Mr. Dumke stated that this development will be affordable housing, with some market rate units as well. With section 42 affordable housing, none of the rent is subsidized by the government. Renters need to have a job, with good credit. Background checks are also done on the applicant. He explained how the tax credit program worked. Families earning 60% of the county median income would qualify for the affordable units. Rents would range from \$951 per month for three bedrooms, \$823 per month for a two-bedroom units, and one-bedroom unit would be \$709 per month.

Ms. Kiedrowski asked what the success rate was with the projects they have done. Mr. Dumke responded that he and his partner, Cal Schultz, have been working with WEHDA for years. They are awarded two projects per year. They have had a very high success rate. It is a very competitive program

Mr. Hayes was interested in any ideas for the front of the school. This would also be a great place for a community garden or some type of courtyard or patio. He thought that the addition should be broken up since it is such a long, straight wall. There could also be an interior courtyard. Mr. Dumke responded they will be doing a flat roof like the school. They always include an outdoor common area in their projects, along with a playground and indoor fitness center. There will be different building materials used to break up the facade. He will talk with the architect to see what other ideas he would have with bump-outs, etc. The chalkboards are required to remain where they are for the historic credits.

Mr. Hayes was also concerned about the neighboring properties surrounded by vehicular traffic. Mr. Dumke thought that both drives may be needed for fire truck access. It is possible that the drive on the north side could be eliminated.

Mr. Hayes also wondered if the skate park could be extended.

Mr. Dumke added that the construction materials includes brick on the exterior wall toward Madison Avenue. The addition would be connected to the school with glass.

Underground parking was discussed. Mr. Dumke said with this footprint, it would fit 20-24 stalls, but would be very expensive to construct. Two garages could be eliminated.

Mr. Olejniczak stated that the north driveway is a public alley and is used by three or four of the surrounding lots. If not needed, he suggested not to connect to it or sign it as enter only. Also, the garages are only 10 feet wide. Twelve feet is the typical minimum. It would be a good idea to connect the sidewalk to Lansing Avenue. Mr. Olejniczak liked the fact that Mr. Dumke is an experienced developer. They have done a lot of these projects. Getting the section 42 credits is tough.

Mr. Dumke would like to break ground in fall of 2020. Once they find out if they received the credits, it will take six months before construction will take place. During that time they will get bids, obtain permits, etc. It will take a full year for construction.

Mr. Hayes does not want them to lose the "Boys /Girls" that is imprinted in cement on the front of the building. He also likes the old chimney on the building.

This request was also for a combined preliminary/final PUD process. Moved by Mr. Holey, seconded by Ms. Kiedrowski to follow a combined preliminary/final PUD request. All ayes. Carried.

West Waterfront Redevelopment – Recommendations from the Ad Hoc West Waterfront Planning Committee (Introduction only): Mr. Olejniczak stated a plan was presented to the Council that was put together by a 10 person committee appointed by the Council. A public hearing will be held on August 6th at a joint Council/Plan Commission meeting.

Ad Hoc West Waterfront Redevelopment Committee members Caitlen Oleson and David Schanock presented the plan. They went over the process, the public input, the goals and principles, and the various recommendations.

Mr. Hayes discussed parking areas. He also stated it would be nice to know what agreements are existing and what are to be negotiated. Partners should be identified. The next goal is to see what the City needs to do with agreements and how to start implementing some actionable items.

Mr. Holey complimented the plan, but losing parking spots in the parking lot at Sawyer Park would not be good for events such as fishing tournaments, etc. It could be pursued to obtain a Great Lakes fish as far as displaying art. Mr. Schanock stated that they needed to show all options.

Mayor Ward said that in regard to the Ahnapee and Ice Age Trails, you don't always find two important trails that intersect. He added that the promenade along the shoreline should be done as soon as possible with the Knowles-Nelson Stewardship Grant.

Mr. Olejniczak added that the two grants awarded to the City total approximately \$440,000, with matching dollars required.

Mr. Schanock added that benches, artwork, playground equipment, water features, and even the bump out over the water are perfect opportunities for the sale of naming rights.

Mayor Ward talked about the bridge pedestrian loop. It should be developed and marked with signage. Mr. Schanock said in addition to the bridge loop, having good informational signs explaining what is in this development, what's surrounding it, and what is in within Sturgeon Bay that people can go to next.

The public will be able to comment on the plan at the public hearing on August 6th.

Status of updating the Comprehensive Plan: Mr. Olejniczak stated that the Council adopted the recommendation to hire Vandewalle & Associates for completing the Comprehensive Plan Update. Tomorrow the contract should be ready to sign. The plan for kick-off will be at the September 18th meeting.

Consideration of: Zoning code sec. 20.31(4)(b) - Surfacing of parking lots: Mr. Sullivan-Robinson stated that staff looked at other communities to see what their requirements are for paving parking areas. Generally, paving is always required and often there was more detailed standards than Sturgeon Bay's code. He presented several options for consideration. Seasonal or occasional use could be exempted, as well as exempting small parking areas with 4 or 5 spaces or less; not paving excess parking; or exempt parking areas with a low volume of use or exempting areas based upon their location on the lot.

Mr. Norland expressed his concern with a lack of a paved surface that would allow dust and dirt. There is a type of brick paver that allows grass to grow through. Ms. Kiedrowski responded that it would require more maintenance and is more expensive than asphalt. It can't have a lot of traffic.

Mr. Hayes said it should be encouraged to be more environmentally friendly. That would help with the stormwater management.

Mayor Ward mentioned that a seasonal market proposed to install a permanent building on the property. Under the current ordinance they would have to have the parking lot paved. They had wondered if there were other alternatives for their site.

Mr. Holey thought that obtaining a variance is a pathway for people to not have to pave if they can justify a hardship. The ordinance could be left as is.

Mr. Statz added that gravel is considered impervious. There should be some type of clarification in terms of what is acceptable between impervious and pervious.

Mayor Ward suggested that for section 20.31(4)(b) to insert language on what's acceptable, such as using recycled blacktop or keep it partially gravel.

Mr. Olejniczak suggested to hold this over to another Plan Commission meeting and staff to bring back language with options.

Mr. Hayes thought the same conditions should apply to City parks.

Adjourn: Moved by Mr. Hayes, seconded by Mr. Statz to adjourn. All ayes. Carried. Meeting adjourned at 8:35 p.m.

Respectfully Submitted,



Cheryl Nault

Community Development Secretary

JOINT PLAN COMMISSION & COMMON COUNCIL
August 6, 2019

A meeting of the Joint Plan Commission and Common Council was called to order at 6:00 p.m. by Mayor Ward. Plan Commission roll call: Norland, Ward, Statz, Holey, Reeths, and Hayes were present. Kiedrowski was excused. Common Council roll call: Bacon, Hayes, Williams, Avenson, Nault, Wiederanders, and Reeths.

Avenson/Williams to adopt agenda. Carried.

The public hearing re: recommendation from the Ad Hoc West Waterfront Planning Committee (West Waterfront Redevelopment Plan) was opened at 6:03 p.m. Community Development Director Olejniczak presented an overview of the Plan process.

The following people spoke at the public hearing: Chris Kellems, 120 Alabama St; Mike Langenhorst, 15 Utopia Circle; Barbara Allmann, 717 Prairie Lane; Jeff Tebon, owns 63 East Oak Street; John Hauser, 746 Kentucky Street; Don Freix, 8305 Quarterline Road, Fish Creek; Scott Moore, 947 Pennsylvania Street; Thomas Wulf, 1127 Cove Road; Ed Frier, former employee of SEH. There were three letters read into the record by Joan Wake, 1855 Memorial Dr; Liz Orlock, and Trudy and Jay Herbst, 228 West Pine Street.

The public hearing was closed at 6:41 p.m.

The following discussion took place by the Plan Commission regarding the West Waterfront Plan: The Ad Hoc Committee was complimented for their work, waterview and water access is a good idea, location of the granary, environmental issues that may need further review, details that need to be figured out based on conceptual plan, the desire to have a solid plan for future use of the granary and general favor of the conceptual plan to move forward on the west side. Statz/Hayes to recommend adoption of the West Waterfront Redevelopment recommendation from Ad Hoc West Waterfront Planning Committee, as a conceptual plan. Further discussion took place regarding environmental concerns were addressed by City Administrator VanLieshout, that a follow up with the DNR will be done when a solid location for the granary is determined, and the Sturgeon Bay Historical Society Agreement. Roll call: Carried with Norland and Reeths voting no.

The following discussion took place by the Common Council regarding the West Waterfront Plan: The level of detail in the conceptual plan and that it may be took much or too little, that more details to implement the plan will come as developers show interest, the need for compromise to move forward, the amount of public involvement and feedback used in the Plan creation shows the public's interest, the need to start on the project, the current Agreement that is in place, and the positive that public art and public space are included in the Plan. Williams/Nault to recommend to accept the West Waterfront Redevelopment Recommendations from the Ad Hoc West Waterfront Planning Committee, as a conceptual plan and move forward with the process. Carried.

Williams/Reeths to adjourn. Carried. The Joint meeting adjourned at 7:40 p.m.

Respectfully submitted,

Stephanie L. Reinhardt
City Clerk/HR Director

Sturgeon Bay Comprehensive Plan Update Project Timeline										2019						2020							
										Meeting Dates		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
1	Work Plan Development, Ongoing Project Management and Coordination																						
2	Public Participation Plan and Strategy										8/21 PC 9/3 CC												
3	Base Map Compilation and Preparation																						
4	Data Collection and Analysis																						
5	Review and Summarize Existing Plans and Ordinances																						
6	Review Zoning Code and Map																						
7	Review Existing Design Review Ordinances and Guidelines																						
8	Project Team Calls (Consultant and Staff) (up to 8)										Need to Set Dates												
9	Comprehensive Plan Update Project Kick-Off Meeting (with PC)										10/16												
10	Plan Commission Meetings (2 in person; up to 2 more by Skype as determined by staff) Submit packet materials one week in advance										12/11*; 2/19 Skype: 3/18												
11	Stakeholder Interviews, City Tour, and Land Use Inventory										10/15-10/16												
12	Community Engagement Workshop										Mid Nov/pre Thanksgiving												
13	Community Polling Via City Polco										Nov-Dec												
14	Targeted Planning Areas Workshop										Early January												
15	Community Comprehensive Plan Vision Graphic																						
16	Targeted Planning Areas Map																						
17	Target Area Conceptual Redevelopment Plan Map, Vision, and Strategies (3 areas)																						
18	Draft and Final Comprehensive Plan Documents and Maps																						
19	Draft Plan Public Open House & Plan Commission Set Public Hearing										4/15												
20	Joint Plan Commission & Common Council Public Hearing & Adoption (5/19 CC)										5/19												
21	Adopted Plan Production and Distribution																						
<div>● = Meeting / Public Event Plan Commission: 3rd Wednesday Council: 1st & 3rd Tuesday</div> <div>*Dec. 11 a special PC date</div>																							
Updated: 8/2/2019																							

PUBLIC PARTICIPATION STRATEGY AND PROCEDURES
FOR THE CITY OF STURGEON BAY
COMPREHENSIVE PLAN UPDATE
2019

Introduction

A key required component of Section 66.1001 of Wisconsin Statutes—the State’s comprehensive planning legislation—is actively involving community stakeholders as each local comprehensive plan is being developed, updated, or amended. Public participation helps to ensure that the resulting comprehensive plan accurately reflects the vision, goals, and values of citizens of the community.

Section 66.1001(4)(a) of Wisconsin Statutes requires the City of Sturgeon Bay to adopt, by resolution, written procedures designed to foster public participation at every stage in the preparation, update, or subsequent amendment of its comprehensive plan. The written procedures must provide for wide distribution of the comprehensive plan, an opportunity for the public to submit written comments on the plan, and provisions for local response to such comments.

This document meets this statutory requirement. It serves as the procedures that will be used to guide the required ten-year update to the City’s Comprehensive Plan, which was adopted on March 2, 2010.

Major Goals of Public Participation Strategy

- Provide opportunities for members of the public to participate in processes to consider and adopt a complete update to the City’s Comprehensive Plan.
- Adopt an updated plan that reflects the ideas, desires, and objectives of most residents and property owners.
- Meet both the letter and spirit of Wisconsin’s Comprehensive Plan legislation.
- Use the City’s Plan Commission as a foundation for guiding the plan update process.
- Recognize that the goals expressed above must be balanced with the need to complete the Comprehensive Plan update within a reasonable timeframe.

Selected Public Participation Techniques

The City will, at a minimum, use the following techniques to obtain public input during the plan update process:

- Assure that all Plan Commission and City Council meetings to consider and adopt the updated plan are open to the public and are noticed as required by State open meeting regulations.
- Public comments will be solicited and responded to at every stage of planning process.
- A survey will be developed and administered to community members to solicit feedback and determine community priorities.
- Hold focus groups with key stakeholders identified by the City.
- Hold one public engagement workshop to discuss the community vision for the Comprehensive Plan. This meeting will be open to the public and advertised in advance.
- Hold one target area planning workshop to focus input on areas of specific interest and potential planning and redevelopment opportunities.

- Provide an opportunity at each public meeting held on the Comprehensive Plan update for public comment. Some meetings will be particularly meant to encourage wide participation from the public. Other meetings are intended to be work sessions for the Plan Commission, City Council, or some combination. The public comment period will be provided at either the beginning or end of each public meeting, or at one or more other parts of the meeting at the discretion of the Plan Commission or City Council. This will allow the Commission or Council to concentrate on completing tasks without interruption, while still allowing the public an appropriate chance to observe and comment.
- Maintain a timely and informative website regarding the planning process, plan drafts, and upcoming public meetings. The website will be housed on the City website and will include opportunities for public comment.
- Hold at least one public open house to review the draft plan.
- Hold at least one formal public hearing on the proposed Comprehensive Plan update and the adopting ordinance prior to adoption. All members of the public will have an opportunity to present testimony and offer comments at the public hearing. The public hearing will be noticed and held per the requirements of Wisconsin Statutes, Section 66.1001.

Opportunities for Comments/Responses on Draft Comprehensive Plan

The City will have copies of draft plan materials available at City Hall and the Library during normal business hours. The City will also provide copies of the draft and final plan to adjacent and overlapping governments and non-metallic mineral interests as required by statute, and to members of the participating public as requested. The City may charge for public copies an amount equal to the costs of time and materials to produce such copies.

Public comments will be solicited and responded to at every stage of the plan update process. Written comments on the comprehensive plan update may also be delivered, mailed, or emailed to the City Clerk. The City will respond to written comments via mail, email, telephone, meeting, and/or through consideration of appropriate changes to the draft comprehensive plan.

PLAN COMMISSION RESOLUTION 2019-01
RECOMMENDING THE ADOPTION OF A PUBLIC PARTICIPATION PLAN
FOR THE UPDATE OF THE COMPREHENSIVE PLAN
CITY OF STURGEON BAY, WISCONSIN

WHEREAS, the City of Sturgeon Bay on March 2, 2010, adopted the City of Sturgeon Bay Comprehensive Plan Update, under the authority of and procedures established by §66.1001(4), Wisconsin Statutes; and

WHEREAS, that Comprehensive Plan document advises both the regular Plan Commission review of the Comprehensive Plan, as well as the ability to respond to unique circumstances which arise in relation to the Comprehensive Plan which are distinct from the regular plan review process, and to enable the City's consideration of potential amendments and updates where the Plan becomes irrelevant or contradictory to emerging policy or trends; and

WHEREAS, §66.1001(4)(a), Wisconsin Statutes, requires that the governing body of the local governmental unit adopt written procedures designed to foster public participation at every stage of the comprehensive plan preparation or update process, and that such written procedures shall provide for wide distribution of draft plan materials, an opportunity for the public to submit written comments on the plan materials, and a process for the governing body to respond to such comments; and

WHEREAS, the City of Sturgeon Bay believes that meaningful public involvement in processes designed to consider and update its Comprehensive Plan is important to assure that the resulting Plan meets the wishes and expectations of the public; and

WHEREAS, the attached "Public Participation Strategy and Procedures for the City of Sturgeon Bay Comprehensive Plan Update" includes procedures to foster public participation, ensure distribution of draft plan materials, provide opportunities for written comments on such materials, and provide mechanisms to respond to such comments.

NOW, THEREFORE, BE IT RESOLVED that the Plan Commission of the City of Sturgeon Bay hereby recommends that the City Council adopt a resolution to constitute official City approval of the attached "Public Participation Strategy and Procedures for the City of Sturgeon Bay Comprehensive Plan Update" as required under §66.1001(4)(a), Wisconsin Statutes.

Adopted this 21st day of August, 2019.

David J. Ward, Mayor and Plan Commission
Chair

Stephanie Reinhardt, City Clerk



MEMO

To: Plan Commission
From: Christopher Sullivan-Robinson
Date: August 14, 2019
Subject: Consideration of Pavement Requirements Code Text Amendment

Based on the discussion from the Plan Commission meeting, it was determined that the ordinance should better define how a driveway and parking area can be surfaced. It also was determined that the ordinance should not be changed to allow gravel or crushed stone for the few complaints that the City has received.

In this packet I have included a couple of new two additional options:

Option 1: Besides concrete and asphalt, the ordinance would allow brick and porous pavement.

Option 2: This option better defines our current regulations with an the addition that the asphalt or concrete must meet a carrying capacity of 4000 pounds. This was something commonly used in other communities and insures a level of durability for commercial uses. In addition is separated out a portion of the ordinance for clarity.

Also attached are the options from the previous meeting.

1. Exempt seasonal/occasional use. Business or uses that operate not more than a certain number of days (e.g. 180 days) out of a calendar year could be exempted from the paving requirement.
2. Exempt small parking areas. Parking areas with 5 spaces or less would be exempted from the paving requirement. A different number of spaces could be used instead, but the 5 spaces is suggested because that is the threshold where landscaping requirements kick in. Another option is to do 4 spaces which would be based off the minimum requirement for duplexes, since paving is not required for two-family dwellings.
3. Only require the paving for the parking spaces and drive aisles that are required by the zoning code. Excess parking wouldn't have to be paved. The zoning code requires a minimum number of spaces to be provided, but many businesses provide more than that. The code could allow the excess spaces to be unpaved.
4. Exempt parking areas that have low volume of use. For example, parking areas/drive aisles for storage units that don't see much traffic perhaps could be graveled. It might be difficult to define specific uses to exempt so this exemption could be a plan commission determination upon petition.
5. Exempt parking areas based upon location on the lot. The code could exempt a percentage of the parking area if it is located such that it would not be visual, have noise or dust issue. For instance, if a portion of the parking area was at the rear of the building with

good separation/buffering from adjoining property, that portion could be graveled. This would most likely be a plan commission determination.

6. Make no changes to the code. Continue to require paving of all parking areas (except for single-family and two-family dwellings) and let the variance procedure handle any instances of hardship or practical difficulties.

The Plan Commission has the ability to recommend any of the option as is or with changes. There is no obligation to make a recommendation if the Plan Commission doesn't believe a change is necessary.

Also attached, is some general information on porous / permeable pavements and ordinances from other communities.

The Plan Commission has the ability to recommend any of the option as is or with changes. There is no obligation to make a recommendation if the Plan Commission doesn't believe a change is necessary.

Revisions that better define allowed surfaces.

20.31 - Off-street parking requirements.

Option 1

- (4) *Design.* All parking spaces and access driveways shall meet the following requirements:
- (a) *Size.* Each required parking space shall be a minimum of nine feet in width and 18 feet in length, exclusive of access drives or aisles, ramps or internal moving lanes.
 - (b) *Surfacing.* Except for parking spaces and access driveways which serve single-family or two-family dwellings, all parking spaces and access driveways shall be paved or otherwise surfaced with an all-weather surface within 12 months after occupancy. Acceptable surfacing materials shall include asphalt, concrete, brick, and porous / permeable pavement. Any heavy equipment vehicular storage areas (such as those associated with truck terminals and contractor's garages) which are not open to the general public need not be paved, although said areas must be maintained in a durable and dustless condition. Any access driveway from a public street to such storage areas shall be paved with asphaltic, bituminous, or concrete surfacing.

20.31 - Off-street parking requirements.

Option 2

- (4) *Design.* All parking spaces and access driveways shall meet the following requirements:
- (a) *Size.* Each required parking space shall be a minimum of nine feet in width and 18 feet in length, exclusive of access drives or aisles, ramps or internal moving lanes.
 - (b) *Surfacing.* Except for parking spaces and access driveways which serve single-family or two-family dwellings, all parking spaces and access driveways shall be paved or otherwise surfaced with an all-weather surface asphalt or cement capable of carrying a wheel load of 4,000 pounds within 12 months after occupancy. Any heavy equipment vehicular storage areas (such as those associated with truck terminals and contractor's garages) which are not open to the general public need not be paved, although said areas must be maintained in a durable and dustless condition. Any access driveway from a public street to such storage areas shall be paved with asphaltic, bituminous, or concrete surfacing.
 - (c) *Surfacing Exemption(s):* Any heavy equipment vehicular storage areas (such as those associated with truck terminals and contractor's garages) which are not open to the general public need not be paved, although said areas must be maintained in a durable and dustless condition. Any access driveway from a public street to such storage areas shall be paved with asphaltic, bituminous, or concrete surfacing.

ORDINANCE REVISIONS TO EXEMPT CERTAIN USES AND ALLOW GRAVEL/CRUSHED ASPHALT

OPTION 1

20.31 - Off-street parking requirements.

- (4) *Design.* All parking spaces and access driveways shall meet the following requirements:
- (a) *Size.* Each required parking space shall be a minimum of nine feet in width and 18 feet in length, exclusive of access drives or aisles, ramps or internal moving lanes.
 - (b) *Surfacing.* Except for parking spaces and access driveways which serve single-family or two-family dwellings, all parking spaces and access driveways shall be paved or otherwise surfaced with an all-weather surface within 12 months after occupancy. Any heavy equipment vehicular storage areas (such as those associated with truck terminals and contractor's garages) which are not open to the general public need not be paved, although said areas must be maintained in a durable and dustless condition. Any access driveway from a public street to such storage areas shall be paved with asphaltic, bituminous, or concrete surfacing. *Access driveways and parking lots serving seasonal uses which operate no more than 180 days out of a calendar year shall be allowed to surface the parking area with compact stone or gravel as long as said surface is maintained. Concrete aprons shall extend an additional 5 feet past any sidewalk improvements to provide a buffer from pedestrian improvements.*

OPTION 2

20.31 - Off-street parking requirements.

- (4) *Design.* All parking spaces and access driveways shall meet the following requirements:
- (a) *Size.* Each required parking space shall be a minimum of nine feet in width and 18 feet in length, exclusive of access drives or aisles, ramps or internal moving lanes.
 - (b) *Surfacing.* Except for parking spaces and access driveways which serve single-family or two-family dwellings, and parking areas with 5 spaces or less, all parking spaces and access driveways shall be paved or otherwise surfaced with an all-weather surface within 12 months after occupancy. Any heavy equipment vehicular storage areas (such as those associated with truck terminals and contractor's garages) which are not open to the general public need not be paved, although said areas must be maintained in a durable and dustless condition. Any access driveway from a public street to such storage areas shall be paved with asphaltic, bituminous, or concrete surfacing.

OPTION 3

20.31 - Off-street parking requirements.

(4) *Design.* All parking spaces and access driveways shall meet the following requirements:

(a) *Size.* Each required parking space shall be a minimum of nine feet in width and 18 feet in length, exclusive of access drives or aisles, ramps or internal moving lanes.

(b) *Surfacing.* Except for parking spaces and access driveways which serve single-family or two-family dwellings, all parking spaces and access driveways **required in this chapter** shall be paved or otherwise surfaced with an all-weather surface within 12 months after occupancy. Any heavy equipment vehicular storage areas (such as those associated with truck terminals and contractor's garages) which are not open to the general public need not be paved, although said areas must be maintained in a durable and dustless condition. Any access driveway from a public street to such storage areas shall be paved with asphaltic, bituminous, or concrete surfacing.

OPTION 4

20.31 - Off-street parking requirements.

(4) *Design.* All parking spaces and access driveways shall meet the following requirements:

(a) *Size.* Each required parking space shall be a minimum of nine feet in width and 18 feet in length, exclusive of access drives or aisles, ramps or internal moving lanes.

(b) *Surfacing.* Except for parking spaces and access driveways which serve single-family or two-family dwellings, all parking spaces and access driveways shall be paved or otherwise surfaced with an all-weather surface within 12 months after occupancy. Any heavy equipment vehicular storage areas (such as those associated with truck terminals and contractor's garages) which are not open to the general public need not be paved, although said areas must be maintained in a durable and dustless condition. Any access driveway from a public street to such storage areas shall be paved with asphaltic, bituminous, or concrete surfacing. Compact stone or gravel may be used based on location and volume of traffic by approval of the Plan Commission.



Pervious Pavement

Controlling water runoff

Lake friendly living
means using lakeshore
BEST MANAGEMENT
PRACTICES

BMP

Pervious Pavement

STANDARDS

Driveway

- No erosion
- Defined and minimized driveway
- Runoff channeled away from the lake

LAKE BENEFITS

By infiltrating precipitation, pervious pavers reduce stormwater runoff flow rate, volume, and temperature, and filter pollutants than can end up in lake waters, rivers, and wetlands. They help recharge groundwater and maintain stream base flows.

MATERIALS

To find materials and further info on installing pervious pavement visit:

- ◆ www.icpi.org
- ◆ www.asphaltpavement.org
- ◆ www.perviouspavement.org

Pervious Pavement

Description: Pervious pavement (a term that includes pervious concrete, porous asphalt, permeable paver blocks and reinforced turf) is an infiltration BMP that combines stormwater infiltration, storage, and structural pavement consisting of a permeable surface underlain by a storage or infiltration reservoir. Pervious pavement is well suited for walking paths, sidewalks, driveways, and low vehicle weight streets.

Purpose: By infiltrating precipitation, pervious pavement reduces stormwater runoff flow rate, volume, and temperature, and filters pollutants that would otherwise run into lakes, rivers, and wetlands. Pervious pavement also helps recharge groundwater and maintain stream base flows.

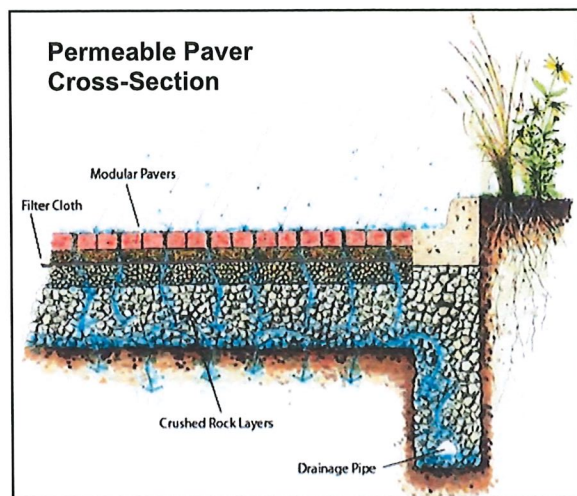
Types of Pervious Pavement

Permeable Pavers (Paver Blocks).

Permeable Pavers are best suited for sidewalks and other pathways. While pavers are a durable option, they require careful installation to avoid being popped or damaged. Pavers also require maintenance, but do not require the use of a special vacuum like other options.

Porous Asphalt. Porous asphalt is considered the cheapest and easiest of the pervious paving options. It is also the easiest to fix when damaged, but is the most susceptible to being damaged, especially in a Northeastern climate. Porous Asphalt does require maintenance, as the pores will become clogged over time and need to be vacuumed clean. Like all of the pervious surface options, this requires a permeable subsurface and soil testing should be conducted beforehand to ensure operational success (see images on opposite page).

Pervious Concrete. Pervious Concrete is the most expensive of the pervious paving



Adapted from illustration by Doug Adamson.

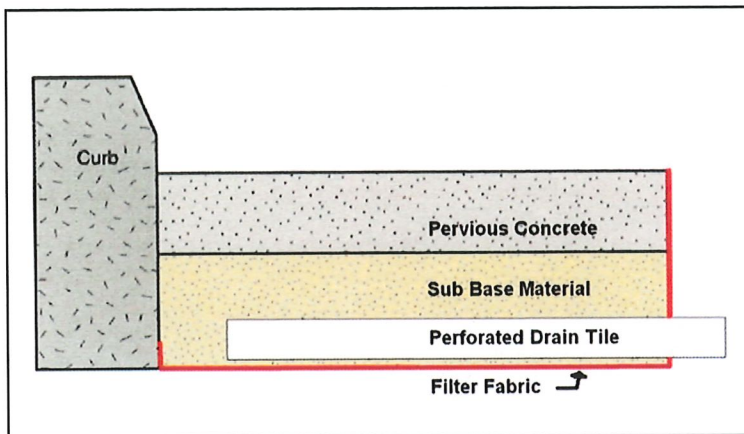
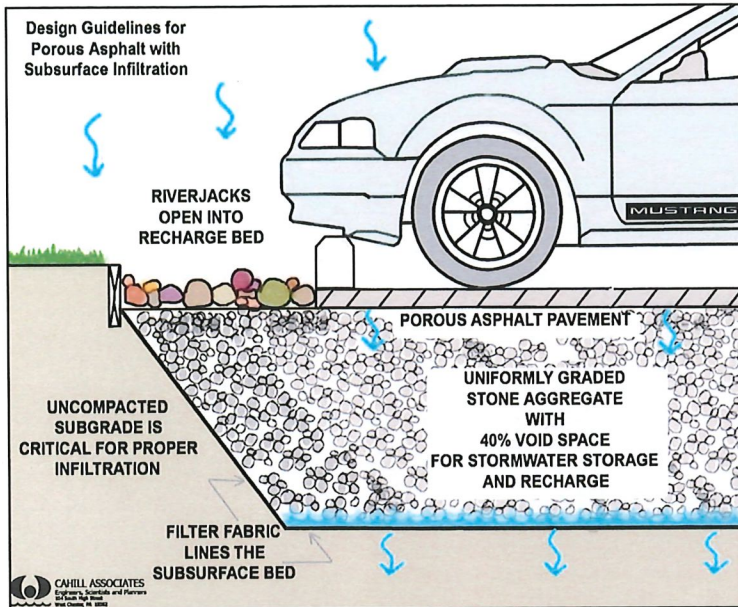


Driveway using
Permeable Pavers

Source: www.younglandscapes.com

Pervious Pavement

Controlling water runoff



options. Because it must be mixed in a very precise way to ensure a strong batch, one will need special training to mix it.

Maintenance: Maintenance levels range from medium to high depending on the type of pervious pavement.

- ◆ The use of leaf blowers on permeable pavement can force dirt and debris into pavement void spaces. Avoid blowing leaves, grass trimmings and other debris across permeable pavement.
- ◆ Remove weeds from pavement and replace missing sand or gravel between pavers as needed.
- ◆ Inspect subdrain outlets (if applicable) yearly to verify they are not blocked.
- ◆ Inspect pavement after rains for ponding or other visible problems. If there are problems with standing water, vacuum sweeping with specialized equipment may be required. Concrete grid pavers do not require sweeping. (Maintenance referenced from the Bay Area Stormwater Management Agencies Association)

Surfacing Requirements in other Communities

Green Bay:

(a) In general. All open off-street parking areas, all driveways leading to such parking areas, and all other areas upon which motor vehicles may be located shall be surfaced with a dustless all-weather hard surface material capable of carrying a wheel load of 4,000 pounds. Acceptable surfacing materials shall include asphalt, concrete, brick, cement pavers, or similar material installed and maintained per industry standards.

(b) Residential drives may contain a grass center provided that the areas on which the vehicle's wheels touch are a minimum of 12 to 18 inches in width.

Greenfield:

In all districts no vacant land shall be occupied or used and no building shall be erected, enlarged, extended, or increased, or used including, but not limited to, use by a new use or changed use, until and in connection with every use, there shall be provided off-street parking stalls for all vehicles according to the following:

A. *Adequate access, drive widths, and driveway paving.* (Am. [#2870](#)) The following shall apply:

1. Adequate access to a public street shall be provided for each parking space.
2. Each required off-street parking space shall open directly onto an aisle or driveway that is wide enough to provide safe and efficient means of vehicular access to the parking space.
3. Driveways providing access to a public street shall be a minimum of twelve (12) feet in width for one-family and two-family residential dwellings, and a minimum of twenty-four (24) feet wide for all other non-residential uses and thirty (30) feet for all private streets.
4. Except for one-family and two-family residential dwellings, one-way drives providing access to a public street shall be a minimum of fourteen (14) feet in width.
5. With the construction of any new driveway, or the repaving of an existing driveway, it shall be paved with concrete, asphalt, brick, or porous pavement. Gravel and/or crushed stone driveways are prohibited.
6. Any new driveway for a new single-family residential dwelling must be paved within one (1) year of occupancy with concrete, asphalt, brick, or porous pavement, which is consistent with the timing requirements of [Section 15.23](#), Building Code, for the completion of landscaping in a new single-family dwelling parcel.

7. If a single-family dwelling has existing gravel or crushed stone driveway and undertakes a major renovation/improvement of their dwelling, then the paving of that driveway with concrete, asphalt, brick, or porous pavement shall be part of that overall improvement project. "Major" in this context means a dollar value which exceeds fifty (50) percent of the parcel's existing "improvement (building) assessed value."

8. Except in R-3, R-3A, R-4A, and R-4B Districts, all driveways shall have at least a five (5) foot side yard setback.

Neenah:

(2) M-1, M-2, C-1, C-2, I-1 and 1-2 Districts.

a. Driveways and parking areas for all multifamily, commercial and industrial uses shall be free from dust or loose particles and surfaced with a durable material acceptable to the Department of Community Development at time of building and principal use occupancy;

River Falls:

The following is a summary of city requirements and information which must be indicated on the proposed plan.

H. Lot Surfacing. All driveways, off-street parking facilities and drive-in business lots shall be surfaced with Portland cement concrete, bituminous concrete or bituminous road mix, so as to provide a hard, durable, dustless surface. Unless impracticable and waived in writing by the city engineer, all such facilities shall be graded and drained to a point or points within the limits of the private lot such that no runoff shall exit the driveway into the public street, except that driveways for single-family and duplex dwelling units may drain to the public street. Further, such facilities shall be constructed with storm sewer catchment devices and pipes connecting to the city storm sewer system that are of sufficient size to accommodate the runoff from a ten (10) year design storm. French drain catch basins or vegetated retention basins may be permitted by the city engineer if city storm sewer is not reasonably available. All drain covers and grates installed for on-site storm sewer facilities shall be of a type that are nonhazardous to bicyclists and other two wheel vehicles. Surfacing shall be completed within one year of completion or occupancy of the principal structure unless a written extension is granted by the community development director.

Little Chute:

(4) *Surfacing*. All off-street parking areas and driveways shall be surfaced with a dustless all-weather material capable of carrying a wheel load of 4,000 pounds (normally, a two-inch blacktop on a four-inch base or five inches of Portland cement will meet this requirement). Any parking area for more than five vehicles shall have the aisles and spaces clearly marked. Compacted stone or gravel may be used only with the approval of the plan commission. Completion of surfacing is required prior to

the issuance of an occupancy permit. However, for required surfacing during the period between November 1 and April 1, the owner shall enter into an agreement with the village agreeing to complete all required surfacing by no later than the following June 1. All driveway aprons shall be constructed of concrete as approved by permit to be obtained from the public works department prior to construction.

Brillion:

(6) *Surfacing.* All off-street parking areas shall be surfaced with an asphaltic or cement, pavement or chipseal in accordance with city standards and specifications so as to provide a durable and dust free surface, and shall be so graded and drained as to dispose of all surface water. Any parking area for more than five vehicles shall have the aisles and spaces clearly marked. Surfacing of parking areas shall be completed before occupancy is granted. The city plan commission may, however, permit a delay in surfacing in the I-1 and I-2 industrial districts, provided that surfacing will be completed within three years following occupancy. When a delay is permitted, the city plan commission may require appropriate sureties to guarantee that the surfacing will be completed on schedule.

Oconto:

(d) *Surfacing.* All off-street parking area, excluding parking spaces accessory to a single-family dwelling, shall be surfaced with a dustless all weather material capable of carrying a wheel load of four thousand (4,000) pounds. This would typically include a two-inch blacktop on a four-inch base or five (5) inches of Portland cement. For a limited period not greater than two (2) years, this surface could temporarily consist of compacted crushed stone or gravel. Any parking area greater than four (4) vehicles shall have the aisles and spaces clearly marked.

De Pere:

(c) *Surfacing.* Parking areas and drives providing access thereto for single family and two-family dwellings and all other off-street parking areas and drives providing access thereto shall be hard surfaced with concrete, asphalt, or brick.

Staff Report
Tourist Rooming House Ordinance Review

Tourist Rooming Houses (TRH) are dwelling units, which offer sleeping accommodations to transient guests for periods less than 30 days, not including boarding houses or bed and breakfast establishments. These are allowed within all the residential, commercial and agricultural districts. This ordinance has been in effect since March 1, 2016 and staff has seen continued growth over the last 3 years. Prior to that such short-term rentals were only allowed in the commercial and multi-family residential district, and a license from the City was not required. Now, property owners that wish to be permitted for this use must submit the City of Sturgeon Bay Tourist Rooming House application and a \$100.00 permit fee.

Over this last winter, there has been a bit of pressure to take another look at this ordinance to better understand how the ordinance is affecting our City. Some of the comments made are as follows: This use has a negative impact on other lodging facilities such as hotels, motels, inns, and etc. These are facilities that are required to meet higher standards based on state building and health codes. This use has a negative impact on the declining year-round population of Sturgeon Bay. This takes away from the long-term residential homes and rentals. This use is practically unrestricted with no insurance requirements. Based on these topics and other concerns brought to our attention it would be a good idea to take a second look at this ordinance now that it has been active for a while.

Recently, the state has further complicated this issue by limiting municipalities from restricting property owners from conducting short term rental activity from 7-28 days with the ability to restrict the use to 180 days out of the year. Right now, the City ordinance meets state statute, but the Commission could tighten the ordinance up to the current maximum restrictions under the state statute. However, the City cannot go back to outright prohibiting tourist rooming houses.

In March, a discussion group was led by Chairman Dennis Statz and attended by Ald. Kelly Avenson, Planner/Zoning Administrator Chris Sullivan-Robinson, City Administrator Josh VanLieshout, several short-term renters, and some owners from lodging facilities. There was a wide variety of opinions from both sides of the topic, but no clear consensus. There were some who believe that by allowing Tourist Rooming Housing we are taking away affordable homes to long-term residential uses, which is having a domino effect on sustainable jobs within the community. While Sturgeon Bay continues to see growth in tourism, on the back end we have seasonal job vacancies and a lack of affordable housing. Tourist Rooming Houses might not be the main problem, but there are signs across the nation that should be taken into consideration. Heavier enforcements should be imposed to maintain equal economic opportunity and maintain our sense of community.

Following the discussion meeting, it was requested by Acting Chairman Statz that staff draft an ordinance that restricts new Tourist Rooming Houses based upon the maximum

restrictions in the state statute, but grandfathers Tourist Rooming Houses with existing licenses. That draft ordinance is in your packet. The content is in line with what the state statute allows the City to regulate. New Tourist Rooming Houses would have to have a 7-day minimum rental period and rentals of 7 days to 28 days would be allowed for only 180 consecutive days out of any 365-day period. So, new Tourist Rooming Houses could only do weekly rentals for half the year.

In addition, the draft ordinance grandfathers all Tourist Rooming Houses that have a valid license issued prior to July 1, 20##. This date was chosen because in Sturgeon Bay Tourist Rooming House licenses expire on June 30th and, secondly, that date should be close to the actual effective date if this draft ordinance is ultimately adopted by the Council. The grandfathered Tourist Rooming Houses would be subject to the standard nonconforming use rules of the zoning code.

In April, Plan Commission decided that staff should look at how other communities regulate short-term rentals, and the difference in regulations for hotels vs short-term rentals. So it has been a few months since this item was reviewed.

Based on what was requested last meeting, staff looked into regulatory requirements of hotels vs. STR's and reviewed other municipalities.

From a municipal standpoint, the biggest cost regulatory difference is between commercial building and residential building. From review of the Department of Agriculture Trade and Consumer Protection, depending on the number of rooms for a hotel use, the fee with the inspection can cost up to almost \$1700. STR's inspection and permit cost \$410 and a license can hold up to 4 units. All types of lodging facilities are regulated under the same section of Wisconsin State Statute. The regulatory bodies are the, DATCP, DOR, and municipalities.


Other Communities Regulations:

- Walworth County, WI – Require 7 Day minimum except in PUD's
- Green Bay, WI – Comparable to Sturgeon Bay
- Madison, WI – Host on site = no limitation; Host off site = max 30 days/year
- Racine, WI – Must be the primary residence
- Ashwaubenon, WI – 180 days / year
- Douglas County, WI – Comparable to Sturgeon Bay
- Town of Oconomowoc, WI – Comparable to Sturgeon Bay
- Albion, WI – 7 day minimum / 180 day out of a year
- Menasha, WI – Comparable to Sturgeon Bay

The Plan Commission has numerous options to consider, including:

1. Make no changes and drop the issue from consideration.
2. Recommend approval of the draft ordinance to Council as presented.

3. Consider other changes to the Tourist Rooming House regulations, such as applying the additional restrictions only to the residential zoning districts or adding additional provisions, such as local inspections or insurance.
4. Continue to gather input and data from the community, such as additional meetings of the discussion group or public info meetings, surveys, etc.
5. Table this discussion to a future date, such as this winter, to see if the trends relating to Tourist Rooming Houses in the City change in any way.

Prepared by 
Christopher Sullivan-Robinson
Planner / Zoning Administrator

Date 8.15.19

20.09 - Use regulations for R-1 district.

The R-1 district is intended to provide a pleasant, safe and quiet neighborhood environment free from traffic hazards, incompatible land uses, or public annoyance for single-family residential development in the city.

(1) Permitted uses are:

(i) Tourist rooming houses, subject to the following:

1. **Licensing.** The facilities shall be licensed by the state department of health services, the city, and the Door County Tourism Zone Commission.

a. New tourist rooming house permits issued by the city are valid for one year and expire on June 30. If a new tourist rooming house permit is issued after April 1, the city permit shall expire on June 30 the following year.

b. Renewal tourist rooming house permits are valid for two years and expire on June 30. Renewal permits may be applied for no sooner than six months prior to expiration, but are not valid until July 1.

c. The community development department will oversee the issuing or renewal of tourist rooming house permits. In the event city staff denies a permit, the applicant may appeal the denial decision to the city plan commission.

2. **Management.** The owner/operator must reside within Door, Kewaunee, or Brown Counties during periods in which the tourist rooming house is rented. This requirement may be waived if there is a valid management contract with a management company located within Door County.

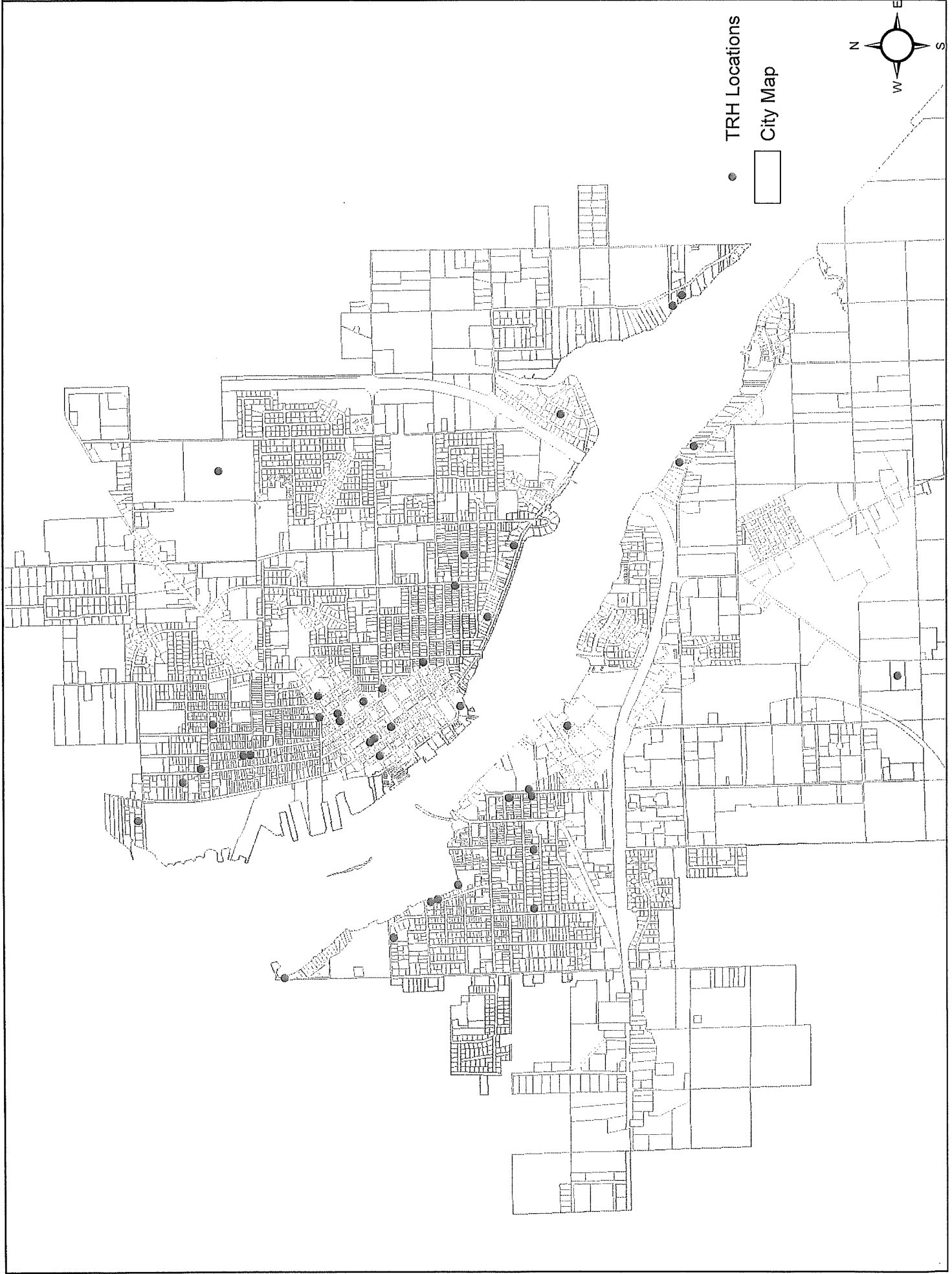
3. **Signage.** Designated tourist rooming houses may have an unlit sign no larger than 2 square feet in size.

4. **Duration of stay.** Tourist rooming houses shall not be rented for periods of fewer than 7 days.

5. **Maximum annual rental days.** The total number of days within any consecutive 365-day period that the tourist rooming house may be rented shall not exceed 180 days. The maximum 180 days shall run consecutively within each 365-day period. The owner of the accessory dwelling unit shall notify the city clerk in writing when the first rental within a 365-day period begins.

6. Tourist rooming houses licensed under this section prior to July 1, 2019 shall be exempt from subsections 4 and 5 above, provided a valid license for the tourist rooming is maintained at all times and subject to the nonconforming use requirements of section 20.26(1).

City of Sturgeon Bay Permitted Tourist Rooming Houses



Lodging owner correspondence

A couple of very important factors regarding our situation here:

1) We do not have consistent tourist traffic. Door County does not have the "pass through" numbers of travelers as are found in other areas. We are essentially in a cul de sac. Unlike other communities that are on the way to another destination, people are coming here to come *here*. We basically have an "on" season and an "off" season with the "off" months far outweighing the "on" ones.

2) Our year-round population is declining. Removing affordable long-term rentals and homes from the market from those that want to commit to (or even try out) living here will only make it that much harder for anyone to even consider making Sturgeon Bay their home.

There must be a better way to do this where it can be more in line with the special circumstances of our community. This issue should not be taken lightly and I strongly implore you all to carefully consider all aspects of this issue before moving forward on any decisions. The longer this is allowed to explode the harder it will be to reel it back in.

I still wish to request an immediate moratorium on issuing any further permits until there can be a more extensive review and consideration of this matter.

Regulations:

What some other communities are doing:

- **limit total number of days units can be rented in a year** (60, 90, 120 days...)
- **require minimum night stay**
 - for example, 7 days minimum stay (though I think that people would find a way to work around this but at least it could be a regulation that could suffer a fine if it were found to be abusing the regulation.)
 - 7 day stay would at least would help to not compete *as much* with the hotels HOWEVER it still encourages property owners to remove their units from long-term renters)
- **Limit # of permits issued to each property owner**
 - **limit to two short-term rental units:** Their primary residence (where they live - see definition below) and one other unit.
 - some do allow up to three short-term rentals (one as primary residence, two for transient rentals) again, proving **primary residence** is key. In Seattle, for example, they introduced the addition of a 3rd rental after one-year
 - **Per property/property owner: the name on the license must be the same as the name on the deed for the property** otherwise, for example, a family of 5 could have 5 outside units each under a different name OR a couple co-owning a property could each get permits adding to the total # of permits in that household.
- **Primary Residence requirement** defined as the dwelling unit in which a person resides for more than one half of the year.
- **Accessory Dwelling Units** are not allowed as STRs in many cities. Some that do allow it require that there is **proof of primary residence** and **limit number of days** it can be rented.

- I would also argue that they should have to comply with the same codes others would have to comply with. For example, when we wanted to convert rooms at The Tambourine into temporary housing--basically just a place for a visiting artist to sleep, or temporary summer help to stay--we were told that in order to do so we had to install fire-suppression system, fire doors, etc. so I'm not sure why these other places converting their spaces would not be required to do the same especially when they'd be operating it essentially as a business for profit.
- **limit the number of permits allowed per block**
- **not allowable in apartment complexes or rent controlled areas** (condos should be advised to add to lease agreements if not already).
- **complaints (noise, trash, vandalism, etc.) lead to revocation/non-renewal of permits**
- **moratoriums on issuing additional licenses** to allow time for further study (New Orleans city council, for example, passed creating an interim zoning district prohibiting new STRs and license renewals for some types of rentals, another to prohibit some new commercial STRs, and another to redirect the New Orleans City Planning Commission (CPC) to issue a broader study of the city's STR laws)
- **limiting maximum occupancy** (ie # of people) that can occupy a short-term rental unit. Many have maximum capacity of 6-8 with no more than 2 persons per available bed (so a 2 bedroom apartment would have max capacity of 4; 3 beds max capacity at 6, etc.)
- **permit application/permits that require annual renewals and fees...** I would add if operated primarily as a business then also require same health and safety requirements as other transient lodging facilities

Considerations:

- STRs encourage property owners to rent housing for short-term instead of taking on long-term rentals
- It is argued that it's a good way for home owners to make a extra money to support their families but when it's done during times when hotels are already struggling I believe that this additional revenue for property owners negatively impacts lodging businesses who are trying support a work force who are also trying to provide for *their* families (an equal and opposite result adding to one but taking away from another). In the meantime, the hotel industry faces much more stringent requirements and higher expenses which puts them exponentially at a disadvantage over the loose and practically non-existent requirements imposed on STRs.
- For the city/county though there's the immediate gratification of collecting a new source of room tax dollars. However, in the long run it drives up property tax, rental prices, housing costs which discourages those who want to settle here. Whole home rentals end up being owned by out of town investors who are not investing in the community. This puts Sturgeon Bay at a disadvantage for attracting more people to the community to live and work. Without available affordable housing it's very difficult to attract and keep people in the area who can contribute to the workforce. **Our population is already declining. We do not need to throw further fuel on this fire.**

- Sense of community is eroded. Those that purchased to invest in a community are now faced with transient neighbors who are not invested in caring for or maintaining property or relationships in the community.
- AirBnB/STR "creates jobs" is not as accurate as it immediately seems.
 - I believe it may be more accurate to say that it creates "different jobs." Seems there may be a trade-off where hotels that are impacted negatively by the increase of AirBnB/STRs are not able to provide hours to their employees and staff cuts need to be made (another possible equal and opposite result where there's an increase in jobs in one area while there's also a loss of jobs in another).
 - When hotels lose business it also prevents those existing lodging businesses from investing further in their employees.
 - many businesses are working hard to offer better pay and benefits but as their businesses take a hit this becomes harder to do.
 - In the meantime we are all competing for the same much needed help while the hotels incur much higher expenses.
- As the hotels continue to suffer (and their workforce suffers) so does the ability to provide quality services. As that erodes it hurts our overall image as a city as well.
- Lack of supervision of renters is unfair to those that live nearby who have invested in the community.

Questions:

- **definition of "transient lodging"** has hotels and private homes in same definition. **Why then are hotels subject to more regulations than a private home if they fall under the same definition?** For example, hotels must have:
 - 2 annual fire inspections
 - fire suppression systems (if new business), alarms, lit exit signs, emergency lights, extension chords not allowed, flame retardant materials, points of egress, monthly fire system testing, etc.
 - 1 annual health inspection
 - restaurant licenses and commercial grade appliances
 - if an AirBnB/STR has a kitchen where food may be prepared, why not required to get a restaurant permit (for example, hotels serving basic continental breakfast are required to have a Moderate Complexity permit to basically serve cereal, donuts and hardboiled eggs. Also required to have commercial fridge, ice machine and dishwasher. Why wouldn't other transient lodging facilities necessitate these same requirements?
 - ADA compliant bathrooms, ramps, etc. (all other new businesses would be required to have, why not new AirBnB/STR businesses?)
- **Is there a way to protect current renters from eviction for the purpose of re-purposing their apt as an AirBnB/STR?**
- **If the city is going to allow over saturation of an existing market then would the city then be willing to subsidize the existing businesses it's hurting?** (this is a stretch, I know. But it's good food for thought. Think of the soy bean farmers who were just

compensated for their crops due to the hit that they took because of the imposed tariffs on their product)

- **Are they required to show proof of insurance/minimum coverage?** Enforcing insurance minimum coverage should be a must and part of their annual application/renewal. If something were to happen to a guest on site, property owners should prove to have enough insurance coverage to take responsibility to care of them.
- **New apartment building being built on Egg Harbor Rd, for example, are there safeguards in place to protect that they will not be allowed to AirBnB/STR?** I would add that if any taxpayer money or any government subsidies were used to build complex that this is required in lease agreements and be strictly enforced.
- **Is there a way to limit *when* people are allowed to rent their properties?** For example, could rentals less than 7 days (if allowed at all) be prohibited in the off season when hotels are struggling to survive? Perhaps only allow them during peak season when the occupancy rates traditionally are above 85%? This way they would be supplementing the market when it's needed and not adding to the further competition when it's not. More food for thought.
- **Is there a way to limit the number of licenses that are allowed in each area just like liquor licenses have limits?** Especially in an area such as ours where there are ample hotel rooms and limited downtown housing.
- **What are the fines for someone who does not have a permit or operates more than 1 rental with only 1 permit?**

PROPERTY owner correspondence

The following is our personal story regarding **Tourist Room Housing** (short-term housing) in order to help further the dialog on the subject of revisiting Sturgeon Bays' current ordinance.

We live at 948 Memorial Drive, which has a lot that is dissected by the road. Our home is on one side and a parkway and our dock is on the other side.

We purchased the house in September 2016 and had it rebuilt with the idea we would have Tourist Room Housing (TRH) in order to help us afford the homes upgrade and taxes. A significant amount of our personal savings went into the property, that had been **vacant and for sale for two years** before we purchased the property. We did extensive remodeling for over a year that included taking a one and a half story and changing it into a two-story home. We were careful to try to design the house to function for our needs while honoring the character of the neighborhood. We have had numerous compliments by passersby.

We moved into our home in November of 2017. We started hosting our extra rooms in July of 2018. We live on the first floor full time with a cat and two dogs. On our second floor and lower level we have a total of three spaces we rent and on occasion share with friends and family.

We pride ourselves with having a very high rating by our Guests. We provide bikes and kayaks for their use along with a steam shower and a sauna. We refer Guests to places in Sturgeon Bay and the rest of Door County to explore, eat and recreate. We develop relationships with Guests and expect many will return to our home or other places in Sturgeon Bay or Door County. We draw travellers from across the United States and overseas that may not have decided to visit our area. We have had the pleasure of hosting guests from Germany, France, Ireland, Singapore and the UK. **Our Guests expect a local authentic experience we are uniquely striving to provide them.**

We also try to pass on our love and respect for our community and the unique and treasured natural setting we are blessed to be part of. We feel a sense of stewardship to the place and play an active role in protecting and enhancing the region.

My (Johns') vocation was as a co-owner of a small outdoor specialty store in Green Bay that sold kayaks, canoes, backpacks and outdoor clothing. I understand and appreciate how local economies work and how important voting with our dollars can shape a community along with state and local policies and ordinances.

I also understand how there can be good players and less than good players in a market. At my business we always tried to provide great service and supported a community of outdoor recreational enthusiasts. We tried to grow the market while trying to be respectful, supportive and fair to our community and our competitors. We were able to garner certain prestigious dealerships such as Patagonia that

would restrict their distribution, try to keep their prices high by establishing suggested retail prices and we, in kind, would protect their reputation, provide a high level of service and commit to adequately stock the store with their product. My business distinguished itself then, and we hope to distinguish ourselves with our TRH now.

This can be the case for short- term rental properties with good players that grow and support a community and less than good players (large multi- property owner) that at a certain saturation level can drive property and tax values upwards, contribute to a housing shortage while providing less community benefits. Currently, looking at the list of 2018 Sturgeon Bay TRH there are few large multi- property owners in the Sturgeon Bay community. This is where ordinances come in to set standards. (Note that it is a fine line between favoring one model of business over another versus having policies that recognize externalized costs to others and the community at large and try to minimize these.)

New technologizes and innovation have brought about short-term Internet generated rentals. We must also realize that regional competition shapes business. **The Millennial generation expects to find Airbnb- type rentals where they travel. Some will go to other destinations if they are not offered.** We are not only competing with other vacation areas in Wisconsin and the Upper- Midwest we are competing with Egg Harbor and Fish Creek. The genie is out of the bottle.

In order to boost the quality of life for Sturgeon Bay (loss of \$25 million to Door County's economy because of a housing deficient) affordable housing can lead to a larger year- round population and therefore is a good goal. Supporting housing for seasonal workers has also been identified as a laudable goal as has other housing deficits. The recent change to allow Mother- in- law Accessory Dwellings should help some. Although the recent housing study makes it evident that the most fruitful action is to create new buildings designed to fit various groups' needs.

Scapegoating all online short- term room rentals is not the Holy Grail for troubling traditional lodging and the housing shortage. It can be tempered with changes to the ordinance but we ask that this be strategically done. Bring out the scalpel, not the axe.

Waterfront property is a niche. Living on the water comes with very high taxes and property values that require great wealth or a plan that includes supplemental income TRH offers Chris and I. We are able to cover a small mortgage, insurance and taxes with this extra income.

We ask that our situation and others that have made significant livelihood investments be accommodated. We feel what we are doing overall benefits the community while other Tourist Room Housing may be less beneficial, especially

looking forward. **If we were limited to having seven- day minimum stays we would be severally challenged and may decide to do Vacation Rental of our entire house.** If the ordinance changes without accommodations, we have stranded assets. We designed and rebuilt our home specifically with Tourist Room Housing in mind based on the current ordinance.

Some ordinance changes that seem fair and would accommodate our and some others situation include:

*****-Grandfathering current Tourist Room Housing**

This would respect the large investments current TRH owners have made while keeping a moderate number of TRH available to tourists searching for this style of housing. Sturgeon Bay does not want to pass up Door County visitors that can go further up the Peninsula. Put a seven-day minimum on new TRH.

This answer would stir less controversy and hopefully avoid possible legal challenges of *property rights* while accommodating multiple interests.

-Primary residence requirement

This requirement would limit the number of TRH while keeping the quality of them higher having on-site supervision.

Austin Texas has an ordinance that has capped short- term rental homes where there is no owner- occupant and is no longer accepting permitting applications.

-Primary residence with one adjacent freestanding rental (i.e., converted garage or carriage house)

You might add a grandfathering clause/ cap to restrict *too* much short- term rental availability.

-Limit number of TRH geographically

-Put a moratorium on TRH

This is a balancing act between individual freedom in the market place, tempering disruptive changes to traditional land use and business models, accommodating demand for new traveling experiences, the larger communities need for affordable housing and Sturgeon Bays quality of life issues. While it is difficult to regulate, design, create and save the heart and soul of a place this is a worthy phantom to chase.

Tourist Room Housing is another venue of a *sharing economy* that can continue to enrich our community by inter- weaving people to place and each other. TRH has its possible dark side characterized by large multi- property absentee ownership that at scale can exacerbate housing, traditional lodging and other quality of life issues.

While there may be other opinions I do not think the 41 plus permitted short-term rentals, identified by the city, has significantly affected Sturgeon Bay but it may be a future threat an ordinance change may avert.

In the spirit of inquiry, shared benefit and good will, let's proceed.

Thank you for your attention.
Respectfully Submitted by
Chris Zimonick and John Hermanson
948 Memorial Dr.
Sturgeon Bay, WI. 54235
920-615-5978

What is possibly allowed under existing state law?

Madison's short-term rental ordinance states:

"Who May Rent, and How Often

- 1 You may only rent a property if it is your primary residence.
- 2 The property can only be offered for rental by the owner or a renter who is explicitly authorized in the lease.
- 3 If the operator occupies the residence at the time of the rental, there is no limit on the number of days the residence may be rented.

If the operator does not occupy the residence at the time of rental, the the residence may be rented no more than thirty (30) days per licensing year; July 1 to June 30th."

"Now, if you are a homeowner who has been renting your house to tourists for years, sometimes for less than one-week periods, you may be asking whether you can continue renting for weekends or other periods of less than one week. The short answer is: Maybe. Depending on your use of the property, you may be able to establish your property as an existing nonconforming use under what are colloquially referred to as "grandfather laws." Contact the attorneys at Murdock Law if you think this might be your situation and if you need help navigating the laws. We're here to help protect your [property rights](#)."

Murdock Law in Port Washington on website

Dave Lienau, county board chair
Rep. Kitchens

Considerations:

What are the problems we are trying to solve? Do we have statistics to how big the problems are? What are we measuring to determine there is a problem? Are we trying to create an advantage for traditional lodging since they have experienced a "bite" out of their business due to short-term rentals? Are we trying to help the issue of affordable housing in Door County? Are we trying to make sure neighbors to STR's are happy with this type of business being conducted in their neighborhood? Are we trying to make sure the STR's are treated the same as other lodging (requiring permits, inspections, etc)? Are there other concerns?

Are we trying to "level the playing field"?

"Right now, traditional housing also lists on listing agencies. Ergo, if guests see those listings and still don't choose to stay there, why is this the problem of STR owners in Sturgeon Bay? Don't these listings for traditional lodging on these sites level the playing field enough? This is healthy competition in the market, and if traditional lodging wants more of the market share, she needs to reconsider her marketing plans."

This is a local decision (Sturgeon Bay) but it will have county effects for years to come. The ripple effects will be long-lasting.

The area is very dependent on tourism dollars (all of the county too) and the decision should not be taken lightly.

Last year, Door County was third on the list for top earning areas in the state of Wisconsin for short-term rentals through Airbnb. Figures for VRBO, Expedia, and other services were not readily available. According to a report in The Milwaukee Business Journal, Door County hosted 21,000 visitors through Airbnb for an income of \$3.2 million in 2018 lagging only behind Milwaukee and Dane Counties.

2017-2019 budget allows for this legislation, what if the next budget changes that? Let's remember that the allowance is only in the budget in the first place because the Wisconsin Hotel and Lodging Association had a strong hold on Walker and wanted it there.

What is currently required of short-term rentals in Sturgeon Bay (inspections, water testing, permits, etc)?

"What makes us materially different? We have gone through a licensing process. We have our well water tested. We employ local folks."

"Sturgeon bay for this year had an increase of 1.1% in room tax collections. Which is the smallest of all Door county. So there solution is let's restrict it. Look at egg harbor, baileys, and Sister Bay. All there room tax dollars percentages have increased almost 6 or more percent. And guess where most of the new investment in the county is going. Not sturgeon Bay."

"I agree with all the above statements. Only thing I want to add is that maybe there should be some restraints to the number of licenses issued. Two possibilities I see with unrestrained licensures.

1. So saturated a market that no one does well.

2. So commercial that we become another Wisconsin Dells (or close proximaty).

There are towns here in Colorado that most of the locals were forced out of their homes and the complections of the community drastically changed because of buy up of most of single family homes and unrestrained commercialism. Central City and Blackhawk are big examples. There are many others."

"Also what happens to companies like JR vacation rentals. They do the same thing we are doing. So if there is change it must affect them as well. Some of these Northern Door vacation rentals have been doing this for decades."

"What makes us materially different? We have gone through a licensing process. We have our well water tested. We employ local folks."

If we are considering limiting STR's in any way, we should understand that any income these hosts are earning is shared income with other tourism activities (dining, charters, leisure activities, etc) not to mention state revenue tax and room tax.

Benefits of STR's for Door County:

- STR's allow for a variety of lodging options allowing Door County to appeal to a wider variety of visitors. For example:
 - Large groups who don't want to be broken up into many rooms
 - Guests who desire privacy
 - Families who like to cook together

"Family groups are the most frequent guests at pur house. They add to the local economy by shopping, eating out, using tourism services, and they fall in love with Door County which helps it thrive."

- Groups who desire a specific location where traditional lodging is not available

- STR's allow local homeowners who may not be directly involved in the tourism trade to benefit from the increased visitorship in the area and supplement their income. Rather than having a negative attitude about season visitors such as bumper stickers that say, "If it's called tourism season, why can't we shoot them?" locals would welcome the boost in their income.

"I have three children and Airbnb/VRBO has changed the way we travel completely and opened up so many opportunities. For years our family stayed in rental homes before we bought, which we wouldn't have been able to do. Now that we own our Airbnb our tax dollars are helping the community while at the same time we don't use the schools, etc. Additionally, the upkeep of our property and others like ours helps keep many local businesses (hardware stores, etc) and tradesmen (plumbers, contractors, electricians, etc.) in business. We wouldn't be able to own our home if we couldn't rent it out. The hotels in the area have their own appeal to many who enjoy the services they provide. As times change the owners should consider the idea that they can run their businesses differently as well, such as marketing it as a boutique hotel, offering unique experiences etc..."

- STR's can increase the value of a property and as a result, higher tax dollars are collected. Yes, this can negatively affect the affordable housing market, but more dollars would be available for incentives for developers, etc.
- STR's help build a free and open marketplace that promotes all lodging hosts to "bring their A game" and offer the best lodging possible. Competition keeps everyone on their toes and helps everyone improve what they offer.

"Individuals travel ideas and patterns have changed. Not everyone wants to stay in hotels or bed and breakfast. If you do not move with the times, you will be left behind."

"If someone is searching with the term, 'Door County' on a site such as Airbnb, and, if there is a mandatory stay of seven days in Sturgeon Bay, they will simply go elsewhere in the County where there are no length of stay requirements. It is false reasoning for Melaniejane to assume that these potential guests are going to flock to her motel (See her letter on this page from March 2). That means lost tourist \$ for Sturgeon Bay!"

- STR's provide employment for cleaning staff, property management, pest control, HVAC providers, electricians, plumbers, landscapers, snow removal, lawn care providers and more. The more a place is rented, the more these services will be needed.

"If I were to rent to long term renters. I would not spend the money in the community like I do for short term rentals. Long term I would do the bare minimum. With short term

rentals I'm constantly updating, painting, landscaping, snow removal, updating appliances and the such. And guess when I do most of my purchases for this. The winter, when local businesses need the extra income. "

- STR's provide valuable room tax to bring more tourism dollars to the region.
- Hotels simply cannot accommodate all of the people that come to Door County on a yearly basis. Limiting STR's may contribute to more large-scale hotel projects. These may not fit the Door County "vibe".

"Rental homes hide in plain site and oftentimes change back to permanent residences without anyone knowing. A huge hotel takes away from the ambiance that DC tries to maintain."

"So I do think we need to be careful to maintain the integrity of Door County so that people will continue to come and enjoy our communities. And I want to see the locals staying in their homes and more permanent residents moving in. Affordable housing is no longer available here where I live. I'd hate to see the same happen in Sturgeon Bay."

Arguments against requiring a 7-night minimum:

- If homeowners decide not to rent in STR's because of the minimums, there's no guarantee that these properties would go to affordable housing or year-round rentals.

"As an owner a 4 Airbnb's, I can't pay the mortgage if I rent to long term renters. So would be forced to sell all my property. If not would have to knock one of my 1920 houses down and put up a condo. Because it's in commercial zone to make it pay."

- Seven-night minimum stays may take vacations in Door County out of the budgetary reach for some families. Young families, couples, and people on a fixed income may choose to visit Door County for a long weekend rather than a week for budget reasons. Forcing STR's to only offer full week rentals is a hardship on the people who want to vacation and cannot afford a full week.

✓ MARTY
✓ CHRISTOPHER

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Sharing is Caring: Regulating Rather than Prohibiting Home Sharing in Wisconsin

Apallonia C. Wilhelm

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SHARING IS CARING: REGULATING RATHER THAN PROHIBITING HOME SHARING IN WISCONSIN

“If the City is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law.”¹

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1. Heef Realty & Invs., L.L.P. v. City of Cedarburg Bd. of Appeals, 2015 WI App 23, ¶ 13, 361 Wis. 2d 185, 861 N.W.2d 797.

I. INTRODUCTION

Wisconsin is famous for a variety of reasons, beer and cheese of course, but also for its many tourist attractions. In 2016, Wisconsin attracted 107.7 million tourists bringing in \$20 billion for the state's economy.² Each year, Summerfest, EAA AirVenture Oshkosh, and the Wisconsin State Fair—just to name a few—bring in tourists from all over the world.³ With tourism comes lodging necessity, and people are finding that a short-term rental (STR) on popular sites like Airbnb, is an affordable alternative to hotels.⁴ An STR is generally defined as “[p]roperty advertised for rent for terms less than 30 consecutive days,”⁵ which is exactly the type of rental tourists regularly seek. Airbnb currently has thousands of active listings in Wisconsin, including 792 listings in Milwaukee, 490 in Madison, and 231 in Green Bay.⁶ Smaller areas like the City of Cedarburg and the Village of Ashwaubenon have 65 and 38 listings respectively.⁷ Additionally, in 2017, over 200,000 guests stayed in

2. *The Power of Wisconsin Tourism*, TRAVELWISCONSIN.COM, <http://industry.travelwisconsin.com/uploads/medialibrary/e4/e4babea4-c3a0-4c8c-a9f8-5ce446c05b2c-poweroftourism-sheet.pdf> [<https://perma.cc/V6DB-8QPX>] (last visited Jan. 1, 2018) (noting that tourism had an impact in 2016 up \$700 million from 2015 and a 35% increase in the last six years).

3. *See Fairs & Festivals in Wisconsin*, TRAVELWISCONSIN.COM, <https://www.travelwisconsin.com/things-to-do/entertainment-attractions/fairs-festivals> [<https://perma.cc/EGV5-X3FZ>] (last visited Jan. 1, 2018) (boasting over 1,000 scheduled fairs and festivals in Wisconsin in 2018).

4. *See Comparing Airbnb and Hotel Rates Around the Globe*, BUSBUD.COM, <https://www.busbud.com/blog/airbnb-vs-hotel-rates/> [<https://perma.cc/TZ9R-6PEG>] (last visited Jan. 1, 2018) (“In some cities, the difference in price is dramatic. For instance, in Toronto, a hotel room costs about 50% more than an Airbnb stay on average.”).

5. *Burnett County Short-Term Rental Guidelines: Land Use and Information Committee—January 2016*, BURNETTCOUNTY.COM, <http://burnettcounty.com/DocumentCenter/View/3658> [<https://perma.cc/Z59A-5RDX>]. Additionally, in the event a guest refuses to leave or inadvertently stays for over thirty days the host may subsequently become a landlord and must use eviction proceedings to remove the guest. *See* Skip Descant, *Airbnb ‘Squatter’ Checks Out of Palm Springs Condo*, USA TODAY (Aug. 21, 2014, 1:05 AM), <http://www.usatoday.com/story/news/nation/2014/08/21/airbnb-squatter-leaves-condo/14375429/> [<https://perma.cc/MYU5-56VH>].

6. *Wisconsin*, AIRDNA, <https://www.airdna.co/region/us/wisconsin> [<https://perma.cc/XZ5M-JV3X>] (last visited Apr. 1, 2018) [hereinafter AIRDNA].

7. *See, e.g., Cedarburg or Village of Ashwaubenon Listings*, AIRBNB, <https://www.airbnb.com> [<https://perma.cc/W42A-XL2C>] (enter “Cedarburg, WI, United States” or “Village of Ashwaubenon” in the search field; then press enter for results) (last visited Jan. 1, 2018).

Airbnbs throughout Wisconsin, earning hosts over \$25 million, which was almost double the number of visitors from 2016.⁸

Overall, STRs remain largely unregulated in Wisconsin, causing concerns with health and safety, tax evasion, disruption of neighborhoods, and issues with liability.⁹ Mainly, unregulated STRs create confusion for all involved.¹⁰ As Airbnb continues to grow, cities across the country are enacting ordinances to try to keep up with the ever-changing landscape of home sharing while preventing further confusion for its citizens.¹¹

Often at the center of the STR debate is property rights, including what they encompass and what they should encompass. Property is often described theoretically as a “bundle of sticks.”¹² The bundle of sticks metaphor refers to the different property rights that individuals hold: the right to use; the right to possess; the right to transfer or dispose of the property; and the right to exclude others from the property.¹³ Property owners who operate STRs are experiencing concerns with their bundle of sticks, specifically the right to use and the right to exclude. First, property owners believe their property rights include the right to use their private property as an STR. Second, property owners also believe they have the right to exclude others from using their property as an STR without their permission, such as is common in landlord-

8. Rick Barrett, *Wisconsin's Airbnb Hosts See a 97% Spike in Visitors in 2017*, MILWAUKEE J. SENTINEL (Dec. 23, 2017, 4:50 PM), <https://www.jsonline.com/story/news/2017/12/23/wisconsin-airbnb-hosts-see-97-spike-visitors-2017/979205001/> [<https://perma.cc/A3HG-7T78>] (“Airbnb service in Wisconsin grew 97% from 2016 as it became better known and benefited from large tourism events during which hotels were booked solid.”); *Wisconsin Airbnb Hosts Earned \$25.2 Million, Welcomed 210,000 Guests in 2017*, WIS. GAZETTE (Dec. 21, 2017), http://www.wisconsin Gazette.com/news/wisconsin-airbnb-hosts-earned-million-welcomed-guests-in/article_96164e88-e684-11e7-b0e2-572f406479f9.html [<https://perma.cc/83BY-LXFA>].

9. Although, recently, the state of Wisconsin and Airbnb came to an agreement in which Airbnb will collect taxes for certain cities. Ross Terrell, *State, Airbnb Reach Tax Deal*, WIS. PUB. RADIO (June 9, 2017, 10:12 AM), <https://www.wpr.org/state-airbnb-reach-tax-deal> [<https://perma.cc/KC58-7X2K>]. This will be discussed more in Section IV.C. It is worth noting that Airbnb is not the only home-sharing company; therefore, hosts using other sites could continue to evade taxes.

10. See *infra* Part V.

11. See, e.g., PORTLAND, OR., PLANNING & ZONING CODE § 33.207 (2015), <https://www.portlandoregon.gov/bps/article/501886> [<https://perma.cc/W33C-8LSW>]; NASHVILLE, TENN., ORDINANCE No. BL2016-492 (2017), https://www.nashville.gov/mc/ordinances/term_2015_2019/bl2016_492.htm [<https://perma.cc/D2FH-DTVB>].

12. Kristine S. Tardiff, *Analyzing Every Stick in the Bundle: Why the Examination of a Claimant's Property Interests is the Most Important Inquiry in Every Fifth Amendment Takings Case*, 54 FED. LAW. 30, 31 (2007).

13. *Id.*

tenant circumstances.¹⁴ Lastly, property owners are under the impression that they can exclude the government from restricting the use of their private property as they choose.¹⁵ Aside from the interests of the property owner, there are three other interests involved with STRs, those of the host, the guest, and the city.¹⁶

This Comment proceeds as follows. Part II begins with a discussion of the sharing economy, specifically home sharing, and its impact on the world thus far. Using Airbnb as an example, this Part will describe both the positive and negative aspects of home sharing. Next, Part III compares existing approaches to home sharing from San Francisco, California's regulatory approach to New York's prohibitory approach. Part IV addresses the current status of home sharing in Wisconsin, including three recent court cases regarding land use restrictions, a proposed state law encouraging home sharing, and three Wisconsin cities' different approaches to home sharing. Finally, Part V suggests a clear regulatory approach and enforcement procedure for Wisconsin cities that will combine the various competing interests in a way that is fair and manageable.

II. THE SHARING ECONOMY: WHAT IS HOME SHARING?

The sharing economy involves the exchange of underused assets or services from one individual to another either for a fee or for free.¹⁷ The exchange of

14. Since STRs are rather new, property owners are unlikely to realize that without a provision in their lease prohibiting the tenant from subleasing the property to guests on Airbnb, tenants can use the property without the landlord's express permission for such a purpose. This is assuming the tenant follows the subleasing laws of the city. See Michael Schultes, *Here to Stay or a Flash in the Pan? How Zoning and Property Laws May Affect Airbnb in Baltimore and the Nation*, 5 U. BALT. J. LAND & DEV. 77, 82–83 (2015).

15. See generally Jamila Jefferson-Jones, *Airbnb and the Housing Segment of the Modern "Sharing Economy": Are Short-Term Rental Restrictions an Unconstitutional Taking?*, 42 HASTINGS CONST. L.Q. 557, 560 (2015) (discussing "the question of whether municipal restrictions on short-term leasing constitute unconstitutional takings of private property without just compensation").

16. One might think the host is the same as the property owner. However, they are not always one and the same. When cities began regulating STRs little was done to distinguish between the two. Cities have now come to realize the interests may be intertwined, but they are not always the same. A host may be a tenant or a landlord, but ultimately the ability to use a property as an STR should be solely up to the property owner, meaning the person who owns the home. There is not an issue when the property owner gives permission to the tenant or the landlord to use the property as an STR. Property owners should also realize the importance of re-visiting their lease templates in order to ensure they now account for STRs and whether they do or do not want the tenant or landlord to use the property should be explicitly mentioned. See *infra* Part V.

17. See *Consumer Intelligence Series: The Sharing Economy*, PWC.COM 5 (2015), <https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the->

assets or services is often completed through sharing platforms or marketplaces.¹⁸ Two of the most common examples include Airbnb—allowing users to share their homes with guests—and Uber—allowing users to use their personal vehicles for transportation services.¹⁹ According to a national Pew Research Center survey, 72% of the U.S. adult population has used at least one type of shared, online service.²⁰ Of the 72%, 11% have used an online home-sharing service and 15% have used a ride-sharing service.²¹ In addition, research conducted in 2014 by PriceWaterhouseCoopers estimates that by 2025 the global sharing economy will have potential revenue worth \$335 billion.²²

In a triumph of understatement: the sharing economy is shaking up established markets.²³ One market in particular is the hospitality industry and the most well-known home sharing company is Airbnb.²⁴ Roommates Joe Gebbia and Brian Chesky founded Airbnb in 2008 while living in San Francisco struggling to pay rent.²⁵ The idea began with guests sleeping on air mattresses in their apartment and receiving breakfast in the morning; hence the name, Air

sharing-economy.pdf [https://perma.cc/SB7X-74RA] [hereinafter *Consumer Intelligence Series*] (including examples such as hospitality and dining, automotive and transportation services, retail and consumer goods, and media and entertainment).

18. *Id.* at 15.

19. *See id.* at 5.

20. Aaron Smith, *Shared, Collaborative and On Demand: The New Digital Economy*, PEWRESEARCHCENTER 3 (2016), http://www.pewinternet.org/files/2016/05/PI_2016.05.19_Sharing-Economy_FINAL.pdf [https://perma.cc/4W9X-VY6G] [hereinafter *Shared, Collaborative and On Demand*]. The national Pew Research Center survey consisted of 4,787 American adults, looked at 11 different shared services, and was conducted between November 24 to December 21, 2015. *Id.*

21. *Id.*

22. *The Sharing Economy: Sizing the Revenue Opportunity*, DECLARA (Nov. 12, 2017), <https://declara.com/content/kaZnB43a> [https://perma.cc/H25Y-Q7SW]. The PwC research “compared the revenue potential in five new ‘sharing economy’ sectors (peer-to-peer finance, online staffing, peer-to-peer accommodation, car sharing and music and video streaming) with the potential in five traditional ‘rental’ sectors (equipment rental, B&B and hostels, car rental, book rental and DVD rental).” *Id.* Both of which have a revenue potential worth \$335 billion in 2025. *Id.*; *see also* Judith Wallenstein & Urvesh Shelat, *Hopping Aboard the Sharing Economy*, BCG.COM (Aug. 22, 2017), <https://www.bcg.com/publications/2017/strategy-accelerating-growth-consumer-products-hopping-aboard-sharing-economy.aspx> [https://perma.cc/ML2N-JW65] (discussing the rapid growth of the sharing economy as evidenced, in part, by “[a]n estimated \$23 billion in venture capital funding . . . poured into the market since 2010”).

23. *See Consumer Intelligence Series*, *supra* note 17, at 4.

24. *See Shared, Collaborative and On Demand*, *supra* note 20, at 15.

25. Biz Carson, *How 3 Guys Turned Renting an Air Mattress in Their Apartment into a \$25 Billion Company*, BUS. INSIDER (Feb. 23, 2016, 11:22 AM), <http://www.businessinsider.com/how-airbnb-was-founded-a-visual-history-2016-2> [https://perma.cc/4LKX-Q9JC].

Bed and Breakfast.²⁶ Airbnb now contains over 3 million listings in over 191 countries,²⁷ and, as of March 2017, it was reportedly worth \$31 billion.²⁸

A large part of Airbnb's success is the simplicity of the process. Anyone can use Airbnb (as a guest or a host) by going to its website and creating an account, a process that takes mere minutes. Hosts can post listings that range from rentals of an entire home, apartment, or private room,²⁹ and the rentals range from one day to an entire month.³⁰ The hosts fill out the description of the listing including pictures, amenities, and price.³¹ Further, hosts decide "house rules," stating whether pets, parties, or smoking is allowed, and the check-in time available.³² Guests find listings on Airbnb based on their preferred dates of stay, number of guests, room type, and price range.³³

Airbnb's success, however, is not without challenges. For instance, Airbnb's simplistic approach, allowing anyone to use the site, provides few safeguards for screening.³⁴ Because Airbnb functions as a "reputation-based

26. *Id.*

27. *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> [<https://perma.cc/3LNS-T25X>] (last visited Jan. 1, 2018). Airbnb listings include renting "an apartment for a night, a castle for a week, or a villa for a month." *Id.*

28. Lauren Thomas, *Airbnb Just Closed a \$1 Billion Round and Became Profitable in 2016*, CNBC (Mar. 9, 2017, 10:45 AM), <https://www.cnbc.com/2017/03/09/airbnb-closes-1-billion-round-31-billion-valuation-profitable.html> [<https://perma.cc/VY39-DKZN>]. Airbnb's previous valuation was \$30 billion, thus, its valuation increased by \$1 billion in just six months. *See* Maureen Farrell & Greg Bensinger, *Airbnb's Funding Round Led by Google Capital*, WALL ST. J. (Sept. 22, 2016, 3:23 PM), <http://www.wsj.com/articles/airbnb-raises-850-million-at-30-billion-valuation-1474569670> [<https://perma.cc/B36H-H3VQ>].

29. Lara Major, *There's No Place Like (Your) Home: Evaluating Existing Models and Proposing Solutions for Room-Sharing Regulation*, 53 SAN DIEGO L. REV. 469, 474 (2016). *See generally* AIRBNB, <https://www.airbnb.com> [<https://perma.cc/W42A-XL2C>] (last visited Jan. 1, 2018) [hereinafter AIRBNB].

30. *About Us*, *supra* note 27.

31. *Host on Airbnb*, AIRBNB, <https://www.airbnb.com/host/homes> [<https://perma.cc/7H49-SP9T>] (last visited Jan. 29, 2018).

32. *See* AIRBNB, *supra* note 29 (viewing any current listing will show the "house rules" established for that listing).

33. *See generally* AIRBNB, *supra* note 29 (typing in any city will bring up current listings in which one can filter by preference).

34. *See Terms of Service*, AIRBNB, <https://www.airbnb.com/terms> [<https://perma.cc/U79H-ZRDV>] (last updated Jan 29, 2017). Under "Eligibility, Using the Airbnb Platform, Member Verification" it states:

2.4 User verification on the Internet is difficult and we do not assume any responsibility for the confirmation of any Member's identity. Notwithstanding the above, for transparency and fraud prevention purposes, and as permitted by applicable laws, we may, but have no obligation to (i) ask Members to provide a

system,” hosts and guests must rely on reviews left by one another to determine whether the property is safe and secure.³⁵ In addition to limited screening safeguards, some Airbnb users have experienced issues concerning racially discriminatory conduct.³⁶ However, on the upside, the reputation-based system has actually been shown to slightly deter such discrimination.³⁷

Another problem arises when guests cause damage to homes, as one user complained about on Airbnb’s Community Center page, detailing damages in excess of \$3,500 from an out of control house party.³⁸ Airbnb provides a \$1 million host guarantee in the event property damage occurs,³⁹ but it does not apply until after the host seeks recovery from the responsible guest and his or her existing insurer.⁴⁰ Additionally, few cases exist in which Airbnb followed

form of government identification or other information or undertake additional checks designed to help verify the identities or backgrounds of Members, (ii) screen Members against third party databases or other sources and request reports from service providers, and (iii) where we have sufficient information to identify a Member, obtain reports from public records of criminal convictions or sex offender registrations or an equivalent version of background or registered sex offender checks in your local jurisdiction (if available).

Id. (emphasis added).

35. Joseph Shuford, Note, *Hotel, Motel, Holiday Inn and Peer-to-Peer Rentals: The Sharing Economy, North Carolina, and the Constitution*, 16 N.C. J.L. & TECH. ON. 301, 307 (2015).

36. See Benjamin Edelman et al., *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, 9 AM. ECONOMIC J. APPLIED ECON., Apr. 2017, at 1, 1 (“In an experiment on Airbnb, we find that applications from guests with distinctively African American names are 16% less likely to be accepted relative to identical guests with distinctively white names.”). The study also discussed how an Airbnb guest must display a picture on their profile and how a picture is often a “market design choice that may further enable discrimination.” *Id.* at 2.

37. See Jun Li et al., *A Better Way to Fight Discrimination in the Sharing Economy*, HARV. BUS. REV. (Feb. 27, 2017), <https://hbr.org/2017/02/a-better-way-to-fight-discrimination-in-the-sharing-economy> [<https://perma.cc/U4TW-92TN>] (“[W]e found that when guests have even one positive review on their profiles, it statistically eliminates racial discrimination against them.”).

38. See *Community*, AIRBNB (Apr. 26, 2016, 10:45 AM), <https://community.airbnb.com/t5/Hosts/House-trashed-wrecked-destroyed-by-guest/td-p/76067> [<https://perma.cc/T9EU-G99A>]. See generally *AirbnbHell: Uncensored Airbnb Stories from Hosts & Guests*, AIRBNBHELL.COM, <http://www.airbnbhell.com> [<https://perma.cc/7LWZ-YYPL>] (last visited Jan. 1, 2018) (providing Airbnb hosts and guests with a forum to tell their stories to show the “risks and dangers of using Airbnb”).

39. *The \$1,000,000 Host Guarantee*, AIRBNB, <https://www.airbnb.com/guarantee> [<https://perma.cc/4Z36-ZS5Z>] (last visited Jan 1, 2018).

40. *Host Guarantee Terms and Conditions*, AIRBNB, https://www.airbnb.com/terms/host_guarantee [<https://perma.cc/S78M-AR7G>] (last updated June 19, 2017).

through on this guarantee, creating a false sense of security in its users.⁴¹ It is inevitable that as Airbnb continues to grow in popularity, more issues will come to light. For now, cities should focus on enacting clear regulations and enforcing appropriate penalties for non-compliance.

III. REGULATING OR PROHIBITING HOME SHARING? SAN FRANCISCO VS. NEW YORK

There are generally three options when approaching home sharing: cities can do nothing, cities can create a regulatory structure, or cities can completely prohibit home sharing. The regulatory structures throughout different cities come in many different forms, ranging from having only a few requirements⁴² to having several pages of requirements.⁴³ On the other hand, cities that prohibit home sharing do so by either banning home sharing altogether or prohibiting certain kinds of home sharing.⁴⁴ The city of San Francisco and the state of New

41. See *What Does the Airbnb Host Guarantee Actually Guarantee?*, PROPER INSURANCE, <https://www.proper.insure/airbnb-host-guarantee/> [<https://perma.cc/YGF5-PLKU>] (last visited Jan. 1, 2018) (“Relying on Airbnb’s Property Damage Guarantee Could Leave You Broke & Homeless.”); Julie Bort, *Airbnb Banned From Condo Complex After Guest Caused \$10,000 Of Damage*, BUS. INSIDER (Oct. 9, 2014, 2:50 PM), <http://www.businessinsider.com/airbnb-guest-caused-10000-of-damage-2014-10> [<https://perma.cc/AHL4-MNLS>]; see also *Is the Airbnb \$1 Million Host Guarantee a Marketing Gimmick?*, QUORA, <https://www.quora.com/Is-the-Airbnb-1-million-host-guarantee-a-marketing-gimmick> [<https://perma.cc/RN6V-3G3S>] (last visited Jan 1, 2018) (“The Airbnb Host Guarantee is definitely a fraud, and Airbnb should be absolutely ashamed for their deceptive advertising.”).

42. See *Burnett County Short-Term Rental Guidelines*, *supra* note 5 (demonstrating how Burnett County in Wisconsin has a mere nine requirements for regulating STRs).

43. See, e.g., PORTLAND, OR., PLANNING & ZONING CODE § 33.207 (2015). Portland’s STR ordinance is eight pages long and includes two different types of STRs: Type A—which is a rental where no more than two bedrooms are rented to overnight guests—and Type B—where three or more bedrooms are rented to overnight guests. *Id.* Nashville, Tennessee’s STR ordinance is also several pages long, including three different types of STRs and an STR permit cap in which the owner must check an availability map to determine if their property can be listed. NASHVILLE, TENN., ORDINANCE No. BL2016-492 (2017). *Id.*

44. See Bianca Barragan, *Santa Monica Just Banned Airbnb’s Biggest Money-makers*, CURBED L.A. (May 13, 2015, 12:04 PM), <http://la.curbed.com/2015/5/13/9961560/santa-monica-just-banned-airbnbs-biggest-money-makers> [<https://perma.cc/CH7X-47BN>]. Santa Monica has some of the strictest laws of any city when it comes to home sharing. Like the state of New York, Santa Monica completely bans home sharing of entire units lasting under thirty days, but does allow home sharing of rooms or a couch if the occupant “registers and pays taxes on the unit.” See *id.* The village of Ashwaubenon in Wisconsin wanted to prohibit home sharing completely but settled on confining the STRs to only twenty-two homes. Richard Ryman, *Ashwaubenon Limits Short-Term Rentals*, USA TODAY NETWORK-WIS. (Aug. 24, 2016, 6:44 PM), <http://www.packersnews.com/story/news/2016/08/24/ashwaubenon-limits-short-term-rentals/89297080/> [<https://perma.cc/5HCU-THPE>].

York have adopted completely opposite approaches to regulating home sharing. Although limited housing is a large problem for both cities,⁴⁵ San Francisco approaches the problem with comprehensive regulation while New York utilizes outright prohibition. The following Sections will discuss both approaches: Section A will summarize the regulatory scheme in San Francisco by outlining the positive and negative aspects of its current ordinance and Section B will examine the prohibitory approach of STRs in New York with arguments from both proponents and opponents of its state law enacted in late 2016.

A. San Francisco, California

In 2015, San Francisco enacted a Short-Term Rental Ordinance in Chapter 41A of the San Francisco Administrative Code (Ordinance), creating the Office of Short-Term Rental (OSTR).⁴⁶ Because San Francisco suffers from “a severe shortage of decent, safe, sanitary, and affordable rental housing,” the city created the Ordinance to limit people from buying and renting properties to use solely as STRs.⁴⁷ Thus, if the residential unit is subject to the Inclusionary Affordable Housing Program, it is prohibited from being used as an STR.⁴⁸ The OSTR has an extensive regulatory structure with many essential features, but the fact that it is so extensive also places a seemingly undue burden on individuals seeking to host in the city.

45. S.F., CAL., ADMIN. CODE § 41A.3(a) (2016), [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter41aresidentialunitconversionandde?fn=document-frameset.htm&f=templates\\$uq=\\$up=1\\$force=7158\\$vid=amlegal:sanfrancisco_ca_m\\$anc=JD_Chapter41A](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter41aresidentialunitconversionandde?fn=document-frameset.htm&f=templates$uq=$up=1$force=7158$vid=amlegal:sanfrancisco_ca_m$anc=JD_Chapter41A) [https://perma.cc/MF3H-UNXE]; Michael Greenberg, *Tenants Under Siege: Inside New York City's Housing Crisis*, N.Y. REV. OF BOOKS (Aug. 17, 2017), <http://www.nybooks.com/articles/2017/08/17/tenants-under-siege-inside-new-york-city-housing-crisis> [https://perma.cc/SPK8-UU7P].

46. S.F., CAL., ADMIN. CODE § 41A.7; see Letter from Kevin Guy, Director, Office of Short-Term Rentals, to Short-Term Rental Hosting Platform Company (July 31, 2017), https://shorttermrentals.sfgov.org/sites/default/files/OSTR_Letter_to_Platforms_Admin_Guidelines073117.pdf [https://perma.cc/R7RK-PY3Z] [hereinafter Letter from Kevin Guy].

47. S.F., CAL., ADMIN. CODE § 41A.3.

48. *Id.* § 41A.4. Planning Code Section 415 requires each local government agency to develop a comprehensive long-term plan that establishes policies encouraging the development of a variety of types of housing for all income levels, including multifamily rental housing. S.F., CAL., PLANNING CODE § 415.1(A)(1)(d) (2014), [http://library.amlegal.com/nxt/gateway.dll/California/planning/article4developmentimpactfeesandproject?f=templates\\$fn=altmain-nf.htm\\$q=\[field%20folio-destination-name:%27415.1%27\]\\$x=Advanced#JD_415.1.1](http://library.amlegal.com/nxt/gateway.dll/California/planning/article4developmentimpactfeesandproject?f=templates$fn=altmain-nf.htm$q=[field%20folio-destination-name:%27415.1%27]$x=Advanced#JD_415.1.1).

The OSTR has several important eligibility requirements for individuals but the occupancy requirements appear to be excessive. The first step is to verify eligibility, requiring an individual to be a permanent resident of San Francisco and to have lived in his or her unit for at least sixty days before applying.⁴⁹ The occupancy requirements further prohibit a permanent resident from using their residence as an STR unless they occupy the property for at least 275 days in a calendar year.⁵⁰ This is likely due to the aforementioned shortage of affordable housing in the city, but it prevents individuals from using their property as they choose.

San Francisco's Ordinance uses the term permanent resident when describing an STR owner. The permanent resident "may be an owner *or* a lessee,"⁵¹ which means that San Francisco considers a tenant to be a permanent resident who can use the unit as an STR. However, the OSTR attempts to protect the property owner's interest in a few ways. First, the Office warns the tenant that registering the unit does not override any lease agreement and strongly recommends the tenant review the lease beforehand.⁵² Second, the Office requires the tenant to provide a copy of the lease or rental agreement when applying to be added to the STR registry.⁵³ Third and finally, when the tenant applies to be added to the STR registry, the Office sends a mailed notice to the owner of record of the residential unit, informing the owner that the Office received an STR application for the unit.⁵⁴

An important step towards becoming a host is the permit process. The OSTR has several requirements to obtain a permit, with some more burdensome than others. The OSTR requires a permanent resident to register as a business and then register to become a certified host, both of which can be completed by applying online or in-person.⁵⁵ The permanent resident, however, is not allowed to use the unit as an STR until receiving a certificate and certificate

49. *Short-Term Residential Rental Guide*, S.F. BUS. PORTAL 1, <https://businessportal.sfgov.org/start/starter-kits/short-term-rental> [<https://perma.cc/9PTX-D9T2>] (last visited Jan. 2, 2018) [hereinafter *STR Starter Kit*].

50. S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(A).

51. *Id.* § 41A.4 (emphasis added).

52. *See Become a Certified Host*, S.F. OFFICE OF SHORT-TERM RENTALS, <https://shorttermrentals.sfgov.org/hosting/become-certified> [<https://perma.cc/VS9S-GS3R>] (last visited Jan. 1, 2018) (located under "Are you a tenant (renter), condominium owner, or TIC owner?"). In addition, the OSTR advises that individuals should be cognizant that "homeowner's association bylaws, and Covenants, Conditions & Restrictions" can prohibit subletting as well. *Id.*

53. *See id.*

54. S.F., CAL., ADMIN. CODE § 41A.5(g)(3)(A).

55. *See Become a Certified Host*, *supra* note 52.

number from the OSTR.⁵⁶ The cost of initial registration is \$250.⁵⁷ Although the fee is not excessive, the fee is less of a burden if the applicant could rent out the unit while waiting for approval.⁵⁸ An approved application is valid for two years and must be renewed by filling out a renewal application.⁵⁹ Additionally, in order to maintain good standing on the registry, the permanent resident must submit quarterly reports to the OSTR using an online form indicating the number of days the unit was listed as an STR.⁶⁰

In the event one qualifies as a permanent resident and receives a permit, when the permanent resident is present overnight at the same time as a guest, he or she can rent out the unit for an unlimited number of nights.⁶¹ If he or she is not present, there is a 90-night maximum per year.⁶² It is not clear where the 90-night maximum came from but it is unnecessarily restrictive. For example, someone who travels often would benefit from not only the extra income but also from the added security of having someone occupy their home. Furthermore, if an individual owns a multi-unit building, that person is only allowed to register the unit in which they reside.⁶³

The health and safety of all involved is of utmost concern when regulating STRs,⁶⁴ and San Francisco's Ordinance is no exception. For instance, the permanent resident must post a clearly printed sign inside the STR that provides the location of all fire extinguishers in the building and unit, fire exits, gas shut off valves, and pull fire alarms.⁶⁵ Additionally, the permanent resident must

56. See *id.* ("You may only offer (list/advertise) short-term rentals after you have received this certificate . . ."). But see Letter from Kevin Guy, *supra* note 45 ("Once a host has submitted an application, the host may continue to book and host short-term rentals while the application is pending.").

57. See *STR Starter Kit*, *supra* note 49, at 2.

58. Not to mention, if your application is denied, you lose the \$250 fee. *Id.*

59. S.F., CAL., ADMIN. CODE § 41A.5(g)(3)(A).

60. See *About the Office of Short-Term Rentals*, S.F. OFFICE OF SHORT-TERM RENTALS, <https://shorttermrentals.sfgov.org> [<https://perma.cc/Z9MZ-77LG>] (last visited Jan. 1, 2018). The permanent resident must also maintain records for two years demonstrating compliance with the ordinance and the records must be available upon request. See S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(B).

61. See *STR Starter Kit*, *supra* note 49, at 1.

62. See *Become a Certified Host*, *supra* note 52.

63. See *id.*; *STR Starter Kit*, *supra* note 49, at 1.

64. See ERIC T. SCHNEIDERMAN, N.Y. STATE OFFICE OF THE ATT'Y GEN., REPORT ON AIRBNB IN THE CITY 2 (2014), <https://ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf> [<https://perma.cc/L3PP-4BNZ>] [hereinafter SCHNEIDERMAN, AIRBNB IN THE CITY]; see also S.F., CAL., ADMIN. CODE ch. 41A.

65. S.F., CAL., ADMIN. CODE § 41A.5(g)(2)(D).

demonstrate that the STR is in compliance with all “Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or Planning Code enforcement.”⁶⁶ And, if at any time the unit is not in compliance, the Planning Department can suspend the registration and registration number until the violation is resolved.⁶⁷ Additionally, if members of the public wish to file a complaint, they can do so through a designated contact person of the city’s Planning Department.⁶⁸ The contact person shall also provide information to the public regarding noise violations, vandalism, and illegal dumping.⁶⁹ Lastly, through the OSTR, if an individual is concerned that a neighbor is using the property illegally as an STR, the individual can go onto the OSTR website and search the property address to verify compliance.⁷⁰

Another requirement in San Francisco is mandatory compliance with tax provisions. Before using a unit for STR purposes, an individual must register with the Treasurer and Tax Collector and obtain a Business Registration Number, which is a process free of charge.⁷¹ When a permanent resident begins renting, the Ordinance states that he or she must collect and remit all required transient occupancy taxes.⁷² The practice has since evolved, however, and Airbnb now collects these amounts in a few cities, including San Francisco, and then sends the taxes to the tax authority on the host’s behalf.⁷³ The tax authority for San Francisco is the Tax Collector’s Office, and it charges a “Transient Occupancy Tax,” which is 14% of the listing price, plus any cleaning fee for reservations.⁷⁴

66. *Id.* § 41A.5(g)(1)(H).

67. *Id.*

68. *Id.* § 41A.5(g)(6).

69. *Id.*

70. See *Complaints & Enforcement*, S.F. OFF. OF SHORT-TERM RENTALS, <https://shorttermrentals.sfgov.org/complaints> [<https://perma.cc/G4XE-C8FY>] (last visited Jan. 1, 2018) (located under “How do I find out if a property has a City-issued registration number?”).

71. See *STR Starter Kit*, *supra* note 49, at 2.

72. S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(C).

73. *What is Occupancy Tax? Do I Need to Collect or Pay It?*, AIRBNB, <https://www.airbnb.com/help/article/654/what-is-occupancy-tax-do-i-need-to-collect-or-pay-it> [<https://perma.cc/EX3K-JY34>] (last visited Jan 1, 2018) [hereinafter *What is Occupancy Tax?*].

74. *STR Starter Kit*, *supra* note 49, at 3; *In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?*, AIRBNB, <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available> [<https://perma.cc/48BP-LAWZ>] (last visited Jan. 1, 2018); see also S.F., CAL., BUS. & TAX REGULATIONS CODE §§ 6.7-1, 6.16-1 (2018), [http://library.amlegal.com/nxt/gateway.dll/California/business/article6commonadministrativeprovisions?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_6.7-1](http://library.amlegal.com/nxt/gateway.dll/California/business/article6commonadministrativeprovisions?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_6.7-1)).

San Francisco's Ordinance does not provide many requirements to address potential liability. However, the permanent resident is required to maintain liability insurance appropriate to cover the STR in an amount of not less than \$500,000 or conduct each STR transaction through a Hosting Platform that provides equal or greater coverage.⁷⁵

San Francisco's enforcement structure includes requirements for hosting platforms (meaning companies like Airbnb), as well as permanent residents. Hosting platforms are required to provide notice to any user listing a unit on its site.⁷⁶ The notice must include the following information: "Administrative Code Chapters 37 and 41A regulate Short-Term Rental of Residential Units; the requirements for Permanent Residency and registration of the unit with the Department; and the transient occupancy tax obligations to the City."⁷⁷ Although the ordinance requires the permanent resident to collect and remit all transient occupancy taxes, the ordinance also requires the hosting platform to collect and remit all required transient occupancy taxes.⁷⁸ Currently, Airbnb collects these amounts and sends them directly to the tax authority, but based on the language of the ordinance, it is unclear which party actually has this responsibility.⁷⁹ The hosting platform must also "maintain a record demonstrating that the taxes have been remitted to the Tax Collector."⁸⁰ If the hosting platform does not abide by the ordinance, the Planning department can penalize it up to \$1,000 per day.⁸¹

75. S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(D). Additionally, the ordinance states that the coverage shall "defend and indemnify the Owner(s), as named additional insured, and any tenant(s) in the building for their bodily injury and property damage arising from the Short-Term Residential Use." *Id.*

76. *Id.* § 41A.5(g)(4)(A).

77. *Id.*

78. *Id.* §§ 41A.5(g)(1)(C), 41A.5(g)(4)(B).

79. *See id.* §§ 41A.5(g)(1)(C), 41A.5(g)(4)(B); *see also What is Occupancy Tax?*, *supra* note 73.

80. S.F., CAL., ADMIN. CODE § 41A.5(g)(4)(B).

81. *Id.* § 41A.5(d)(3). Airbnb filed suit against the City and County of San Francisco because of the potential fines placed on Airbnb for actions by hosts on their site. *See Airbnb, Inc. v. City of San Francisco*, 217 F. Supp. 3d 1066, 1070 (N.D. Cal. Nov. 8, 2016). The lawsuit subsequently settled in 2017 with Airbnb compromising by vowing to improve its relationship with city regulators. *See Heather Somerville & Dan Levine, Airbnb, San Francisco Settle Lawsuit Over Short-term Rental Law*, REUTERS (May 1, 2017, 12:47 PM), <https://www.reuters.com/article/us-airbnb-sanfrancisco-settlement/airbnb-san-francisco-settle-lawsuit-over-short-term-rental-law-idUSKBN17X254> [<https://perma.cc/MM9M-LDL9>].

For permanent residents, San Francisco utilizes an administrative enforcement structure.⁸² The first violation of any of the requirements in the ordinance results in a fine of not more than \$484 per day from the notice of the violation until the unlawful activity terminates.⁸³ The second and any subsequent violation results in not more than a \$968 fine per day.⁸⁴ Additionally, if there are multiple violations by any individual, the unit shall be removed from the registry for one year and its continued use is subject to penalties of up to \$1,000 per day.⁸⁵ To date, San Francisco has charged \$1.68 million in penalties and, of that, has collected over \$700,000.⁸⁶

According to the OSTR, as of May 2017, there were more than 8,000 hosts listed on Airbnb in San Francisco.⁸⁷ The OSTR, however, has only 2,100 registered STR hosts,⁸⁸ meaning that 73.7% of Airbnb hosts are not in compliance. The OSTR is hopeful the number of hosts in compliance will increase due to its recent agreement with Airbnb.⁸⁹ In the agreement, Airbnb agreed to ensure all hosts abide by the OSTR's requirement of registering their units.⁹⁰ Airbnb will do this by automatically registering each host with the city when an individual becomes a host on its site.⁹¹ Additionally, Airbnb must cease business with a host and remove listings if Airbnb cannot verify a valid registration or a pending application.⁹² Lastly, Airbnb must provide up to three

82. S.F., CAL., ADMIN. CODE § 41A.6(d). The administrative penalties provided apply to not only an Owner or Business Entity but also to the Hosting platform. *Id.* § 41A.6(d)(1)(A).

83. *Id.* § 41A.6(d)(1)(A).

84. *Id.* § 41A.6(d)(1)(B).

85. *Id.* § 41A.6(d)(2).

86. Carolyn Said, *SF Warns Home-Stay Companies that Hosts Must Register*, S.F. CHRON. (Aug. 1, 2017), <http://www.sfchronicle.com/business/article/SF-warns-home-stay-companies-that-hosts-must-11725790.php> [<https://perma.cc/2XSR-UDEU>] (noting that the uncollected penalties are either being appealed or were submitted to a collection agency).

87. Elizabeth Weise, *Airbnb Rentals in San Francisco May Dive With New Host Rules*, USA TODAY (May 1, 2017, 6:01 PM), <https://www.usatoday.com/story/tech/news/2017/05/01/airbnb-san-francisco-settlement-regulations-illegal-homeaway/101168688/> [<https://perma.cc/3E46-BE6X>].

88. *Id.*

89. *See* Said, *supra* note 86. The Director of the OSTR stated: "We're entering a very different world in how we do our enforcement, working collaboratively with platforms It will be a much more efficient way of operating." *Id.*; *accord* Weise, *supra* note 87.

90. *See* Said, *supra* note 86. To note, the agreement is only with Airbnb and HomeAway (another hosting platform), but the OSTR states that all hosting platforms are required to comply with the mentioned requirements due to its already enacted Ordinance. *See also* S.F., CAL., ADMIN. CODE § 41A.5(g)(4); Letter from Kevin Guy, *supra* note 46.

91. *See* Weise, *supra* note 87.

92. *See* Letter from Kevin Guy, *supra* note 46.

years of records upon request,⁹³ which is an important step towards compliance due to the fact that city officials lack the ability to get their hands on consistent home-sharing data without the help of sharing platforms.⁹⁴

San Francisco's Ordinance is an example of a comprehensive regulatory structure that is relatively easy to understand. The Ordinance also, importantly, balances competing interests in a way that is realistic for San Francisco's particular needs. Moreover, the Ordinance protects property owners' rights but also seeks to protect guests with health and safety requirements. San Francisco's Ordinance has penalties in place for non-compliance and unlike many other cities, actually enforces them. San Francisco goes even a step further and has come to an agreement with hosting platforms to work collaboratively to ensure STR hosts abide by the city's Ordinance.

B. New York

While San Francisco takes a regulatory approach towards STRs, New York's law on STRs is an example of a prohibitory approach. On October 21, 2016, New York Governor Andrew Cuomo signed into law a bill restricting STRs.⁹⁵ The law bans STRs lasting under thirty days when the owner is not present during the stay.⁹⁶ The law passed in New York is the first of its kind and no other state has enacted such a law.⁹⁷ New York is Airbnb's biggest

93. See Said, *supra* note 86.

94. See FRED BROUSSEAU ET AL., SHORT-TERM RENTALS 2016 UPDATE, CITY & CTY. OF S.F. BD. OF SUPERVISORS POL'Y ANALYSIS REP. 3 (Apr. 7, 2016), <http://sfbos.org/sites/default/files/FileCenter/Documents/55575-BLA.ShortTermRentals%20040716.pdf> [<https://perma.cc/82GB-DX64>].

95. The bill was introduced by Republican Andrew Lanza and passed the Senate on June 17, 2016. See S. 6340A, 2016 Leg., 239th Reg. Sess. (N.Y. 2016). Governor Cuomo received the bill on October 18 and signed it into law three days later. See N.Y. MULT. DWELL. LAW § 121 (McKinney 2017); Kia Kokalitcheva, *New York Just Cracked Down on Airbnb With a New Law*, FORTUNE (Oct. 21, 2016), <http://fortune.com/2016/10/21/airbnb-new-york-2/> [<https://perma.cc/U3P9-BY3X>].

96. N.Y. MULT. DWELL. LAW § 4(8); Kokalitcheva, *supra* note 95. When an owner must be present during the stay means that an owner can rent out a room(s) in their home to guests while the owner is also staying overnight but cannot rent out their entire home to guests if they are not also staying in the home during the stay.

97. Shiloh Frederick, *Should Airbnb Be Illegal in NY? State Housing Committee Says 'Yes,' Passes Bill*, BK READER (May 18, 2016, 1:00 PM), <http://www.bkreader.com/2016/05/new-york-assembly-housing-committee-votes-bill-curb-airbnb-users/> [<https://perma.cc/VZ4L-GYQ6>]. Notably, no other state has followed suit, but several cities either outright prohibit or restrict STRs in a way that makes it practically impossible to operate an STR. These cities include the following: Fort Worth, Jacksonville, Kansas City, Los Angeles, New Orleans, Santa Barbara, Fresno, Atlanta, Denver, and Oklahoma City. See Andrew Moylan, *Roomscore 2016: Short-Term Rental Regulation in U.S. Cities*,

market in the United States⁹⁸ so, unsurprisingly, Airbnb adamantly opposed the law and filed suit against New York.⁹⁹ Airbnb and New York have since settled, with New York agreeing to impose the law only on STR owners for non-compliance and not to fine Airbnb.¹⁰⁰

New York passed the law primarily because of its housing crisis, which has resulted in at least 61,000 people in New York living in shelters.¹⁰¹ Of the 61,000, 75% are families with children and at least a third have at least one working parent.¹⁰² The housing crisis is due in large part to the real estate market in New York, which attracts the global financial elite who are willing to pay tens of millions of dollars for an apartment.¹⁰³ The supply of higher-paying renters drives lower-income individuals out of their apartments at an alarming rate.¹⁰⁴ One such example includes a woman whose landlord presented her with a new lease that increased her rent to almost 70% of her income.¹⁰⁵ She simply could not pay and was forced to move her and her daughter in with relatives when she could not find alternative affordable

R STREET 10 (2016), <http://www.rstreet.org/wp-content/uploads/2016/03/RSTREET55.pdf> [https://perma.cc/M69H-9DP9].

98. Katie Benner, *Airbnb Sues Over New Law Regulating New York Rentals*, N.Y. TIMES (Oct. 21, 2016), <http://www.nytimes.com/2016/10/22/technology/new-york-passes-law-airbnb.html> [https://perma.cc/SWE6-PV2Y].

99. See Complaint, *Airbnb, Inc. v. Schneiderman*, No. 1:16-cv-08239 (S.D.N.Y. Oct. 21, 2016); Benner, *supra* note 98 (“In its lawsuit, filed Friday afternoon in Federal District Court in the Southern District of New York, the company contends that the law violates the company’s constitutional rights to free speech and due process, as well as the protection it is afforded under the Communications Decency Act, a federal law that says websites cannot be held accountable for content published by their users.”).

100. Stephen R. Miller & Jamila Jefferson-Jones, *Airbnb and the Battle Between Internet Exceptionalism and Local Control of Land Use*, 31 PROB. & PROP., May–June 2017, at 36, 38; Katie Benner, *Airbnb Ends Fight With New York City Over Fines*, N.Y. TIMES (Dec. 3, 2016), <http://www.nytimes.com/2016/12/03/technology/airbnb-ends-fight-with-new-york-city-over-fines.html> [https://perma.cc/9C2U-4J7D].

101. Greenberg, *supra* note 45 (“New York’s [situation] is what aid groups would characterize as a ‘complex emergency’: man-made and shaped by a combination of forces that have led to a large-scale ‘displacement of populations’ from their homes.”).

102. *Id.*

103. Beckie Strum, *Ultra-Rich to Demand More Elite Homes in New York: Report*, MANSION GLOBAL (Nov. 15, 2017), <https://www.mansionglobal.com/articles/80555-ultra-rich-to-demand-more-elite-homes-in-new-york-report> [https://perma.cc/K2GJ-GYPW] (“New York City’s super-prime housing market . . . [primarily includes] homes sold at \$10 million or more.”).

104. Greenberg, *supra* note 45.

105. *Id.*

housing.¹⁰⁶ That, unfortunately, is the situation many tenants in New York find themselves in.

Supporters of the New York law emphasize its ability to address the New York housing supply problem. New York State Senator Liz Krueger, a proponent of the law, believes STRs take affordable housing off the market, aggravating New York's housing crisis.¹⁰⁷ She also believes the new law is a win for anyone who enjoys a quiet and safe neighborhood.¹⁰⁸ State Assemblywoman Linda B. Rosenthal, author of the New York law, advises that the law is intended to target "serial illegal hotel kingpins from breaking the law and taking away affordable housing from the New Yorkers who need it most."¹⁰⁹ In fact, an investigation by the State Attorney General found that more than a third of the units listed on Airbnb come from large commercial operators.¹¹⁰ Airbnb argues, however, that STRs do not hurt the housing supply, commenting that "outdated zoning laws, longstanding political opposition to new development, and layers of bureaucracy accumulated over years are combining to various degrees from city to city to create housing challenges, not 8-year-old Airbnb."¹¹¹ Further, Airbnb argues that allowing STRs, which create new tax revenues, would help cities to construct new affordable housing.¹¹²

Additionally, proponents of the law believe Airbnb risks public safety and threatens the quality of life in New York neighborhoods.¹¹³ Because nearly 72% of Airbnb listings are illegal, they often do not comply with building, fire,

106. *Id.*

107. Deanna Ting, *Airbnb Loses New York Battle as Governor Signs New Law Aimed at Hosts*, SKIFT (Oct. 21, 2016, 3:04 PM), <https://skift.com/2016/10/21/airbnb-loses-new-york-battle-as-governor-signs-new-law-aimed-at-hosts/> [<https://perma.cc/W4LV-VLW9>].

108. *Id.*

109. *Assembly Member Linda B. Rosenthal and Senator Andrew J. Lanza Unveil New Legislation to Crack Down on Airbnb & Illegal Hotel Operators*, SHAREBETTER, <http://www.sharebetter.org/story/assembly-member-linda-b-rosenthal-and-senator-andrew-j-lanza-unveil-new-legislation-to-crack-down-on-airbnb-illegal-hotel-operators/> [<https://perma.cc/7TQP-JEAG>] (last visited Jan. 6, 2017) [hereinafter SHAREBETTER].

110. *Id.*

111. *Zillow Panel: Home Sharing Not Hurting Housing Supply, Affordability*, AIRBNB CITIZEN (Dec. 7, 2016), <https://www.airnbncitizen.com/zillow-panel-home-sharing-not-hurting-housing-supply-affordability/> [<https://perma.cc/TQP5-6WAY>].

112. *Id.* ("[S]everal cities, including Chicago and Los Angeles, are beginning to apply the new tax revenues generated by Airbnb to build more affordable housing and aid the homeless. On December 1, New Orleans passed landmark new rules for home sharing that also direct a portion of the new revenue to the construction of affordable housing.").

113. SHAREBETTER, *supra* note 109.

and other safety codes.¹¹⁴ Also, proponents of the law believe that Airbnb leads to homes functioning illegally as hotels, which is in violation of zoning laws and safety codes.¹¹⁵

Furthermore, proponents argue that the law is committed to protecting property owner and landlord rights. Sherwin Belkin, an attorney who represents landlords, said that what is “being forgotten is that what Airbnb and other short-term rental groups are sharing is not their property.”¹¹⁶ In addition, landlords and property owners, not tenants, are the ones who are fined when violations occur.¹¹⁷ Landlords specifically argue that STRs increase wear on their units because of the added traffic and increase potential liability concerns.¹¹⁸ Moreover, proponents point out that the law is only enforcing what is already prohibited because most residential leases prevent tenants from utilizing their units as an STR.¹¹⁹

On the other side of the argument are individuals who strongly oppose the law because it takes away property owners’ rights to use their property as they choose and imposes steep penalties if they are caught doing so. State Senator Phil Boyle, sharing the sentiment of most who oppose the law, said, “I think that most people understand that [home sharing] is the way of the future, and anything we do to try and stop it is just going to slow down an area of the economy that has a chance to be positive for the state of New York.”¹²⁰ One of the biggest complaints is that the law takes away income from the potential hosts who are trying to defray high rent and pay their bills.¹²¹ Josh Meltzer, Airbnb’s New York head of public policy, echoed the concern about lost income to potential hosts, stating that the bill is “disappointing,” but that he was not surprised “to see politicians . . . cut a last minute deal with the hotel industry

114. See SCHNEIDERMAN, *AIRBNB IN THE CITY*, *supra* note 64, at 2.

115. See *id.* at 14.

116. Rich Bockmann, *Airbnb is Not Taking it Lying Down: Startup Ramps Up for Fight of Its Life in NYC*, REAL DEAL (Mar. 1, 2016), http://therealdeal.com/issues_articles/as-opponents-line-up-airbnb-fights-to-win-legitimacy-in-nyc/ [<https://perma.cc/9JJX-YJQU>].

117. *Id.*

118. Reuters, *New York Bill Would Ban Airbnb Listings for Some Short-Term Rentals*, NBC NEWS (June 21, 2016, 7:00 AM), <http://www.nbcnews.com/tech/tech-news/new-york-bill-would-ban-airbnb-listings-some-short-term-n596111> [<https://perma.cc/929E-9VSQ>].

119. Liz Krueger, *Answers for New Yorkers Concerned or Confused About the Illegal Hotel Law*, N.Y. ST. SENATE (May 27, 2014), <https://www.nysenate.gov/newsroom/articles/liz-krueger/answers-new-yorkers-concerned-or-confused-about-illegal-hotel-law> [<https://perma.cc/6BH4-6USF>].

120. Bockmann, *supra* note 116.

121. Erica Byfield, *Airbnb Hosts, Opponents Square Off Over New Fines in NYC*, NBC NEW YORK (Oct. 26, 2016, 3:59 PM), <http://www.nbcnewyork.com/news/local/Airbnb-Fines-New-Restrictions-New-York-State-Law-Cuomo-398743741.html> [<https://perma.cc/U4HD-L6PY>].

that will put 30,000 New Yorkers at greater risk of bankruptcy, eviction or foreclosure.”¹²² Additionally, opponents argue that the fines are outrageous; with a penalty of up to \$1,000 for first time offenders, \$5,000 for the second offense, and \$7,500 for the third, the fees are impractical for the average homeowner.¹²³

As earlier mentioned, the law does not prohibit a guest from staying under thirty days if the owner simultaneously occupies the unit during the stay.¹²⁴ Therefore, proponents of the law believe it is adequately aimed at individuals who run illegal hotels and that it does not interfere with property rights.¹²⁵ However, that is not the case because the law does not only target illegal hotels, the law places all individuals in the same basket. Meaning, regardless of whether individuals buy several buildings to use as STRs or travel often on business and want to utilize their homes as STRs when they are away, both are now prohibited from listing on Airbnb. Thus, the bill could distinctively prohibit individuals who own multiple units rather than prohibiting all unoccupied STRs under thirty days.

New York’s law is over-inclusive. The need for action regarding STRs because of the affordable housing crisis is understandable, but the knee-jerk reaction of an over-inclusive law is not. An STR regulation should seek to combine competing interests of property owners with guests and the city in a way that is fair and manageable. It should not outright prohibit one side in the interest of the other. New York should consider reevaluating and revising its current law by categorizing STRs into different types based on their impact rather than placing all users into one category.¹²⁶

IV. HOME SHARING’S IMPACT ON WISCONSIN

Although home sharing is not as robust in Wisconsin as other areas around the country, Wisconsin is experiencing the impact and its cities are actively

122. Brian Solomon, *New York Wants to Fine Airbnb Hosts Up to \$7,500*, FORBES (June 17, 2016, 3:59 PM), <https://www.forbes.com/sites/briansolomon/2016/06/17/new-york-wants-to-fine-airbnb-hosts-up-to-7500/#792dbd0e4d86> [https://perma.cc/5YSZ-CDBU].

123. N.Y. MULT. DWELL. LAW § 121(2) (McKinney 2017); *see also* Byfield, *supra* note 121 (“Airbnb hosts in New York City . . . say the service helps make ends meet and that the new fines are ‘outrageous.’”).

124. *See* N.Y. MULT. DWELL. LAW § 4(8); *New York Senate Passes Bill that Would Ban Some Short-term Airbnb Listings*, FOX NEWS (June 21, 2016), <http://www.foxnews.com/travel/2016/06/21/new-york-senate-passes-bill-that-would-ban-some-short-term-airbnb-listings.html> [https://perma.cc/SC8S-VGR8].

125. FOX NEWS, *supra* note 124.

126. This idea will be discussed later in this Comment. *See infra* Part V.

attempting to find a fair resolution for all parties involved.¹²⁷ In Wisconsin, an STR is often referred to as a “tourist rooming house.”¹²⁸ A tourist rooming house is defined as “any lodging place or tourist cabin or cottage where sleeping accommodations are offered for pay to tourists or transients.”¹²⁹ STRs are regulated by local and state law, but in Wisconsin STRs are mainly regulated by local law.¹³⁰ However, STR regulation in Wisconsin is largely inconsistent from one municipality to another, which leads to confusion for all involved.¹³¹ Further, the few regulations that cities have adopted do not have appropriate penalties for non-compliance, and those that do, are not enforced. The following Sections will outline the various regulations that cause confusion at various levels of law in Wisconsin. Section A will discuss land use restrictions including zoning laws and restrictive covenants; Section B will discuss proposed and enacted state laws; and Section C will discuss individual city regulations including those of Milwaukee, Green Bay, and Madison.

A. Land Use Restrictions

One of the biggest issues regarding STRs is land use restrictions, most notably with zoning law, and less so with restrictive covenants. Many cities attempt to incorporate STR regulation into pre-existing zoning law, causing confusion and frustration for STR users.¹³² Other cities that do not have STR regulations in place cause confusion for STR users because property owners think the lack of regulation means all STRs are allowed, only to find out that zoning law applies.¹³³

For example, one Wisconsin case demonstrates an attempt to incorporate STR regulation into pre-existing zoning law. In *Heef Realty and Investments, LLP v. City of Cedarburg Board of Appeals*, the Wisconsin Court of Appeals looked at the question of whether “short-term rental is a permitted use for property in a single-family residential district under the City of Cedarburg’s

127. See *infra* Section IV.C.

128. Q. *I Want to Rent My House Short Term (Less Than 30-days At a Time): What Do I Need To Know?*, VILLAGE OF FONTANA, <http://www.villageoffontana.com/documents/shorttermrentalinfo.pdf> [https://perma.cc/K37S-44XA] (last visited Apr. 1, 2018).

129. WIS. STAT. § 97.01(15k) (2015–2016). For purposes of this Comment, I will continue to use the term STR rather than TRH.

130. See *infra* Section IV.C.

131. Eric Olson, *Short-Term Rentals Back in the Spotlight: What is Reasonable Regulation?*, LAKE TIDES, Spring-Summer 2016, at 1, 3.

132. *Id.* at 2–3.

133. *Id.*

zoning code.”¹³⁴ The owners of two homes initiated a suit against the City of Cedarburg (City) when they were told they could not use their homes as STRs because such a use was in violation of City Ordinance 13-1-46.¹³⁵ The court ultimately ruled in favor of the home owners in finding that STRs are permitted based on the fact that the Ordinance permits single family dwellings in a single-family residential zone and only one family occupies the short-term rental at any given time.¹³⁶ The court further stated that, in construing the Ordinance in favor of the free use of property, the City cannot impose time or occupancy restrictions or requirements that are not in the zoning scheme.¹³⁷ Therefore, since the Ordinance only requires that the dwelling be occupied by a single family and does not mention time or occupancy restrictions, the City would need to enact clear and unambiguous law if they want to draw a line requiring a certain time period of occupancy.¹³⁸

Just four months later, in *Vilas County v. Accola*, the Wisconsin Court of Appeals faced the same issue of whether a Vilas County ordinance permits short-term rentals of single family detached dwelling units located in the single-family residential district.¹³⁹ The court in this case, however, granted summary judgment in favor of the County, holding that the ordinance unambiguously prohibited short-term rentals of single family detached dwelling units.¹⁴⁰ The court stated that if it were limited to only section 4.1 of the County’s zoning ordinance, which governs the R-1 district where the property is located, the court would agree with the home owners that the “ordinance does not unambiguously prohibit the rental of single-family detached dwelling units in the R-1 district for periods of less than one month.”¹⁴¹ However, the court stated that it must read all sections of the ordinance in conjunction with one another.¹⁴² In doing so, the court looked at section 4.2, governing the RL district, which permits both of the following: “(1) the rental of single-family detached dwelling units for periods of less than one month; and (2) all uses permitted in the R-1 district, which includes single-family detached dwelling

134. *Heef Realty & Invs., L.L.P. v. City of Cedarburg Bd. of Appeals*, 2015 WI App 23, ¶ 1, 361 Wis. 2d 185, 861 N.W.2d 797.

135. *Id.* ¶ 2.

136. *Id.* ¶ 10.

137. *Id.* ¶ 12.

138. *Id.* ¶ 13.

139. *Vilas County v. Accola*, 2015 WI App 52, ¶ 1, 364 Wis. 2d 409, 866 N.W.2d 406.

140. *Id.*

141. *Id.* ¶ 15.

142. *Id.* ¶ 16.

units.”¹⁴³ The court held that “rental of single-family detached dwelling units for periods of less than one month is not a permitted use in the R-1 district because a contrary interpretation would render section 4.2(B)(4) superfluous.”¹⁴⁴

Although it seems as if *Vilas County* alters the court’s ruling in *Heef Realty*, it does not. The decision in *Heef Realty* is distinguishable from *Vilas County* because in *Heef Realty* the ordinance simply listed single-family dwellings as a permitted use in a zoning district.¹⁴⁵ The ordinance did not have additional sections for the court to interpret and thus, without more, the ordinance did not unambiguously prohibit short-term rentals of single family dwellings.¹⁴⁶

Another STR issue that leads to confusion is restrictive covenants. A restrictive covenant is “[a] private agreement . . . in a deed or lease, that restricts the use or occupancy of real property . . . by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put.”¹⁴⁷ A restrictive covenant is distinguishable from zoning law because it is between private parties, whereas local governments impose zoning laws.¹⁴⁸ Most recently, in the summer of 2017, a case over a restrictive covenant came before the Wisconsin Court of Appeals. In *Forshee v. Neuschwander*, Lee and Mary Jo Neuschwander (Neuschwanders) used their home as an STR for several years, taking in over 170 guests in 2015.¹⁴⁹ Richard Forshee and several other neighbors (Neighbors) of the Neuschwanders filed suit in 2016, alleging that the use violated a restrictive covenant prohibiting “commercial activity.”¹⁵⁰ The district court ruled in favor of the Neighbors with the belief that “commercial” is commonly defined as “viewed with regard to profit” in which the Neuschwanders had clearly profited over the STR.¹⁵¹ The district court also relied on extrinsic evidence from an individual involved in the creation of the

143. *Id.* ¶ 19.

144. *Id.* (“Where possible, an ordinance must be read ‘to give reasonable effect to every word, in order to avoid surplusage.’” (quoting *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110)).

145. Compare *id.* ¶ 21, with *Heef Realty & Invs., L.L.P. v. City of Cedarburg Bd. of Appeals*, 2015 WI App 23, ¶¶ 1–2, 361 Wis. 2d 185, 861 N.W.2d 797.

146. Compare *Vilas County*, 2015 WI App 52, ¶ 21, with *Heef Realty*, 2015 WI App 23, ¶ 14.

147. *Restrictive Covenant*, BLACK’S LAW DICTIONARY (10th ed. 2014).

148. *The Basics of Restrictive Covenants*, ROBERTS & ROBERTS, LLP, <http://www.robertslegalfirm.com/restrictions.html> [<https://perma.cc/PZV4-EN8T>] (last visited Jan. 2, 2018).

149. *Forshee v. Neuschwander*, 2017 WI App 43, ¶ 4, 377 Wis. 2d 162, 900 N.W.2d 100.

150. *Id.* ¶ 5.

151. *Id.* ¶ 6.

parties' subdivision.¹⁵² The individual stated that the "purpose of the restrictive covenant was to ensure and maintain a quiet neighborhood where people would know their neighbors."¹⁵³ The court believed that the use of the property as an STR did not follow that purpose, and that, therefore, STRs were prohibited by the restrictive covenant.¹⁵⁴

On appeal, the Court of Appeals used principles of statutory construction to interpret the restrictive covenant. The Court of Appeals began its discussion by explaining that

Wisconsin's public policy favors the free and unrestricted use of property. "Accordingly, restrictions contained in deeds . . . must be strictly construed to favor unencumbered and free use of property." In order to be enforceable, deed restrictions must therefore be expressed "in clear, unambiguous, and peremptory terms." When the meaning of language in a restrictive covenant is doubtful, all doubt should be resolved in favor of the property owner's free use.¹⁵⁵

The Court of Appeals then, similar to the district court, looked at the specific wording of the restrictive covenant to ascertain what "commercial activity . . . on any of said lots" meant.¹⁵⁶

The court concluded that the covenant was ambiguous because "reasonable minds could differ as to whether the restrictive covenant prohibits short-term rentals."¹⁵⁷ The crux of the finding was that the commercial activity did not occur "on" the Neuschwanders property.¹⁵⁸ The court reasoned that although the Neuschwanders accepted money for the STR, they did not buy or sell goods on their property, nor did they use the space for an office to promote their STR.¹⁵⁹ Ultimately, the Neuschwanders and their tenants did not use the property for anything but a residential purpose.¹⁶⁰

The court then discussed how the use of the extrinsic evidence was an error by the district court. Although a court can interpret provisions by looking at

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* ¶ 9 (first citing *Crowley v. Knapp*, 94 Wis. 2d 421, 434, 288 N.W.2d 815, 822 (1980); then quoting *id.*; and then quoting *id.* at 435; and then citing *Zinda v. Krause*, 191 Wis. 2d 154, 165, 528 N.W.2d 55, 58 (Ct. App. 1995)).

156. *Id.* ¶ 11.

157. *Id.* ¶ 14.

158. *Id.* ¶ 13.

159. *Id.*

160. *Id.* ¶ 18.

the “intent” of a restrictive covenant, the “intent” refers to the “scope and purpose of the covenant *as manifest by the language used*,” not “the subjective intent of the drafter.”¹⁶¹ Furthermore, the court looked at the surrounding provisions of the restrictive covenant and came to the conclusion that “when read together, the restrictive covenant’s three provisions do not clearly show that the intent of the covenant is to maintain a quiet neighborhood where people know their neighbors.”¹⁶² The Court ultimately reversed in favor of the Neuschwanders.¹⁶³ The Neighbors appealed and in October 2017 the Wisconsin Supreme Court granted review.¹⁶⁴ The Wisconsin Supreme Court heard oral arguments in February 2018 but as of the time of this writing, the Court has not yet issued a decision.¹⁶⁵

Moving forward, it would be wise for cities to revisit zoning laws, specifically their definition sections, to ensure short-term rentals are unambiguously accounted for. Because restrictive covenants are private agreements, individuals should diligently check for such restrictions before operating their property as an STR.

B. Statutory Law

In 2015, following the pair of Wisconsin Court of Appeals decisions,¹⁶⁶ the Wisconsin legislature proposed a law regarding TRHs. 2015 Assembly Bill

161. *Id.* ¶ 14–15 (quoting *Zinda v. Krause*, 191 Wis. 2d 154, 166, 528 N.W.2d 55, 58 (Ct. App. 1995)).

162. *Id.* ¶ 19. “The first provision in the restrictive covenant prohibits the erection of any dwelling with a living space of less than 1,000 square feet.” *Id.* ¶ 16. The court took this to mean that larger dwellings means more people in the neighborhood including noise and activity. *Id.* The second provision prohibits the subdivision of existing lots. *Id.* ¶ 17. The court acknowledged that this showed an intent to keep population density low. However, it stated that STRs have no effect on population density because whether it is the owner’s occupying the property or guests, it is still the same amount of people at any given time. *Id.* The third provision is the one in question in this case in which the intent of the provision is to limit activities on the lot to residential only. *Id.* ¶ 18. The court reiterated that there is no evidence that “either the Neuschwanders’ or their tenants’ use of the Neuschwanders’ property is anything other than residential.” *Id.*

163. *Id.* ¶ 22.

164. *Forshee v. Neuschwander*, 2017 WI 94, 378 Wis. 2d 222, 904 N.W.2d 371; Brief of the Defendants-Appellants, *Forshee v. Neuschwander*, No. 2016 AP 1608 (Nov. 28, 2017).

165. Oral Argument, *Forshee v. Neuschwander*, 2017 WI 94, 378 Wis. 2d 222, 904 N.W.2d 371 (No. 16-1608), https://www.wicourts.gov/supreme/scoa.jsp?docket_number=2016AP001608&begin_date=&end_date=&party_name=&sortBy=date [https://perma.cc/3XEK-7UVL] (last visited Mar. 31, 2018).

166. *Heef Realty & Invs., L.L.P. v. City of Cedarburg Bd. of Appeals*, 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797; *Vilas County v. Accola*, 2015 WI App 52, 364 Wis. 2d 409, 866 N.W.2d 406.

583 and Senate Bill 446: “prohibit[] any city, village, town, or county . . . from enacting or enforcing an ordinance that prohibits, regulates the duration or frequency of, or unreasonably restricts the rental of a residential dwelling for seven consecutive days or longer.”¹⁶⁷ This new law would have excluded from regulation any residential dwelling that is rented exclusively for periods that are seven consecutive days or longer.

Proponents of the bill saw it as a lifeline for struggling homeowners to avoid foreclosure by using STRs as substitute income.¹⁶⁸ Proponents also believed the bill would boost the tourism industry by giving less wealthy families the opportunity to rent lakeside cabins.¹⁶⁹ In addition, State Senator Frank Lasee, the only Senator to sponsor Senate Bill 446, believed the bill would have “reinforced property rights.”¹⁷⁰ State Representative Scott Allen, author of Assembly Bill 583, shares Senator Lasee’s sentiment, stating, “Do we err on the side of local government and their rights or do we err on the rights of the individual property owner? If I’m getting that question, nine times out of ten, I’m coming down on the side of the property owner.”¹⁷¹ In 2016, despite proponents’ arguments in favor of the bill, the proposed law failed to pass in the legislative session.¹⁷²

On September 21, 2017, Governor Scott Walker signed the annual budget for 2018.¹⁷³ In a move that has garnered much criticism, state legislators included an amendment in the budget that legalized STRs lasting more than seven days.¹⁷⁴ The amendment specifically states: “[A] political subdivision

167. A. 583, 2015 Leg., 102d Reg. Sess. (Wis. 2015); S. 446, 2015 Leg., 102d Reg. Sess. (Wis. 2015).

168. Teymour Tomsyck, *Proposed Bill Could Remove Local 30 Day Rental Limit on Airbnb*, BADGER HERALD (Mar. 14, 2016), <http://badgerherald.com/news/2016/03/14/people-could-use-airbnb-longer-in-madison-despite-local-restrictions-if-bill-passes/> [https://perma.cc/K8U3-BCC8].

169. *Id.*

170. Daniel Bice, *Lasee Pushes Online Home Rental Bill—While Renting His Home Online*, MILWAUKEE J. SENTINEL (May 30, 2016), <http://archive.jsonline.com/news/statepolitics/lasee-pushes-online-home-rental-bill-while-renting-his-home-online-b99734864z1-381315001.html> [https://perma.cc/HL4T-QUV3].

171. Polo Rocha, *Local Limits on Short-Term Rentals Could be Blocked under Pending Bill*, WISBUSINESS.COM (Dec. 21, 2015), <http://www.wisbusiness.com/index.html?Article=361961> [https://perma.cc/AUV4-PY36].

172. WIS. S. JOURNAL, 2015 Leg., 102d Sess. 856 (Wis. 2016).

173. Theo Keith, *Gov. Scott Walker Signs State Budget in Advance of Re-election Run*, FOX6NOW.COM (Sept. 21, 2017, 12:30 PM), <http://fox6now.com/2017/09/21/governor-scott-walker-to-sign-state-budget-nearly-3-months-late/> [https://perma.cc/HXT8-KWXF].

174. 2017 Wis. Act 59 § 996g; see JOINT FINANCE COMMITTEE, SHARED REVENUE, TAX RELIEF, LOCAL GOVERNMENT AND BUDGET MANAGEMENT, Omnibus Motion No. 418 (Wis. 2017), <http://legis.wisconsin.gov/democrats/media/1789/shared-revenue-tax-relief-local-government-and->

may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for 7 consecutive days or longer.”¹⁷⁵ The amendment also requires that if an individual has an STR for more than ten nights in a year, they must (1) obtain a license as a TRH from the Department of Agriculture, Trade, and Consumer Protection and (2) obtain a license from the political subdivision if there is an ordinance enacted that requires it.¹⁷⁶ Additionally, the amendment states that any ordinance currently in effect that contradicts these provisions does not apply and must not be enforced.¹⁷⁷

This means that cities in Wisconsin can no longer *prohibit* rentals that last over seven days. However, it does not appear to mean that cities cannot *regulate* these rentals, which is an important distinction. The ability to regulate was a concern with the 2015 law because it explicitly stated that an ordinance could not “regulate[] the duration or frequency of, or unreasonably restrict[],” an STR,¹⁷⁸ but the amendment does not include this language. Furthermore, although the day limit might be a problem for some cities, specifically cities trying to completely prohibit STRs, the vast majority should remain unaffected because the overwhelming number of individuals who use STRs are not renting spare rooms or homes for “seven consecutive days.”¹⁷⁹ Thus, because the average guest stays for less than seven consecutive days, the law does not interfere with STRs that primarily concern residents in Wisconsin.¹⁸⁰

budget-management-omnibus-motion-418.pdf [https://perma.cc/Z9N9-LHJJ]; see also Jeff Bollier, *State Budget Restricts Local Government's Ability to Regulate Short-Term Rentals*, GREEN BAY PRESS GAZETTE (Sept. 26, 2017, 10:04 PM), <http://www.greenbaypressgazette.com/story/news/2017/09/26/ashwaubenon-upset-walker-short-term-rentals/706820001/> [https://perma.cc/V5UQ-DP4A].

175. 2017 Wis. Act 59 § 996g.

176. JOINT FINANCE COMMITTEE, SHARED REVENUE, TAX RELIEF, LOCAL GOVERNMENT AND BUDGET MANAGEMENT, Omnibus Motion No. 418 (Wis. 2017), <http://legis.wisconsin.gov/democrats/media/1789/shared-revenue-tax-relief-local-government-and-budget-management-omnibus-motion-418.pdf> [https://perma.cc/Z9N9-LHJJ].

177. *Id.*

178. See A. 583, 2015 Leg., 102d Reg. Sess. (Wis. 2015); S. 446, 2015 Leg., 102d Reg. Sess. (Wis. 2015).

179. Airbnb conducts a study which measures the economic impact it has on cities around the world. In one of the reports, Airbnb provided results from eight different cities. Five of the cities included length of stay information, and all five showed that on average the length of stay was less than seven days. For example, San Francisco's average length of stay is 3.5 days, New York is 6.4 nights, Amsterdam is 3.9 nights, Berlin is 6.3 nights, and London and Edinburgh is 4.6 nights. *AIRBNB ECONOMIC IMPACT*, AIRBNB, <http://blog.airbnb.com/economic-impact-airbnb/#san-francisco> [https://perma.cc/8KYU-Q4FB] (last visited Jan. 29, 2018).

180. Because the budget was recently passed, there is little information on why the specific language was used. Nor do we know who included the amendment in the budget because it was a 999

Overall, more information is needed on the specifics regarding this new amendment but two points are important. First, the amendment appears to still allow local cities to regulate STRs. Although it does not prevent local governments from prohibiting STRs under seven consecutive days, local governments do not respond well when their autonomy is blindly challenged.¹⁸¹ In addition, local governments are often better equipped than the state to handle creating regulations specific to their needs as interests vary from city to city.¹⁸²

Second, although the amendment is a step in the right direction, it should not specify a number of days. The amendment should state that local government can regulate *any* STR and cannot prohibit *any* rental of a residential dwelling unit.¹⁸³ This would allow local governments to retain their autonomy by allowing regulation of STRs as they see fit while also preventing any local government from out-right prohibition, which reinforces property rights. Other cities have moved in a similar direction by proposing zoning amendments that

motion, which is “introduced as the last portion of the committee’s work on the budget, bearing the names of the committee’s co-chairs. It is often introduced and passed in the middle of the night or early in the morning.” See Jessie Opoien, *Finance Co-chair Darling: Secretive 999 Motion ‘Taints’ the Wisconsin Budget Process*, CAPITAL TIMES (June 6, 2017), http://host.madison.com/ct/news/local/govt-and-politics/election-matters/finance-co-chair-darling-secretive-motion-taints-the-wisconsin-budget/article_3f33248b-faab-5392-8a6f-ce4e3f9434f9.html [https://perma.cc/2YY8-7BGF]. Therefore, looking at the reasons for the previous proposed law in Wisconsin might shine some light because it had the same “seven consecutive days” language. For example, Representative Scott Allen, Assembly Bill 583 author, says the bill was meant to help individuals in Wisconsin who have to leave the state for a job or for a military assignment and isn’t meant for the rentals on Airbnb and similar companies. See Rocha, *supra* note 171.

181. See, e.g., Bollier, *supra* note 174 (“This is going to wreak holy hell on this community. It’s going to be miserable to regulate . . . It’s going to be horrendous. The governor didn’t do the right thing and the legislature didn’t do the right thing when they passed it. It’s a 999 motion, so we don’t know what elected official put that rotten piece of legislation in there. That’s terrible.”).

182. See *infra* Part V; see, e.g., Todd Richmond, *Local Wisconsin Officials Considering Own Mining Regulations*, U.S. NEWS (Nov. 19, 2017), <https://www.usnews.com/news/best-states/wisconsin/articles/2017-11-19/local-wisconsin-officials-considering-own-mining-regulations> [https://perma.cc/B3NJ-ZWVM] (“By having an ordinance in place, local officials can best position themselves to ensure that local concerns and needs are addressed.”).

183. See, e.g., Joey Garrison, *State Bill Would Override Nashville on Short-Term Rental Rules, Block Ban*, TENNESSEAN (Feb. 9, 2017, 12:54 PM), <http://www.tennessean.com/story/news/politics/2017/02/09/state-bill-would-override-nashville-short-term-rental-rules-block-ban/97699934/> [https://perma.cc/539J-DRMV] (reporting on a similarly proposed state bill in Nashville, Tennessee); Jonathan Oosting, *Vacation Rental Bans Under State Scrutiny*, DETROIT NEWS (Oct. 9, 2017, 12:05 AM), <http://www.detroitnews.com/story/news/politics/2017/10/09/airbnbs-rights-nuisance-complaints/106455878/> [https://perma.cc/6ND9-QXS5] (discussing bills introduced to prevent local governments from enacting zoning ordinances that prohibit or ban owners from renting out homes for less than 28 days).

would “remove the duration of tenancy requirements for residential uses,” allowing all forms of STRs.¹⁸⁴ Establishing this shift at the state level, however, would prevent fragmented city by city prohibitions and limit confusion for citizens.

C. Individual City Regulation

In Wisconsin STRs are mainly regulated by local law.¹⁸⁵ Some cities, such as Milwaukee, take a lenient approach by not having any STR regulations in place.¹⁸⁶ The benefit for such an approach is that potential hosts do not have multiple, sometimes expensive, hoops to jump through when renting out a unit.¹⁸⁷ However, this benefit may cause the false belief that all STRs are legal. These cities that take a lenient approach often also leave their citizens open to issues with health and safety and potential hidden liabilities, while also missing out on the prospective income from applicable taxes.¹⁸⁸ Other cities, such as Green Bay, take a more relaxed approach with a regulatory structure that few know of and virtually no one enforces.¹⁸⁹ These cities face similar issues as a city with a lenient approach but are in an arguably better position because there are at least some safeguards in place. Lastly, other cities, such as Madison, take a self-reporting approach.¹⁹⁰ The self-reporting approach is beneficial because it has regulations for citizens to follow, but it has its drawbacks based on the fact that a self-reporting enforcement structure is not reliable.¹⁹¹

There are undoubtedly positive and negative aspects to each approach, but the key to a successful regulatory scheme is a clear enforcement structure that is actively implemented, preferably by a designated OSTR. Additionally, uniform regulation and enforcement of STRs, rather than prohibition, should combine competing interests in a way that is fair and manageable. The

184. Memorandum from Jeffrey L. Zyontz, Legislative Att’y, to Montgomery Cty. Council on Zoning Text Amendment 15-01 (Jan. 9, 2015), http://montgomerycountymd.granicus.com/Viewer.php?view_id=6&event_id=1705&meta_id=74865 [https://perma.cc/MR6Z-G6SL].

185. See *infra* Section IV.C.1–3.

186. See *infra* Section IV.C.1.

187. See Moylan, *supra* note 97, at 5.

188. See Alexandra Silets, *Success of Airbnb Prompts Talk of Regulation, Taxes in Chicago*, CHI. TONIGHT (May 10, 2016, 7:51 PM), <http://chicagotonight.wttw.com/2016/05/10/success-airbnb-prompts-talk-regulation-taxes-chicago> [https://perma.cc/3JXJ-B7TP].

189. See *infra* Section IV.C.2.

190. See *infra* Section IV.C.3.

191. See *infra* Section IV.C.3.

following is a more in-depth analysis of each of these three cities' differing approaches on regulating STRs.

1. Milwaukee, Wisconsin

Compared to any other city in Wisconsin, Milwaukee currently has the most listings on Airbnb.¹⁹² In 2017, more than 40,000 guests stayed in Milwaukee using Airbnb, earning homeowners a staggering \$4.2 million in income.¹⁹³ As of April 2018, Milwaukee had over 800 listings on Airbnb with the number fluctuating daily.¹⁹⁴ The listings range from entire homes on the East Side to a college dorm style bedroom close to Brady Street.¹⁹⁵ And the prices range from \$19 a night for a room to almost \$1,000 a night for an entire apartment.¹⁹⁶ To any Wisconsin native, it is no surprise that Milwaukee boasts the largest STR listings because Milwaukee has some of the biggest tourist attractions in Wisconsin, including Summerfest¹⁹⁷ and Milwaukee Brewer games.

Milwaukee takes a lenient approach and does not currently have an STR ordinance in place.¹⁹⁸ The City does, however, respond to complaints (though there have been few), which includes neighbors complaining about loud parties.¹⁹⁹

This lack of regulatory and enforcement structure leaves Milwaukee open to many issues including health and safety concerns, tax evasion from hosts, and uses in violation of land use restrictions. In addition, when there is no regulatory structure in place, it causes confusion for property owners as to what STR uses are permitted because some owners are mistakenly under the

192. AIRDNA, *supra* note 6.

193. *2017 Guest Arrivals and Total Host Income*, WIS. GAZETTE (Dec. 21, 2017), http://www.wisconsin Gazette.com/news/guest-arrivals-and-total-host-income/article_2c8201a0-e685-11e7-bae3-ab90f5618c0d.html [<https://perma.cc/M7RT-UJ5U>].

194. AIRDNA, *supra* note 6.

195. *See, e.g.*, AIRBNB, *supra* note 29 (enter "Milwaukee, WI, United States" in the search field; then click search button for results) (last visited Jan. 9, 2017).

196. *Id.*

197. Paul Gores, *Local Airbnb Use Spiked with Summerfest*, MILWAUKEE J. SENTINEL (Sept. 21, 2016, 12:01 PM), <http://www.jsonline.com/story/money/business/2016/09/21/local-airbnb-use-spiked-summerfest/90784900/> [<https://perma.cc/Y935-NMCL>] ("Airbnb said the Milwaukee area posted its biggest boost in home sharing June 25. 'While the festival did not begin until June 28, the mass arrival of over 2,000 seasonal staffers as well as producers, vendors and band crews initiated a spike on June 25,' Airbnb said in its report.").

198. *See* Moylan, *supra* note 97, at 11.

199. Colleen Henry, *Homeowners Speak Out Against Private Renting Regulation*, WISN.COM (Mar. 1, 2016, 5:42 AM), <http://www.wisn.com/article/homeowners-speak-out-against-private-renting-regulation/6331212> [<https://perma.cc/U3JT-B3NV>].

impression that no regulatory structure means no rules.²⁰⁰ Moreover, Milwaukee is missing out on the additional revenue that applicable taxes would generate for the city that could be used to improve homelessness and fund affordable housing in the city.²⁰¹

2. Green Bay, Wisconsin

Green Bay has the third largest number of listings on Airbnb in Wisconsin.²⁰² In 2017, over 6,500 guests stayed in Green Bay bringing in just under \$900,000 for hosts.²⁰³ The listings in Green Bay range from a private room for \$40 a night up to \$1,500 a night for a four-bedroom home.²⁰⁴ Green Bay contains substantially fewer listings than Milwaukee and Madison; however, Green Bay officials see STRs as a benefit,²⁰⁵ bringing tourists to shop in their malls and to eat in their restaurants. Further, STRs may deter individuals visiting for events, such as Green Bay Packer games, from driving under the influence by creating a place to stay in the city.²⁰⁶

In 2016, Green Bay enacted General Ordinance No. 20-16, which amended the city's current Zoning code.²⁰⁷ The ordinance is written clearly by removing the lesser-known term "transient residential use" and replacing it with "short-

200. Such a situation arose for one property owner who listed a Milwaukee mansion on Airbnb in a ritzy neighborhood near Lake Park. Olson, *supra* note 132. The city of Milwaukee prohibited such a rental because it constituted a hotel use in a residential zone. *Id.* It is important to note that whether or not Milwaukee has regulations for STRs, the use of a mansion to accommodate over 20 guests would be prohibited based on current zoning code. *Id.* The point being, when there aren't guidelines to follow, people mistakenly think any use of an STR is allowed because there aren't regulations to the contrary.

201. See Silets, *supra* note 188; see also *supra* note 101 and accompanying text.

202. AIRDNA, *supra* note 6. I note however that the STR rankings for each city vary daily with Green Bay fluctuating from the third to the fifth largest STR numbers in the past few months.

203. 2017 *Guest Arrivals and Total Host Income*, *supra* note 193.

204. See, e.g., AIRBNB *supra* note 29 (enter "Green Bay, WI, United States" in the search field; then click search button for results) (last visited Jan. 14, 2017).

205. See Adam Rodewald, *Green Bay Considers 11th Short-Term Rental House*, GREEN BAY PRESS GAZETTE (May 12, 2016, 2:01 PM), <http://www.greenbaypressgazette.com/story/news/local/2016/05/12/green-bay-considers-11th-short-term-rental-house/84276022/> [<https://perma.cc/P3G6-98S9>].

206. See generally Shelby Le Duc, *Ashwaubenon Short-term Rental Houses Get OK*, POST CRESCENT (June 15, 2016, 10:25 AM), <https://www.postcrescent.com/story/news/2016/06/15/packer-party-houses/85837736/> [<https://perma.cc/UT55-CWCJ>].

207. CITY OF GREEN BAY, MINUTES OF THE COMMON COUNCIL 54-55 (Sept. 20, 2016), http://greenbaywi.gov/wp-content/uploads/Council_Minutes_Longform-9-20-16.pdf [<https://perma.cc/L48U-LNRF>].

term rentals,”²⁰⁸ a step all cities should take when amending their Zoning code to include STR regulations. The ordinance defines an STR as a “dwelling unit in which paying guests are entitled to occupancy for a period of less than twenty-eight (28) calendar days.”²⁰⁹ The ordinance does not contain occupancy requirements for the property owner, meaning the property can be used as an STR for an unlimited amount of days per year whether the property owner lives in the home or not.²¹⁰

The ordinance requires the property owner to obtain several permits, including a Green Bay STR Permit, a State of Wisconsin TRH Permit, and a State of Wisconsin Sale and Use Tax Permit.²¹¹ Additionally, the property owner must show proof of registration with the City of Green Bay Treasurer regarding Brown County room tax requirements and proof of registration with the Brown County Health Department.²¹² Also when applying for an STR permit, the property owner must show proof of insurance.²¹³ The fee for an STR permit or renewal of the permit is a modest \$100, but lasts for only one year.²¹⁴ Further, the ordinance states that “STRs granted by the City may be subject to review on a yearly basis” and “STRs may be revoked based on the findings of the Plan Commission.”²¹⁵

The ordinance provides various protections to both property owners and guests. Regarding safety, the ordinance requires the number of occupants “not [to] exceed the limits set forth in the State of Wisconsin Uniform Dwelling Code and other applicable County and City of Green Bay housing regulations for residential structures.”²¹⁶ Green Bay’s ordinance also contains a section regarding violations including a penalty not to exceed \$500.²¹⁷ The ordinance further safeguards property rights by requiring the person seeking to use his or

208. *Id.*

209. GREEN BAY, WIS., MUN. CODE § 13-302 (2016), <http://info.ci.green-bay.wi.us/Files/CHPTR13-ZoningOrdinance.pdf> [<https://perma.cc/A3DZ-HEKA>].

210. *See id.* Other ordinances, like those in the city of Madison, have occupancy requirements in which property owners can rent out their property as an STR for only thirty days if they do not occupy the property when there is a guest, but allows the property to be rented for an unlimited amount of days if the property owners are present during the stay. *Short-Term Rentals*, CITY OF MADISON, <https://www.cityofmadison.com/mayor/programs/short-term-rentals> [<https://perma.cc/L6AN-3NYB>] (last visited Jan. 13, 2017) [hereinafter CITY OF MADISON].

211. GREEN BAY, WIS., MUN. CODE § 13-1602(j)(1).

212. *Id.*

213. *Id.* § 13-1602(j)(2).

214. *Id.*

215. *Id.* § 13-1602(j)(9).

216. *Id.* § 13-1602(j)(4).

217. *Id.* § 13-1602(j)(12).

her property as an STR to be what the ordinance refers to as a “local representative.” A local representative is “[a] property owner or his or her design who permanently resides within the City of Green Bay or a licensed property management company with a physically staffed office within the City of Green Bay who manages a short-term rental.”²¹⁸ Such a definition restricts tenants from obtaining an STR permit and using the property they are renting as an STR. The ordinance could go even further by requiring the local representative to provide a driver’s license when obtaining a permit and to have the driver’s license name match the name of record on the deed for the property.²¹⁹

Green Bay is headed in the right direction in terms of regulating STRs fairly. In August of 2017, Green Bay became the second city in Wisconsin to enter into a tax agreement with Airbnb.²²⁰ Airbnb estimates that the extra revenue will bring in over \$50,000 annually for the city.²²¹ This agreement is a giant step towards enforcing tax collection on Airbnb hosts.

However, Green Bay takes a relaxed approach in enforcing its ordinance. First, although there are over 100 Green Bay listings on Airbnb, the City Council has only voted to permit eleven STRs in the City.²²² Second, because the city has only permitted eleven homes as STRs, over 100 listings are not likely in compliance with health and safety regulations²²³ or lack sufficient liability insurance, or both.

3. Madison, Wisconsin

Arguably the largest opposition towards STRs in Wisconsin comes from the city of Madison. Madison contains over 500 listings on Airbnb, the second largest number of STR listings in Wisconsin.²²⁴ In 2017, Madison hosts made

218. *Id.* § 13-302.

219. Nashville, Tennessee takes this extra step by requiring that the property owner apply for the STR permit and that “[o]wnership information on [the] application must match the deed as recorded with the Davidson County Clerk’s office.” See *Short Term Rental Property*, NASHVILLE.GOV, <http://www.nashville.gov/Codes-Administration/Construction-and-Permits/Short-Term-Rentals.aspx> [<https://perma.cc/7VQU-S43H>] (last visited Feb. 28, 2018).

220. Jeff Bollier, *Airbnb to Collect Room Tax in Green Bay*, GREEN BAY PRESS GAZETTE (July 17, 2017), <https://www.greenbaypressgazette.com/story/money/2017/07/17/airbnb-room-tax-green-bay/484486001/> [<https://perma.cc/F864-HFUP>] (“Airbnb users will pay 10 percent hotel room tax on their rentals in Green Bay beginning Aug. 1.”).

221. *Id.*

222. Rodewald, *supra* note 205.

223. Bollier, *supra* note 220.

224. AIRDNA, *supra* note 6. These numbers are as of April 1, 2018.

\$3.6 million from over 27,000 guests.²²⁵ Madison Mayor Paul Soglin is an active supporter of regulating STRs, arguing that legislation should not override local ordinances.²²⁶ As such, Mayor Soglin actively opposed Assembly Bill 583 and Senate Bill 446, accusing the state legislature of continuously preempting local control.²²⁷ Soglin believes that STRs threaten affordable housing by encouraging individuals to buy properties specifically for use as STRs, which increases the cost of housing.²²⁸ He is also of the opinion that property owners are incentivized to put their rentals on Airbnb because property owners often make more when utilizing their property as an STR as opposed to renting the property at monthly rates.²²⁹

Madison is the home of the University of Wisconsin-Madison, which Soglin believes is also affected by STRs.²³⁰ Soglin stated that there are several listings near campus, which threaten students' ability to obtain affordable housing.²³¹ Further, Soglin surmises that students have used Airbnb to rent out their dorm rooms.²³² However, University of Wisconsin housing spokesperson Brendon Dybdahl advises there is no evidence of this occurring.²³³ In fact, Andra Ghent, professor of real estate and urban land economics at the University of Wisconsin-Madison, stated that "Wisconsin isn't dealing with limited housing stock and isn't as worried about Airbnb's impact on driving rental prices up," believing that in even highly populated metro areas, those concerns are mainly a distraction.²³⁴

The city of Madison has regulated STRs since 2013²³⁵ when the City Council adopted an ordinance with the purpose of striking a balance between

225. 2017 *Guest Arrivals and Total Host Income*, *supra* note 193.

226. Tomsyck, *supra* note 168.

227. Jeff Glaze, *Wisconsin Airbnb Bill Threatens Affordable Housing, Says Madison Mayor*, WIS. ST. J. (Feb. 11, 2016), <http://www.govtech.com/social/Wisconsin-Airbnb-Bill.html> [<https://perma.cc/4HJM-N7LF>].

228. *Id.*

229. Tomsyck, *supra* note 168.

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. Scottie Lee Meyers, *Airbnb Debate Arrives In Wisconsin Following Contentious Battle In San Francisco*, WIS. PUB. RADIO (Dec. 29, 2015, 3:35 PM), <http://www.wpr.org/airbnb-debate-arrives-wisconsin-following-contentious-battle-san-francisco> [<https://perma.cc/QW8X-QJ4P>].

235. MADISON, WIS., GEN. ORDINANCES § 28.061 (2013), <https://madison.legistar.com/LegislationDetail.aspx?ID=1500910&GUID=1AE70436-9DA2-4632-96B3-6148DD240182> [<https://perma.cc/47DP-LRST>].

the competing rights of property owners.²³⁶ Madison allows a property owner to offer STRs, and if the lease specifically authorizes it, a renter may use their residence as an STR.²³⁷ However, the property may only be rented if it is the owner's primary residence.²³⁸ If the owner occupies the residence at the time of the rental, there is no limit on the number of days the residence may be rented. But, if the owner does not occupy the residence at the time of the rental, the residence can only be rented for thirty days per licensing year.²³⁹ The owner must keep records on-site, from the previous year as well as the current year, that lists the identity of the guests, dates of stay, length of stay, and acknowledgement by the owner whether they were present at the time of the stay.²⁴⁰ Regarding safety, there are no additional requirements; owners are required to abide by preexisting building code rules for residential use, which involves a smoke detector and carbon monoxide rule.²⁴¹

The city of Madison advises the owner to check with four main agencies before listing their property: Zoning, Department of Revenue, Public Health, and the City Treasurer.²⁴² First, in regard to Zoning, the City recommends that owners contact the City of Madison Zoning to ensure STRs are allowed in their area and to confirm compliance with maximum family occupancy rules.²⁴³ Second, the owner needs to obtain a seller's permit from the Department of Revenue because owners of STRs must report and pay Wisconsin sales tax.²⁴⁴ The sales tax rate is based on the location of the STR.²⁴⁵ Third, the owner must also have a current license from Public Health Madison and Dane County,²⁴⁶

236. CITY OF MADISON, *supra* note 210.

237. MADISON, WIS., GEN. ORDINANCES § 28.151 (2018), https://library.municode.com/wi/madison/codes/code_of_ordinances?nodeId=COORMAWIVOIICH20--31_CH28ZOCOOR_SUBCHAPTER_28JSURE [<https://perma.cc/6TKQ-J93Q>].

238. *Id.*

239. *Id.* A licensing year is July 1 to June 30. *Id.*

240. *Id.*

241. *Id.* (meaning that these requirements are not new, all homes being used for residential purposes should already be following the smoke detector and carbon monoxide rules).

242. CITY OF MADISON, *supra* note 210.

243. *Id.*

244. *Homeowners and Individuals Providing Short-Term Lodging*, WIS. DEP'T OF REVENUE (Jan. 25, 2016), <https://www.revenue.wi.gov/Pages/TaxPro/news-2016-160125.aspx> [<https://perma.cc/LGW9-J4RY>] (last visited Jan. 13, 2017).

245. *Id.*

246. MADISON, WIS., GEN. ORDINANCES § 28.061 (2013), <https://madison.legistar.com/LegislationDetail.aspx?ID=1500910&GUID=1AE70436-9DA2-4632-96B3-6148DD240182> [<https://perma.cc/47DP-LRST>].

the fee for which is \$535 for a new license and \$160 for a renewal.²⁴⁷ Lastly, the owner must register with the City Treasurer and pay room tax. The current room tax is 9% of the gross receipt, and the tax only applies when an individual rents a room or house for less than thirty consecutive days.²⁴⁸

Madison's ordinance does not include an enforcement structure, relying mainly on self-reporting.²⁴⁹ In 2016, after three years of Madison's ordinance being in place, City Treasurer Dave Gawenda stated that of the hundreds of STR listings in Madison, only eight residences are currently registered as a tourist rooming house.²⁵⁰ The fact that there are only eight residences registered shows the problem with self-reporting and the need for a clear enforcement structure.

In 2017, Madison was the first city in Wisconsin to partner with Airbnb to collect taxes.²⁵¹ Mayor Soglin said that getting hosts in compliance with room taxes and licenses will not include penalties because the goal is education and compliance.²⁵² Airbnb collects the taxes during the booking process, which conveniently alleviates any work for a host.²⁵³ Airbnb then remits the tax directly to the state for the host.²⁵⁴ This process reportedly began on May 1, 2017.²⁵⁵

247. PUB. HEALTH MADISON & DANE CTY., LODGING, POOL AND BODY ART LICENSE FEES (2017), <http://www.publichealthmdc.com/documents/LicenseFeeSch-LodgingPoolTattoo.pdf> [https://perma.cc/6ANE-7T3R].

248. Memorandum from Maribeth Witzel-Behl, City Clerk, City of Madison on Room Tax Packet (Nov. 4, 2016), <https://www.cityofmadison.com/sites/default/files/city-of-madison/clerk/documents/licensing/RoomTaxPacket.pdf> [https://perma.cc/QAM6-V4P2].

249. See MADISON, WIS., GEN. ORDINANCES § 28.061 (2013), <https://madison.legistar.com/LegislationDetail.aspx?ID=1500910&GUID=1AE70436-9DA2-4632-96B3-6148DD240182> [https://perma.cc/R2MW-4GS3]. The text of the fiscal note merely states "[n]on-compliant entities may be cited for non-compliance and subject to penalties." *Id.* (emphasis added).

250. Jeff Glaze, *Paul Soglin Threatens Airbnb Tax Collection, Enforcement*, WIS. ST. J. (Mar. 15, 2016), http://host.madison.com/wsj/news/local/govt-and-politics/paul-soglin...ction-enforcement/article_47be7605-c6c1-50a9-935a-d102d7cd178c.html [https://perma.cc/DJ3P-EFQ4].

251. Terrell, *supra* note 9.

252. Shamane Mills, *Madison Could Ink Deal with Airbnb to Collect Room Taxes*, WIS. PUB. RADIO (Mar. 21, 2017, 5:00 AM), <https://www.wpr.org/madison-could-ink-deal-airbnb-collect-room-taxes> [https://perma.cc/BCN3-XTWG].

253. *Id.*

254. *Id.*

255. Molly Dill, *Airbnb to Start Collecting Taxes in Wisconsin: Will Automatically Tax Hosts on Home Sharing Income*, BIZTIMES (June 8, 2017, 1:04 PM), <https://www.biztimes.com/2017/industries/accounting/airbnb-to-start-collecting-taxes-in-wisconsin/> [https://perma.cc/WLN6-7238].

The city of Madison is enmeshed in home sharing regulation, and with strong proponents and opponents of regulation, Madison will continue to struggle until it implements a clear enforcement structure. Additionally, the day limits are more prohibitive than necessary—there should not be a thirty-day limit when an individual is not present during the stay. The rest of the regulatory structure appears to balance competing interests in a way that is fair and manageable. With Mayor Soglin's successful partnership with Airbnb, the city has made giant steps towards an effective enforcement structure.

V. MOVING FORWARD: HOME SHARING IN WISCONSIN

A. *Achieving Uniformity and Enforcement*

Certainly, there is no one-size-fits-all solution to STR regulation because each city has different objectives and needs. However, uniform regulation and enforcement of STRs, rather than prohibition, can combine competing interests in a way that is fair and manageable. The four main interests involved with STRs are those of the property owner, the host, the city, and the guest. When implementing a regulatory framework, cities should include the following categories: an enforcement structure; a permit process; lease applicability; land use restrictions; health and safety; tax collection; and liability.

Below are recommendations for each of these seven categories.

B. *Proposed Regulating Framework*

1. Enforcement structure

The largest and most important aspect of STR regulation is an appropriate enforcement structure. The enforcement structure must incentivize compliance with appropriate fees and fines, but it should not be over burdensome and prevent users from participating in the regulatory process. An enforcement structure is likely to succeed with the participation of hosting platforms because such platforms hold a lot of data that is essential to the success of cities' regulatory structures.²⁵⁶ Without the participation of hosting platforms, cities do not have the relevant data to see who is utilizing their property as an STR, for how long, and how often. Cities should also contemplate a three strikes policy in which a user is prohibited from using their property as an STR if they are caught out of compliance on three occasions.²⁵⁷

256. See Somerville & Levine, *supra* note 81.

257. See Avery Hartmans, *Airbnb Has Finally Come to the Table in New York—But It Might be Too Late*, BUS. INSIDER (Oct. 19, 2016, 3:35 PM), <http://www.businessinsider.com/airbnb-releases->

Overall, cities cannot continue listing fines in their regulatory structures when they have no intention of enforcing them. Cities should first reach out to hosting platforms to come to an agreement on the relevant data needed. Cities must then create either an entire Office of STR enforcement or put existing employees in charge of enforcement and follow through on it.

2. Permit process

Cities need a permit process that is convenient and equitable but not burdensome on potential hosts. Similar to San Francisco, allowing individuals to obtain a permit through an online system is extremely convenient and increases the likelihood that individuals will comply.²⁵⁸ The permit process should also categorize STRs into different types based on their impacts, including owner-occupied and non-owner occupied.²⁵⁹ Cities should also categorize owner-occupied and non-owner occupied permits into different types depending on how many days per year the owner utilizes the property as an STR. For example, 0–59 days of usage per year should require the smallest fee, 60–119 days should require a mid-range fee, and 120 days or more per year should require the highest fee. Non-owner occupied permits should have a similar structure but include higher fees due to the potential additional impact on neighbors and affordable housing. Additionally, potential hosts should be able to rent their units until their permits are approved, which can help alleviate some of the burden that comes with a fee. Overall, cities should not use the price of the permit to prevent STRs; it should be used to incentivize compliance.²⁶⁰

Again, cities should also consider the possibility of creating an STR Office to handle the permit process, not dissimilar to the San Francisco Office of Short-Term Rentals.²⁶¹ If the Office handled all STR-related issues, it would prevent confusion for users. This includes creating a name for the office that is easily understood for users, and the Office of Short-Term Rentals would surely

new-homesharing-rules-2016-10 [https://perma.cc/N2QV-8E3F]. Airbnb proposes a good neighbor rule, “Airbnb will implement a ‘three-strikes’ rule that would bar hosts from renting their property if they violate city or state laws.” *Id.* The amount of time a city would ban a STR user is something that needs clarification by each individual city. One suggestion is a ban for six months or, alternatively, a progressive ban starting at six months for the first violation of the three strikes rule, then a year for the second, and then a permanent ban for the third and final violation.

258. See *STR Starter Kit*, *supra* note 49, at 3.

259. This would follow a similar format as Nashville, Tennessee’s. See *Short Term Rental Property*, *supra* note 219.

260. See, e.g., *id.* In Nashville, both a permit and a permit renewal cost a mere \$50. *Id.*

261. See *San Francisco Office of Short-Term Rentals*, *supra* note 60.

suffice.²⁶² Currently, individuals are supposed to reach out to the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) for information pertaining to renting out their property,²⁶³ which is anything but clear for someone interested in home sharing. At the very least, cities must create a website or designate a portion of their existing website to STR information.

On the other hand, if the city is able to come to an agreement with hosting platforms such as Airbnb, Airbnb could handle the permit process. This would alleviate confusion because the property owners would not have to figure out the STR regulations for the specific city in which they are listing. They would simply list their property, and in doing so, Airbnb would send their information to the appropriate city. The process is also convenient because it could be an automatic approval instead of waiting for an STR Office to approve or deny a request. The approval would be automatic, and if an issue occurs later, the city would reserve the right to revoke the permit. Additionally, cities could work with Airbnb to require property owners to input their permit number in order to list on Airbnb, preventing any user from home sharing without proper approval.

3. Lease applicability

As mentioned throughout this Comment, property owners and hosts are not one and the same and should not be treated as such. Cities need to continue distinguishing between the two when creating STR regulations to prevent abuse by either party. Options range from San Francisco's approach that requires a potential host to bring in their lease for approval of a permit,²⁶⁴ to Nashville's approach, which requires the name on the deed of sale to match the name of the applicant.²⁶⁵ In addition, property owners need to look at their existing leases and make changes to account for STRs, whether that is to prohibit their tenants and landlords from using the property as such, or to work with them on finding a balance to meet both parties' interests. Lastly, tenants need to be cognizant of leases and be aware that their lease determines whether they can use their unit as an STR, not the city.

262. The name could also include the name of the city to differentiate between different offices, such as the Milwaukee Office of Short-Term Rentals.

263. LEAGUE OF WIS. MUNICIPALITIES ET AL., THINKING OF RENTING OUT YOUR PROPERTY FOR OVERNIGHT STAYS? 3 (2016), <https://datcp.wi.gov/Documents/ShortTermRentalGuidance.pdf> [<https://perma.cc/78TR-Q4B3>].

264. See *Become a Certified Host*, *supra* note 52.

265. See NASHVILLE, TENN., ZONING CODE § 17.16.250(E)(2)(b) (2017), https://library.municode.com/tn/metro_government_of_nashville_and_davidson_county/codes/code_of_ordinances?nodeId=CD_TIT17ZO_CH17.16LAUSDEST_ARTIVUSPEACA [<https://perma.cc/44C3-7QSF>].

4. Land use restrictions

Local governments need to re-visit their zoning ordinances. First, they need to make updates that incorporate STR use. It generally is not clear to a property owner when looking through existing zoning laws that an STR is synonymous with a “tourist rooming house” or “transient residential lodging.” Creating new definitions for STRs will encourage users to utilize the zoning laws while also ensuring they are clear and understandable. Second, local governments need to make sure existing zoning laws are not ambiguous in areas in which they wish to prohibit STRs. As evidenced by recent court cases, zoning laws are often not clear or up to date when it comes to STR usage.²⁶⁶

Similar to leases, cities at the very least must provide a disclaimer for potential hosts stating that restrictive covenants, condominium association bylaws, and conditions and restrictions are not overruled by local law because they are private agreements.²⁶⁷ Potential hosts should check all of these documents before attempting to use a unit as an STR. If a land use restriction applies to the property in question and the meaning is not easily understood, seeking legal advice is a logical next step.

5. Health & safety

Cities already have regulations in place regarding health and safety in residential areas, such as requiring a smoke detector and carbon monoxide detector in the home.²⁶⁸ What most cities lack is an enforcement procedure to ensure compliance with these practices.²⁶⁹ Again, an Office of STR would help facilitate this process. The Office could set up and enforce an annual health and safety inspection. It could also notify neighbors that a home in their neighborhood is being used as an STR. For example, the city could require the property owner notify neighboring houses on all sides of the listing. Furthermore, cities could implement an age restriction to combat issues with noise, such as requiring guests be at least 21 or 24 years old.²⁷⁰

6. Tax collection

Cities should work with hosting platforms to reach agreements where the hosting platform is responsible for collecting and remitting taxes. With Airbnb responsible for doing so, it would alleviate confusion and create a convenient

266. See, e.g., *Heef Realty & Invs., L.L.P. v. City of Cedarburg Bd. of Appeals*, 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797.

267. See *STR Starter Kit*, *supra* note 49, at 6.

268. See, e.g., *PORTLAND, OR., PLANNING & ZONING CODE* § 33.207.040(B)(4) (2015).

269. See *supra* note 249 and accompanying text.

270. See, e.g., *NASHVILLE, TENN., ZONING CODE* § 17.16250(E)(2)(4) (2017).

process that would incentivize compliance for all users. In the interim, the property owner should be responsible for tax collection. If property owners want to use their property as an STR, they should be held accountable to the same standards as hotels when it comes to taxes. A property owner needs to become acquainted with applicable taxes and have a process in place that ensures taxes are collected and remitted to the necessary enforcement area. Cities that do not currently have an enforcement method for tax collection are missing out on extra revenue for the city. As previously mentioned, other cities have used the extra revenue to help the homeless and create affordable housing.²⁷¹

7. Liability

All property owners are responsible for ensuring guests are safe, which includes appropriate liability insurance. Property owners are warned that existing homeowner's insurance likely does not cover situations in which their home is being used as an STR.²⁷² If the property owner has not re-evaluated their liability insurance with their insurance company, they likely are not covered. Some cities have required the property owner to show proof of insurance when applying for an STR permit²⁷³ and have allowed the property owner to substitute insurance with the hosting platforms offer of insurance.²⁷⁴ This practice is not recommended and should not be used because hosting platforms have been known not to follow through on the promise of liability insurance.²⁷⁵ The best method is to require a property owner and a hosting platform to have the appropriate insurance coverage and to not allow them to rely on each other for coverage. Property owners need to be aware of the possible liabilities with having guests stay in their home. Existing insurance policies often cover visitors who may get injured at your home but having paying guests stay in your home is unfortunately not the same.²⁷⁶ Overall, property owners need to be aware of the difference and seek necessary coverage to prevent an expensive shock in the future.

271. AIRBNB CITIZEN, *supra* note 111.

272. See *Understanding Home-Sharing in Wisconsin*, WIS. OFFICE OF THE COMM'R OF INS. (Dec. 2016), <https://oci.wi.gov/Documents/Consumers/PI-235.pdf> [<https://perma.cc/R9TL-XZDQ>].

273. See S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(D) (2016); see also NASHVILLE, TN, ORDINANCE No. BL2014-951 (2015).

274. See S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(D). As previously mentioned, Airbnb provides a \$1 million host guarantee in the event property damage occurs. See *supra* notes 39–41 and accompanying text.

275. See sources cited *supra* note 38 and accompanying text.

276. *Understanding Home-Sharing in Wisconsin*, *supra* note 272.

VI. CONCLUSION

Home sharing is indeed here to stay and will continue to shake up established markets. Whether regulation is at the state or local level, or both, implementation of some form of regulation is needed. Each city, as it should, has different needs it must address and regulation should seek to balance these needs. Cities should tailor regulatory schemes for the benefit of all interested parties, including the property owner, the host, the city, and the guest. Outright prohibition of STRs would not establish benefits for all interested parties. As Governor Scott Walker has said, the state of Wisconsin, as it stands, is not equipped to handle the emerging market of STRs.²⁷⁷ Governor Walker also agrees with regulation rather than prohibition of STRs in Wisconsin in order to encourage potential tourists: “We want to make sure [regulation] is not so prohibitive [that tourists] opt not to come to Wisconsin.”²⁷⁸ Wisconsin cities will continue to struggle when dealing with STRs unless a balance is sought that is fair and manageable. Achieving this balance means implementing a clear regulatory and enforcement structure that protects and benefits all interested parties.

APALLONIA C. WILHELM*

277. Frank Zufall, *State Also Struggles with STR Regulation, Says Gov. Walker*, SAWYER COUNTY REC. (Dec. 21, 2016), http://www.apg-wi.com/sawyer_county_record/news/regional/state-also...-says-gov-walker/article_9d9cdbce-c707-11e6-8533-27e99491010c.html [https://perma.cc/2CP8-BKFN].

278. *Id.*

* Managing Editor of the *Marquette Law Review*, J.D., 2018, Marquette University Law School, B.A., 2011, University of Wisconsin-Milwaukee. First, I would like to thank my grandmother, Marcy. I would be nowhere without her love and unwavering encouragement. Second, I would like to thank my husband, Cody, and my son, Cooper, for their continuous support while I pursued my law degree. Lastly, I must thank Attorney Domingo G. Cruz for the topic of this Comment and for his endless patience during the beginning stages of research.

Sullivan-Robinson, Christopher

From: Olejniczak, Marty
Sent: Wednesday, March 6, 2019 9:14 AM
To: Sullivan-Robinson, Christopher
Subject: FW: 2018 Breakdown by property for the CITY of SB

Follow Up Flag: Follow up
Flag Status: Flagged

FYI – in case this info is useful to your TRH issue

From: VanLieshout, Josh
Sent: Tuesday, February 26, 2019 10:18 AM
To: Olejniczak, Marty
Subject: FW: 2018 Breakdown by property for the CITY of SB

From: Door County Tourism Zone <info@doorcountytourismzone.com>
Sent: Tuesday, February 26, 2019 10:05 AM
To: VanLieshout, Josh <ivanlieshout@sturgeonbaywi.org>
Subject: 2018 Breakdown by property for the CITY of SB

Property Type	2018 Room Tax Revenue	Rank in Room Tax Revenue
50 - Hotel/Motel	\$259,492.62	1
51 - Resort	\$154,529.82	2
52 - Inn	\$48,241.89	4
53 - Condo	\$119,845.16	3
54- B&B	\$22,937.67	6
56- Cottage/Cabi	\$38,049.80	5
59- Other	\$2,214.09	7
	\$645,311.05	

Kim Roberts
Administrator
Door County Tourism Zone Commission
P.O. Box 55
10568 Country Walk Lane Unit 102
Sister Bay WI 54234
920.854.6200

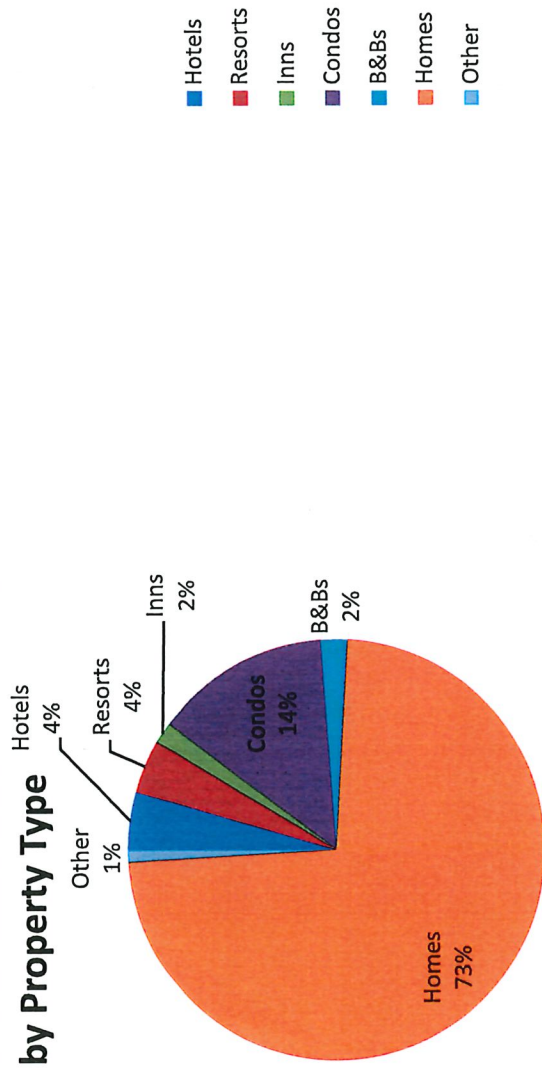
www.doorcountytourismzone.com

By Unit Report

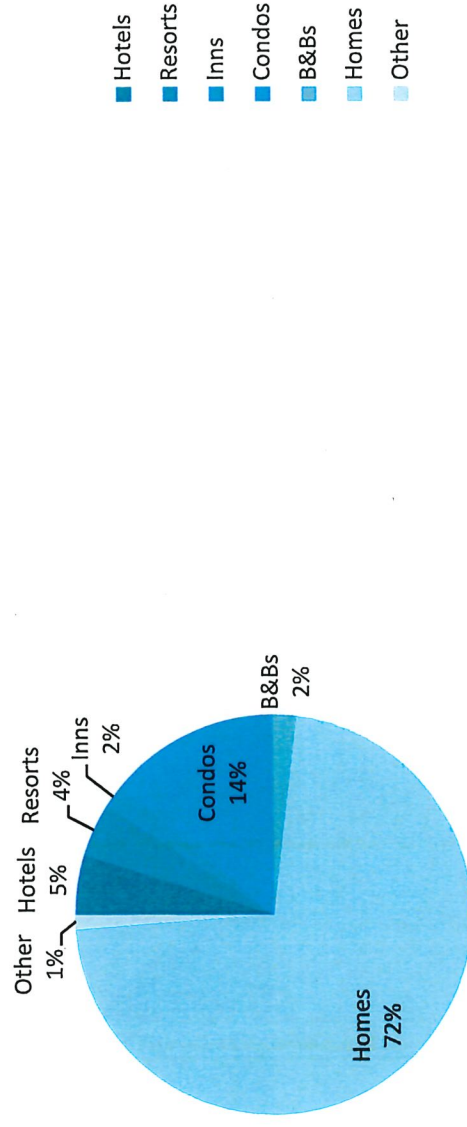
By Unit Report

[illegible]

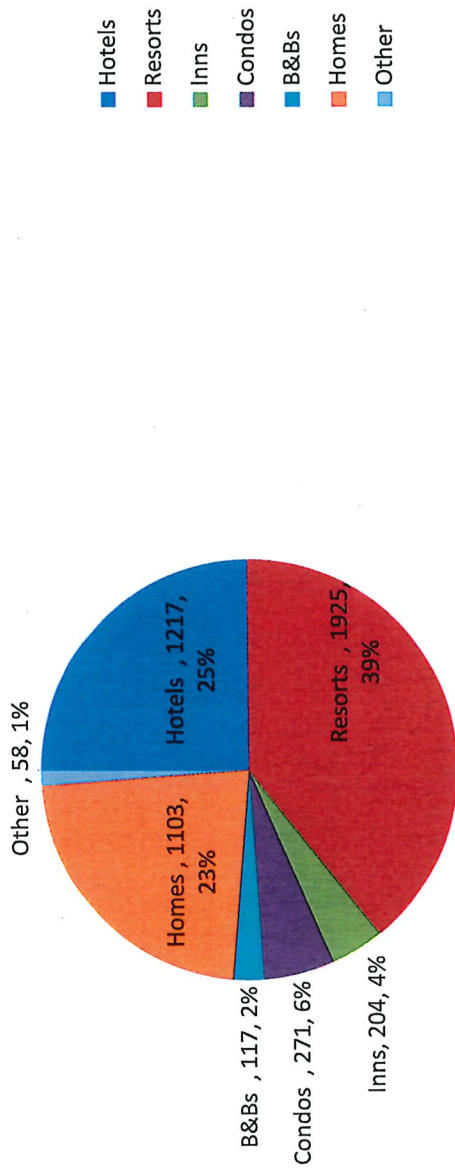
December 12, 2018 Permits by Property Type



May 11th, 2018 Permits by Property Type



December 12, 2018 Units by Property Type



May 11th, 2018 - Units by Property Type

