Understanding Short-Term Rentals

The Challenges and Possibilities of STRs in Our Communities

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Short-term rentals (STRs) are one of the hottest topics in the planning and zoning world right now, and one of the more complex topics we’ve had the pleasure of wrestling with here at County Planning in a while. Though the concept is decades-old, the recent exponential growth of short-term rentals (thanks to online platforms such as Airbnb, VRBO, HomeAway and others) has catapulted them into the limelight. And with that growth comes a recognition of the issues, both positive and negative, that go along with STRs.

What Do We Mean by “Short-Term Rentals”?

The simple answer is that a short-term rental is a dwelling unit, or portion thereof, that is rented for a short duration (typically less than 30 days) to transient guests (such as tourists, not someone looking for permanent housing). But the answer is more complicated than that, and STRs can take on a variety of forms. It could be your 20-something buddy who occasionally rents out his couch or spare room to a friend of a friend who’s in town for an event. It could be the retiree next door who regularly rents out her accessory apartment to supplement her fixed-income. But most often, at least in Dutchess County, it’s when the house down the block is rented out to visitors for a short stay, and more often than not the owner of that house is not on-site during the rental, or may not even live there at all.

As you read further, here are some important distinctions to keep in mind about STRs:

**HOSTED versus UNHOSTED:**

- **Hosted STR** – When the property owner remains on-site during the rental. This is often the case with the short-term rental of a room within a house, or an accessory apartment located either within the house or elsewhere on the property (such as above a garage).

- **Unhosted STR** – When the property owner is not present on-site during the rental. This is almost always the case with whole-house rentals (though there are occasions where a second, separate dwelling unit on the property may be occupied by the property owner).

**PRIMARY RESIDENCE versus NON-PRIMARY RESIDENCE:**

- **Primary Residence STR** – The property where the short-term rental takes place contains the primary residence of the property owner, even if they vacate the property during the rental period.

- **Non-Primary Residence STR** – The property where the short-term rental takes place is either a secondary residence or solely an investment property, the main purpose of which is that of a short-term rental.

This complex topic has earned itself a somewhat lengthier discussion herein, so please bear with us. This article seeks to explain the basics of short-term rentals and offer some general guidance on how local municipalities might choose to regulate them via zoning. It is important to recognize
that the guidance in this article reflects a snapshot in time rather than long-established techniques, as regulating STRs is still being tested. Ultimately, time (and likely, the courts) will be the true test for which approaches pass muster and which go the way of the proverbial dodo bird.

Local Picture: Survey of Dutchess County Municipalities

Our office recently conducted a survey of local municipal officials and staff – mayors and supervisors, city administrators, zoning administrators, law enforcement, building inspectors, code enforcement officers, planning board chairs, and others – to gather baseline information on the current status of short-term rentals in Dutchess County and to identify any concerns or opportunities regarding them. While admittedly an anecdotal effort, responses were received from 26 of 30 Dutchess County municipalities, a response rate that suggests this is a topic of great interest in many communities. In reviewing the data, one thing was abundantly clear – communities have more questions than answers when it comes to STRs.

Over 88% of survey respondents believe there are short-term rentals operating in their communities, but what types, how many, and where they’re located is less clear. Most communities do not know whether their STRs are hosted or unhosted, or the owner’s primary residence or not. At the time of the survey, none of the respondent communities had specific short-term rental regulations, and only a few were applying other sections of their code when issues arose; overall, most municipalities (72%) said they do not regulate STRs in any way. Looking ahead, seven municipalities were drafting regulations and another 10 indicated an interest in developing regulations to address short-term rentals.

According to the survey, municipalities see more potential negatives than positives when it comes to STRs operating in their community – 53% of respondents said they see opportunities, while 79% said they have concerns. With that said, most of our communities had not been inundated with formal complaints about STRs (during 2017-2018). If STR complaints were filed with a community, they were generally related to noise and disorderly conduct, building and property maintenance issues (e.g. trash), and illegal parking. The impression given from the survey responses is that noise and disorderly conduct issues primarily arise when the property owner is not present on-site during the rental (unhosted rentals). Others noted that complaints have been received about the impact on traditional bed-and-breakfast establishments and how STRs are unfairly competing in the lodging market. A key issue in addressing complaints is not only having local STR regulations, but being able to adequately enforce them, and many communities (43%) do not feel equipped with the right tools or staffing levels to do so.

What Does the Actual Data Reveal About STRs in Dutchess County?

In 2017, Dutchess County and Airbnb entered into a voluntary agreement whereby Airbnb collects and remits the required County hotel occupancy tax (as per Dutchess County Local Law No. 11 of 1983) on behalf of the hosts operating via its online platform.

In recognizing that Airbnb is just one of over 100 online platforms that facilitate short-term rentals, the County now contracts with Host Compliance, a web-based service that helps identify short-term rentals and notify hosts of their obligation to remit the tax. As part of that contract, we receive aggregate data about the number of STR listings identified in Dutchess County, which has aided in our understanding of the local picture of short-term rentals. Some of the highlights for Dutchess County, as measured in August 2019, include:

- There were 947 short-term rental units countywide (these were reflected in 1,334 listings, but this higher number indicates some duplication across multiple online platforms. For our purposes, we are focused on the number of units unless otherwise indicated)
- Every municipality has STRs; the number of units per municipality ranged from 2–151
- 31% increase in number of listings between 2017-2018
- 87% of listings are the entire dwelling unit (versus a room or portion of the unit)
Plan On It, September/October 2019 Issue

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**Number of Short-Term Rentals By Municipality**

August 2019

<table>
<thead>
<tr>
<th>Municipality</th>
<th># of Units</th>
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<td>City of Beacon</td>
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<td>Town of LaGrange</td>
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<td>Town of Pleasant Valley</td>
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**Distribution of Short-Term Rental Units, Per Municipality**

August 2019

- 23% had ≤10 units
- 63% had 11-50 units
- 10% had 51-100 units
- 3% had >100 units

[source: Host Compliance]

This data reflects a point-in-time summary of the number of known short-term rental units throughout Dutchess County. [source: Host Compliance]

As with many disruptive innovations, there are both pros and cons to short-term rentals. These are usually closely related and feel like the flip sides of the same coin, making it difficult to balance the benefits and burdens that short-term rentals bring to communities.

**The Benefits of Short-Term Rentals**

Let’s begin by reviewing some of the positive aspects of short-term rentals:

**Additional Financial Resources for Residents** – The origin story of short-term rentals is inspiring. Tech savvy entrepreneurs identify an underutilized resource (extra rooms in homes, and second homes that often sit vacant) and develop a consumer-friendly platform to help property owners monetize this excess capacity. STR ads show seniors remodeling and renting out their grown children’s bedrooms and using these funds to offset property maintenance and taxes, or a young family renting out a basement room to help pay the mortgage or save for their children’s college. The benefits to existing residents are clear in these cases.

**Alternative Lodging Options** – Many communities would like to attract more tourists but there is often a shortage of lodging or a lack of the type of lodging that is attractive to today’s traveler. While many people like to get away to hotels, a significant number of people want a different experience where they can cook a quick breakfast, do some laundry (so they don't
have to pay those crazy airline luggage fees), have common space to spend quality time with friends and family, or most importantly, bring Fido.

**Enhanced Tourism/Revenue Opportunities** – In addition to boosting the financial resources of existing residents, short-term rentals also bring more people into our communities, which is often desirable in struggling downtowns. Tourists provide much needed customers for our restaurants, entertainment venues, and other retail and recreation amenities.

Additional tax revenue can be another benefit. This most frequently comes in the form of an occupancy tax. In Dutchess County it is estimated that STRs generated $368,000 in occupancy tax in 2018, which was used to offset the county tax rate.

**Neighborhood Revitalization** – STRs are often credited with revitalizing struggling neighborhoods as individuals purchase and rehabilitate vacant and abandoned properties. Improvements to these blighted properties helps raise adjacent property values and improve quality of life issues such as crime.

**The Negative Impacts of Short-Term Rentals**

Along with these benefits comes the inevitable list of concerns:

**Altered Neighborhood Character** – Effects on the quality of life in a neighborhood is a frequently raised issue with short-term rentals. Stories of wild bachelor parties, numerous cars parked on lawns, and mounds of trash abound, all of which puts additional stress on already overworked police departments and building inspectors.

Since short-term rentals often result in a steady stream of guests who come and go from a property, existing residents also mention safety and security as a concern. While there isn’t much direct research on this yet, as with many other issues related to STRs, it is likely all about the details. Are the STRs permitted or illegal units? Is there any oversight by the local municipality via an annual permit or some other monitoring mechanism? It’s in the best interest of everyone, including STR hosts, to make sure the safety and security of guests and nearby residents is maintained at all times.

Even if STRs are well run, conversion from a primary residence for full-time residents to an STR housing transient visitors will affect the character of the neighborhood, as fewer people will know these temporary “neighbors.” What is the value of having a neighbor who keeps an eye on your home when you are on vacation or lets you borrow their mower when yours breaks? For many of us, these day-to-day interactions are part of the fabric of our neighborhood, and they disappear when you have different people coming and going every few days.

**Effect on Traditional Lodging** – When an apartment shifts to a short-term rental, it is effectively moving from the housing market to the hotel market, which can negatively impact existing lodging. Although STRs compete in the lodging market, they are not regulated the same way, which puts traditional lodging at a competitive disadvantage, at least when it comes to price. Not only is traditional lodging built to a different, more expensive building code, it is subject to regular health and building code inspections. These regulations are critical to ensuring the safety of occupants, but they also add to the cost of doing business, and STRs are not subject to these same standards. It is important that any STR regulations attempt to level the regulatory playing field for all lodging.

**Housing Affordability and Availability** – The effect of STRs on housing affordability and availability is another frequently cited concern. Housing prices are very much a function of supply and demand so it makes sense that when housing units are removed from the regular market, either rental or owner, it is likely that prices will increase. A recent joint study from the National Bureau of Economic Research, California State University, and University of
Southern California shows this is, in fact, happening. Their study states, “the results presented in this paper suggest that the increased ability to home-share has led to increases in both rental rates and house prices.” In addition, it states “an increase in Airbnb listings leads to a decrease in the number of units available to long-term renters.” Dutchess County has long struggled with low vacancy rates in the rental housing market, so even a small shift further in that direction could create a crisis. This underscores a long-standing need for a wider variety of housing types in Dutchess County such as accessory units, small apartment buildings (2-4 units), and larger apartment complexes.

The City of New Orleans, a popular tourist destination that also attracts waves of visitors for events such as Mardi Gras, has been struggling with an aggressive short-term rental market for several years. They crafted regulations with a tiered permitting process, which have been modified since their inception, and the City continues to struggle with the outfall of STRs. A displaced resident spray-painted the message shown above in an attempt to draw attention to one of the negative effects of short-term rentals. [Image credit: The Lens, March 23, 2018]

Some argue that the units being converted to STRs are not affordable housing, asserting that the question of affordability is moot. However, the housing market is a continuum; if higher-end units are removed from the rental housing market, the people who would have rented them will be forced to look for alternative units. The housing market is a bit like musical chairs: particularly in a community that isn’t doing much building, each conversion to a short-term rental is like pulling out a chair between rounds. But unlike musical chairs where the person left standing is selected by chance, in the housing market the person left standing is usually the one with the fewest financial resources.

It has also been suggested that the ability to easily earn income by offering your property as a short-term rental might increase the number of households purchasing second homes, as STRs now make it more financially feasible. This could result in even more homes being taken out of the market for permanent residents, driving up purchase prices.
Lastly, a word on property values and short-term rentals, as many existing homeowners may express this concern. While it is possible that an individual property could be devalued because of a problematic STR nearby, the early research suggests short-term rentals actually increase a community’s housing costs, hence the concerns outlined above about their impact on affordability. Increasing housing prices are great if you’re an existing homeowner, but can be a struggle for potential homebuyers or renters.

**Unintended Consequences on Local Businesses** – We stated earlier that having more people in our communities is generally considered a good thing for local business, but there can be negative impacts on these establishments as STR tenants typically support different businesses than residents. While residents and tourists both enjoy a great restaurant, tourists generally don’t need a hardware store or a full-service pharmacy. Even if they use these stores while visiting, it’s usually for minor purchases that aren’t enough to sustain these businesses over the long term. The hardware store needs people to buy wood and paint, and the pharmacy needs people to fill prescriptions. If just 5% of a community’s housing converts from homeowners to short-term rental tenants, how does that affect the ability of the hardware store or pharmacy, already on tight margins, to survive? Even the grocery store, which short-term rental tenants may use to some extent, could end up struggling since visitors purchase fewer groceries than full-time residents as they often eat out at local restaurants, or they’ve packed their cars with a significant amount of groceries from home.

**Potential Change to Property Assessment Classification** – Local assessors consider a variety of factors when calculating an assessment, including whether the property is used for residential or commercial purposes. Some jurisdictions are starting to question the practice of continuing to tax properties used for short-term rentals at the lower residential rate. In Colorado, the El Paso County Assessor’s Office [took up this question recently](http://example.com), and is considering shifting STR properties to the commercial tax rate.

**Potential for Inadequate Insurance Coverage** – Many homeowner policies consider the practice of short-term rentals to be a commercial endeavor and will not cover them under a standard homeowner policy. Some may provide coverage for only one or two rentals per year (think special events such as if the Super Bowl or Olympics were in town), while others may offer a separate rider that can be purchased. Regardless of how the property is assessed, it is likely that many properties operating as short-term rentals are underinsured.

**Options for the Municipal Regulation of Short-Term Rentals**

Use of property for the short-term rental of a dwelling unit (or portion thereof) constitutes a form of land use, and can therefore be regulated by the municipal zoning code. But as they say, the devil’s in the details. The complexity of local regulations will likely depend on the amount of short-term rental activity in a particular municipality and the number of problems arising from their existence. Given this, communities across the country are still working out how best to regulate STRs. There are a dizzying number of ideas circulating for how to address them – some will prove better than others, but one important consideration to keep coming back to as you evaluate options is whether or not the regulation is enforceable.

Whether your community is excited or cautious about short-term rentals, the reality is that every single municipality in Dutchess County has STRs operating within their boundaries, and they appear to be here to stay, no pun intended. Municipalities might consider some level of regulation, depending on local circumstances; the following are emerging as baseline ideas for municipalities to consider including in local regulations:

**Clearly State Goals and Objectives** — Start here! Before you sit down and begin drafting code, gather a cross-section of residents, stakeholders, and community leaders to have a conversation about the many facets of short-term rentals. Understand the pros and cons, and
talk openly and honestly about what is best for your community. Based on this, decide what your community’s underlying goals and objectives are related to short-term rentals, and use those to inform the creation of local regulations.

**Provide Clear Definitions** — Carefully crafted definitions are the cornerstone of a good zoning code, and clearly defining short-term rentals is an important component of a municipality’s approach to regulating STRs. Be sure to differentiate between the characteristics of an STR versus other types of lodging options that may be defined in your code. And while we encourage municipalities to consider language carefully and within their local context, the following examples of STR terminology, adapted from the Sustainable Economies Law Center report entitled *Regulating Short-Term Rentals: A Guidebook for Equitable Policy,* may be helpful:

- **Short-Term Rental (STR)** – The rental of a Primary Residence or portion thereof for a period of fewer than 30 nights, for which the guest compensates an owner or lessee of the unit.

- **Primary Residence** – A housing unit in which an owner or lessee resides for a minimum of 9 months of the year. [NOTE: The minimum timeframe can be customized by the community. Some codes may already define this term. Alternatively, the municipality may be able to rely on the determination of primary residency as it applies to New York State’s Basic STAR Exemption/Credit program; if a homeowner has applied for and been granted the Basic STAR Exemption/Credit, that could be deemed sufficient proof of residency for the purposes of a local STR ordinance.]

- **Hosted Primary Residence STR** – A Short-Term Rental unit where the owner or lessee hosts one or more guests in a bedroom or some portion of the unit and is generally present for the duration of the rental period, in particular during overnight hours.

- **Unhosted Primary Residence STR** – A Short-Term Rental unit where the owner or lessee leaves the unit for a period of time – for example, over a weekend, when traveling for work, or while on vacation – and rents out all or part of the unit in his or her absence.

- **Vacation Rental** – An entire residential unit that is not a Primary Residence and is rented to guests on a short-term basis, typically fewer than 30 nights. [NOTE: Consider defining this if your community isn’t limiting STRs to a primary residence only.]

**Limit STRs to Primary Residences** — Many of the concerns raised regarding short-term rentals are typically associated with those operating as a business investment, rather than by a permanent resident of the community. Limiting this use to a primary residence ensures that the STR homeowner benefits are attainable, while the negative effects on neighborhoods and housing availability are attenuated.

**Require an Annual Operating Permit** — Requiring short-term rental hosts to obtain an operating permit, renewable every year or two, gives the municipality an opportunity to ensure
compliance with local regulations and opens up a line of communication with the STR host. An onerous and expensive registration process might encourage units to operate illegally, while a relatively simple permit process would encourage host participation and could help keep the recordkeeping manageable for the municipality. In addition to the typical information included in any permit request, consider the following additional requirements for STRs:

- Proof of primary residence via eligibility for the NYS Basic STAR Exemption/Credit program, or the provision of at least two documents such as driver’s license, voter registration, NYS income tax returns, etc.
- Name and contact information for person(s) responsible for handling non-emergency issues and complaints during a rental.
- Inspection or self-certification of compliance with building and fire safety requirements, such as operational smoke and carbon monoxide detectors, proper accommodations for exiting the unit during an emergency, etc. Requiring a municipal inspection of STRs can be challenging as many of our communities don’t have sufficient staffing levels. Where this is an issue, municipalities could provide a list of building and fire safety requirements to the STR permit applicant, and require they provide a notarized affidavit of compliance with all safety items as part of their permit application.
- Consider charging only a modest permitting fee to cover administrative costs, which will encourage participation. Fines can be structured to help cover the costs of enforcement and investigation of complaints, placing the cost burden on those with violations rather than all STR hosts.
- Require inclusion of the STR permit number in any advertising for the short-term rental unit.
- Require proof of adequate insurance coverage by the STR property owner. Some online rental platforms offer certain protections but it may be difficult to determine what is covered. A municipality could decide that rental platform protections are not adequate, and require separate insurance coverage.
- Include a penalty fee structure, and a process for revoking a permit.

Additional Regulations to Consider in Municipalities with Higher Concentrations of Short-Term Rentals
In addition to the baseline items listed above, communities that have a higher number of short-term rentals and/or areas of STR concentration might consider additional oversight:

**Disincentivize STRs as an Investment Opportunity** — Whether or not your community is currently feeling the pinch on housing availability that can come along with a burgeoning short-term rental market, it is important to understand that, in most cases, any new short-term rental is likely displacing something that was formerly a long-term rental unit or owner-occupied home. To preserve housing availability, some communities are implementing a minimum occupancy timeframe when people first buy or rent a housing unit. This might only be a consideration if your municipality does not require the STR be the owner’s primary residence. This is intended to deter the purchase of a unit for the sole purpose of conducting short-term rentals. For example, a new owner might be required to occupy the unit for a minimum of six months, two years, or whatever timeframe the municipality feels is enough to deter the purchase of property for short-term rental as an investment opportunity.

**Require Plans for Parking, Garbage Removal, Etc.** — Where short-term rentals may be located in close proximity to neighboring properties, or in more densely populated locations such as villages and cities, municipalities can require hosts to carefully outline how things like parking and garbage removal will be handled.
Require Special Use Permit — If your community is concerned about neighborhood character and site design considerations, or if non-primary residence STRs will be allowed, requiring a special use permit gives the Planning Board a role in determining where and how an STR might be appropriately located.

Sounds Good, But Difficult to Enforce
In the fast-changing world of short-term rental regulation, communities have been testing a variety of ways to effectively regulate STRs without creating enforcement struggles. These ideas are mentioned often but could be more difficult to enforce:

Prohibiting STRs Altogether — Prohibiting short-term rentals may sound like a tempting option to communities dealing with numerous complaints or enforcement issues. But while it may appear to be a simple solution, a full prohibition on STRs can be extremely difficult to enforce. We know from data collected by Host Compliance that every single community in Dutchess County has short-term rentals. Even if a municipality prohibits the use, determined STR hosts are finding ways to evade detection and continue to operate “under the radar.” Rather than rely on this somewhat combative approach, we recommend communities engage in an open conversation with a variety of stakeholders (residents, STR hosts, code enforcement officials, etc.) in order to determine if there may be some common ground in acknowledging the benefits of short-term rentals, and then give consideration to adopting regulations that allow for short-term rentals while addressing some of the issues that can arise. If a municipality ultimately decides that a full prohibition is the way to go, use of an online service that can identify illegal units may aid in local enforcement.

Limit Number of Permits Per Block or Neighborhood — In areas experiencing a higher concentration of short-term rentals, such as village or urban neighborhoods, concerns may be raised about a shift in neighborhood character from local to transient. To help reduce the possibility that entire blocks or neighborhoods could shift to short-term rentals, municipalities might decide to place a cap on the number of annual operating permits issued in a given geographical area. However, this can be more complicated than it may seem. How are the boundaries of the chosen geography, such as a “neighborhood,” drawn? What number of units would be appropriate to achieve the community’s goals? Will the municipality face continual pressure to increase the limit? And ultimately, once the permit limit is achieved, will this policy actually push some short-term rentals underground, defeating the purpose of having a permitting system in the first place?

Limiting Number of Rental Nights — Some communities include a cap on the number of nights per calendar year, either for any STR or just for unhosted units. Information about the number of nights rented across multiple online STR platforms is not currently easy to get, so without easy access to this data, enforcement becomes very challenging.

Are We Done Yet?
If you’ve made it this far, congratulations — you are officially a planning and zoning enthusiast! And as you’ve probably figured out by now, short-term rentals are . . . complicated. From identifying your community’s underlying goals and objectives regarding STRs, to figuring out how to balance the pros and cons, and remembering the concept of enforceability when crafting local regulations, the task of addressing short-term rentals can be time-consuming. And although this article focuses on the housing aspects of short-term rentals, municipalities should be aware that some of these online platforms facilitate the rental of things like tents, campers and motorhomes, pools, storage spaces, driveways, and a variety of other nonconventional items and experiences. When crafting local regulations, be sure to keep the larger sharing economy in mind to avoid problematic conflicts or loopholes.
This is a complex, fast-moving area of consideration for our local communities and we understand that it may seem a bit overwhelming. We’ve pulled together this summary information in an effort to help local municipalities navigate the still-shifting sands of short-term rentals, and look forward to continued collaboration on the issue.

It’s also important to step back from the regulatory concerns for a moment and acknowledge what this meteoric rise of short-term rentals in Dutchess County signifies — our area is blessed with beauty and diversity, from bustling main streets in our cities and villages to a wealth of historic sites, vibrant natural resources, and wonderful recreational amenities. Short-term rentals are a user-driven market and Dutchess County clearly has something for everyone.

More Information

The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb, National Bureau of Economic Research, California State University, Marshall School of Business at University of Southern California, revised June 2019 (last accessed from website October 2019)

Regulating Short-Term Rentals: A Guidebook for Equitable Policy, Sustainable Economies Law Center, March 2016 (last accessed from website October 2019)

A Practical Guide to Effectively Regulating Short-Term Rentals on the Local Government Level, Host Compliance

Could You Bnb My Neighbor? A Planner’s Take on the Sharing Economy, Jeffrey Goodman, first published in APA’s Planning magazine, February 2016 (last accessed from Host Compliance website October 2019)

Inside Airbnb’s ‘Guerrilla War’ Against Local Governments, WIRED Magazine, May 2019

RESOURCES tab on Host Compliance website, includes articles, webinars, ordinance tool, and more

Share Your Thoughts

We’d love to hear your thoughts on the issues and regulatory challenges surrounding short-term rentals in your community:

Click to E-Mail us about STRs

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This newsletter was developed by the Dutchess County Department of Planning and Development, in conjunction with the Dutchess County Planning Federation.

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