

Short Term Rentals

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Short-Term Rentals

Issue at a Glance

- Local government officials want to retain authority for regulating short-term rentals and home-sharing; companies in the short-term rental business prefer that the state establish policy for the regulation of short-term rentals and home-sharing.
- Stakeholders have different ideas about the positive and negative impacts of the short-term rental industry.
- State and local governments across the U.S. have adopted highly diverse approaches to regulating the short-term rental industry.

The Policy Challenges

The debate about short-term rentals encompasses a number of concerns about intergovernmental relations, neighborhood character and quality of life, revenue collection, and protection of public health and welfare. Whether state or local government is the most appropriate forum to address and manage these concerns is a preeminent point of contention.

A short-term rental is defined as a residential dwelling, including a single-family dwelling or a unit in a multi-unit building, such as an apartment building, condominium, cooperative, or time-share, that is rented wholly or partially for a fee for a period of less than 30 consecutive days. Online platforms that allow residents to offer short-term rentals of houses, apartments, or rooms have grown in popularity over the past decade. The home-sharing company Airbnb, for example, is a \$30 billion industry and is the largest among several companies in the short-term rental (STR) industry that include HomeAway, Flipkey and VRBO¹. In the Knoxville area alone, Airbnb earned more than \$17.4 million in 2017; in fact, Knoxville, Sevierville, Gatlinburg and Pigeon Forge number among the top 10 home-sharing markets in Tennessee².

In response to concerns expressed by constituents and other interests, local governments across the country and in Tennessee have enacted ordinances that affect short-term rentals and home-sharing. These ordinances address particular local concerns in different ways, but generally include the collection of various taxes and fees, noise, trash collection, parking and traffic concerns, and mitigation of potential negative impacts on neighborhood character, property values, and the availability of affordable housing.³ Knoxville for instance requires that neighborhood and or homeowner's associations be notified about an application for an STR

¹ Ulrik Binzer, "The Short-Term Rental Market Is Booming. Here's Why Cities Should Regulate It.," *National League of Cities*, May 30, 2017, <http://www.nlc.org/article/the-short-term-rental-market-is-booming-heres-why-cities-should-regulate-it>.

² WBIR, "Airbnb Hosts in the Knoxville Area Earned \$17.4 Million in 2017," *wbir.com*, January 4, 2018, <https://www.wbir.com/article/news/local/airbnb-hosts-in-the-knoxville-area-earned-174-million-in-2017/51-503021627>.

³ Binzer, "The Short-Term Rental Market Is Booming. Here's Why Cities Should Regulate It."

permit in their community.⁴ The TN Attorney General has opined that STRs are subject to hotel occupancy and sales taxes just like hotels and motels in the state.⁵

In 2016, the General Assembly considered a Short-Term Rental Unit Act. In its various iterations, the bill first applied to the entire state, then to the state's four largest cities, and finally only to Nashville. The bill passed on first reading in the House and action was deferred in the Senate Finance, Ways, & Means Committee until the first calendar in 2018. This bill proposed to prevent local governments from banning short terms rentals, and to require an STR unit provider to maintain at least \$500,000 in liability insurance, comply with applicable fire safety standards, and collect and remit all applicable taxes.⁶

During 2017, at least 28 state legislatures considered bills that would preempt local regulatory authority to set restrictions on short-term housing.⁷ Arizona, for instance, prohibited local governments from banning or restricting short-term rentals based solely on their classification, use, or occupancy. Whether the state of Tennessee should adopt preemptive measures that prevent local governments from banning short term rentals will be a focus of the debate in 2018.

Those involved in an STR business general prefer that the state legislature establish a uniform policy for the regulation and operation of STRs and prohibit local government from banning this land use.⁸ They argue that diverse local ordinances that prohibit or impose cost-prohibitive compliance requirements infringe on private property rights. A common rhetorical appeal is: "Why can't homeowners make a little money renting a spare room or two in their home?"⁹ The implication is that those involved in the STR industry simply want to use their property to earn money from hosting tourists or other short-term visitors that will help the local economy.

Other positive impacts claimed by those in the STR industry are that they promote efficient use of available housing space, enable local residents to have an additional source of income, and facilitate broader social and cultural exchange between residents and visitors.¹⁰

⁴ City of Knoxville, "The Knoxville City Code to Require Notification of the Application for a Short Term Rental Operating Permit," Ordinance #O-284-2017 § (2017), http://www.knoxvilletn.gov/UserFiles/Servers/Server_109478/File/Finance/STR/STR-284-2017.pdf.

⁵ State of Tennessee, Office of the Attorney General, "Tax on Short-Term Rental of Homes, Apartments, and Rooms Arranged Through Websites" (Opinion No. 15-78, December 1, 2015), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2015/op15-78.pdf>.

⁶ Cameron Sexton and John Stevens, "Short-Term Rental Unit Act," Pub. L. No. HB1020, SB1086 (2017), <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1020>.

⁷ Liz Malm, "2017 Legislative Update - Short Term Rentals" (MultiState Associates, n.d.), http://www.ncsl.org/documents/taskforces/Short_term_rental_tax_update.pdf.

⁸ Binzer, "The Short-Term Rental Market Is Booming. Here's Why Cities Should Regulate It."

⁹ Tennessee Municipal League, "Short-Term Rentals," The Tennessee Municipal League (TML), n.d., <https://www.tml1.org/issue/short-term-rentals>; Tennessee Municipal League, "Responding to Industry Arguments," n.d., https://www.tml1.org/sites/default/files/tml/pdf/Responding_to_Industry_Arguments.pdf.

¹⁰ Yassi Eskandahr-Qajar and Janelle Orsi, "Regulating Short-Term Rentals a Guidebook for Equitable Policy," Sustainable Economies Law Center, March 2016, https://drive.google.com/file/d/0B1VPWTZ0vw6MTVh2b182QTFVV1E/view?usp=embed_facebook.

They also think that a robust STR market might help to ensure that rental houses do not fall into disrepair.¹¹

A 2017 opinion poll of 500 Nashville voters sponsored by Airbnb found that 60 percent of respondents thought that second-home or investment property rentals, or non-owner-occupied units should be “mostly” allowed, with some restrictions.” Only 22 percent of respondents thought they should be completely or “mostly” prohibited.¹² A sharply divided Nashville Metro Council voted to defer action in 2017 on an ordinance regulating STRs; it is expected to take up the matter again in 2018.¹³

That state government has the power to preempt local governments from prohibiting or restricting STRs is indisputable; the main point of contention is whether a “one-size fits all” state policy will yield results preferable to the policies enacted by local governments tailored to address the particular concerns of local residents.¹⁴ For this reason, state preemption of local government regulation of the STR market is considered by local government officials to represent a serious erosion of municipal home rule and the power to regulate persons and property to protect public health, safety, welfare, peace, and prosperity of residents.¹⁵ They think state action in this arena represents a preemption of the local government power to control local land uses through tools such as zoning ordinances that has been upheld by state courts. If short-term rentals are allowed to be the only commercial enterprise permitted to operate in residential areas without much regulation by local government, serious conflicts may arise with community standards and the desire of local residents to protect their property values.

Moreover, advocates for local government leadership on STR policy hold that industry depictions of “homeowners renting out a spare room or two” are highly inaccurate and misleading.¹⁶ They point out that the large majority of rentals advertised by STR businesses involve an entire home not occupied by the owner; therefore tenants are unlikely to be as concerned about loud parties, trash, and parking or traffic issues as when the residence is owner-occupied.¹⁷ Short-term rentals differ from the single family home leases that appear from time to time in many neighborhoods. Most leases for single family homes are for at least a year. Residents with long-term leases are believed to be more likely to take better care of the property compared to visitors who rent by the week.¹⁸ Many of the homeowners who are in the STR business advertise multiple homes on-line STR services, and consequently, depictions of a

¹¹ Jamila Jefferson-Jones, “Airbnb and the Housing Segment of the Modern ‘Sharing Economy’: Are Short-Term Rental Restrictions an Unconstitutional Taking?,” *Hastings Constitutional Law Quarterly* 42 (March 1, 2015): 557–75, <https://papers.ssrn.com/abstract=2624700>.”plainCitation”.”Jamila Jefferson-Jones, “Airbnb and the Housing Segment of the Modern ‘Sharing Economy’: Are Short-Term Rental Restrictions an Unconstitutional Taking?,” *Hastings Constitutional Law Quarterly* 42 (March 1, 2015)

¹² Eleanor Kennedy, “By the Numbers: How Nashvillians Feel About Short-Term Rentals,” *Nashville Business Journal*, September 27, 2017, <https://www.bizjournals.com/nashville/news/2017/09/27/by-the-numbers-how-nashvillians-feel-about-short.html>.

¹³ Joey Garrison, “In Win for Airbnb, Nashville Council Holds off on Short-Term Rental Phase-out Bill,” *Tennessean*, October 4, 2017, <https://www.tennessean.com/story/news/2017/10/04/nashville-metro-council-holds-off-phase-out-bill-until-18/727041001/>.

¹⁴ Nolan Gray, “The Positive Power of Preemption - Sometimes State Preemption Is a Good Thing,” *CityLab*, August 13, 2017, <https://www.citylab.com/equity/2017/08/the-positive-power-of-preemption/536241/>.

¹⁵ Binzer, “The Short-Term Rental Market Is Booming. Here’s Why Cities Should Regulate It.”

¹⁶ Tennessee Municipal League, “Short-Term Rentals”; Tennessee Municipal League, “Responding to Industry Arguments.”

¹⁷ Binzer, “The Short-Term Rental Market Is Booming. Here’s Why Cities Should Regulate It.”

¹⁸ Tennessee Municipal League, “Short-Term Rentals”; Tennessee Municipal League, “Responding to Industry Arguments.”

single-family homeowner who occasionally rents out an unused room for some extra money are not typical of the industry.¹⁹

Another potential negative impact of STRs is that they may suppress the supply of affordable housing as investors in rental properties compete with families to purchase homes.²⁰ That residents have real concerns about STRs in their neighborhood was apparent when Metro Nashville established a 24/7 complaint line for residents who needed help to resolve an issue with a short-term rental property.²¹

Outlook

Debate will continue on the merits of state v. local regulation of STRs and precisely what state or local regulatory policies will maximize the positive impacts while minimizing and mitigating perceived negative impacts.²² Whether stakeholders will agree on some compromise to establish basic state guidelines for safety regulation and efficient collection of relevant taxes while enabling local governments to address the variety of issues of concern to local residents remains to be seen.

¹⁹ Tennessee Municipal League, “Short-Term Rentals”; Tennessee Municipal League, “Responding to Industry Arguments.”

²⁰ Dayne Lee, “How Airbnb Short-Term Rentals Exacerbate Los Angeles’s Affordable Housing Crisis: Analysis and Policy Recommendations Student Notes,” - Harvard Law & Policy Review 10, no. 1 (2016): 229–53, http://heinonline.org.proxy.lib.utk.edu:90/HOL/Page?handle=hein.journals/harlpolv10&div=13&g_sent=1&casa_token=&collection=journals#.

²¹ Metro Government of Nashville & Davidson County, “Metro Launches Short-Term Rental Property Hotline,” Nashville.gov, September 12, 2017, <https://www.nashville.gov/News-Media/News-Article/ID/6780/Metro-Launches-ShortTerm-Rental-Property-Hotline.aspx>.

²² Cory Scanlon, “Re-Zoning the Sharing Economy: Municipal Authority to Regulate Short-Term Rentals of Real Property,” SMU Law Review 563, no. 2 (2017): 562–91, <https://scholar.smu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4691&context=smulr>; Kellen Zale, “When Everything Is Small: The Regulatory Challenge of Scale in the Sharing Economy,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, November 7, 2016), <https://papers.ssrn.com/abstract=2866044>.