

# Short Term Rental Study – 2018 Ed.

City of New Orleans



## City Planning Commission

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## **A. Executive Summary**

### **Introduction**

The City of New Orleans implemented its new short term rental (STR) regulations in April of 2017 after the City Planning Commission studied and provided recommendations to City Council. Three years after the first study and nearly a year and a half after the implementation of the first STR regulations, the City Planning Commission is reevaluating the short term rental regulations, acknowledging the proliferation of the industry, and the unintended effects of the current short term rental requirements.

In March 2018, the City Council passed Motion M-18-86 directing the City Planning Commission to reevaluate the current STR regulations that were codified in 2017, to provide recommendations for necessary amendments among growing concerns regarding the affects STRs have on the communities and neighborhoods in which they are located. Motion M-18-86 was rescinded when City Council passed Motion M-18-194 in May, 2018, directing the City Planning Commission to reexamine the current STR regulations, but with an emphasis on analyzing four specific cities' regulations in order to extract any successful policies that may influence new STR regulations in New Orleans. In the same meeting, the City Council introduced the *Short Term Rental Interim Zoning District* (IZD) covering all lots within the Historic Core and Historic Urban zoning districts, Central Business District zoning districts, MU-1 Medium Intensity Mixed Use and MU-2 High Intensity Mixed Use Districts. The IZD prohibited: (1) the issuance or renewal of a Temporary Short Term Rental permit or license, and (2) any issuance of a Commercial Short Term Rental permit or license for STR-use on the first floor of a multi-story building that can or may contain residential uses on subsequent floors.

With relatively lenient STR regulations currently in place, the City Planning Commission staff recognizes the need to strengthen regulations, protecting New Orleans' housing stock, ensuring New Orleans remains a place first and foremost for its citizens, and protecting the character of New Orleans' unique neighborhoods.

### **Study Goals:**

#### *Goals from Original Study:*

- Ensure the safety of visitors;
- Protect neighborhood character and minimize impacts to residential areas;
- Enable economic opportunities;
- Create equitable regulations for the hospitality industry;
- Create regulations based on best practices that respond to the unique circumstances in New Orleans;
- Generate revenue for the City;
- Facilitate public notice and information;
- Allow short term rentals based on their impact;
- Propose regulations that respond to the unique impacts of each short term rental type to minimize nuisances;
- Propose enforceable regulations;
- Prioritize enforcement; and
- Implement a system where problem operators would not vest property rights.

### *Specific Requests from Motion M-18-194:*

Study the City's existing regulations and STR data to:

- Determine if amendments to existing laws are warranted and necessary;
- Reduce any unintended secondary effects of STRs relative to the residential fabric of the City;
- Ensure platform accountability;
- Amend categories and definitions;
- Make revisions to permitted/prohibited zoning categories;
- Update fee structure to more adequately address housing affordability;
- Create possible remedies to the illegal operation of STRs;
- Adopt the use of parcels, as opposed to municipal addresses, in issuing permits and licenses;
- Modify Commercial STR licensing regulations that would encourage the development of multi-story commercial buildings containing retail or other commercial uses on the first floor and residential uses, including Commercial STR, on subsequent floors; and
- Enforce additional/new prohibitions, if needed, including capping measures (such as limiting the number of licenses or creating restrictions based on block-face, spacing, or census tract), compliance standards, the use of homestead exemptions in issuing permits and licenses, data collection, enforcement mechanisms, and any applicable regulations that may be available relative to the internet platforms that provide STR listings.

### **Key Findings**

Based on the review of nationwide practices and the analysis of the situation in New Orleans, the following key findings informed the Short Term Rental Study recommendations:

#### **Short Term Rental History**

- In their previous study, the City Planning Commission staff recommended four types of Short Term Rentals; Accessory, Temporary, Principal Residential, and Commercial. The City Planning Commission recommended eliminating the Principal Residential type due to concerns about allowing whole-home short term rentals in residential districts where there the operator is not present onsite to manage and monitor the short term rental.
- The City Council made a number of modifications to what was initially recommended by the City Planning Commission. While the City Council maintained the prohibition on the Principal Residential Short Term Rental type, it expanded the use of the Temporary Short Term Rental type. The limit on the number of days per year was increased from 30 days to 90 days, and perhaps more significantly, the Temporary Short Term Rental was no longer required to be someone's occupied dwelling unit, which allowed every dwelling unit to potentially become a short term rental without any limits on density. In addition, City Council voted to eliminate the recommendation that short term rentals be allowed in the French Quarter (except for the VCE District along Bourbon Street), among other minor changes.
- Since the regulations went into effect on April 1, 2017, there have been a few relatively minor permanent modifications and a significant temporary change. When modifications to the Riverfront Design Overlay District were adopted on March 6, 2018, Commercial Short Term Rentals were prohibited in the Marigny and Bywater portions of the Riverfront Overlay District. Another modification was adopted on April 11, 2018 which placed a "soft cap" on Commercial Short Term Rentals in the HU-B1 and HU-MU Districts, where only the first two Commercial Short Term Rentals per property are a permitted use and any more than two require a conditional use.

## **Current Short Term Rental Data**

- The City had a total of 4,210 active Short Term Rental licenses as of May 23, 2018. This roughly equates to 2.17% of total housing units in New Orleans. Over half of the licenses active at this time were Temporary licenses (51%), and the remaining split between Accessory (26%), and Commercial licenses (23%).
- The major concentrations of STR licenses are within residential district groupings in the Historic Core and Historic Urban neighborhoods. Over half (51.1%) of all active licenses are within a Historic Urban Neighborhoods Residential District, and an additional 14.8% are located within Historic Core Neighborhoods Residential Districts.
- The Central Business District has, in total and proportionately, the greatest concentration of Short Term Rental licenses with 19.2% of housing units holding a STR license. Other neighborhoods with high proportions include the Marigny (11.7% of housing units), Bywater (7.7%), Tremelafitte (7.1%), and East Riverside (6%).

## **Enforcement**

- Violations of the STR regulations are determined at administrative adjudication hearings by administrative hearing officers. Currently there are only two hearing officers, which are shared between the Department of Safety and Permits and Code Enforcement.
- In addition to short term rental violations, administrative adjudication hearings for the One Stop Shop also include violations relating to the Zoning Division, Historic District Landmarks Commission, and Vieux Carré Commission. The current pool of administrative hearing officers is very limited. There are only two staff in the One Stop Shop dedicated to adjudications. The hearings must be shared with other violations. Processing of violations requires significant administrative support; thus, the amount of short term rental violations that can be adjudicated at a given time is limited.
- After determining that a violation has occurred, an administrative hearing officer may levy fines, costs, and penalties for each violation of the regulations for short term rentals. The fines that may be imposed by the hearing officer are limited to \$500 per day for each violation of the ordinance by state law. For many short term rental operators, these fines are not a deterrent.
- The City has not collected the majority of fines that have been levied related to STR violations. The City may place liens on the property for uncollected fines; however, this necessitates significant staff time and City resources to administer. Additionally, any person determined by the hearing officer to be liable for a code violation may appeal the determination to Civil District Court within 30 days of the hearing officer's order. To date there have been 31 appeals to Civil District Court of short term rental violations, some of which resulted in the fines being dismissed or lowered.

## **Platform Accountability**

- Pursuant to the City Code, short term rental hosting platforms that list short term rentals in the City must provide certain information about activity on the platform on a monthly basis to the City of New Orleans. Currently the only platforms that have submitted the required monthly reports are Airbnb and Expedia.
- The current data reporting requirements are inadequate to determine violations other than the 90-day limit for temporary licenses. The information provided in the reports is not sufficient to take enforcement action against a particular property because it does not provide any identifiable information. While a subpoena process is available, the information provided in the responses is

inadequate for effective enforcement. Processing the reports, issuing subpoenas, and tracking information, takes significant staff time and City resources to administer.

- Unlike in the past, the most popular platforms with STR hosts and visitors facilitate not only the short term rental advertisement, but also the commercial transaction. The commercial transaction aspect of the service between local hosts, platforms, and visitors has provided a new avenue to require licensure and data sharing of the platforms with listings in New Orleans.

### **Operator Accountability**

- One issue that has been identified since the short term rental regulations were enacted is the lack of accountability for local property managers or operators of short term rentals. Many people who have a short term rental license pay a property manager or operator to rent and operate the short term rental. There are not issues with most operators, but when there is a problem with an operator it is very difficult to hold him or her accountable. The City is able to cite the property owner and/or the license holder, but if the operator is neither of those, then it is nearly impossible to hold them accountable.
- This can be especially problematic if there is a license holder that lives out of town and relies on the property manager or operator to manage all aspects of the short term rental. In some cases, the operator is renting the short term rental beyond the maximum guest limit, over the 90 night maximum for Temporary Short Term Rentals, or is using a valid license number for one unit to rent out other units without licenses. The property owner or license holder might not be aware of the property manager's activity until they receive a violation notice from the Department of Safety and Permits.

### **Best Practices**

- Many cities have enacted short term rental regulations in the past few years, but have since amended their policies with further restrictions to counteract and help mitigate the unanticipated negative effects STRs have had on the communities in which they are located.
- The different cities researched utilize different policy tools to regulate short term rentals. Each approach has been catered to their specific city's needs. There is no one-size-fits-all policy for STRs.
- Many of the cities studied require a host on-site during the stay of the STR guests. Requiring a host during the stay of STR guests helps to mitigate negative impacts sometimes associated with short term rentals such as noise, trash and inappropriate behavior. Ostensibly, a host who lives in the property has greater agency than an off-site manager.
- Short term rental platforms have cited several legal issues with sharing information and complying with local zoning regulations including the First Amendment, Communication Decency Act, and the Stored Communications Act. San Francisco and Santa Monica demonstrate clear examples of municipalities that have successfully regulated platforms and overcome court challenges because their regulations are focused on the *transaction* and not the *content* of the listing. While there is no guarantee that these regulations will continue to be upheld if they are appealed to higher courts or that courts in Louisiana will decide the same way as courts in California, the City should explore this possibility.
- Other cities utilize third party vendors to enhance enforcement, helping City staff to find, adjudicate, and fine illegally operating STRs.

## **Public Input**

- The City Planning Commission held two public hearings, the staff has met with multiple stakeholders, and received hundreds of written public comments to obtain input on the STR study.
- Proponents of STRs assert the benefits of STRs include creating additional income for residents or renters, providing jobs for service providers (housekeeping, maintenance workers, etc.), spurring redevelopment of blighted properties, allowing tourists to interact with local hosts, providing an alternative option for traveling families, and the economic development spurred by visiting STR guests.
- The opponents of STRs state the disadvantages include diminishing housing stock for permanent residents, increasing home prices and taxes attributed to STRs, loss of permanent residents and neighborhood character, impacts to quality of life including noise and trash generated by whole-home STRs, and lack of a permanent resident on-premises to mitigate the potential negative effects of STRs.
- Nuances among STR proponents include some commercial operators who believe that only STRs within residential neighborhoods pose a problem. Similarly, some STR operators in residential neighborhoods believe that out-of-city and corporate owners are the source of STR negative impacts.

## **Commercial STRs**

- Citizens expressed a number of concerns related to the Commercial STR type based on several factors. Commercial STRs are only authorized in non-residential zoning districts and may operate 365 days per year. The zoning districts that authorize Commercial STRs include neighborhood business and low-intensity mixed use districts that – especially in the City’s Historic Core and Historic Urban places – can be found on corners surrounded by residences or small nodes and corridors within the hearts of neighborhoods.
- Another concern is the extent to which Commercial STRs may occupy multiple units within multi-family residential or mixed use structures. A good portion of the City’s apartments or condominiums are found within Mixed Use or Neighborhood Business zoning districts, which allow a variety of businesses as well as Commercial STRs. With an unlimited percentage of the building allowed as STRs, some buildings have become entirely occupied by STRs.

## **Temporary STRs**

- The Temporary Short Term Rental license was intended to be a minimally impactful short term rental type that is only utilized during major events, such as Mardi Gras, or Jazz Fest for permanent residents. The City Planning Commission originally recommended allowing a resident to rent out a whole unit for a predetermined time via the Temporary Use Permit process.
- The lack of a permanent resident requirement, the generous 90-day limit, and the absence of density restrictions has led to a proliferation of temporary STR licenses. The Temporary Short Term Rental license type has become a de-facto whole-home rental, with no permanent resident or owner present. This has led to quality of life issues, such as noise, loss of neighborhood character, and other impacts discussed further in this report. These negative impacts are exacerbated in residential areas, where most of the temporary licenses are located.

## **Accessory STRs**

- Of the three types of short term rentals, there is general consensus that the Accessory Short Term Rental is the least problematic type since there is a requirement for a Homestead Exemption and the property owner is present during the time of the rental.
- Currently the Accessory STR is only permitted in a two-family dwelling where the owner lives in one half and the other half is licensed as a short term rental. While doubles are one of the most common housing types in the City, there are other housing types (small multi-family and lots with more than one dwelling structure) that are unable to take advantage of the regulations.
- The current name “Accessory” is confusing to the public. The word “accessory” is intended to imply that the STR is accessory to the main use of the property, which is a residential dwelling. It has been interpreted by many that it allows the rental of an accessory structure, which is prohibited by the definition and use standards.
- There has been some criticism of renters being excluded from this STR type since they are the most impacted by displacement and rising rents.

## **Capping Measures**

- Certain neighborhoods, especially in the Historic Core and Historic Urban Neighborhoods, have high concentrations of short term rental licenses. These neighborhoods typically have higher densities of residential units due to the compact development pattern. Most of these areas were constructed before the automobile and are walking distance to tourist attractions and destinations, which make them desirable to tourists. The most common license type in these neighborhoods is the Temporary Short Term Rental. Currently, there is no limit on the number of temporary licenses per lot, which exacerbates this problem.

## **Affordable Housing**

- There is no conclusive evidence demonstrating that STRs are the cause of housing unaffordability in New Orleans. There are a number of broader factors which have affected the housing market over the last decade which have led to increased housing costs. That being said, there is sufficient anecdotal evidence that STRs have exacerbated an already difficult market especially in the Historic Core, Historic Urban, and Central Business District neighborhoods where concentrations of STRs have been greatest.
- Finding a home to rent or purchase within an affordable range has become a significant challenge for many New Orleans residents. This reality has been escalating since the destruction and devastation to the city’s housing stock from Hurricane Katrina in 2005 and in the policy decisions made by the City, State and federal government in the years following. In 2008, the nationwide recession and credit crisis intensified the affordable housing shortage.
- The city’s housing condition has now escalated into a crisis level situation where the lack of affordable housing is affecting residents at the very-low, low, median, and in some cases the above-median income levels – this is especially difficult for those who need to live in high opportunity neighborhoods, which are categorized as such due to their proximity to jobs, services, schools, and public transportation.
- These neighborhoods are located in the Central Business District, Historic Core, and Historic Urban neighborhoods of the City’s Comprehensive Zoning Ordinance, which have high concentrations of STR licenses, and include the Bywater, Marigny, St. Claude, French Quarter, Treme, Algier’s Point, Central Business District, Mid City, Bayou St. John, Tulane-Gravier, Lower Garden District, Garden District, and the Irish Chanel neighborhoods. This is not to say other neighborhoods aren’t

experiencing housing price increases and shortages; in fact, over the past decade, most of city's neighborhoods have become unaffordable to its residents.

- It is nearly impossible to estimate how many rental units have been taken off the long-term rental market and converted to STRs or to estimate how many tenants have been evicted or not had their lease extended to free up units for STR. At the same time, it is also difficult to definitively state that the reason that rental housing is being lost is solely due to STRs. But what is clear, given the city's housing situation, is that residents are feeling the cumulative effects of the loss of available and affordable housing options.

### **Neighborhood Housing Improvement Fund**

- As of June 18, 2018, \$652,721 was collected by the Department of Finance, Bureau of Revenue for the NHIF and includes all fees collected since the May 1, 2017 STR implementation date.
- The Office of Community Development (OCD) manages the NHIF disbursements. In the 2018 budget proposal presented to the City Council in November 2017, OCD projected that the 2018 NHIF would take in \$3.5 million, which included \$500,000 raised through the short term rental fee. OCD allocated the funds to the following uses; Administrative Costs, Code Enforcement, Special Needs Home Repair Program, Home Match, Affordable Housing Development, Low Barrier Shelter, and Aging in Place Program.
- OCD allocated \$610,000, which was to be combined with approximately \$2.5 million from prior year rollovers for affordable housing development. In meetings with stakeholders, including housing advocates, neighbors, and STR operators the staff learned that there is general consensus for raising the NHIF fee on nightly STR rentals to create more affordable housing.

### **Gap Financing**

- There are development projects in the city that have been made possible, according to STR operators, because they signed long-term leases for certain units in the development to be used as STRs. The projects, one of which included affordable housing units, were apparently at risk of losing their funding or were not able to secure the proper financing until the STR leases were in place. The leases provided the security that there would be a guaranteed revenue stream for the project.

### **Recommendations**

#### **Land Use & Zoning**

#### **Definitions**

The City Planning Commission proposes to modify the Short Term Rental definition to create two (2) types of Short Term Rentals: Residential (Partial and Whole Unit), and Commercial.

**Short Term Rental.** Rental of all or any portion thereof of a residential dwelling unit for dwelling, lodging or sleeping purposes to one party with duration of occupancy of less than thirty (30) consecutive days. Hotels, motels, bed and breakfasts, and other land uses explicitly defined and regulated in this ordinance separately from short term rentals are not considered to be short term rentals. Common bathroom facilities may be provided rather than private baths for each guest bedroom. A short term rental is further defined as follows:

- A. **Short Term Rental, Residential.** A short term rental where the owner or resident has his or her permanent primary residential dwelling unit onsite and is present during the guest's stay.

1. **Partial-Unit Residential Short Term Rental.** An owner- or permanent resident-occupied dwelling with a principal use as a permanent dwelling unit and which rents a portion of the dwelling unit, no more than three (3) guest bedrooms and six (6) total guests, for overnight paid occupancy as an accessory use.
  2. **Whole-Unit Residential Short Term Rental.** An owner-occupied lot with no more than four (4) dwelling units where one (1) unit is the owner's permanent residential dwelling unit and where only one (1) dwelling unit per lot is rented with no more than three (3) guest bedrooms and six (6) total guests for overnight paid occupancy as an accessory use.
- B. Short Term Rental, Commercial.** An entire dwelling unit in a non-residential district that rents no more than five (5) guest bedrooms for overnight paid occupancy.

A third type of short term rental could be allowed so that permanent residents could benefit from short term rentals during predetermined periods of the year; however, this would be incredibly labor-intensive for staff to process and enforce. The practice of using day limits has proven ineffective in the past and would be easy to exploit. If the City Council desires to allow this type of STR, there should be standards in place to prevent manipulation of the regulations and resources should be dedicated to processing the licenses and enforcement:

- C. Short Term Rental, Special Event.** An owner- or permanent resident-occupied dwelling with a principal use as a permanent residential dwelling unit and which rents the entire unit with no more than five (5) guest rooms for overnight paid occupancy as a temporary use not to exceed fourteen (14) days per year, with a maximum of two (2) permits per year.

### **Permitted Districts**

The staff believes that the Residential and Special Event Short Term Rental types should be allowed in any zoning district where dwellings are permitted by the Comprehensive Zoning Ordinance, provided that all requirements of the City Code and Comprehensive Zoning Ordinance are met. The staff believes that the French Quarter and Garden District should be treated similarly to the other historic neighborhoods in the City, especially given the above recommendation effectively prohibiting whole-home STRs in residential districts. Therefore, the staff recommends the same regulations that correspond to the different zoning districts in the historic neighborhoods also apply to the French Quarter.

- Residential Short Term Rentals shall be permitted in any district where dwelling units are permitted by the Comprehensive Zoning Ordinance.

City Planning staff believes the impacts of Commercial STRs have proven more significant than many of the neighborhood-friendly uses authorized in neighborhood business zoning districts. This warrants a structure of zoning district permissions somewhat more restrictive than currently written.

- Prohibit Commercial Short Term Rentals in the least intensive neighborhood business districts.

To preserve ground floor commercial that is critical to the pedestrian environment in historic commercial corridors, the staff recommends a restriction on the first floor of multi-story buildings in certain zoning districts.

- Prohibit Commercial STR licenses on the first floor of a multi-story building that can or may contain residential uses on subsequent floors, in historic commercial corridor districts.

The staff believes there should be a limitation on the number of Commercial Short Term Rentals permitted in each building in certain districts to preserve long-term housing units and prevent the conversion of multi-family buildings to commercial uses. This cap should not apply to districts or areas where development on upper floors has been complicated in the past, such as along Canal Street or in the VCE District.

- The staff recommends imposing a cap of 1 unit or 25% of all units per lot or within a single building constructed across lot lines, whichever is greater in certain zoning districts. The City should further explore using Commercial STRs above the cap as an incentive for the provision of affordable housing units within the same building or lot.
- This cap should not apply to the VCE District or properties with frontage along Canal Street between the River and Rampart Street.

The table below summarizes recommended district permissions and new standards for Commercial STRs. If a district is not listed, Commercial STRs are recommended as prohibited.

<b>Place Designation</b>	<b>Zoning District</b>	<b>Permitted?</b>	<b>New Standards/Limitations</b>
Rural Development Districts	M-MU Maritime Mixed Use	Yes*	*25% cap
Historic Core Neighborhoods Non-Residential Districts	VCE Vieux Carré Entertainment	Yes*	*Ground floor restriction – no cap
	VCE-1 Vieux Carré Entertainment	Yes*	*25% cap and ground floor restrictions
	VCC-1 Vieux Carré Commercial	No	N/A
	VCC-2 Vieux Carré Commercial	Yes*	*25% cap and ground floor restrictions
	VCS Vieux Carré Service	Yes*	*25% cap and ground floor restrictions
	VCS-1 Vieux Carré Service	Yes*	*25% cap and ground floor restrictions
	HMC-1 Historic Marigny, Treme, Bywater Commercial	No	N/A
	HMC-2 Historic Marigny, Treme, Bywater Commercial	Yes*	*25% cap and ground floor restrictions
	HM-MU Historic Marigny, Treme, Bywater Mixed Use	Yes*	*25% cap and ground floor restrictions
Historic Urban Neighborhoods Non-Residential Districts	HU-B1A Historic Urban Neighborhood Business	No	N/A
	HU-B1 Historic Urban Neighborhood Business	Yes*	*25% cap and ground floor restrictions
	HU-MU Historic Urban Mixed Use	Yes*	*25% cap and ground floor restrictions
Suburban Neighborhoods	S-B1 Suburban Neighborhood Business	No	N/A

<b>Place Designation</b>	<b>Zoning District</b>	<b>Permitted?</b>	<b>New Standards/Limitations</b>
Non-Residential Districts	S-LB1 Suburban Lake Area Neighborhood Business	No	N/A
	S-B2 Suburban Pedestrian Corridor Business	Yes*	*25% cap and ground floor restrictions
	S-LB2 Suburban Lake Area Neighborhood Business	Yes*	*25% cap and ground floor restrictions
	LC Lake Area Commercial	Yes*	*25% cap and ground floor restrictions
Commercial Center and Institutional Campus Districts	C-1 General Commercial	Yes*	*25% cap and ground floor restrictions
	C-2 Auto Oriented Commercial	Yes*	*25% cap and ground floor restrictions
	C-3 Heavy Commercial	Yes*	*25% cap and ground floor restrictions
	MU-1 Mixed Use Medium Intensity	Yes*	*25% cap and ground floor restrictions
	MU-2 Mixed Use High Intensity	Yes*	*25% cap and ground floor restrictions
	EC Educational Campus	Yes	None
	MC Medical Campus	Yes	None
LS Life Sciences	Yes	None	
Centers for Industry	MI Maritime Industrial Commercial & Recreational Subdistrict	Yes	None
Central Business Districts	CBD-1 Core Central Business	Yes*	*25% cap
	CBD-2 Historic Commercial and Mixed Use	Yes*	*25% cap
	CBD-3 Cultural Arts	Yes*	*25% cap
	CBD-4 Exposition	Yes*	*25% cap
	CBD-5 Urban Core Neighborhood Lower Intensity Mixed Use	Yes*	*25% cap
	CBD-6 Urban Core Neighborhood Mixed Use	Yes*	*25% cap
	CBD-7 Bio-Science	Yes*	*25% cap

## **Permitting & Licensing**

### *Application Submittal Requirements*

- The City should require additional documentation by the applicant at the time of application to verify information about the short term rental, which could include a site plan, floor plan with unit layout with all rooms listed and smoke detectors and fire extinguishers locations, proof of insurance, property owner permission form (if applicable), links to existing listings, and interior and exterior photographs.

- Applications should include a Nuisance Prevention and Response Plan requirement, which could include a noise monitoring system.
- If residency is required, two documents to include at least one Louisiana state-issued identification (i.e driver's license), and should include a second form that could include voter registration, bank statement, pay stub, W2 form, or utility bill mailing address.
- Applicants should provide listing data including platforms used and identification numbers used on any platform.
- Renters can stand to benefit from being a partial unit STR operator, helping to insulate them from rising housing costs. If a renter is the short term rental operator of a partial-unit Residential Short Term Rental, then the applicant shall submit a form provided by the Department of Safety and Permits that is signed by the property owner and notarized. The form should grant permission for the renter to operate a partial-unit short term rental, confirm that the renter will reside in the dwelling unit for the term of the license, and serve as notice that the property owner could held responsible for any violations associated with this short term rental.
- Renewals should require all of the same information documentation, attestations, and/or inspections as the original application submittal. In addition, the short term rental operator should report the number of nights rented the previous year and provide proof of tax payment in the form of a tax clearance from the Department of Finance and/or documentation from the platform verifying that the correct amount of taxes remitted to the City for the licensed short term rental.
- The Department of Safety and Permits should not renew licenses for short term rentals with open violations and unpaid taxes or fines. In addition, the Department of Safety and Permits should develop a policy and appeal process for the revocation and non-renewal of licenses for owners and/or operators with a history of noncompliance with the regulations.

#### *License Review Process Recommendations*

- Notice should be provided once the license has been issued to surrounding property owners or occupants, which should include the license number, type, limitation, contact information, and how to report violations.
- A zoning review should be required by the Zoning Division of the Department of Safety and Permits to confirm that all the requirements of the Comprehensive Zoning Ordinance have been met prior to issuance of a short term rental license.
- Inspections could be required for all short term rental applications; however, this would require additional license review time, require additional resources for the Department of Safety and Permits, and could be a disincentive for some people to apply which would reduce the compliance rate.
- The City Council shall budget adequate resources for personnel and other operating expenses to the Department of Safety and Permits for short term rental license review.

#### *Enforcement*

- The Department of Safety and Permits should develop a separate administrative adjudication process for short term rental violations.
- The City Council should ensure there is adequate funding in the Department of Safety and Permits and the City Attorney's office to process adjudications, pay for administrative hearing officers, follow up on judgments, and defend appeals to Civil District Court.

- The City should provide additional funding for proactive STR enforcement, to identify violations of the regulations via web scraping or other techniques. This could be provided by a third-party provider or achieved with ongoing education of City staff.
- Develop a 24/7 mechanism where citizens can report suspected violations of the STR regulations. Staff inspectors during the evenings, weekends, and during large tourist events to respond in real-time to complaints.
- To effectively enforce short term rentals, the City needs to advocate for the amendment of State Law to increase the maximum daily fine to above \$500.
- Criteria for revocation of STR, Platform, and Operator licenses should be developed and enforced.

#### *Platform Accountability, Compliance, and Cooperation*

- Platforms shall be required to register with the City and obtain an annual license.
- The City Council should amend the City Code to require that all platforms and booking agents (internet-based or not) that facilitate or make a STR transaction possible collect and remit the applicable taxes to the City of New Orleans. This shall not absolve the STR operators from any requirements for record keeping, reporting to the City, and paying any taxes that have not been remitted by the platforms.
- The City should require platforms to share additional data including addresses, listing identification or link, and license numbers in the monthly reports.
- Listings shall include license numbers.
- Listings not identified by owner/operator as part of the license application shall be presumed to be illegally operating.

#### *Revenue*

To ensure that short term rental operators are paying all applicable taxes and fees, every STR license holder should be required to register with the Department of Finance, Bureau of Revenue as a prerequisite to obtaining a license.

- Require STR operators to register with the Bureau of Revenue as a prerequisite to obtaining a license.
- The short term rental operator shall keep a log of short term rental activity which includes date the unit was rented on a short term basis and fees for the rental. This log shall be maintained up to date and is subject to inspection by the City upon request and during the license renewal.
- Upon renewal, the operator shall present the Department of Safety and Permits with verification that all applicable taxes and fees have been paid.

#### *Affordable Housing*

- The per night fee for the NHIF required by STR license holders should be increased to \$8.00 per occupied night, while keeping the per night fee for partial rentals at \$1.00.
- The money raised in the NHIF by STRs should be dedicated to affordable housing development and administrative fees to develop the affordable housing and should not be used for code enforcement regulation or other code compliance.
- Any person or entity submitting an application for a short term rental license shall complete an Affordable Housing Impact Analysis (AHIS) form. This form shall be required for an application to be considered complete.

- In accordance with the City’s housing policies, including affordable housing and home buyer programs, the Administration and City Council could consider leveraging Commercial STRs above the cap in exchange for an affordable housing unit or by creating a program to assist potential homebuyers in securing gap financing.

### *Operator Requirements*

To ensure that short term rentals are properly licensed and operate in a responsible manner, the following regulations should be put into place:

- The Department of Safety and Permits should license the people who act as short term rental operators. There shall be two types of Short Term Rental Operator licenses, one for on-site Residential (Residential STR operators) and one for Commercial STR operators.
- The Short Term Rental Operator license holder must be a natural person and not a corporation. Short term rental operators shall reside within a certain driving distance from the short term rental location.
- The license will require a fee and passing an online or in-person test to ensure knowledge of the short term rental regulations and the responsibilities of an operator.
- It should be a violation to be a short term rental operator without a license and operate a short term rental in violation of the short term rental regulations in the Comprehensive Zoning Ordinance and City Code.

### **Next Steps**

The 2018 Short Term Rental Study directed by City Council Motion M-18-194 will be presented to the City Planning Commission on September 25, 2018. Before it considers the Study, the CPC must first hold a public hearing; special rules were adopted at the September 11, 2018 meeting that will (1) limit each speaker to a maximum of one (1) minute, and (2) disallow speakers from ceding time to another speaker. Taking public input into mind, the CPC can choose to forward the Study to the City Council with or without changes to the staff recommendations. If the CPC chooses to modify the Study recommendations, the staff will incorporate those recommendations and forward the revised Study to the City Council by the deadline of October 5, 2018. The City Council may choose to hold its own public hearing on the Study, though it is not required. The City Council may then direct the CPC to consider all or part of the recommendations as text changes to the Comprehensive Zoning Ordinance. If that is done, the CPC will docket the request and write a staff report with recommendations for specific zoning text changes. The zoning docket would require an additional public hearing before the CPC and again the CPC may choose to recommend text changes to the City Council with or without modification of the staff recommendations, or they could recommend denial of the proposal. Next, the City Council must hold a public hearing before considering adoption of zoning text changes. The Council may adopt, adopt with modifications, or deny the recommendations of the CPC.

The Short Term Rental Study also makes recommendations for changes to the City Code, processes around Short Term Rental administration, and advocacy at the State level. The City Planning Commission would not be formally involved in implementation of those changes.

As noted earlier, a Short Term Rental Interim Zoning District is in effect and has prohibited the issuance and renewal of Temporary STR licenses in much of the city. Any STR type or non-qualifying structure prohibited under new regulations may continue to operate under a previously-issued license until the expiration of that license. If the Temporary STR license type is eliminated as recommended, most of those licenses will have expired by the time new regulations go into effect.

## **B. Short Term Rental History & Current Regulations**

### **History of Short Term Rental Regulations in New Orleans**

#### **What are Short Term Rentals?**

In general, short term rentals are residential dwelling units that are rented for overnight lodging purposes. Short term rental are different from long-term rentals in that they are rented to visitors and many not be someone's place of residence. The Comprehensive Zoning Ordinance (CZO) defines short term rentals as being rented for less than 30 consecutive days, which is a common distinction between short and long-term rentals used throughout the United States.

Short term rentals are not the only defined lodging use in the CZO, which includes bed and breakfasts, hostels, hotels/motels, and timeshares. Short term rentals are most similar to bed and breakfasts, which are both located in residential dwelling units. The largest difference between short term rentals and bed and breakfasts is that short term rentals are generally rented out as an entire dwelling unit while bed and breakfasts are required to have an owner or operator who lives in the dwelling and are typically rented per room.<sup>1</sup>

A hotel/motel is an establishment that provides sleep accommodations and has customary lodging services, such as a lobby, concierge services, pools, conference and meeting facilities, restaurants, and bars. Hotels/motels typically rent rooms that do not have kitchen facilities, so they are not renting dwelling units. Hostels are similar to hotels/motels, except a guest can rent a room or a bed in a common dormitory style room and often have shared bathrooms and/or shared kitchen facilities. A timeshare building can be similar to certain types of short term rentals, in that they can be dwelling units. The difference between a timeshare and a short term rental is that in a timeshare the person has either an ownership stake or right of use for certain period of the year.

In summary, short term rentals are intended to provide temporary sleeping accommodations for visitors to New Orleans and are different from long-term rentals in that short term rentals are rented for less than 30 days. In addition, short term rentals are different from other temporary sleeping accommodations in that they are typically an entire dwelling unit that is rented to a single party of guests.

#### **Regulations Prior to Original Short Term Rental Study**

The City Planning Commission first studied short term rentals in fall of 2015, and the first study was approved by the Planning Commission on January 26, 2016. During this first study, CPC found that there were very limited regulations on short term rentals and they were not allowed in most parts of the City. At this time, the definition for a short term rental was as follows:

**“Short Term Rentals.** Rentals of a premises or any portion thereof for dwelling, lodging or sleeping purposes with duration of occupancy of less than sixty (60) consecutive days in the Vieux Carré and less than thirty (30) consecutive days outside the Vieux Carré. Hotels, motels, bed and

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<sup>1</sup> The exception to this is the partial unit Accessory Short Term Rental where a party rents up to 3 bedrooms of an owner occupied dwelling unit, which is very similar to an Accessory Bed and Breakfast.

breakfasts, and other land uses explicitly defined and regulated in this ordinance separately from short term rentals are not considered to be short term rentals.”

The short term rental definition was not specific to what a short term rental was, it essentially renting something for sleeping purposes that was not defined as another specific land use in the CZO. In addition, short term rental were allowed in very few areas. Short term rental were a permitted use in the S-LC District, a subdistrict of the MI District, and the CBD-7 District, and a conditional use in 9 other zoning districts.<sup>2</sup> Despite being permitted in only a few districts, the number of short term rentals were proliferating as platforms like Airbnb made listing and renting short term rentals safer and easier, and short term rentals became much more popular. In addition, the City had lax enforcement of the short term rental regulations, so there was little disincentive for people to rent their properties on a short-term basis without a license. The CPC staff estimated that there were between 2,400 and 4,000 unique short term rentals at that time, 70% of which were rentals of an entire dwelling unit.

### **2016 Short Term Rental Study**

In the 2016 Short Term Rental Study, the City Planning Commission staff recommended a regulatory framework for short term rentals. CPC staff recommended creating 4 categories of short term rentals based on the type and location of the short term rental, which were generally as follows:

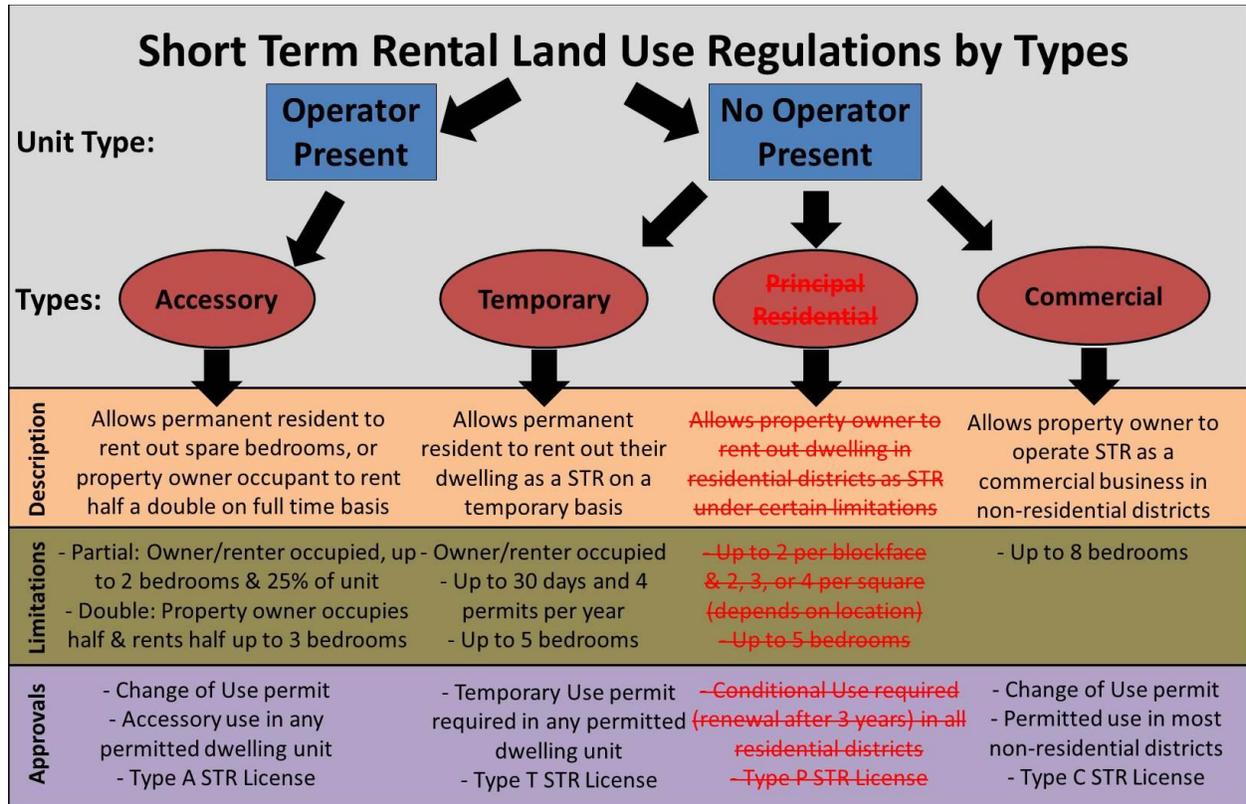
- **Accessory Short Term Rental:** required someone to be onsite at the time of the rental either as a partial dwelling unit or in one unit of an owner-occupied double;
- **Temporary Short Term Rental:** an occupied dwelling unit, the entire of which could be rented up 30 days per year when the permanent resident was not present;
- **Principal Residential Short Term Rental:** An entire dwelling unit in a residential district that could be rented year-round but required approval of a temporary conditional use and was limited in density to 2-4 per block; and
- **Commercial Short Term Rental:** an entire dwelling unit in a non-residential district that can be rented year-round with limited restrictions.

The CPC staff made recommendations for definitions, permitted and conditional use district permissions, use standards, temporary use standards, and parking requirements for these four types of proposed short term rentals. In addition, CPC staff suggested permitting and license requirements, a fee, tax and fine structure, and enforcement recommendations in City Code. The CPC staff submitted the study to the Planning Commission for its considerations. The Planning Commission recommended eliminating the proposed Principal Residential Short Term Rental type and recommended approval of the modified study at their January 26, 2016 meeting. The Planning Commission recommended eliminating the Principal Residential Short Term Rental type due to concerns about allowing whole-home short term rentals in residential districts where there the operator is not present onsite to manage and monitor the short term rental. The Planning Commission’s recommendations, included the elimination of the Principal Residential Short Term Rental, are summarized in the Figure below.

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<sup>2</sup> Short term rentals were conditional uses in the C-2, MU-1, MC, MS, LS, CBD-1, CBD-2, CBD-3, and CBD-4 Districts, prior to the adoption of the current regulations.

Figure 1: City Planning Commission’s Original STR Recommendation



**City Council Adopted Regulations**

On May 5, 2016, the City Council passed a motion directing the City Planning Commission to consider a text amendment to the Comprehensive Zoning Ordinance to implement the recommendations in the Short Term Rental Study. This request was considered by the City Planning Commission at their August 9, 2016 meeting, and went back to City Council for final consideration. At their December 1, 2016 meeting, City Council adopted multiple ordinances to enact the short term rental regulations in the Comprehensive Zoning Ordinance and City Code.

City Council made a number of modifications to what was initially recommended by the City Planning Commission. While the City Council maintained the prohibition on the Principal Residential Short Term Rental type, they expanded the use of the Temporary Short Term Rental type. The limit on the number of days per year was increased from 30 days to 90 days, and perhaps more significantly, the Temporary Short Term Rental was no longer required to be someone’s occupied dwelling unit, which allowed every dwelling unit to potentially become a short term rental without any limits on occupancy or density. In addition, City Council voted to eliminate the recommendation that short term rentals be allowed in the French Quarter (except for the VCE District along Bourbon Street), among other changes.

City Council also adopted an ordinance that established the permit and license requirements, fees, penalties, and platform data sharing requirements in City Code.<sup>3</sup> These City Code changes set up the licensing

<sup>3</sup> Ordinance No. 27,204 MCS

requirements for the Short Term Rental types that were established in the CZO. These requirements allowed the applicant to attest to complying with then licensing requirements, which helped facilitate the “pass-through” registration process that was established with Airbnb where applicants could initiate the license application on Airbnb’s website. Finally, City Council adopted an ordinance that established a \$1 per night fee for the Neighborhood Housing Improvement Fund for affordable housing,<sup>4</sup> and authorizing the Mayor to enter into a Cooperative Endeavor Agreement with Airbnb for the remittance of taxes.<sup>5</sup> The Short Term Rental regulations went into effect on April 1, 2017.

### **Modifications Since Short Term Rental Regulations were Adopted**

Since the regulations went into effect on April 1, 2017, there have been a few relatively minor permanent modifications and a significant temporary change. When modifications to the Riverfront Design Overlay District were adopted on March 6, 2018, Commercial Short Term Rentals were prohibited in the Marigny and Bywater portions of the Riverfront Overlay District.<sup>6</sup> Another modification was adopted on April 11, 2018 which placed a “soft cap” on Commercial Short Term Rentals in the HU-B1 and HU-MU Districts, where only the first two Commercial Short Term Rentals per property are a permitted use and any more than two require a conditional use.<sup>7</sup>

In addition to the changes above, right after City Council adopted this new Short Term Rental Study motion, City Council adopted Motion M-18-145 which created the Short Term Rental Interim Zoning District (IZD). This IZD prohibits the following uses in the Historic Core Districts, Historic Urban Districts, Central Business Districts, the MU-1 District, and the MU-2 District:

- Any issuance or renewal of a Temporary Short Term Rental permit or license.
- Any issuance of a Commercial Short Term Rental permit or license for STR-use on the first floor of a multi-story building that can or may contain residential uses on subsequent floors.

This IZD went into effect when the motion was adopted. The City Planning Commission considered this request at it July 10, 2018 meeting and recommended modified approval of the IZD.<sup>8</sup> The City Council voted to approve the City Planning Commission’s recommendation at their September 6, 2018 meeting.

### **Current Short Term Rental Regulations**

#### **Comprehensive Zoning Ordinance Regulations**

As amended by recent text amendments and the Short Term Rental Interim Zoning District, here are the current short term rental definitions, use standards, off-street parking requirements, permitted and conditional use permissions, and temporary provisions in the Comprehensive Zoning Ordinance:

#### *Definitions (Article 26)*

Here are the definitions for short term rentals and the three specific types of short term rentals from the Comprehensive Zoning Ordinance:

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<sup>4</sup> Ordinance No. 27,210 MCS

<sup>5</sup> Ordinance No. 27,218 MCS

<sup>6</sup> Ordinance No. 27,674 MCS

<sup>7</sup> Ordinance No. 27,726 MCS

<sup>8</sup> The City Planning Commission recommended some minor changes to clarify the applicability of the IZD for certain Commercial Short Term Rentals (Zoning Docket 086/18).

**Short Term Rental.** Rental of all or any portion thereof of a residential dwelling unit for dwelling, lodging or sleeping purposes to one party with duration of occupancy of less than thirty (30) consecutive days. Hotels, motels, bed and breakfasts, and other land uses explicitly defined and regulated in this ordinance separately from short term rentals are not considered to be short term rentals. Common bathroom facilities may be provided rather than private baths for each room. A short term rental is further defined as follows:

**A. Short Term Rental, Accessory.** Either (i) an owner occupied dwelling with a principal use as a permanent dwelling unit and which rents no more than three (3) guest rooms and six (6) total guests for overnight paid occupancy as an accessory use, or (ii) an owner-occupied two-family dwelling in which one unit of the two-family dwelling is occupied by the owner with a principal use as the owner's permanent residential dwelling unit and which the other unit of the two-family dwelling is rented with no more than three (3) guest rooms and six (6) total guests as an accessory use. Only one accessory short term rental shall be permitted in any two-family dwelling. For either type of accessory short term rental, the owner shall occupy the unit and be present during the guest's stay.

**B. Short Term Rental, Temporary.** A residential dwelling which rents the entire unit with no more than five (5) guest rooms for overnight paid occupancy as a temporary use not to exceed ninety (90) days per year, except in the Vieux Carré, the area generally bounded by: Iberville St., N. Rampart St., Esplanade Ave., and the Mississippi River, where Temporary Short Term Rentals shall be prohibited. No owner or resident is required to be present during the guest's stay.

**C. Short Term Rental, Commercial.** An entire dwelling unit in a non-residential district that rents no more than five (5) guest rooms for overnight paid occupancy.

#### *Use Standards (Article 20)*

The use standards for Commercial Short Term Rentals are found in **Article 20** and listed below. The use standards for Accessory Short Term Rentals are in found in **Article 21, Section 21.6 Accessory Structures and Uses** and the use standards for Temporary Short Term Rentals are found in in **Article 21, Section 21.8 Temporary Uses**, both of which are in **Article 21**. The Commercial Short Term Rental use standards are listed below:

### **20.3.LLL SHORT TERM RENTALS**

#### **20.3.LLL.1 SHORT TERM RENTALS GENERAL STANDARDS**

- a. In addition to the regulations below, all short term rentals shall comply with the regulations of the Department of Safety and Permits and the Department of Finance, Bureau of Revenue.
- b. All short term rentals shall require a license. The license shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all period of occupancy and contain the license number, the contact information for the owner or in-town property manager, the license type (Temporary, Accessory, or Commercial) and the bedroom and occupancy limit.
- c. Short term rentals shall not be operated outdoors, in an accessory structure, or in a recreational vehicle.
- d. Only one party of guests shall be permitted per short term rental unit.

- e. There shall be an in-town property manager if the owner or operator is out of town during the time of the rental.
- f. Short term rentals shall be considered dwelling units for density purposes and subject to the minimum lot area per dwelling unit requirement of the applicable zoning district.

**20.3.LLL.2 SHORT TERM RENTAL, COMMERCIAL STANDARDS**

- a. A short term rental license shall be secured prior to operation; and short term rental operators shall comply with all applicable license requirements provided in the Code of the City of New Orleans.
- b. The license shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all period of occupancy and contain the license number, the contact information for the owner or in-town property manager, the license type (Temporary, Accessory, or Commercial) and the bedroom and occupancy limit.
- c. Up to five (5) bedrooms may be rented to guests and occupancy shall be limited to two (2) guests per bedroom with a maximum ten (10) guests.
- d. No signs are allowed for a Commercial Short Term Rental.

*Accessory and Temporary Use Standards (Article 21)*

The use standards for Accessory Short Term Rentals are in found in **Article 21, Section 21.6 Accessory Structures and Uses** and the use standards for Temporary Short Term Rentals are found in in **Article 21, Section 21.8 Temporary Uses**

**21.6.II ACCESSORY SHORT TERM RENTALS**

**21.6.II.1 SHORT TERM RENTALS GENERAL STANDARDS**

- a. In addition to the use standards below, all short term rentals shall comply with the regulations of the Department of Safety and Permits and the Department of Finance, Bureau of Revenue.
- b. All short term rentals shall require a license. The license shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all period of occupancy and contain the license number, the contact information for the owner or in-town property manager, the license type (Temporary, Accessory, or Commercial) and the bedroom and occupancy limit. But in no event shall any Accessory Short Term Rental license be issued in the Vieux Carré, the area generally bounded by: Iberville St., N. Rampart St., Esplanade Ave., and the Mississippi River.
- c. Short term rentals shall not be operated outdoors, in an accessory structure, or in a recreational vehicle.
- d. Only one party of guests shall be permitted per short term rental unit.
- e. The short term rental shall appear outwardly to be a residential dwelling.
- f. Use of the short term rentals for commercial or social events shall be prohibited.
- g. The short term rental shall not adversely affect the residential character of the neighborhood.
- h. The short term rental shall not generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his or her residence.
- i. Proof of ownership shall be required via a valid homestead exemption.

**21.6.II.2 SHORT TERM RENTAL, ACCESSORY STANDARDS**

- a. A short term rental license shall be secured prior to operation; and short term rental operators shall comply with all applicable license requirements provided in the Code of the City of New Orleans.
- b. For partial unit accessory short term rentals, only a portion of the dwelling shall be rented, which shall be limited to three (3) guest bedrooms, and occupancy shall be limited to two (2) guests per bedroom or six (6) guests total. There shall be at least one bedroom for the fulltime owner-occupant.
- c. For partial unit accessory short term rentals, the owner shall occupy the unit and be present during the party's stay.
- d. For all Accessory Short Term Rentals, proof of owner occupancy shall be required with a homestead exemption.
- e. Where the accessory short term rental occupies one unit of a two-family dwelling, occupancy shall be limited to two (2) guests per bedroom for a total of up to six (6) guests.
- f. No signs are allowed for an Accessory Short Term Rental.

[...]

**21.8.C PERMITTED TEMPORARY USES**

<b>Table 21-3: Permitted Temporary Uses</b>				
<b>Permitted Temporary Use</b>	<b>District</b>	<b>Timeframe</b>	<b>Hours of Operation</b>	<b>Temporary Use Standards</b>
[...]				
Short Term Rental, Temporary	Any Zoning District where dwelling units are permitted*	Rentals shall be limited to a maximum of ninety (90) days per year, except in the Vieux Carré, the area generally bounded by: Iberville Street, N. Rampart Street, Esplanade Avenue, and the Mississippi River, where Temporary Short Term rentals shall be prohibited.		Section 21.8.C.14
[...]				

*\* In accordance with City Council Motion M-18-195, any issuance or renewal of a Temporary Short Term Rental permit or license is prohibited in the Historic Core Districts, Historic Urban Districts, Central Business Districts, the MU-1 District, and the MU-2 District.*

[...]

**21.8.C.14 SHORT TERM RENTAL, TEMPORARY\***

**21.8.C.14.a SHORT TERM RENTAL GENERAL STANDARDS**

- 1. In addition to the use standards below, all short term rentals shall comply with the regulations of the Department of Safety and Permits and the Department of Finance, Bureau of Revenue.
- 2. All short term rentals shall require a license.
- 3. The license shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all periods of occupancy and contain the

license number, the contact information for the owner or in-town property manager, the license type (Temporary, Accessory, or Commercial) and the bedroom and occupancy limit.

4. Short term rentals shall not be operated outdoors, in an accessory structure, or in a recreational vehicle.
5. Only one party of guests shall be permitted per short term rental unit.
6. The short term rental shall appear outwardly to be a residential dwelling.
7. For temporary short term rentals, there shall be an in-town property manager available at all times if the owner or operator is out of town during the time of the rental.
8. Use of the short term rentals for commercial or social events shall be prohibited.
9. The short term rental shall not adversely affect the residential character of the neighborhood.
10. The short term rental shall not generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his or her residence.
11. If renter occupied and operated, proof of the property owner's consent and signature on the license application shall be required.
12. If renter occupied, the operator shall provide a current rental lease.

#### **21.8.C.14.b SHORT TERM RENTAL, TEMPORARY STANDARDS\***

1. A short term rental license shall be secured prior to operation; and short term rental operators shall comply with all applicable license requirements provided in the Code of the City of New Orleans.
2. Rentals shall be limited to a maximum of ninety (90) days per year, except in the Vieux Carré, the area generally bounded by: Iberville Street, N. Rampart Street, Esplanade Avenue, and the Mississippi River, where Temporary Short Term rentals shall be prohibited.\*
3. Up to five (5) bedrooms may be rented to guests.
4. Occupancy shall be limited to two (2) guests per bedroom or ten (10) guests, whichever is less.
5. The entire dwelling can be rented and the permanent resident is not required to be present during the party's stay.
6. No signs are allowed for a Temporary Short Term Rental.

#### *Off-Street Parking and Loading (Article 22)*

The parking requirements for short term rentals depend on the type. As a temporary use, Temporary Short Term Rentals do not have any parking requirements. Accessory Short Term Rentals are required to have the same number of parking spaces as the dwelling unit. Commercial Short Term Rentals are required to have one parking space per 2 guest rooms, which is equivalent to the parking requirement for a bed and breakfast. In districts where parking is not required for any use, no off-street parking is required for the short term rental.

### **22.4 Required Off-Street Vehicle Parking Spaces**

#### **22.4.A General Requirements**

[...]

Use	Minimum Required Vehicle Spaces	Minimum Required Bicycle Spaces	
		Required Short-Term Bicycle Spaces	Percentage of Long-Term Bicycle Spaces
[...]			
Short Term Rental, Accessory	see applicable dwelling type		
Short Term Rental, Commercial	1 space per 2 guestrooms	1 per 5 rooms	25%
[...]			

*Permitted and Conditional Uses (Articles 7 to 17)*

Below are the use tables that show the zoning districts where Commercial Short Term Rentals are permitted (“P”), conditional (“C”), and prohibited uses (blank space). Accessory and Temporary Short Term Rentals do not appear in these use tables below because these short term rental types are permitted in a dwelling unit in any zoning district, subject to the definition and use standards for each type. Commercial short term rentals are not currently permitted in Open Space Districts (Article 7), Historic Core Neighborhoods Residential Districts (Article 9), Historic Urban Neighborhoods Residential Districts (Article 11), and Suburban Neighborhoods Residential Districts (Article 13), and thus the use tables for these districts are not shown below.

Uses	District	
	R-RE	M-MU
[...]		
Short Term Rental, Commercial		P
[...]		

Uses	District									
	VCC-1	VCC-2	VCE	VCE-1	VCS	VCS-1	VCP	HMC-1	HMC-2	HM-MU
[...]										
Short Term Rental, Commercial			P*					P*	P*	P*
[...]										

\* In accordance with City Council Motion M-18-195, any issuance of a Commercial Short Term Rental permit or license for STR-use on the first floor of a multi-story building that can or may contain residential uses on subsequent floors is prohibited.

Use Table: Historic Urban Neighborhoods Non-Residential Districts (Article 12)			
Uses	District		
	HU-B1A	HU-B1	HU-MU
[...]			
Short Term Rental, Commercial	C*	P, C <sup>9*</sup>	P, C <sup>9*</sup>
[...]			

\* In accordance with City Council Motion M-18-195, any issuance of a Commercial Short Term Rental permit or license for STR-use on the first floor of a multi-story building that can or may contain residential uses on subsequent floors is prohibited.

[...]

Table 12-1 Footnotes

[...]

<sup>9</sup> Permitted Commercial Short Term Rentals are limited to two (2) on one property; any Commercial STR use greater than two is a conditional use.

[...]

Use Table: Suburban Neighborhoods Non-Residential Districts (Article 14)								
Uses	District							
	S-B1	S-B2	S-LB1	S-LB2	S-LC	S-LP	S-LM	S-MU
[...]								
Short Term Rental, Commercial	P	P	P	P	P	P	P	
[...]								

Use Table: Commercial Center & Institutional Campus Districts (Article 15)									
Uses	District								
	C-1	C-2	C-3	MU-1	MU-2	EC	MC	MS	LS
[...]									
Short Term Rental, Commercial	P	P	P	P*	P*	P	P		P
[...]									

\* In accordance with City Council Motion M-18-195, any issuance of a Commercial Short Term Rental permit or license for STR-use on the first floor of a multi-story building that can or may contain residential uses on subsequent floors is prohibited.

Use Table: Centers for Industry (Article 16)				
Uses	District			
	LI	HI	MI	BIP
[...]				
Short Term Rental, Commercial			P*	
[...]				

\* Please note that Commercial Short Term Rentals are only permitted in the MI District's Commercial and Recreational Sub-District.

Use Table: Central Business Districts (Article 17)							
Uses	District						
	CBD-1	CBD-2	CBD-3	CBD-4	CBD-5	CBD-6	CBD-7
[...]							
Short Term Rental, Commercial	P*	P*	P*	P*	P*	P*	P*
[...]							

\* In accordance with City Council Motion M-18-195, any issuance of a Commercial Short Term Rental permit or license for STR-use on the first floor of a multi-story building that can or may contain residential uses on subsequent floors is prohibited.

### Overlay Districts (Article 18)

#### 18.13 RIV Riverfront Design Overlay District

The recently-approved Riverfront Overlay District prohibits Commercial Short-Term Rentals in Sections 18.13.H.3 – RIV-3 Bywater Sub-District Use Standards and Use Restrictions, and 18.13.I.4 – RIV-4 Marigny Sub-District Use Standards and Use Restrictions.

### Temporary Provisions (Article 19)

#### Short Term Rental Interim Zoning District

City Council Motion M-18-195 adopted an IZD that placed limitation of Temporary and Commercial STRs in certain districts, which went into effect when the motion was adopted. The City Planning Commission considered this IZD in Zoning Docket 086-18, which was subsequently approved by City Council resulting in a text amendment to **Article 19** of the CZO. The IZD prohibits the following uses in the Historic Core Districts, Historic Urban Districts, Central Business Districts, the MU-1 District, and the MU-2 District:

- Any issuance or renewal of a Temporary Short Term Rental permit or license.
- Any issuance of a Commercial Short Term Rental permit or license for STR-use on the first floor of a multi-story building that can or may contain residential uses on subsequent floors.

### **City Code Regulations**

The City Council also adopted a number of amendments to the City Code to establish the license regulations and fees. The license requirements can be found in Chapter 26 of the City Code. The affordable housing fee for the Neighborhood Housing Improvement Fund (NHIF) can be found in Chapter 70 of the City Code. Finally, there were some modifications made to Chapter 150 of the City Code to ensure that short term rentals were subject to the same sales and use tax as hotels. All of these modifications can be found in the sections below:

*Chapter 26, Article XI* of the Code of the City of New Orleans was amended as follows:

#### **Article XI – Standards for Short Term Rentals**

##### **Sec. 26-613. – Permit and License – Created and Required.**

(a) An annual Short Term Rental License Permit may be issued to eligible applicants by the Department of Safety and Permits, upon consultation with the Executive Director of the City Planning Commission. A Short Term Rental License Permit is a privilege, not a right, and may be revoked or not renewed based on non-compliance with the requirements of the Comprehensive Zoning Ordinance, or the requirements provided herein. There shall be three (3) license categories, as defined by the Comprehensive Zoning Ordinance.

- 1) Type A License for Accessory Short Term Rentals;
- 2) Type T License for Temporary Short Term Rentals; and
- 3) Type C License for Commercial Short Term Rentals.

(b) No property shall be utilized as a Short Term Rental, as defined by the Comprehensive Zoning Ordinance, without an authorized Short Term Rental License Permit. No Type A or Type T License Permit for Accessory or Temporary Short Term Rentals is valid or shall be issued in the Vieux Carré, the area bounded by: Iberville St., N. Rampart St., Esplanade Ave., and the Mississippi River.

(c) Any holder of a short term rental license permit issued pursuant to this article shall maintain on file with the department of safety and permits a current address of a natural person in Orleans Parish on whom service may be made, including without limitation the service of legal notices and lawsuits related to the operation of short term rentals and/or compliance with this article and/or applicable provisions of the Comprehensive Zoning Ordinance. Service upon the person on file shall be deemed effective service upon the holder of the short term rental license permit. Any juridical person holding a short term rental license permit shall be qualified to do business in the State of Louisiana. Failure to comply with this provision or to keep current the agent for service shall be grounds for revocation of the short term rental license permit.

##### **Sec. 26-614. – Submission Documents and Requirements.**

An applicant for a short term rental license permit shall:

- (1) Attest to the following and furnish the necessary documentation upon request of the department of safety and permits:
  - a. That the property has current, valid liability insurance of \$500,000.00 or more;

- b. That each short term rental unit has working smoke detectors in every bedroom, outside sleeping area, and on all habitable floors;
  - c. That each short term rental unit has a properly maintained and charged fire extinguisher in each short term rental unit;
  - d. That in each short term rental unit there is a posting that provides emergency contact information and a floor plan indicating fire exits and escape routes. Posting shall be displayed in a prominent location;
  - e. That the property is in compliance with applicable provisions of the city's Minimum Property Maintenance, Building, Electrical, Mechanical and Plumbing Codes;
  - f. That the property is in compliance with all of the standards and requirements for the License category as mandated in the Comprehensive Zoning Ordinance;
  - g. That the owner, or operator if applicable, has made best efforts to notify the properties immediately adjacent to the desired short term rental of the license application; and
  - h. That the property has no outstanding taxes or municipal code violation liens.
- (2) Furnish the following documentation upon request of the department of safety and permits:
- a. A floor and/or site plan that indicates the location of the required smoke detectors, fire extinguisher, and emergency contact/fire-exit posting, as attested to in subsection (1).
  - b. A completed application for a change of use or building permit, as determined by the department of safety and permits, for Type C, commercial short term rentals.
  - c. The contact information for the owner of the short term rental unit, which includes the owner's primary physical mailing address, cell phone number, and email address. Additionally, the same contact information for the operator, or a local property manager that is able to respond on premises to complaints, if required by the Comprehensive Zoning Ordinance.
  - d. For a Type A license, proof of ownership via a valid homestead exemption, as required by the Comprehensive Zoning Ordinance.
  - e. A copy of the Conditional Use Ordinance, if required by the Comprehensive Zoning Ordinance.
  - f. A list of the short-term rental hosting platform(s) that will be utilized to advertise or solicit the property for use as a short-term rental.
  - g. Verification that the property has no outstanding taxes or property liens.
  - h. A current address of a natural person in Orleans Parish upon whom service may be made.

Any fraud, material misrepresentation, or false statements contained in the attestations, required documentation, or correlating application materials shall be grounds for immediate revocation of a short term rental license permit. Furthermore, all requirements herein shall be continuously maintained throughout the duration of the permit

**Sec. 26-615. - Permit and license issuance.**

(a) Upon satisfactory submission of the required attestations and requested documentation in section 26-614, the department of safety and permits may issue an annual short term rental license permit. Said permit shall contain:

- (1) The address of the short term rental;
- (2) The permit holder's name;

- (3) The type of license, permit number, and rental limitations, including bedroom limit and guest occupancy limit;
  - (4) Contact information (name, phone and e-mail) for complaints by guests or neighbors the listed contact information shall be of an individual able to respond on-premises to complaints;
  - (5) Dates the permit is valid.
- (b) The permit holder shall prominently display the permit on the front façade of the property, in a location clearly visible from the street.
  - (c) The permit holder shall provide the valid permit number on any listing advertising or soliciting the property for use as a short term rental. The permit holder shall only advertise the short term rental as allowed by their short term rental permit.
  - (d) The permit holder shall post the following information in a prominent location in the interior, clearly visible to guests:
    - (1) The permit number;
    - (2) The name and contact information of the owner/operator;
    - (3) The name and contact information of the property manager, if applicable;
    - (4) Occupancy limit;
    - (5) Trash and recycling collection rules and dates; and
    - (6) Additional short term rental rules and operational standards as provided in the Comprehensive Zoning Ordinance, including but not limited to: prohibition on the use of the rental for commercial or social events and noise limitations.

**Sec. 26-616. - Permit and license renewal.**

The short term rental license permit shall be valid one year from the date of issuance. Renewal permits shall be issued in the same manner as initial permits, and requires:

- (1) Providing the department an updated copy of any of the documents required by section 26-614, if applicable.
- (2) A revised attestation, indicating continued compliance with the requirements in section 26-614.
- (3) A revised list of short-term rental platform(s) that will be utilized to advertise or solicit the property for use as a short-term rental.
- (4) Proof of payment of all applicable taxes and fees as required by law.

**Sec. 26-617. - Permit and license fees.**

- (a) Fees for the initial issuance and renewal thereof shall be as follows:

Type A license for accessory short term rentals: \$200.00.

*Type T license for temporary short term rentals:* \$50.00, for each filed application with a valid homestead exemption. \$150.00 for each filed application without a valid homestead exemption.

Type C license for commercial short term rentals: \$500.00.

- (b) A \$1.00 fee for each night of occupancy of a residential dwelling unit used for dwelling, lodging, or sleeping purposes pursuant to a short term rental, shall be remitted to the city to offset the cost of the enforcement and other costs borne by the city.

**Sec. 26-618. - Penalties.**

Any violation of this article and the correlating provisions in the Comprehensive Zoning Ordinance may subject a violator to any remedy, legal or equitable, available to the city. Violations include but are not limited to: advertisement or rental of a short term rental without proper permitting and licensure, operation outside the scope of any of the applicable short term rental regulations provided by law, failure to include the license number or property address of a short term rental unit in any advertisement, and advertising a short term rental outside the permitted scope of a short term rental license permit. Remedies include, but are not limited to: revocation of a short term rental license permit, daily fines, property liens, and the discontinuance of electrical service. Nothing contained herein shall be construed to limit the legal remedies available to any other person for the correction of violations of this article and the correlating provisions in the Comprehensive Zoning Ordinance.

**Sec. 26-619. - Registration created.**

The city will maintain a registry of information regarding short term rentals based upon data provided by short term rental hosting platforms. Each short term rental hosting platform shall provide the city the following information regarding short term rentals on a monthly basis:

- (1) The name of the person issued the license-permit and their contact information (e-mail address/phone number);
- (2) The listing address;
- (3) The tax assessment address (if different than the listing address); and
- (4) License-permit type (A, C, or T).

**Sec. 26-620. - Platform data sharing.**

(a) Short term rental hosting platforms that list short term rentals in the City of New Orleans must provide certain information about activity on the platform on a monthly basis. This information includes:

- (1) The total number of short term rentals listed on the platform during the applicable reported period;
- (2) The total number of nights that each listing on the platform was rented to guests during the applicable reporting period;
- (3) A cumulative tally to date of the number of nights that each listing on the platform is booked for rental during the remaining months of the applicable calendar year;
- (4) A notation indicating the permit type for each listing; and
- (5) The total amount of tax collected by the platform and remitted to the city.

In providing the information required by this subsection, the short term rental hosting platform is not required to provide personally identifiable information.

(b) The city shall have the authority to subpoena information from short term rental hosting platforms. Any such administrative subpoena shall:

- (1) Be submitted in writing by the city attesting that the city has a reasonable belief based on evidence that a short term rental may be in violation of this article or of applicable provisions of the Comprehensive Zoning Ordinance;
- (2) Be sent to the short term rental hosting platforms via regular and certified mail; and
- (3) Be related to a specific investigation by the city relating to a single short term rental that is specifically identified in the subpoena, and alleges the specific violations of this article or of the applicable provisions of the Comprehensive Zoning Ordinance.

The platform shall notify their user of the information requested in the subpoena within ten days of receipt of the subpoena and produce the responsive records within 21 days of providing notice to the user, except to the extent that the user has sought relief in a court of competent jurisdiction.

- (c) For purposes of this article, short term rental hosting platforms are defined as any marketplace that facilitates short term rentals, as defined in the Comprehensive Zoning Ordinance, through advertising, matchmaking or other means, from which the platform derives revenues, including booking fees or advertising revenues, from or maintaining the marketplace.

**Secs. 26-621—26-625. - Reserved.**

*Chapter 70, Article III* of the Code of the City of New Orleans was amended as follows:

**Division 17 – Neighborhood Housing Improvement Fund (NHIF)**

**Sec. 70-415.1. - Created.**

There is hereby created a special fund designated as the City of New Orleans Neighborhood Housing Improvement Fund (hereinafter "NHIF"), into which shall be deposited all proceeds of the special tax authorized by Proposition D of R-91-100; and any other funds designated by lawful authority for deposit in the fund, including \$1.00 of revenues collected relative to the nightly occupancy of short term rentals, as defined in the Comprehensive Zoning Ordinance.

*Chapter 150, Article VI* of the Code of the City of New Orleans was amended as follows:

**Sec. 150-441 - Definitions.**

\*\*\*

*Dealer* includes every person who:

\*\*\*

- (7) Sells or furnishes any of the services subject to tax under this article or who is engaged in the collecting the amount required to be paid by a transient guest as a condition of occupancy at a residential location as provided herein. For purposes of this article, dealer shall not include persons leasing apartments of single-family dwellings on a month-to-month basis.

\*\*\*

*Hotel* means and includes any establishment or person engaged in the business of furnishing sleeping rooms, cottages, or cabins to transient guests, where such establishment consists of sleeping rooms, cottages, or cabins at any of the following: (1) a single business location; (2) a residential location, including but not limited to a house, apartment, condominium, camp, cabin, or other building structure used as a residence. For purposes of this article, hotel shall not mean or include any establishment or person leasing apartments or single-family dwellings on a month-to-month basis.

## C. Current STR Administration

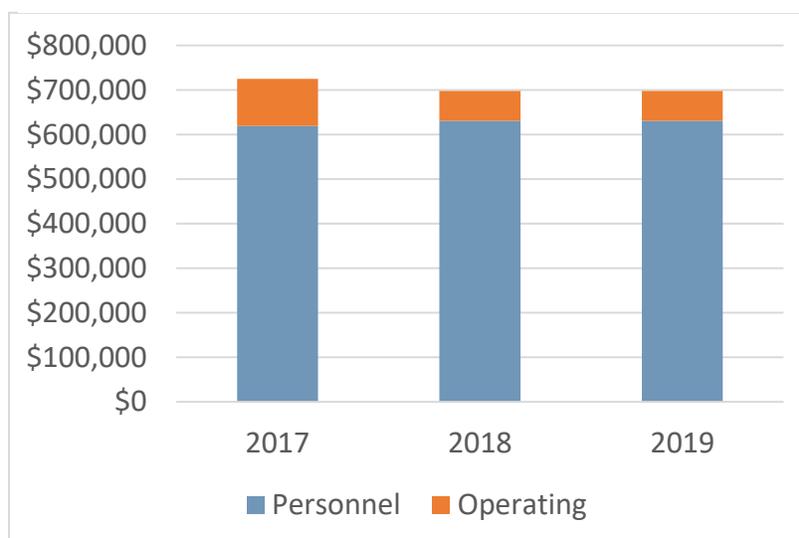
### Administration

The Short Term Rental Administration is a division of the Department of Safety and Permits responsible for licensing of short term rental facilities and enforcement of the standards regulating their operation. The STR Administration works cooperatively with the Zoning Administration Division and the Administrative Hearings Bureau of the Department of Safety and Permits to administer the short term rental regulations of the City's Comprehensive Zoning Ordinance and the City Code. The Short Term Rental Administration also receives support from the Department of Safety and Permits' One Stop Shop, which provides administrative, technical, and other support functions.

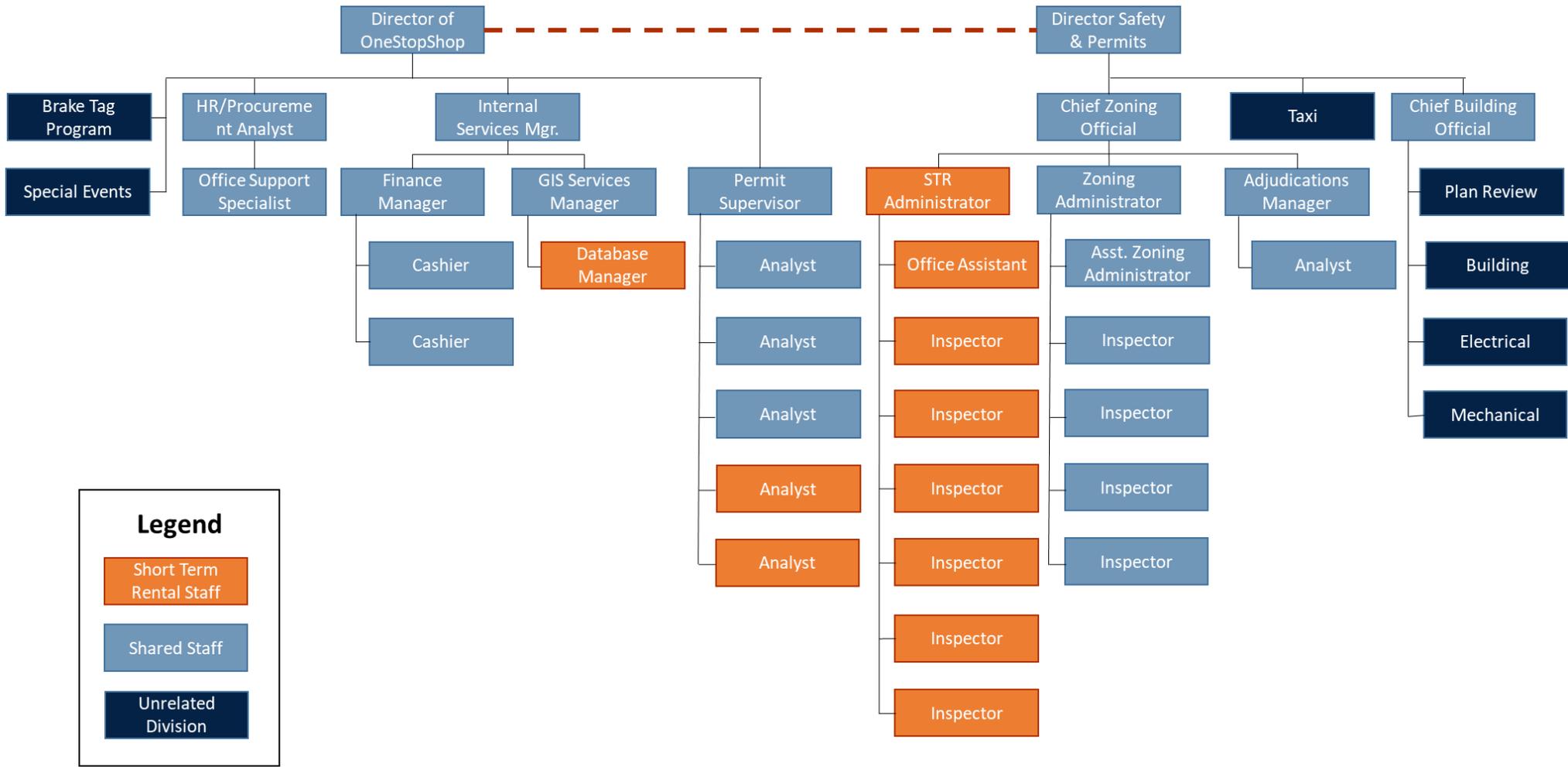
There are currently eleven employees dedicated to Short Term Rental Administration; a Short Term Rental Administrator, two Permit Analysts, six Code Enforcement Inspectors, an Office Assistant, and an Information Technology Specialist. With fringe benefits and salaries included, the current annual cost of personnel totals \$630,415. As mentioned, the STR Administration works collaboratively with other divisions of the Department of Safety and Permits' One Stop Shop. This includes the Administrative Hearings Bureau, which has two employees with a total personnel cost of \$129,134 and the Zoning division, which has seven employees and a total personnel cost of \$573,586. Additional employees in the One Stop Shop also assist with the administration of the short term rental regulations, including assistance with processing payments, technical support with software and applications, and other administrative support as needed. The 2018 adopted budget for the Department of Safety and Permits' personnel costs was \$6,542,082. Figure 3 shows a simplified organizational structure of the Department of Safety and Permits.

The operating costs for the Short Term Rental Administration division in 2017 were \$105,957. In 2018 and 2019 the projected operating expenditures are approximately \$67,000 respectively. The 2017 operating costs were higher because they included the costs of starting up the program, such as computers and vehicles. The 2018 operating costs included purchasing two additional vehicles. In 2019, the Department of Safety and Permits has requested reallocation of operating funds to enhance the current short term rental administration program, including \$45,000 to be used for three administrative hearing officers for short term rentals, and \$20,000 to be used for employee training and development of a webscraping procedure of short term rental platforms. Both the personnel and the operating expenditures are funded by the City's General Fund.

**Figure 2: Personnel & Operating Costs of STR Administration**



**Figure 3: Simplified Organizational Chart of One Stop Shop**



## **Permitting & Licensing**

The permitting and licensing requirements for short term rentals are located in Article 26, Article XI of the Code of Ordinances. The Department of Safety and Permits may issue an annual short term rental license permit after reviewing it for compliance with the requirements of the Comprehensive Zoning Ordinance and Code of Ordinances. There are three license categories, as defined by the Comprehensive Zoning Ordinance; Type A license for accessory short term rentals; Type T license for temporary short term rentals; and Type C license for commercial short term rentals.

### **Application Requirements**

Applications for Short Term Rental licenses may be filed in-person at the City's One Stop for Permits and Licenses on the 7th Floor of City Hall or online through the City's OneStopApp. AirBnB previously offered a "pass-through" registration where the platform collects application information and provides it to the City of New Orleans for processing; however, they have ceased the pass-through registration in response to Council Motion M-18-195, which established the Short Term Rental Interim Zoning District. Along with an application, applicants must provide attestations and/or provide documentation to confirm compliance with the Comprehensive Zoning Ordinance and Code of Ordinances requirements. Any fraud, material misrepresentation, or false statements contained in the attestations, required documentation, or correlating application materials shall be grounds for immediate revocation of a short term rental license permit. The submission documents and requirements for STR licenses are located in Chapter 26 of the City Code. These requirements are:

1. All applicants must submit an attestation that the following requirements are met and that they understand the limitations of the license being applied for:
  - a. The property has current, valid liability insurance of \$500,000 or more.
  - b. Each licensed dwelling has working smoke detectors in every bedroom, outside of sleeping areas, and on all habitable floors.
  - c. Each licensed dwelling has a properly maintained and charged fire extinguisher.
  - d. Each dwelling will provide a posting which provides emergency contact information and a floor plan indicating fire exits and escape routes, which shall be posted in a prominent location.
  - e. Certification that the property is in compliance with the City's Minimum Property Maintenance, Building, Electrical, Mechanical, and Plumbing Codes.
  - f. Certification that the property does and will continue to comply with all standards of the Comprehensive Zoning Ordinance for the specific license type.
  - g. That the owner/operator has made best efforts to notify immediately adjoining properties of an application for a STR license.
  - h. Certification that the property has no outstanding taxes or liens.
  - i. Certification that if the applicant is a renter, the property owner has consented to using the property as a short term rental.
  
2. The following information must be provided to the Department of Safety and Permits upon request, either during the application period or any time during the period of license validity to ensure compliance with the City Code:
  - a. A floor and/or site plan indicating the location of the required smoke detectors, fire extinguisher, and emergency contact/fire exit posting attested to during the application process.
  - b. A completed application for a Change of Use Building Permit when required by the Department of Safety and Permits.

- c. Contact information for both the property owner/applicant and the local contact (if applicable), including a physical mailing address, cell phone number and email address.
- d. For a Type A license, proof of ownership via a valid homestead exemption, as required by the Comprehensive Zoning Ordinance.
- e. A copy of the Conditional Use Ordinance and the approved, recorded plans (if applicable).
- f. A list of the rental platforms to be utilized.
- g. The name and current physical address of a natural person in Orleans Parish upon whom service of process may be made.

**Figure 4: Current STR Application Form**



Date

Tracking Number

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## SHORT TERM RENTAL LICENSE/PERMIT

## APPLICATION

Property Address:  Apt./Ste. Number:

Type of Building:  Residential (Single Family)  Residential (Two Family/double)  Apartment or Unit in Multi-Family Building  Condo

Type of Rental:  Accessory 1 side of a Double  Accessory Partial Unit  Temporary\*  Commercial

Number of Bedrooms in Unit:  Number of Bedrooms to be Rented:

Maximum number of Occupants per Bedroom:

List all platforms you will be renting this property through (e.g. AirBnB, VRBO, HomeAway, etc):

\*IF TEMPORARY, indicate the duration(s) during which you are requesting to rent the unit.

If you do not successfully rent for the full duration, you must provide evidence of booking from all platforms you list on and attest to the number of successfully rented nights to be issued another temporary permit within 1 yr of original issuance.

Start Date	End Date
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

### APPLICANT INFORMATION

Applicant Identity:  Owner  Tenant (If tenant, written permission to operate STR from Prop Owner must be attached)

Name

Mailing Address  City  State  Zip

Phone(s)  Email

### OWNER INFORMATION SAME AS APPLICANT

Name

Mailing Address  City  State  Zip

Phone(s)  Email

### TENANT INFORMATION SAME AS APPLICANT

Name

Mailing Address  City  State  Zip

Phone(s)  Email

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PAGE 1 OF 2



Construction/Development  
Related Permit



Date	
Tracking Number	

## SHORT TERM RENTAL LICENSE/PERMIT APPLICATION

### 24/7 CONTACT PERSON

Name  Company

Address  City  State  Zip

Phone(s)  Email

### AGENT FOR SERVICE

Name  Company

Physical Address  City  State  Zip

Mailing Address  City  State  Zip

Phone(s)  Email

### FEES

- ACCESSORY \$200.00/yr
- COMMERCIAL \$500.00/yr
- TEMPORARY \$50.00/application period if applicant holds valid homestead exemption
- \$150.00/application period if applicant does not hold a valid homestead exemption

### ATTESTATIONS

I, , hereby certify that:

Initial   has current, valid liability insurance of \$500,000 or more.

Initial  Each licensed dwelling has working smoke detectors in every bedroom, outside of sleeping areas, and on all habitable floors.

Initial  Each licensed dwelling has a properly maintained and charged fire extinguisher.

Initial  Each dwelling will provide a posting which provides emergency contact information and a floor plan indicating fire exits and escape routes, which shall be posted in a prominent location.

Initial   is in compliance with the City's Minimum Property Maintenance, Building, Electrical, Mechanical, and Plumbing Codes.

Initial   does and will continue to comply with all Use Standards of the Comprehensive Zoning Ordinance for the specific license type.

Initial  I, , have made best efforts to notify immediately adjoining properties of an application for a STR license.

Initial   has no outstanding taxes or liens.

Initial  I, , hereby certify that if I am renter, I have the consent of the property owner to utilize this property as a short term rental.

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

### ACKNOWLEDGMENTS

I certify that the above information is true and correct to the best of my knowledge. I understand that the City of New Orleans is authorized to suspend or revoke a permit or license issued under the provisions of its Municipal Code wherever a permit or license is issued in error or on the basis of incorrect, inaccurate or any false statement or misrepresentation, or in violation of any ordinance or regulation or any of the provisions of the City of New Orleans Municipal Code, the Comprehensive Zoning Ordinance, the International Construction Code or International Fire Code as adopted by the City of New Orleans. Fines and penalties for misrepresentation of material facts will be assessed in accordance with City of New Orleans ordinances and State of Louisiana Revised Statutes. I understand that any change in the scope or cost of the work must be reported to the Department of Safety and Permits and additional permits may be required.

I certify that I have the authority of the current property owner(s) to apply for the proposal contained in this application.

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

## **Permitting Process**

Once an application has been submitted, the Department of Safety and Permits reviews all materials to determine if all necessary information has been submitted and complies with the requirements of the Comprehensive Zoning Ordinance and Code of Ordinances. Upon review of the information, the Department of Safety and Permits may request additional information or documentation, deny the application, or approve the application upon determination that all requirements have been met and necessary documentation has been submitted. If additional information is requested, the applicant has five days to respond. If the application is approved, the applicant has five days to pay the applicable fee. The fees for short term rental licenses are as follows:

- Accessory Short Term Rental: \$200.00/year
- Temporary Short Term Rental (with Homestead Exemption): \$50.00 per application period.
- Temporary Short Term Rental (without Homestead Exemption): \$150.00 per application period.
- Commercial Short Term Rental: \$500.00/year

Upon satisfactory submission of the required attestations and requested documentation, the Department of Safety and Permits may issue an annual short term rental license permit. The permit will contain:

1. The address of the short term rental;
2. The permit holder's name;
3. The type of license, permit number, and rental limitations, including bedroom limit and guest occupancy limit;
4. Contact information (name, phone and e-mail) for complaints by guests or neighbors the listed contact information shall be of an individual able to respond on-premises to complaints;
5. Dates the permit is valid.



The permit holder is required to prominently display the permit on the front façade of the property, in a location clearly visible from the street. For multi-family developments, such as apartment or condominium buildings, where a unit owner or tenant does not have access to or domain over an element of the building façade facing the public right-of-way, the Short Term Rental License Permit placard shall be posted on or adjacent to the door of the permitted unit in a manner visible and accessible to the other tenants or owners within the structure or development.<sup>9</sup> The short term rental license permit is valid one year from the date of issuance. Renewal permits are issued in the same manner as initial permits, and applicants may be asked to provide:

1. Updated copies of any of the documents originally required;
2. A revised attestation, indicating continued compliance with the requirements
3. A revised list of short-term rental platform(s) that will be utilized to advertise or solicit the property for use as a short-term rental.
4. Proof of payment of all applicable taxes and fees as required by law.

## **Enforcement**

### **Identifying Violations**

The Short Term Rental Administration staff utilizes data obtained from online rental platforms, complaints from the public, as well as independent investigation to identify violations of the short term rental regulations of the City Code and the Comprehensive Zoning Ordinance.

#### *Reporting-Based*

Pursuant to Section 26-620 of the City Code, short term rental hosting platforms that list short term rentals in the City must provide certain information about activity on the platform on a monthly basis to the City of New Orleans. Short term rental hosting platforms are defined in City Code as “any marketplace that facilitates short term rentals, as defined in the Comprehensive Zoning Ordinance, through advertising, matchmaking or other means, from which the platform derives revenues, including booking fees or advertising revenues, from or maintaining the marketplace.” The monthly data reports must include:

1. The total number of short term rentals listed on the platform during the applicable reported period;
2. The total number of nights that each listing on the platform was rented to guests during the applicable reporting period;
3. A cumulative tally to date of the number of nights that each listing on the platform is booked for rental during the remaining months of the applicable calendar year;
4. A notation indicating the permit type for each listing; and
5. The total amount of tax collected by the platform and remitted to the city.

In providing the information required by this subsection, the short term rental hosting platform is not required to provide “personally identifiable information”. Currently the only platforms that have submitted the required monthly reports are Airbnb and Expedia. The reports from Airbnb contain an anonymous listing identification number, the number of nights rented for the year to date, the number of future bookings, and the permit type for those listings that utilized the pass-through registration on Airbnb. If a user did not utilize the Airbnb pass-through system, the permit type is left blank. The reports from Expedia contain an anonymous listing identification number, the number of nights rented for the month, and the booked count for the rest of the year. The anonymous identification number for both Airbnb and Expedia

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<sup>9</sup> As per determination by the Department of Safety and Permits on July 21, 2017

could be linked to multiple listings, so it unclear whether the number of nights rented are for a single property or multiple properties.

**Table 1: Excerpt from Airbnb Monthly Report (June 2018)**

anon_id	ytd	current_month	future_booked	permit_type
6ce0686c-791e-46ff-81dc-8f2b33a3d1a3	9	3	0	
69cfaed0-7fa6-4135-a712-3f3ad0d68b1a	23	2	0	PERMIT_TYPE_A
950076b4-a596-4ee3-ae21-16a7ed82e0df	89	17	14	
05633474-5bc9-4025-8d66-7a6b1691ff5a	49	10	4	PERMIT_TYPE_T

**Table 2: Excerpt from Expedia Monthly Report (June 2018)**

ListingId	Booked Nights Count For Month	Booked Nights Count Rest Of Year
122663	9	20
296064	2	0
304088	0	0
308494	14	14
312807	7	0
318112	0	12
319865	0	0
329907	0	0

Since the reports received from the platforms only provide information on number of nights rented, they are only useful in determining violators of the temporary license 90-day restriction. No identifiable information regarding the location of the short term rental or the user is provided that can be used for further research of potential violations. The City has the authority to subpoena information from the short term rental hosting platforms. These requests are submitted in writing via regular or certified mail by the City attesting that the City has a reasonable belief based on evidence that a short term rental may be in violation of the City Code or the Comprehensive Zoning Ordinance. The subpoena must be related to a specific investigation by the city relating to a single short term rental that is specifically identified in the subpoena, and must allege the specific violations of this article or of the applicable provisions of the Comprehensive Zoning Ordinance. The platform is required to notify their user of the information requested in the subpoena within ten days of receipt of the subpoena and produce the responsive records within 21 days of providing notice to the user, except to the extent that the user has sought relief in a court of competent jurisdiction.

**Figure 6: Sample Administrative Subpoena**

DEPARTMENT OF SAFETY AND PERMITS  
**CITY OF NEW ORLEANS**

MITCHELL J. LANDRIEU  
MAYOR

JARED E. MUNSTER, PH.D.  
DIRECTOR

**NOTICE OF ADMINISTRATIVE SUBPOENA**

Case: 18-01845-RENT

SERVED ON: Airbnb.com  
ISSUE DATE: March 19, 2018  
TRACKING NO.: 7010 1670 0000 9118 8171  
RE: c23de48f-8e37-478d-b8a8-095f489f14f7

Pursuant to Section 26-620(b) of the Municipal Code and by the authority vested in the Director of Safety and Permits through Section 4-702 of the Home Rule Charter of the City of New Orleans,

YOU ARE COMMANDED to produce and remit all available information, including the identity of the user, contact information for the user (email address, telephone number), address of the property, dates and duration of rental(s), and any other available information associated with property or identified listing associated with:

c23de48f-8e37-478d-b8a8-095f489f14f7

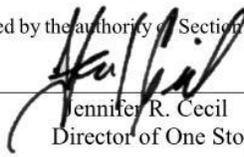
not later than 31-days from the date this document is served upon Airbnb.com.

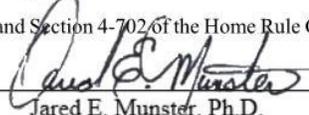
Pursuant to a review of all available data, the Department of Safety and Permits for the City of New Orleans has a reasonable belief based on evidence that the property identified above may be operating in violation of Chapter 26, Article XI of the Code of the City of New Orleans (Standards for Short Term Rentals) and/or the Comprehensive Zoning Ordinance of the City of New Orleans (Ordinance 4,264 MCS, as amended by Ordinance 26,413 MCS, as amended).

This information is required due to the reasonable belief that the following violations of the Municipal Code or Comprehensive Zoning Ordinance are occurring or have occurred:

Code Section	Title	Description
CZO 21.8.C.1	Temporary Rental Limit	Rentals shall be limited to a maximum of ninety (90) days per year.

Issued by the authority of Section 26-620(b) of the Municipal Code and Section 4-702 of the Home Rule Charter.

  
Jennifer R. Cecil  
Director of One Stop

  
Jared E. Munster, Ph.D.  
Director of Safety and Permits

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The current process of issuing subpoenas to request information is burdensome and takes significant staff time. The subpoena responses from Airbnb to date have only included listings that utilized the pass-through registration. The information provided by Airbnb in subpoena responses includes the anonymous listing identification number, the user identification number, the first and last name of the user, contact information for the user, sign up time and date, and IP address utilized when signing up. The information provided by Expedia includes an anonymous listing identification number and the contact information for the user. The information does not link back to a specific license number, does not indicate what type of license the property holds, and it does not provide information on the listing, such as location or address. The Short Term Rental administration can match the contact information with those registered in the City's system; however, this is problematic as some users have multiple listings and the administration is often unable to determine which listing is in violation of the Comprehensive Zoning Ordinance. If the individual is not registered with the City, there is no way to link the listing to a specific property.

The current data reporting requirements are inadequate to determine violations other than the 90-day limit for temporary licenses. The current information provided in the reports is not sufficient to take enforcement action against a particular property because it does not provide any identifiable information. While a subpoena process is available, the information provided in the responses is inadequate for effective enforcement. Processing the reports, issuing subpoenas, and tracking information, takes significant staff time and City resources to administer.

#### *Complaint-Based*

A frequent way the Short Term Rental Administration identifies potential violations is through complaints or concerns submitted by the public. Citizens can report a violation and upload documentation, including photos on the City's website, by emailing [STR@nola.gov](mailto:STR@nola.gov), or by phone through the City's 311 service or calling the STR Administration directly. Currently 311 is only available Monday through Friday from 8 am to 5 pm.

#### *Independent Investigations*

The Short Term Rental Administration staff also retrieves data from online listing platforms to determine if violations are occurring, such as listing beyond what is permitted (bedrooms or guests), listing without a license, or other violations. They also conduct proactive field-based patrols to ensure placards are posted and to respond to complaints. The Department of Safety and Permits may also inspect the property to ensure the required fire alarms, fire extinguishers, fire exits, and emergency contact information is provided on-site.

### **Enforcement Process**

#### *Notice of Violation*

Once the Short Term Rental Administration determines that a code violation exists, a notice of violation(s) is provided to the owner(s) and an adjudication hearing is scheduled. The notification must be sent at least 15 days prior to the scheduled hearing. The notice must provide the municipal address of the property, the date of inspection, a list of the alleged violations at the property, the risk of fees, penalties, costs, and liens that may be imposed for continued violation(s), the contact information for the Department of Safety and Permits, and the time, date, and location of the administrative adjudication hearing where the case will be heard. Failure to appear at the hearing shall be considered admission of liability; however, the Department of Safety and Permits may reset the hearing to a later date if a request is submitted to the hearing officer.

via the agency of the city having a responsibility for the enforcement the code violation(s), prior to the date of the hearing.

### *Adjudication Hearing*

Violations of the Code of Ordinances and Comprehensive Zoning Ordinance are determined at administrative adjudication hearings. Any person, or their representative, charged with code violations may present any relevant evidence and testimony at the hearing. Administrative adjudication hearings concerning code violations of short term rental regulations and other code infractions are conducted before administrative hearing officers. The hearing officer has the authority to hear and decide all code violations, and has the power to:

- Administer oaths and affirmations.
- Issue orders compelling the attendance of witnesses, respondents, alleged violators, and violators and the production of documents.
- Determine whether or not an alleged violator is liable for code violations.
- Levy fees, costs, and monetary penalties.
- Order violators to correct violations within a stipulated time.
- Take any and/or all necessary and lawful measures to effect corrections of the violation if the violator fails to do so within the time allocated by the hearing officer.
- Record orders, judgments, notices of judgments, or liens in the mortgage office.

To qualify as a hearing officer, a person must be licensed to practice law in Louisiana for a minimum of two years. Hearing officers are appointed by the mayor and are sworn before the city attorney to uphold the Constitution, the laws and constitution of the State of Louisiana, and the Charter and ordinances of the City of New Orleans, and to abide by the provisions of the Louisiana Code of Governmental Ethics and the City of New Orleans' Code of Ethics. Currently there are only two hearing officers, which are shared between the Department of Safety and Permits and Code Enforcement.

In addition to short term rental violations, administrative adjudication hearings for the One Stop Shop also include violations relating to the Zoning Division, Historic District Landmarks Commission, and Vieux Carré Commission. Hearings are typically held once a week on Wednesday mornings. Since the current pool of administrative hearing officers is very limited, there are only two staff in the One Stop Shop dedicated to adjudications, the hearings must be shared with other violations, and the processing of violations requires significant administrative support, the amount of short term rental violations that can be adjudicated at a given time is limited.

### *Notice of Judgement*

Following the adjudication hearing, the hearing officer shall issue a final order, judgment, or notice of judgment within 30 days of the hearing. The order, judgment, or notice of judgment must:

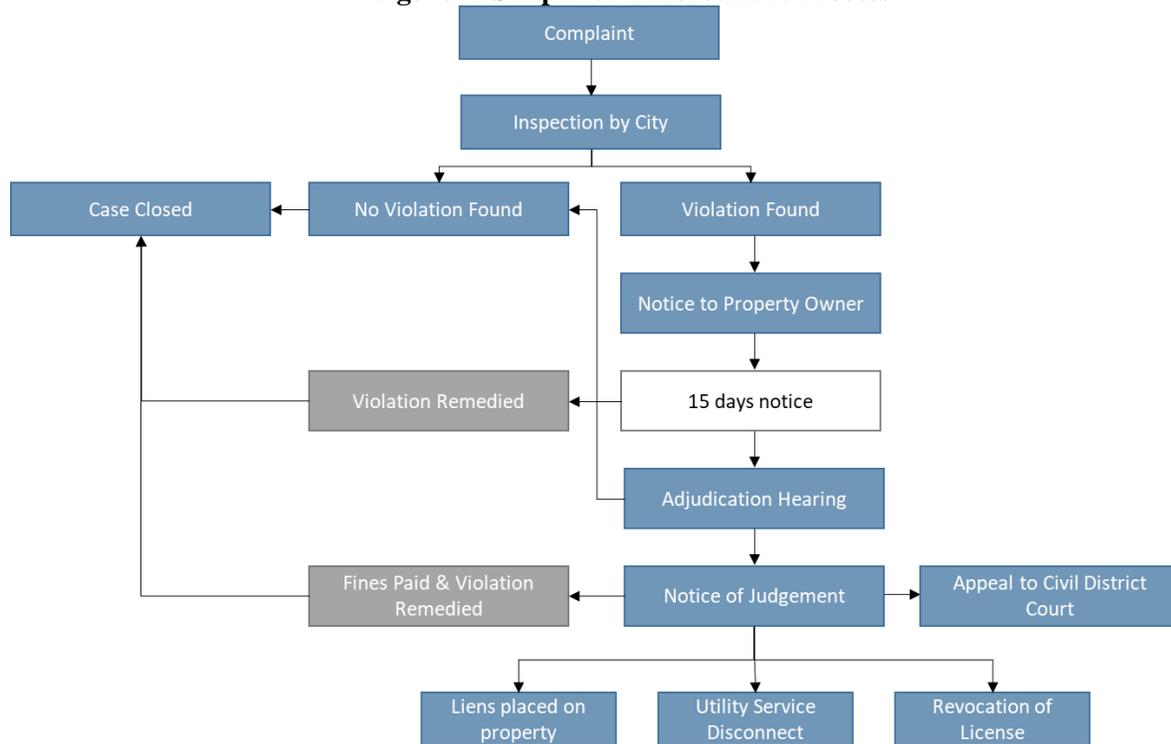
- Be signed by the hearing officer;
- State whether or not the alleged violator is liable for each violation and any specific determinations thereto;
- Provide the amount of fees, costs, and penalties assessed for each violation;
- Provide the defects to be corrected and the extent by which each violation shall be corrected, repaired, and/or abated;
- Provide the reasonable period of time by which each violation shall be corrected, repaired and/or abated;

- Notify the violator(s)' of their right to appeal; and
- Notify the violator that the city may act to abate violation(s) if the violator fails to act in accordance with the order, judgment, or notice of judgment, where applicable.

*Penalties*

As provided by Section 26-618 of the City Code, the penalties for violation of Short Term Rental standards can include, but are not limited to revocation of the Short Term Rental license, fines, and disconnection of electrical service to the subject property. The fines that may be imposed by the hearing officer are limited to \$500 per day for each violation of the ordinance by state law.<sup>10</sup> Any person determined by the hearing officer to be liable for a code violation may appeal the determination to Civil District Court within 30 days of the hearing officer's order. To date there have been 37 appeals to Civil District Court of short term rental violations. These cases are handled by the City Attorney’s office and typically two to three attorneys are assigned to each case. If a fine is not paid, a lien may be placed on the property. This requires the City to file an official notice of lien that must be recorded against the property’s title. This process requires significant staff time and City resources to administer, and court costs relating to filing fees.

**Figure 7: Simplified Enforcement Process**



*Types of Violations*

As mentioned, the short term rental regulations are located in both the Code of Ordinances and the Comprehensive Zoning Ordinance. As of May 24, 2018 there have been 1,489 code incidents for short term rentals. Each incident may contain multiple violations of the Code and Comprehensive Zoning Ordinance. The most common violations are short term rentals in a location where they are not a permitted use (16%),

<sup>10</sup> The penalty for each violation shall not exceed the maximum monetary amount that may be imposed by municipal court as provided in R.S. 13:2500.

not displaying the license number in the posting (14.7%), not displaying the license in a clearly visible location on the property (13.4%), renting over the occupancy limit (11.6%), not displaying the required information to guests inside the rental (10.9%), and not obtaining a license (10.6%). These number may not reflect the most common code violations in actuality, rather the ones the City can most successfully cite and adjudicate given the enforcement constraints. For example, it is likely that the actual infractions of renting over the 90 day limit is much higher but since those infractions are harder to identify, they are not cited as frequently.

**Table 3: Types of STR Violations**

<b>Violation Type</b>	<b>Count</b>	<b>Percentage</b>
Not permitted use	1083	16.0%
License Number in Posting	995	14.7%
Displaying of License	906	13.4%
Occupancy Limit	786	11.6%
Displaying of Information to Guests	738	10.9%
License Required	717	10.6%
Other Regulatory Compliance	436	6.4%
Neighborhood Character	404	6.0%
Advertising Non-Bedroom as Bedroom	304	4.5%
Day Limit	149	2.2%
Noise/disturbance	88	1.3%
Single Party of Guests	62	0.9%
Commercial or Social Events	53	0.8%
Falsifying Attestation	37	0.5%
In-Town Property Manager	24	0.4%
Signage Prohibited	4	0.1%
Total	6786	100%

## **Finance**

After a short term rental license is approved, the City collects a fee based on the license type. In addition to this fee, the City Code requires that all licensed Short Term Rentals collect and report the Hotel/Motel Sales Tax, Hotel Occupancy Privilege Tax and an additional assessment to benefit the City's Neighborhood Housing Improvement Fund.

### **Permit Fees**

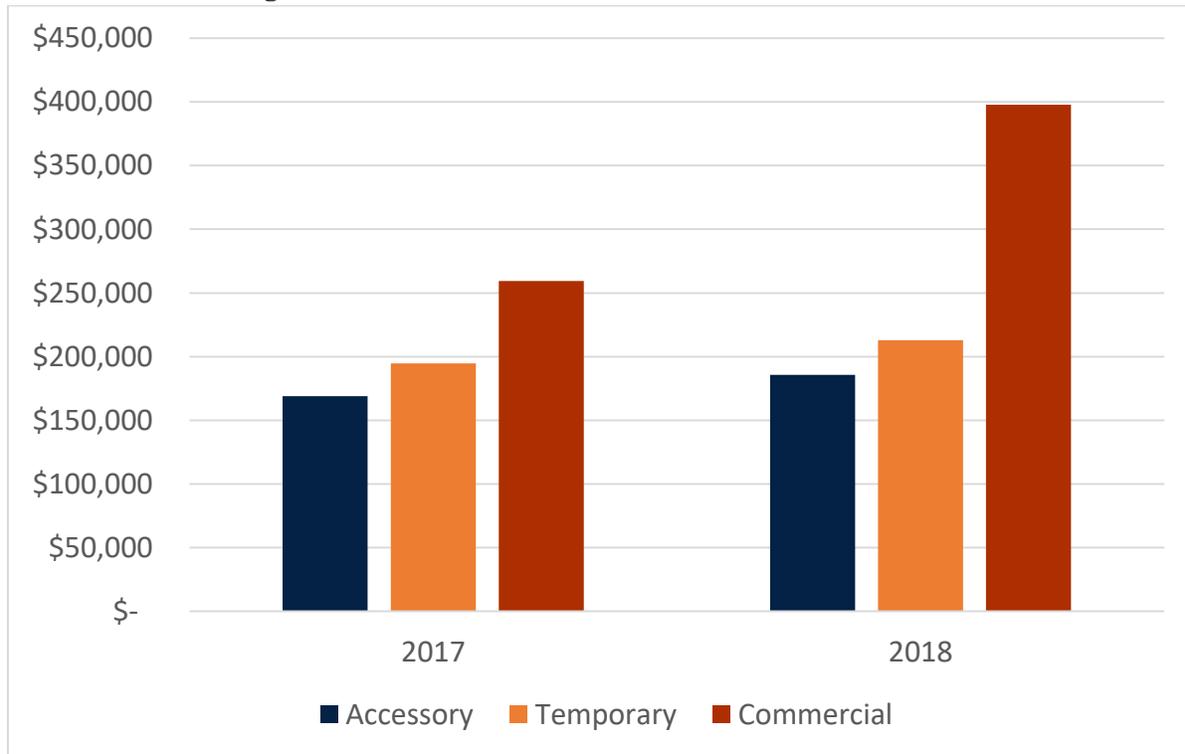
In accordance with Section 26-617 of the City Code, the fee schedule for Short Term Rental licenses is as follows:

- Accessory Short Term Rental: \$200.00/year
- Temporary Short Term Rental (with Homestead Exemption): \$50.00 per application period.
- Temporary Short Term Rental (without Homestead Exemption): \$150.00 per application period.
- Commercial Short Term Rental: \$500.00/year

The City of New Orleans has collected approximately \$622,921 in license fees in 2017 and \$796,454 to date in 2018. In 2017, \$168,850 was collected for Accessory licenses, \$194,596 for Temporary licenses, and \$259,475 for Commercial licenses. In 2018, \$185,600 was collected for Accessory licenses, \$212,950

for Temporary licenses, and \$397,904 for Commercial licenses. These fees are paid into the City’s General Fund.

**Figure 8: Fees Collected from Short Term Rental Licenses**



### Hotel/Motel Tax

The hotel/motel sales tax applied to short term rentals in Orleans Parish is 8.45%, which is assessed on the nightly rental rate.<sup>11</sup> Four percent of this tax is collected by the City of New Orleans’ Bureau of Revenue and the remainder is collected by the State. The tax rate for short term rentals differs from that of large hotels (10 rooms or more) and small hotels (9 rooms or less) and the dedication for the use of those funds is also different, a breakdown of the taxation and dedication can be found in **Table 5**. The funds are allocated in state law to different funds and agencies, including the Louisiana Sports and Exposition District, New Orleans Metropolitan Convention and Visitors Bureau, Ernest N. Morial New Orleans Exhibition Hall Authority, Regional Transit Authority, Orleans Parish School Board, and the City of New Orleans. In 2017, amendments were made to state law that redirected 3.97% of the tax generated by the lease of short term rentals to the “New Orleans Quality of Life Fund” in the state treasury.<sup>12</sup> As per state

<sup>11</sup> The state law considers a short term rental a type of hotel as per R.S. 47:301(6)(a)(ii): "Hotel" means and includes any establishment or person engaged in the business of furnishing sleeping rooms, cottages, or cabins to transient guests, where such establishment consists of sleeping rooms, cottages, or cabins at any of the following:

...  
(ii) A residential location, including but not limited to a house, apartment, condominium, camp, cabin, or other building structure used as a residence.

<sup>12</sup> R.S. 302.56. Disposition of certain collections in Orleans Parish allocates 2% of the hotel/motel sales tax, R.S. 322.49. Disposition of certain collections in Orleans Parish allocates 1%, R.S. 332.55. Disposition of certain collections in Orleans Parish allocates 0.97%. These laws became effective July 1, 2017.

law, “Monies appropriated from the fund shall be available for use by the city of New Orleans for code enforcement by the City of New Orleans Short Term Rental Administration.”

In 2017, the total distributions to this fund were \$1,756,623 and \$2,589,677 have been distributed to date in 2018. The monthly distributions can be seen in Table 4. There were no distributions to this fund prior to July of 2017 because the amendments to state law had not taken effect yet. In order to access the funds for use by the City of New Orleans, the City must enter into a Cooperative Endeavor Agreement with the state. The City is currently working with the State Treasurer to execute a CEA to drawdown the funds from the New Orleans Quality of Life Fund.

<b>Table 4: Distributions to New Orleans Quality of Life Fund</b>		
<b>Month</b>	<b>2017</b>	<b>2018</b>
January		\$ 615,413
February		\$ 504,275
March		\$ 423,186
April		\$ 423,186
May		\$ 323,675
June		\$ 299,942
July	\$ 6,646	
August	\$ 500,151	
September	\$ 297,509	
October	\$ 300,688	
November	\$ 322,784	
December	\$ 328,845	
<b>Total YTD</b>	<b>\$ 1,756,623</b>	<b>\$ 2,589,677</b>

**Table 5: New Orleans Hotel/Motel & Short Term Rental Taxation**

Tax Type	TAXES			DEDICATIONS		
	Hotels		Short Term Rentals	Hotels		Short Term Rentals
	Large	Small (less than 10 rooms)		Large	Small (less than 10 rooms)	
<b>State Sales</b>	<b>2.45</b>	<b>4.45</b>	<b>4.45</b>			
	-	2.00	2.00	Abated	State General Fund	New Orleans Quality of Life Fund
	1.00	1.00	1.00	Convention Center (\$2M), NBA/NFL (Remainder) - if fund balance, Hornets (\$1.75M) then NO Ec Dev Fd for grants (\$0)	Convention Center (\$2M), NBA/NFL (Remainder) - if fund balance, Hornets (\$1.75M) then NO Ec Dev Fd for grants (\$0)	New Orleans Quality of Life Fund
	0.97	0.97	0.97	New Orleans & Company	New Orleans & Company	New Orleans Quality of Life Fund
	0.45	0.45	0.45	State General Fund	State General Fund	State General Fund
	0.03	0.03	0.03	Department of Culture, Recreation, & Tourism	Department of Culture, Recreation, & Tourism	Department of Culture, Recreation, & Tourism
<b>Local Sales</b>	<b>4.00</b>	<b>4.00</b>	<b>4.00</b>			
	1.50	1.50	1.50	City General Fund	City General Fund	City General Fund
	1.50	1.50	1.50	Orleans Parish School Board	Orleans Parish School Board	Orleans Parish School Board
	1.00	1.00	1.00	RTA	RTA	RTA
<b>Assessment*</b>	<b>1.75</b>	<b>1.75</b>	<b>0.00</b>			
	0.75	0.75	-	New Orleans & Company	New Orleans & Company	Not Applicable
	0.75	0.75	-	Tourism Marketing Corp	Tourism Marketing Corp	Not Applicable
	0.25	0.25	-	City for French Quarter	City for French Quarter	Not Applicable
<b>Special Occupancy</b>	<b>7.00</b>	<b>0.00</b>	<b>0.00</b>			
	4.00	-	-	LSED (Superdome)	Not Applicable	Not Applicable
	3.00	-	-	Convention Center	Not Applicable	Not Applicable
<b>Total Tax</b>	<b>15.20</b>	<b>10.20</b>	<b>8.45</b>			
* Assessed on members of Convention & Visitors Bureau, excluding New Orleans East						

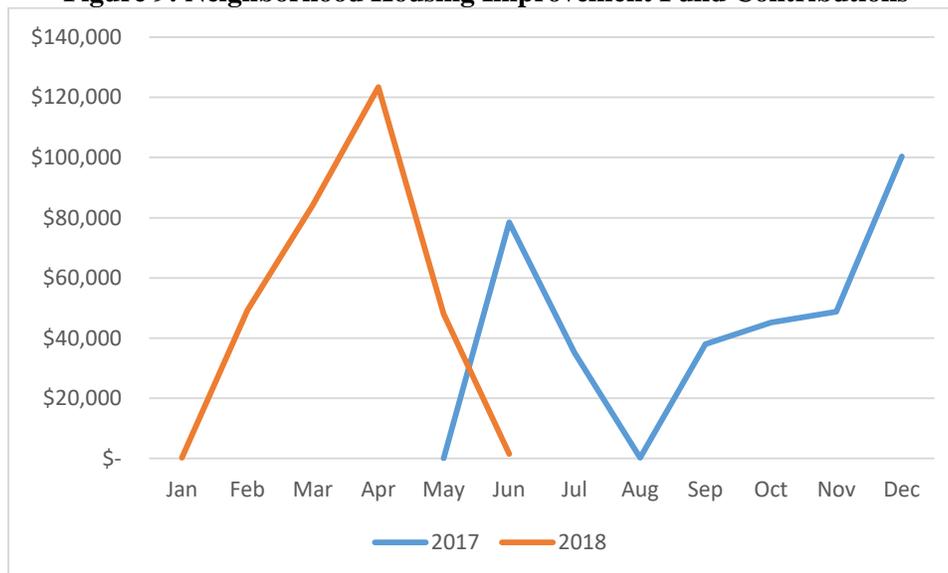
## Hotel Occupancy Tax

In addition to the hotel/motel sales tax, there is a hotel occupancy tax levied upon persons for the privilege of occupying hotel rooms or guest rooms in New Orleans. The Hotel Occupancy Privilege Tax is assessed according to the number of rooms available within the licensed Short Term Rental or hotel/motel; the fee is \$0.50/per night of rental for facilities with 299 rooms or less and \$1.00/per night of rental for facilities with 300 or more rooms. This tax is collected by the City of New Orleans' Bureau of Revenue. The funds collected are placed into the "New Orleans Tourist and Convention Promotion and Support Fund", which provides funding for the New Orleans Tourism Marketing Corporation.

## Neighborhood Housing Improvement Fund Fee

The City of New Orleans imposes a \$1.00 fee for each night of occupancy of a residential dwelling unit used for dwelling, lodging, or sleeping purposes pursuant to a short term rental. This fee is assessed by the City of New Orleans to benefit the City's Neighborhood Housing Improvement Fund. Appropriations from the proceeds of NHIF shall be used to achieve improved housing conditions and neighborhood stability by providing financing for home ownership opportunities, eliminating blight through remediation and rehabilitation, and to provide financing for affordable rental housing. The fund is also supported by a special property tax millage of .91mills (or \$0.0091 for every dollar of "Total Assessed Value").<sup>13</sup> Since May of 2017, the City of New Orleans has collected \$652,721.42 from short term rentals to benefit the City's Neighborhood Housing Improvement Fund. In 2017, \$346,104.50 was collected and \$306,616.92 has been collected to date in 2018.

**Figure 9: Neighborhood Housing Improvement Fund Contributions**



<sup>13</sup> Proposition D of R-91-100

## Fines

After determining that a violation has occurred, an administrative hearing officer may levy fees, costs, and penalties for each violation of the regulations for short term rentals. The City has levied \$463,468.75 in penalties related to violations of short term rental regulations since 2017, of which only \$112,068.25 have been paid. As mentioned, any person determined by the hearing officer to be liable for a code violation may appeal the determination to Civil District Court within 30 days of the hearing officer's order. To date there have been 37 appeals to Civil District Court of short term rental violations, some of which resulted in the fines being dismissed or lowered. The City has the ability to place liens on the property for uncollected fines; however, this necessitates significant staff time and City resources to administer.

**Table 6: Fees Levied & Paid for STR Violations**

Year	Total Fees	Unpaid Fees	Fees Paid
2017	\$ 340,193.75	\$ 245,150.50	\$ 95,043.25
2018	\$ 123,275.00	\$ 106,250.00	\$ 17,025.00
Grand Total	\$ 463,468.75	\$ 351,400.50	\$ 112,068.25

## Tax Collection Process

After being issued a Short Term Rental License by the Department of Safety and Permits, operators must register with the Department of Finance, Bureau of Revenue to obtain an account number so that they can remit the required taxes and fees to the City of New Orleans. This current process does not require Short Term Rental operators to obtain Occupational Licenses or a Mayoralty Permit from the City prior to obtaining a license; instead the STR license is used. The hotel occupancy tax, the Neighborhood Housing Improvement Fund fee, and the City's portion of the hotel/motel sales tax must be reported to the City of New Orleans' Bureau of Revenue on a monthly basis using Form 8010-STR. The reports must be submitted by the 20th day of the month following the month of collection. The state's portion of the hotel/motel sales tax must be remitted separately to the state.

Currently, only Airbnb has a Cooperative Endeavor Agreement with the City for the voluntary collection of hotel/motel sales tax and hotel occupancy privilege taxes to remit taxes on behalf of its users. Short term rental operators who rent using other platforms must register with and remit taxes directly to the City. The information provided by Airbnb to the Bureau of Revenue is aggregated and does not reflect the gross rentals and nights rented for each operator. While hosts on Airbnb may register individually with the City to report their monthly gross rentals and nights rented, it is not required.<sup>14</sup> As per the CEA, the City has the ability to audit Airbnb, but may not audit an individual guest unless an audit of Airbnb has been conducted. It is unknown how many STR operators who do not utilize Airbnb are remitting taxes and fees to the City. Additionally, since hosts on Airbnb are exempt from reporting individually, it is unclear if the taxes and fees remitted by Airbnb accurately reflect the gross sales and nights rented.

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<sup>14</sup> As per the CEA, Airbnb "hosts shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report Hotel Tax, provided Airbnb is in compliance with its obligations herein"

## D. Short Term Rental Data

City Planning Commission staff worked closely with the Short Term Rental Administration of the Department of Safety & Permits to obtain information regarding short term rental licenses active at the time the City Council adopted the Short Term Rental Interim Zoning Ordinance. The data presented in the following tables represent information for properties with active Short Term Rental licenses by 5:00pm on May 23, 2018. These totals do not take into account unlicensed Short Term Rentals or licenses that expired prior to May 23, 2018.

**Table 7: Total Licenses by Type and Homestead Exemption Status**

License Type	Total Licenses	Percent of Total Licenses	Licenses with Homestead Exemption	Percent of Total Licenses with Homestead Exemption
Accessory	1,112	26%	992	89%
Commercial	954	23%	23	2%
Temporary	2,144	51%	542	25%
Total	4,210	100%	1,557	37%

The City had a total of 4,210 active Short Term Rental licenses by the end of the day on May 23, 2018. Over half of the licenses active at this time Temporary licenses, and the remaining split between Accessory and Commercial licenses. A map of this information is provided in the Appendix of this report. Thirty-seven percent of active licenses had a homestead exemption claimed on the site, with the majority having an Accessory license. Currently, a property must have a homestead exemption to qualify for an Accessory license. Though only 89 percent of Accessory licenses are shown to have a Homestead Exemption, the remaining 11 percent are most likely owner-occupied but still awaiting the Assessor’s public data records to be updated. An additional 20 percent (842) of licenses are held by Limited Liability Corporations and are not eligible for a Homestead Exemption.

**Table 8: STR License Application Method**

Application Method	Number by Application Method
Airbnb Pass-Through	1,104
One Stop In-Person	1,052
One Stop Online	2,054
Total	4,210

The majority of applications for Short Term Rental license were submitted through the City’s One Stop App online web service. An additional 1,052 applicants submitted their materials in person at the One Stop Shop in City Hall. The remaining 26 percent of active applications were routed through Airbnb’s pass-through registration system which is a service that the company discontinued shortly after the City Council’s IZD motion was adopted on May 24, 2018.

**Table 9: Number of STR Licenses per Property Owner**

Number of Licenses per Property Owner	License Holders	Total Number of Licenses
One	2,333	2,333
Two to Ten	551	1,414
Eleven to Twenty	5	82
Twenty-One to Ninety-Four	7	381
TOTAL	2,896	4,210

Fifty-five percent of Short Term Rental licenses are held by property owners with only one license. This represents 80.5 percent of the property owners with Short Term Rental licenses. The remaining 45 percent of licenses are held by 19.5 percent of property with a license. Nine percent of all licenses are held by 0.2 percent of property owners with licenses.

**Table 10: Number of STR Licenses per Applicant**

Number of Licenses per Applicant	License Holders	Total Number of Licenses
One	2,256	2,256
Two to Ten	439	1,228
Eleven to Twenty	16	202
Twenty-One to One Hundred Sixty-Eight	8	422
No Applicant Listed or Entered <sup>15</sup>	102	102
TOTAL	2,821	4,210

Applicants for STR licenses do not have to be the property owner, and can often be a STR manager or agent. It is logical then to expect the number of license holders with multiple licenses to be higher than in the table listing licenses by property owner. The number of licenses held by applicants with only one license is 53.5 percent, just shy of the 55 percent of property owners with one license. Similarly, the applicant information shows the same trend at the higher end, with 10 percent of total licenses held by 0.2 percent of applicants.

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<sup>15</sup> The STR application has a field for applicant, agent, property owner, tenant, and 24/7 contact person. The “No Application Listed or Entered” number indicates that the applicant field was not completed on the application. This could be the result of the applicant being the same as the owner, and the field was left blank.

**Table 11: License Type by Zoning District Grouping**

Zoning District	License Type			Total	Percent of Total Licenses
	Accessory	Commercial	Temporary		
Commercial Center & Institutional Campus Districts	3	64	5	72	1.7%
Central Business Districts	4	421	87	512	12.2%
Historic Core Non-Residential Districts	6	139	20	165	3.9%
Historic Core Residential Districts	169	6	450	625	14.8%
Historic Urban Non-Residential Districts	41	312	85	438	10.4%
Historic Urban Residential Districts	791	4	1,356	2,151	51.1%
Rural Development Districts	0	2	1	3	0.1%
Open Space Districts	0	0	1	1	0.0%
Suburban Neighborhoods Non-Residential Districts	1	5	1	7	0.2%
Suburban Neighborhoods Residential Districts	97	1	138	236	5.6%
<b>TOTAL</b>	<b>1,112</b>	<b>954</b>	<b>2,144</b>	<b>4,210</b>	<b>100.0%</b>

The Comprehensive Zoning Ordinance groups zoning districts in placed-based groupings that are intended to promote development that is representative of the character of the areas. Table 11 shows the total number of licenses with each of these groupings by license type and total licenses. A few groupings have very few licenses, including Open Space Districts, Suburban Non-Residential Districts, and Rural Development Districts. Even commercial groupings like the Commercial Center & Institutional Campus District and Historic Core Non-Residential Districts represent less than five percent of all active licenses. The major concentrations of Short Term Rental licenses are within residential district groupings in the Historic Core and Historic Urban neighborhoods. Over half of all active licenses are within an Historic Urban Neighborhoods Residential District, and an additional 14.8 percent are located within Historic Core Neighborhoods Residential Districts. It should be noted that the Historic Urban Residential Districts cover much more area than the Historic Core Residential Districts. The Historic Core Neighborhoods Residential Districts are generally limited to the French Quarter, Marigny, Bywater, and parts of Tremé. The Historic Urban Neighborhoods Residential Districts include numerous neighborhoods Uptown and in Mid-City, St. Roch, the Seventh Ward, the Lower Ninth Ward, and other older areas of the city.

The concentrations in historic residential neighborhoods is predictable given the business model for most short term rental platforms to promote staying within established neighborhoods, or “living like a local.” Additionally, the concentration in the Historic Core and Historic Urban neighborhoods is equally predictable because of their walkability and the nature of tourism in New Orleans and its focus towards the city’s unique architecture and culture that originated in many of the older parts of the city.

**Table 12: Active Licenses by Building Type**

Building Type	Total Licenses by Building Type	Percent of Total
Full Side of a Double	1,324	31%
Single Family Home	1,277	30%
Apartment or Unit in a Multi-Family Building (3+ Units)	1,165	28%
Condo	203	5%
Partial Rental in a Double	174	4%
NULL <sup>16</sup>	61	1%
<b>Total</b>	<b>4,204</b>	<b>100%</b>

The previous paragraph discussed concentrations of Short Term Rental licenses within the various zoning district groupings in the Comprehensive Zoning Ordinance. The placed based nature of these groupings hinted at the type of dwellings and buildings used to house these Short Term Rentals. Table 12 shows that 61 percent of active Short Term Rental licenses are conducting business within either a single- or two-family dwelling. This could be an expected conclusion given the previous table showing that the majority of Short Term Rental licenses are located within residential zoning districts. An additional 33 percent of active licenses were within condos and multi-family dwellings, a significant portion of this total is located in the Central Business District.

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<sup>16</sup> NULL values represent applications that did not provide the building type or the building type was not entered into the City’s LAMA permit tracking system.

**Table 13: Total Licenses by Neighborhood as a Percent of Total Housing Units**

Neighborhood	Number of Licenses	Total Housing Units <sup>17</sup>	Percent of Total Housing Units
Central Business District	492	2,556	19.2%
Seventh Ward	294	6,926	4.2%
Marigny	275	2,342	11.7%
Central City	260	8,702	3.0%
Mid-City	251	7,153	3.5%
Treme-Lafitte	243	3,137	7.7%
Lower Garden District	209	4,969	4.2%
Bywater	167	2,346	7.1%
St. Claude	161	3,856	4.2%
Fairgrounds	108	3,218	3.4%
St. Roch	102	3,952	2.6%
Leonidas	101	3,989	2.5%
Audubon	99	5,592	1.8%
Bayou St. John	98	2,316	4.2%
East Riverside	96	1,587	6.0%
Uptown	96	3,422	2.8%
West Riverside	93	2,815	3.3%
Irish Channel	92	1,963	4.7%
Milan	82	3,333	2.5%
Marlyville - Fontainebleau	73	3,028	2.4%

The table above lists the New Orleans neighborhoods with the largest total of active Short Term Rental licenses. Neighborhood boundaries were established by using the Neighborhood Statistic Areas developed in the 1970's to help track demographic and other data trends over time. The Central Business District, with nearly 500 licenses, has far above any other neighborhoods listed. This could be expected simply due to the density of the Central Business District, especially compared to the other neighborhoods with over 200 licenses: Marigny, Central City, Mid-City, Treme-Lafitte, and Lower Garden District. These neighborhoods are characterized mostly by single- and two-family dwellings, and are mostly within

<sup>17</sup> Data Center Neighborhood Profiles Data Tables 2017 (2012-2016 American Community Survey 5-year estimates)

Historic Urban or Historic Core Residential Districts. To give a better sense of the proportion of residential units being used for short term rentals within each neighborhood, the staff used 2012 - 2016 American Community Survey data for an estimate of total housing unit numbers. The Central Business District has, in total and proportionately, the greatest concentration of Short Term Rental licenses. According to this information, the 11.7 percent of the Marigny's housing units are used for Short Term Rentals, and 7.7 percent of Bywater, 7.1 percent of Treme-Lafitte, and 6 percent of East Riverside are used for Short Term Rental. Citywide, 2.18 percent of housing units had an active STR license on May 23, 2018.

## **E. Short Term Rentals Industry**

In addition to the different types of Short Term Rental (STR) licenses that are described earlier in this report, there are different platforms, business and operation models used and employed by those who own STRs. This section describes the different types of operations.

### **Platforms**

Commonly known as platforms, there are many businesses that specialize in internet advertising of short term rentals. Some companies, like Airbnb, facilitate short term rentals of partial-unit spare bedrooms, whole apartments, or whole houses. Others, like HomeAway or VRBO, facilitate rental of only whole homes. Unlike in the past, the most popular platforms with STR hosts and visitors facilitate not only the short term rental advertisement, but also the commercial transaction. The commercial transaction aspect of the service between local hosts, platforms, and visitors has provided a new avenue to require licensure and data sharing of the platforms with listings in New Orleans.

Many STR hosts use multiple platforms to reach the widest pool of potential visitors. In addition to registering with individual platforms, third party services are available that will facilitate a host's listing on multiple platforms.

### **STR Operators**

#### **Corporate STR Operators**

Some corporations specialize in providing STRs in markets across the country. These may include properties owned or long-term leased by the corporation. In the case of lease, this often means dwellings within an apartment building and possibly an entire apartment building. Leasing all the units in a building enables the company to better control the guest experience while minimizing interactions with other renters or owners. Corporate operators hire local people to manage the day-to-day operations, which can include concierge services, repairs, and housekeeping.

#### **Residential STR Operators**

Residential STR operators are individuals who own and handle nearly all of the STR operations on their own. This may include people who only rent spare rooms or units on property where they reside. Some local individuals also own multiple STR properties or units, but are at a scale small enough to be managed by one person. Most would likely still employ the services of other local people for housekeeping and repairs.

#### **Property Managers**

Like with corporate operators, property managers may be employed in any case where the owner is unable to handle the operations. This could include non-local owners or owners who own multiple rentals. It could also include owners who do manage their own properties, but need a temporary manager while they are traveling.

#### **STR Service Providers**

Many STR owners and operators employ the services of local people to manage the day-to-day operations, which can include concierge services, repairs, landscaping, and housekeeping. Additionally, service providers can include noise monitoring where sensors are installed to detect noise at levels set by the

operator and alerting the operator when a problem is detected. Some jurisdictions require noise monitoring after an infraction of the local noise ordinance or reported disturbances.

### **Compliance Companies**

Several companies specialize in helping cities and other jurisdictions ensure compliance with regulations including registration, permitting, and enforcement processes. This can include monitoring across multiple platforms where hosts may exceed a limit on the number of days a certain STR type is allowed to operate.

## **F. Best Practices**

In 2015, the City Planning Commission researched short term rental best practices by comparing the regulations from fourteen cities across the country. Most of these cities had recently implemented the first version of their STR regulations. In the years that have transpired since New Orleans' first study and the current study, several of the cities that were initially researched have modified their STR regulations in response to growing concerns regarding how short term rentals affect the cities, communities and neighborhoods in which they are located. Some of the cities that have amended their regulations in the intervening years will be discussed further in this section such as Austin, TX, Charleston, SC, Nashville, TN, San Francisco, CA, Santa Monica, CA, and Savannah, GA.

The initial STR study in 2015 examined eleven categories, including definitions, size limitations, owner occupancy, fees, notices, taxes, fines and enforcement as well as building code and inspections; key findings were summarized in each respective category. Analysis of these categories prompted CPC staff to heavily urge policy that would ensure the life safety of guests including the presence of smoke alarms and carbon monoxide detectors. The study also found some of the most impactful and important aspects of successful STR regulations were through fines and enforcement. Specifically, the study found that fines need to be high enough to deter noncompliance in conjunction with an effective enforcement team.

At the time of the first study, New Orleans had not yet implemented comprehensive STR regulations. Researching the STR regulations in other cities illuminated the need to create adaptable policy as the STR industry continually evolves and its impact on the citizens, neighborhoods and economy changes. The initial 2015 study acknowledged several of the cities studied were grappling with the need to create all-encompassing regulations while still determining the impacts of the industry; even in 2015, several of the cities studied were in the process of updating their STR regulations despite having regulations in place for only a short period of time.

Three years after the first study and nearly a year and a half after the implementation of New Orleans' first iteration of STR regulations, New Orleans is once again looking at other cities to inform potential modifications to the current short term rental regulations. The City Planning Commission was directed by New Orleans' City Council to research four specific cities' short term rental policies. These cities have modified past regulations recently to address concerns regarding their initial short term rental regulations. These four cities are Austin, Tx, Charleston, SC, Nashville, TN, and Savannah, GA, which were selected based upon their population, scale, region, tourist destination and other similarities that would make the cities comparable to New Orleans. The CPC staff individually interviewed representatives of four cities cited in the Ordinance; a breakdown of their policies will be the focal point of this section. However, the City Planning Commission also researched Boston, MA, Chicago, IL, New York City, NY, San Antonio, TX, San Francisco, CA, and Santa Monica, CA, to provide a comprehensive overview of the different mechanisms cities across the nation have implemented to regulate short term rentals, particularly those that are also large tourist destinations experiencing an affordable housing crisis.

The cities researched expand the spectrum of STR regulations. Charleston, SC, implemented the most stringent of the regulations researched, while Savannah, GA has incorporated the most lenient. The following section will delve into each of the aforementioned city's ordinances to extract any generalizable, successful regulations that may influence new STR regulations in New Orleans.

### **Austin, Texas**

The City of Austin created loose STR requirements in 2012 that hindered the ability for the city to regulate and enforce the requirements. The City subsequently established more stringent regulations that were

implemented in 2016. The new ordinance was passed on February 23, 2016, with all sections of the ordinance going into effect on March 5, 2016 with the exception of certain sections (sections 4-5) which went into effect on April 1, 2017. Austin defines short term rentals (STRs), as the rental of a residential dwelling unit or accessory building on a temporary basis for periods of less than 30 consecutive days. At the time of this report, Austin had a total of 2,130 short term rentals and 130 applications pending.

Austin has three types of short term rentals, classified as Type 1, 2 and 3 STRs. Type 1 STRs are owner-occupied single-, two-family, or multi-family structures. Type 1 STRs may include the rental of the entire dwelling (primary) or only part of the unit (secondary). In order to be issued a permit for a Type 1 permit, the owner must submit documentation that their information matches the deed of the house as recorded. There are approximately 913 primary and 212 secondary Type 1 licensed STRs in Austin at the time of this report.

Type 2 STRs are non-owner-occupied single- and two-family residences. Type 2 STRs include the rental of the entire structure and are not associated with an owner-occupied principal structure. Type 2 STRs cannot be located on a lot 1,000 feet from another Type 2 STR, unless the license was issued before November 23, 2015. In addition, no more than 3% of single-family residential houses within the census tract of the property may be operated as a Type 1 (second dwelling or secondary apartment) or Type 2 STR. Type 2 STRs are also restricted in specific commercially zoned districts. This type of STR is being phased out under the new ordinance and will ultimately be eliminated by April 1, 2022. Type 2 applications submitted after April 1, 2017 will only be accepted for certain commercial zoning areas pending availability within the census tract, and will be discontinued on April 1, 2022, unless the license is not renewed, in which case the STR becomes discontinued. There are approximately 243 Type 2 STRs in Austin at the time of this report.

Type 3 STRs are multi-family structures that are not owner-occupied and include the rental of an entire dwelling unit. Type 3 STRs are subject to the census tract caps and no more than 3% of the total number of dwelling units located within the structure can be used for short term rentals when located in non-commercial zoning districts. For those located in commercially zoned districts, no more than 25% of the total number of dwelling units located within any building can be used as short term rentals. There are approximately 453 Type 3 STRs in Austin at the time of this report. These new regulations are currently being challenged in the Court of Appeals for the Third Judicial District in Austin.

### **Size limitations**

An STR may not be used by more than 10 adults at one time or by 6 unrelated adults.

### **Location limitations**

Type 1 and Type 3 STRs do not have restrictions based on the zoning districts in which they are located or caps per distance. A Type 2 STR may not be located on a lot that is within 1,000 feet of a lot where another Type 2 STR is located unless the license was issued on or before November 23, 2015 and has been renewed timely. Type 2 STRs in single family districts will be eliminated by 2022. No more than 3% of the single-family units within the census tracts may be used as short term rentals for Type 2 short term rentals or for Type 1 (second dwelling or secondary apartment). Type 3 STRs located in non-commercial zoning districts, no more than 3% of the total number of residential dwelling units located within any structure may be used as a short term rental. Type 3 STRs located in commercial zoning districts are capped at 25% of the total number of residential dwelling units at the property and no more than 25% of the total number of dwelling units located within any structure.

## **Application Materials**

The City of Austin requires the following as part of their application process for an STR license:

- Must submit proof of property insurance
- Proof of payment of hotel occupancy taxes as of the date of the submission if renewing
- The director shall mail notice of the contact information for the local contact to all properties within 100 feet of the short term rental at the licensee's or operator's expense
- Must provide a local contact name
- Certificate or Occupancy or certified inspection
- Driver's license

## **Challenges**

Staff from the City of Austin stated manipulation of homestead exemptions has been an issue. Austin does not have a working relationship with the online platforms, which makes enforcement difficult.

## **Fees**

A STR operator must pay \$443.00 to apply for a license which will most likely be raised closer to \$600.00 next year and the fee to renew a license is \$236.00, but will be raised close to \$400.00 next year. There is an addition of \$100.00-200.00 noncompliance fee for those operators who were cited for a violation within the year prior to applying or renewing their license.

## **Taxes**

Property owners are responsible for registering for and obtaining a taxpayer ID in order to pay the State of Texas's 6% Occupancy tax. Those properties with the Full Purpose Jurisdiction are subject to the City of Austin Hotel 9% Occupancy tax as well.

## **Fines and Enforcement**

Neighbors are notified if there is a STR citation but provide no input. The first penalty is \$500.00, second is \$750.00 and third is \$1,000.00.

Austin has six inspectors that work at night Friday and Saturday nights until 11:00PM and Thursday-Sunday during check out time.

## **Building Code and Inspections**

The applicant must provide an approved life-safety inspection or a Certificate of Occupancy issued in 2006 or later.

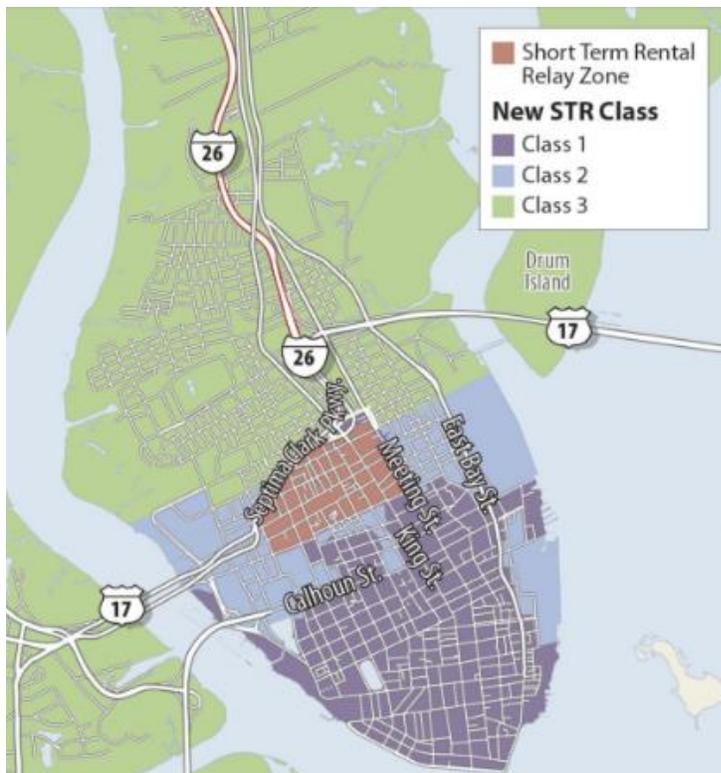
## **Charleston, South Carolina**

Charleston, South Carolina, recently implemented new Short Term Rental regulations that went into effect on July 10<sup>th</sup>, 2018. The new policy was approved after a 16 person task force spent a year researching short term rentals in Charleston, and after conducting numerous meetings with various stakeholders. The task force subsequently provided recommendations to the City Planning Commission three times for review and received final approval on April 10, 2018.

In Charleston, a short term rental is defined as a conditional use to provide sleeping accommodations for a period of 29 days or less. Charleston has three categories of short term rentals and a Short Term Rental Overlay Zone that are defined based on the where in the City they are located. Category 1 is specifically for properties located in the Old and Historic District. Category 2 are those properties located on the peninsula but outside of the Old and Historic District and not within the Short Term Rental Overlay Zone. Category 3 are all properties located outside of the peninsula, and the Short Term Rental Overlay Zone is a small area of grandfathered whole-home short term rentals located on the peninsula. Short term rentals are further defined as either a commercial short term rental use or a residential short term rental use, each with different permitting and operational requirements. It is important to note that the conditional use process in Charleston simply means further verification and overview through an administrative process; the application does not go through same process as the conditional use process in New Orleans. At the time of this report, Charleston had 260 legal STRs and estimated approximately 1,000-1,025 illegal STRs. Charleston's STR team includes a total of 8 employees.

Charleston has general STR requirements for all STRs regardless of category. They are as follows:

- STR shall be operated by the record owner of the subject property and who will reside overnight on the property while residential STR guests are present (only pertains to categories 1, 2, and 3).
- In order to qualify for an STR license, the record owner of the property needs to physically reside at the residence for at least 183 days of the year and has designated the subject property as his/her legal voting address and the address of his/her driver's license.
- A current guest registrar will be kept at the subject property (only pertains to categories 1, 2, and 3).
- The resident owner will provide a rental packet to guest with applicable city rules and pertinent unit safety information.
- The property shall not contain signs that advertise the STR use.
- The record owner of the subject property must keep in full force (during times the STR is operated) a general liability policy insuring against personal injury and property damage with a limit no less than \$1,000,000.00 per occurrence. No physical proof other than an attestation is required.



**Figure 10: Charleston’s STR Zoning Map**

All STRs not within the ST Rental Overlay District need to be owner-occupied and the owner must reside overnight at the residence while STR guests are present.

**Size limitations**

Any STR in Charleston, regardless of category, cannot host more than 4 adults at one time.

**Location Limitations**

Charleston has three categories of STRS plus a Short Term Rental Overlay Zone. All STR properties not within the overlay zone are prohibited from renting whole-home STRs and must fall within the 4% tax exemption for owner-occupied properties, which indicates the dwelling is used as the owner’s primary residence. Those in the Short Term rental Overlay Zone are not required to be the owner’s primary residence but are the only properties in Charleston allowed to operate in this way

as their use has been grandfathered to the property.

Charleston restricts STRs based on location but not zoning districts. Category 1 STRs are located in the Old and Historic District of Charleston. An STR in Category 1 must meet the general requirements for an STR and must provide one off-street parking space for the STR, in addition to any off-street parking required for other uses on the property. The STR unit must also not displace an existing dwelling unit which had been occupied within one year prior to the filing date of the application which is determined based on utility records. Additionally, STRs in this category must be registered on the National Register of Historic Places, which restricts eligible STRs in this category to only 27 structures, which is nearly a complete ban.

Category 2 STRs are located outside the Short Term Rental Overlay and the Old and Historic District, but are still located on the peninsula. An STR in Category 2 must meet the general requirements for an STR and must provide one off-street parking space for the use of the STR, in addition to any off-street parking required for other uses on the property. Additionally, STRs in this category must be located in a building constructed 50 or more years ago.

Category 3 STRS encompass all of the areas off of the peninsula. An STR in Category 3 must meet the general requirements for an STR and must provide one off-street parking space for the specific use of the STR, in addition to any off-street parking required for other uses on the property.

The fourth category, the Short Term Rental Overlay Zone, was created in 2012 and pertains to only one area of the Historic Peninsula. All the properties that operate as short term rentals in the overlay district were grandfathered under the new regulations and are the only properties allowed to operate as non-owner-occupied short term rentals. The overlay zone allows commercial short term rentals to be located on commercially zoned properties within the ST Overlay Zone. In addition to meeting the general requirements

for an STR, the owner must receive a business license and comply with revenue collection laws. The dwelling converted into an STR must not be designated as an affordable housing unit or a workforce unit, and no more than 9 STR units shall be permitted on one lot. If 10 or more STR units are located on a lot, they would be reviewed as an accommodation, which would be similar to a hotel.

### **Application Materials and/or procedure**

The following is a list of documents that must be submitted for review prior to the issuance of an STR license in Charleston:

- Site plans that indicate where the guests will stay and park their car(s) via a floor and site plan.
- Photographs of the structure where the STR is to be located.
- Notarization of application.
- Hosts will need to tell the city how many adults they're hosting.
- Floor plans drawn to scale of the habitable structures that designate all rooms to be used by STR guests, and the specific room or rooms to be used by guests for sleeping.
- A statement which the resident-owner must sign acknowledging that he or she has reviewed and understands the requirements of the ordinance and the applicable section for the category or permit requested.
- Obtain business license which has to be renewed annually.
- After applicant has applied for permit, a notice shall be posted on the subject property for 15 days advising the neighborhood that the owner has applied for a zoning permit to establish a STR use at that location. During this 15 day period, the zoning administrator will determine if an STR permit can be granted.

### **Challenges**

Charleston's biggest issue is their compliance rate of only 50%. In addition, the City does not have a working relationship with the host platforms.

### **Fees**

There is a \$200 application review fee, a \$40 fire and inspection fee, a \$32.21 plan review fee, and an additional \$32.61 per number of floors in the unit being inspected. These fees will be collected when the permit is received. There is a \$64 business license fee, plus an additional \$3.90 per \$1,000 of expected income.

### **Taxes**

STR hosts must collect taxes and remit them to both the state and local tax authorities. Airbnb will automatically collect state-administered sale and lodgings taxes, but not local taxes, which is on the responsibility of the host. Hosts that utilize other rental platforms must remit both state and local taxes.

### **Fines and Enforcement**

Three new enforcement officers were hired to specifically focus on the enforcement and monitoring aspects of STRs. Charleston will also use a data-scraping software to gather information from online listings, such as bedroom counts and addresses to help identify illegal listings or those violating the regulations. Property owners who violate the rules can be fined up to \$1,087 a day, and possibly face 30 days in jail. The city will start with warning letters to properties in question.

## **Building Code and Inspections**

A fire and safety inspection must be performed by the fire marshal prior to issuance of the STR permit.

### **Nashville, Tennessee**

Nashville, Tennessee enacted the first of their Short Term Rental (STR) Regulations July 1, 2015. Nashville updated and amended these regulations on January 23, 2018. Short Term Rental Property in Nashville is defined as a residential dwelling unit containing a maximum of four sleeping rooms that is used for transient occupancy by guests for less than 30 days. The new regulations aimed to phase out non-owner-occupied whole-home STRPs in residentially zoned neighborhoods by June 28, 2020. The new regulations allow operators to continue operating whole-home rentals in residentially zoned districts and renew their permits until the sunset date. Additionally, non-owner-occupied STRPs and multi-family dwelling STRPs may still exist in non-residentially zoned districts, and owner-occupied short term rentals may continue to operate regardless of the zoning district in which they are located. The new regulations also restrict the number of guestrooms allowed per STRP to four and the number of individuals allowed in an STRP to two for each sleeping room, plus four other individuals. The ordinance is an attempt by the City of Nashville to curb displacement of long-term residents and mitigate negative impacts oftentimes associated with STRPs such as noise.

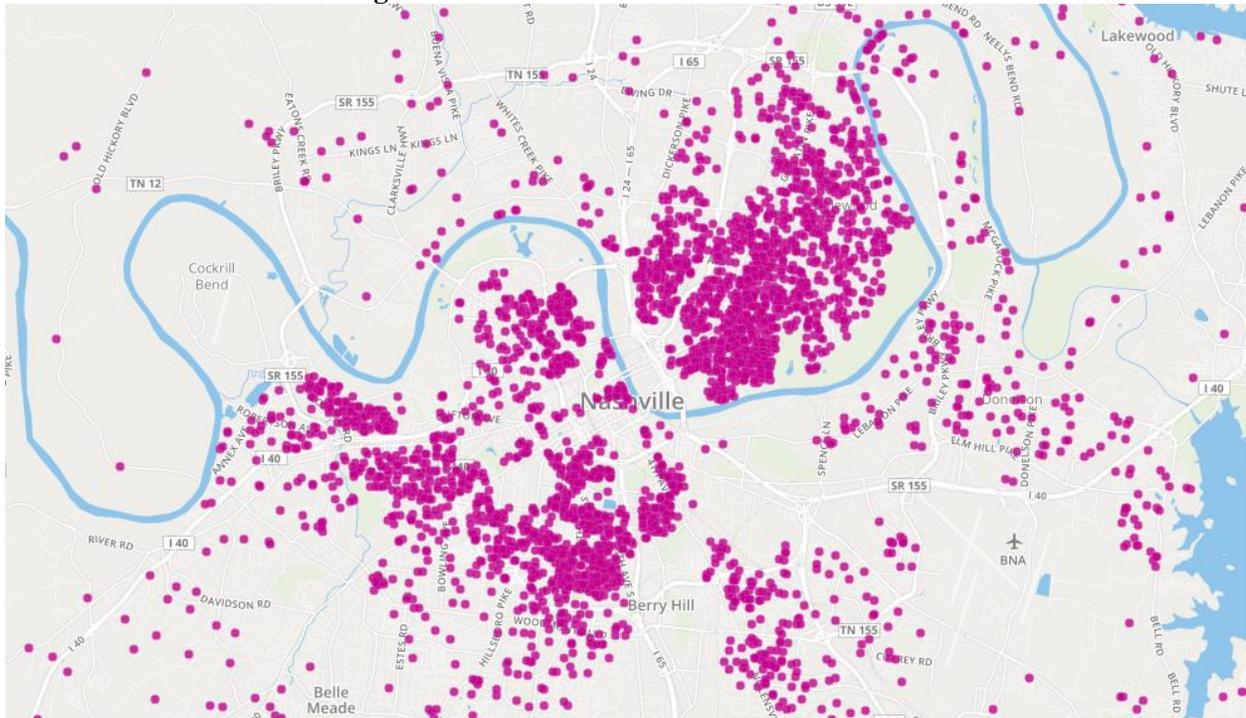
Essentially, the newly adopted City regulations establishes two distinct land use classifications for short term rentals: short term rental owner-occupied, and short term rental non-owner-occupied. Short term rental owner-occupied, is either an owner-occupied residence or a residence on a lot with an owner-occupied residence. Owner-occupied STRPs are only allowed to rent to a single party of individuals and the owner must be a natural citizen (not a corporation or LLC) and prove ownership by providing two documents showing that the residence is occupied as their primary residence. Acceptable documents may include a Tennessee driver's license, State of Tennessee ID card, Davidson County voter registration card, pay stub, work ID or badge, IRS W2 form, or bank statement. The documentation of primary residence address must match the deed as recorded with the Davidson County Clerk's office. Owner-occupied STRPs are classified as an accessory residential use and are permitted in most zoning districts where residential uses are permitted.

When the ordinance was passed, it included a phase out provision that would eventually eliminate existing non-owner occupied short term rentals located in single and two-family zoning districts. Subsequently, Airbnb and other host platforms lobbied the State of Tennessee to restrict City control of STRPs and courted the state to pass the "Short Term Rental Unit Act" bill on April 24<sup>th</sup>, 2018, which blocks important aspects of Nashville's ordinance passed in January of 2018. The bill grandfathers whole-home STRPs located in residential districts past the sunset date as long as the operator continues to renew their license. The exemption would last only until the whole-home STRP is sold or is no longer listed on rental sites like Airbnb or VRBO. The zoning code has not been changed to reflect this state law and therefore the phase out provision is still included but not enforceable.

Short term rental, non-owner occupied, is classified as a commercial use and is only permitted in zoning districts where multi-family residential and hotels are permitted. Rentals are limited to a single party of individuals and are not permitted in R or RS zoned properties. Existing permit holders in these zoned districts may be eligible to apply for renewals, but those permits are not transferable if the property is sold. No new permits for non-owner occupied houses will be issued.

At the time of this report, the City of Nashville had issued 3,840 STRP licenses with approximately 50-60% compliance.

**Figure 11: STRP Permits Issued in Nashville**



The City of Nashville has general requirements that must be met by any STRP operation. These requirements include but are not limited to:

- Maintaining smoke alarms in all locations required by the Fire Marshal.
- Maximum of 12 individuals permitted on an STRP property at any one time.
- The prohibition of food served to the guests by the permit holder or manager.
- Minimum age of the principal renter of a STRP unit is at least 21 years of age.
- The name and telephone number of the local responsible party shall be conspicuously posted within the STRP unit who will be available 24/7 to answer any problems that may arise during the stay of their STRP guests.
- An issued permit does not authorize any person, other than whose name appears on the permit, to operate an STRP on the property.
- An issued permit is valid for one year unless renewed prior to its expiration date.

### **Size limitations**

The maximum number of occupants permitted on a STRP property at any one time shall not exceed more than twice the number of sleeping rooms plus four and is relegated to a single party of individuals (maximum of 12).

If the STRP is only within part of the residence, it must include a minimum of one sleeping room and a bathroom, and is also limited to a single party of individuals.

### **Location limitations**

Nashville previously used census tracts to limit the number of non-owner-occupied STRPs to no more than 3% of the single-family and two-family units within each Davidson County census tract. This restriction was extremely difficult to enforce and was removed under the new regulations passed in January, 2018.

Owner-occupied STRPs are able to operate in any zoning district. However, non-owner-occupied STRPs are restricted to commercial areas. New non-owner-occupied permits are not permitted in R or RS zoned properties. Existing permit holders in these zoned districts may be eligible to apply for renewals, but those permits are not transferable if the property is sold.

### **Application Materials**

In order to receive an STRP permit, the applicant must provide the following:

- Floor plan of residence showing number of bedrooms and location of smoke alarms. The floor plan can be hand-sketched (number of sleeping rooms will be checked against the tax assessor's record). Floor plans need to show details of all levels of the house and any attached structures, location of windows, doors (interior and exterior), and locations of the required smoke detectors.
- Owner-occupied status must be confirmed by two documents showing that the owner in fact occupies the structure as their primary residence. The State of Tennessee does not issue Homestead Exemptions, therefore, acceptable documents may include a Tennessee driver's license, State of Tennessee ID card, Davidson County voter registration card, pay stub, work ID or badge, IRS W2 form, or bank statement. Such documentation of primary residence address must match the deed as recorded with the Davidson County Clerk's office.
- Proof that all taxes have been remitted including property, occupancy, and sales taxes.
- Name and contact information for the person who will be the responsible party for the STRP. This person must live within a 25 mile radius of the subject property.
- To qualify for an owner-occupied permit, the owner of the property must be a natural person or persons, not an LLC, corporations, trusts, partnerships, or joint venture.
- Proof of written notification to the owner of each adjacent property prior to filing the application.
- Application needs proof of insurance for fire, hazard and liability not less than 1 million dollars per occurrence.
- STRs require fire inspection by a fire marshal prior to the issuance of the STRP license.

### **Challenges**

The biggest challenge Nashville has faced implementing their regulations has most likely been the State of Tennessee intervening the regulations. Additionally, residents have expressed concern that STRPs are reducing the quality of life in neighborhoods, and turning the residences into micro-hotels. Since most violations occur at night when inspectors are not working, properly citing bad actors is challenging.

Similarly to other cities, Nashville does not have a working relationship with the platforms and struggles with compliance, and enforcing hosts to remit their hotel/motel taxes.

### **Fees**

There is a \$50.00 dollar fee for the issuance as well as renewal of an STRP permit. The City of Nashville is currently considering increasing the fees to reflect actual costs.

### **Taxes**

Hotel/motel tax is 6% with the addition of a 9.75% sales tax.

Nashville requires STRP operators to pay city lodging taxes. Effective March 1<sup>st</sup>, 2018, Airbnb agreed to collect state and local sales taxes on the platform's site. This means that Airbnb will collect the taxes on

behalf of Nashville hosts. However, hosts who list on any of the other short term rental platforms such as HomeAway or VRBO, are responsible for remitting all taxes due from their rental.

### **Fines and Enforcement**

Nashville has a five year contract with a regulatory company named Host Compliance that scours online STRP listings and provides data on compliance. Using Host Compliance, the City was able to increase tax collection and find illegal listings. After an STR incurs three violations, the City can remove their permit.

### **Building Code and Inspections**

In order to receive an STRP permit, a fire marshal inspection is required to ensure the structure has proper ingress and egress in case of a fire as well as working interconnected smoke alarms and windows in all sleeping rooms. Smoke alarms are also required in all pathways leading from the sleeping area to the door of egress. No other inspections occur prior to receiving an STRP permit.

### **Savannah, Georgia**

In 2015, Savannah enacted the first iteration of their Short Term Vacation Rental (STVR) regulations. A STVR is defined as the rental of an entire residential structure, including single-family residences, townhouses and multi-family apartments for 30 days or less, that may or may not have an on-site manager. STVRs were permitted in Mixed-Use zoning districts where inns were already permitted under these regulations.

In September of 2017, after several meetings with various stakeholders, the city of Savannah amended their STVR regulations to address concerns regarding Short Term Vacation Rental impacts on citizens and the community. Previously, the STVRs located in the Victorian District needed approval by the Zoning Board of Appeals. However, the amendment to the regulations removed this restriction and permitted STVRs by-right in the Victorian District, subject to a 20% ward cap (described in more detail below). The amendment also allowed STVRs to operate in the Traditional Neighborhood (TN-2) District, limited to accessory dwelling units (such as a carriage houses) if the principal residence is owner-occupied.

The Tourism Management Department and Ambassadorship (TMAD) processes STVR applications, provides enforcement, and handles the other regulatory aspects of the STVR program. There are currently three employees in the STVR department which include the director plus one full-time employee. The City had 1,350 registered units as of June 13, 2018.

In addition, Savannah is currently considering utilizing STVRs as a means to help revitalize distressed residential areas. The STVR would be legal for three to five years with a sunset provision. This prospective program would help investment in under-resourced neighborhoods. However, Savannah has yet to fully research this initiative.

## Size Limitations

Savannah limits the number of adults that may stay in a short term vacation rental per guestroom. The number of adults allowed to stay in STVRs was reduced from past regulations which allowed two adults per bedroom plus two adults for each dwelling. Under the new regulations, occupants may not exceed two adults per bedroom.

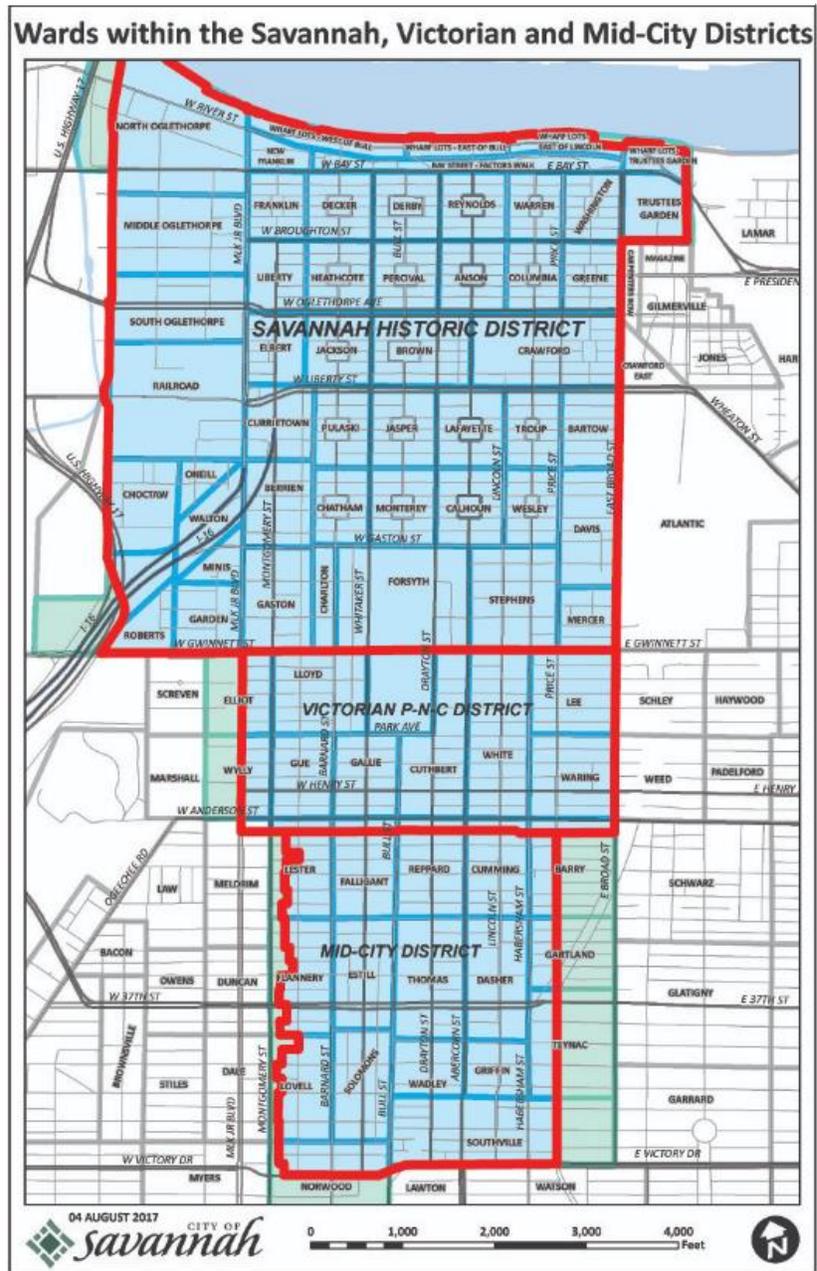
## Location Limitations

Savannah has three main districts, the Historic, Victorian and Mid-City District. The majority of STRVs are located within the Historic District. In addition of the three districts, the city is separated into 40 individual wards that do not necessarily align with zoning districts. The wards are typically square in shape and encompass the entirety of the City. Under the new regulations, a 20% cap was placed on the number of non-owner STRVs allowed in each ward, although there is no cap for STRVs located in a commercially zoned district. There are only 10 wards which have not yet reached the 20% limitation, most of which are within the Mid-City District. In many of the wards that have reached the 20% limitation, the number of STRVs may actually exceed the 20% cap because owner-occupied STRVs are not counted towards the 20% restriction.

A 20% per-ward cap is applicable to non-owner occupied parcels in the Historic District located in the Conservation and Residential zoning districts as well as Non-owner occupied parcels in the Victorian District located in the 1-R, 2-R and 3-R zoning districts. 22 wards have reached the maximum cap in the Historic District and 9 wards have reached maximum cap in the Victorian District cap. The City maintains a waiting list for capped wards.

All parcels including non-owner occupied and owner-occupied parcels with STVR certificates and applications filed before September 28, 2017 have been counted when determining the per-ward cap.

Figure 12: Wards in Savannah



Renewals of pre-existing STVR certificates issued before September 28, 2017 will not be denied even if the issuance of an STVR license causes the ward in which it is located to exceed the 20% cap.

### **Application Materials**

The following is a list of documents that must be submitted for review prior to the issuance of an STVR license in Savannah:

- Proof that adjacent property owners have been notified
- Proof of insurance that covers the premise used as a short term rental.
- Code Compliance verification form indicating the residence has proper ingress and egress in case of a fire, working windows, one fire extinguisher per floor, one smoke alarm located inside and outside of each sleeping room, and a carbon monoxide alarm located in the general vicinity of the sleeping area.
- The property owner must identify an individual as part of the application to handle any issues that may arise during a renter's stay. They must be able to appear on the property within 2 hours of the issue.
- A written exemplar agreement which is executed between the owner or rental management Company and the tenant for non-owner occupied residences.
- If applying for an owner-occupied STVR: proof of property ownership is required, such as a homestead exception, affidavit, valid driver's license or identification card, registration for vehicles owned by and registered in the name of the applicant, a Chatham county Voter's Registration card or previous year's W-2 Form or Internal Revenue Service Tax Return.
- Off-street parking is required for properties with more than three bedrooms but is grandfathered for properties that received a license prior to implementation of new regulations, unless the property has over 4 STVR units.

Once the application has been processed, the applicant will be notified to obtain a Business Tax Certificate (BTC) from the Revenue Department. The applicant needs to provide a copy of the Business Tax Certificate as part of the application before an STVR can be issued.

### **Challenges**

The biggest challenges Savannah faces regarding STRVs center around four issues: illegal operation, expired certificates, quality of life issues, and modifications to exterior appearance. In addition, the 20% cap on non-owner STVRs per ward is difficult to enforce. Similarly to the other cities researched in this section, Savannah does not have a working relationship with any of the host platforms.

### **Fees**

Under the former regulations, the application fee was \$150.00 and the renewal fee was \$50.00. Under the amended ordinance, the fees were raised to \$300.00 for the application and \$150.00 for the renewal fee.

### **Taxes**

In 2015, the Revenue Department began to use a new software program called *Govern* to help manage the hotel/motel tax revenue remittance. *Govern* monitors the business tax certificate account numbers and the amount of monthly hotel/motel tax remitted for STVRs. Short term rental operators are required to remit 6% local hotel/motel tax to the City's Revenue Department by the 20<sup>th</sup> day of the following month. In addition to the local/motel tax, the 7% State Use and Sales Tax must be remitted to the Georgia Revenue

Department by the 20<sup>th</sup> day of the following month. Taxes owed can be tracked with the Business License number and all taxes must be remitted by the STVR operator.

### **Fines and Enforcement**

Savannah has a tiered fine structure. Any violation of zoning, building, or life safety codes results in a fine ranging from \$500.00 to \$1000.00 a day. After three strikes, the city has the right to revoke licenses for one year.

### **Building Code and Inspections**

A state code prohibits Savannah from performing inspections of single-family houses. So, building officials and the local fire marshal developed a code compliance attestation form for STVR operators that recommends minimum safety guidelines. The code compliance document is required as a part of the STVR application.

In addition to the cities discussed above, the following cities have all recently changed their Short Term Rental regulations and are noteworthy examples of evolving STR policy:

### **Boston, Massachusetts**

In January of 2018, Mayor Marty Walsh of the City of Boston proposed an ordinance to regulate Short Term Rentals for the first time. The first proposed ordinance initially allowed for investor units to rent out whole residences for 90 days of the year. However, the proposed ordinance was amended in May of 2018 and approved in June. Specifically, the approved ordinance removed this provision, prohibiting investors and tenants from renting out whole houses. The new regulations will take effect January 1, 2019 which will prohibit approximately 2,000 “investor units” from operating as de facto hotels. However, owner-occupied residential dwellings that contain two or three units will be allowed to rent one of those whole units 365 days a year to short term rental guests. Existing short term rentals that have received proper licensing may continue to operate through August of 2019. Another important provision of the new ordinance mandates that the booking platforms have to submit data to the City of Boston monthly, including the number of nights short term rental property was rented, if the rental was for a room or for an entire dwelling, and the location of the rentals.

In July 2018, Massachusetts’s State and House legislature sent their Governor a bill to make Massachusetts the first state in the country to create a rental registry where the street addresses of all STRs would be listed on a public database. The bill would also subject STRs to certain taxes. At the time of this report, the Governor of Massachusetts, Charlie Baker, returned the bill back to the legislature with proposed amendments such as exempting homeowners that rent out their residence for less than 14 days. He also proposed limiting the type of information that could be made public on the rental registry to protect the identities of short term operators. The legislature has yet to vote on the amendments.

### **Chicago, Illinois**

The City of Chicago implemented their Shared Housing Ordinance on June 22, 2016, which went into effect December 17, 2016. The ordinance requires hosting platforms to register with the City for an annual fee. Hosting platforms are classified into two categories: Intermediaries and Advertising platforms. Intermediaries, such as Airbnb, that list short term rentals registered with the City on the company’s website, would have to provide data on the listings twice monthly to the City and provide insurance on behalf of their hosts. Advertising Platforms, such as HomeAway, which lists licensed vacation rentals, is also required to provide unit registration data to the City. Since the ordinance was approved, only one

platform has registered with the City, Airbnb. Other hosting platforms such as HomeAway have been operating in apparent violation of the law.

The ordinance also requires owners operating their home/unit as an STR to register as a licensee with the City and establishes a process for promptly removing listings from platforms. A “quality of life operational plan” includes the process for expedited removal of nuisance units, units linked to criminal activity or that pose a threat to public health, safety and welfare of the neighborhood.

Chicago is unique in that it allows registered voters to request that specific residential zones prohibit new short term rentals for four years in a precinct, which is the smallest constituent territory within a ward. The petitioner requesting the restriction must be registered to vote in the precinct to which he/she is proposing to restrict the new or additional shared units, and the precinct must contain at least one residentially zoned property with a RS1, RS2, or RS3 designation. After the petitioner requesting the prohibition receives at least 25% of the residents’ signatures on a petition within that precinct, the City Clerk will determine if the petition is legally valid.

Additionally, Chicago maintains a Prohibited Buildings List which went into effect on July 15, 2016. Any building owner may request to place their building on the Prohibited Buildings List which bans these buildings from being used as short term rentals.

### **New York City, New York**

In October of 2016, Governor Cuomo signed a new law that prohibits advertising a short term rental in apartments classified as “Class A”- permanent residency multi-family buildings. While it has been illegal in New York since 2010 to rent out most apartments for fewer than 30 days if the owner or tenant is not living in the unit, the new law makes it illegal to advertise these rentals on online platforms such as Airbnb, VRBO and HomeAway.

New York City recently passed new legislation in July of 2018 requiring short term rental platforms, or “booking services” to submit monthly reports of STR transactions to the Office of Special Enforcement beginning in February 2019. The legislation mandates that the monthly reports provide information regarding the physical address of the short term rental, contact information of the short term rental host, information if the rental is a room or a whole unit, total number of days the dwelling unit or room is rented as a short term rental, and the total amount of fees collected. If the hosting platforms fail to comply, they could be charged up to \$1,500 for each listing not disclosed. This information will help the City regulate illegal listings.

Additionally, New York City requires a Certificate of Occupancy that states the use and occupancy of the building. An inspection is required if the use transitions from long-term rentals to transient uses, requiring an “amendment” of the certificate. The inspection would ensure the residence complies with the New York City fire and building codes which are more stringent than those for long-term rentals.

New York City set the precedent for the “one host one home” philosophy that has been advocated for by many New Orleans’ residents. In New York City, short term rentals of less than 30 days in multi-family units without the host are strictly illegal.

### **San Antonio, Texas**

The City of San Antonio is in the process of creating their first short term rental policy that has yet to be formalized. The draft ordinance has gone through several iterations; the most recent of the draft ordinances will be discussed in this report.

San Antonio is proposing two types of STRs. Type 1 which is owner- or operator-occupied and can be an individual dwelling room or an entire dwelling structure, as long as the owner or operator can prove the residence is their legal residence. Renters (or operators) may be considered in this category as long as the residence is their primary dwelling and they have explicit consent from the property owner. Type 1 STRs can also be in multi-family buildings when the unit is not owner- or operator-occupied but is located on the same land parcel as an owner-occupied unit of common ownership.

Type 2 STR is not owner- or operator-occupied and includes the rental of the entire or partial dwelling unit. STRs are subject to provide one parking space per STR unit or a permit will not be issued.

In residential districts, no more than 12.5% of Type 2s are allowed on the blockface, which also includes bed and breakfast establishments. In multi-family buildings with 1 to 7 units, only 1 unit is allowed to be a Type 2 STR. In multi-family buildings with 8 or more units, Type 2s may occupy 12.5% of the units. The proposed ordinance would allow special exceptions if a blockface has reached its density limit. For example, if the applicant can prove they are rehabilitating a “distressed” structure, can demonstrate that the use as a Type 2 Short Term Rental is the only way in which to rehabilitate the structure and that it won’t negatively impact the quality of the neighborhood, the applicant may be granted a special exception which would allow more Type 2 STRs than what would be allowed with the density cap.

### **San Francisco, California**

San Francisco had a prohibition on utilizing housing stock for short term rentals for several decades, but in 2014, the ban was repealed when the first short term rental regulations were enacted, and then amended again only a year later in 2015. The regulations prohibit investor, or non-owner-occupied dwelling units used for the purpose of short term rentals. San Francisco, similar to many other large cities in the nation, is experiencing a severe shortage of affordable housing. Without proper regulation and cooperation from the platforms, tenants were being evicted from their residences in order to convert the property into illegal short term rentals. San Francisco subsequently settled a law suit that made it illegal for platforms such as Airbnb to collect fees for providing booking services for unlicensed STR units and also created a system where short term rental hosts could register through Airbnb rather than through the City.

San Francisco does not place a ban on location or density of STRs, but does impose other noteworthy regulatory aspects of their STR laws. A tenant in San Francisco is allowed to rent out their unit as long as it is their primary residence; however, they are not to make more than their monthly rent in STR fees charged to guests. Both owners and tenants are allowed to rent out a unit in their residence for 365 days of the year if they are also present overnight (hosted rental), but are limited to 90 days if the tenant or owner is not present overnight (un-hosted rental). San Francisco also prohibits certain types of dwelling conditions from being used as a short term rental, including but not limited to: those in The Presidio, Fort Mason or Treasure Island, Single-Room-Occupancy (SROs), those dedicated as affordable, or the use of a vehicle as a dwelling.

Similarly to Charleston and Santa Monica, an applicant seeking an STR permit must first obtain a Business Registration Number issued through the City’s Office of the Treasurer & Tax Collector. The Business Registration Number ensures the proper taxes are being collected.

### **Santa Monica, California**

Santa Monica had restrictions on all short term rentals in residential districts for several decades prior to the implementation of new STR regulations. In 2015, the City decided to authorize owner-occupied short

term rentals under the City's Home-Sharing Ordinance. Non-owner-occupied houses and whole home STRs continued to be prohibited in Santa Monica.

In 2017, the Council prohibited any new dwelling from being used for the specific purpose of a short term rental. They also require that hosts are present during the entire duration that any dwelling is used as a short term rental, which means that no whole-home short term rentals are permitted. Hosts must also register with the City and obtain a business license.

Santa Monica was recently sued by AirBnB and HomeAway in an attempt to invalidate current regulations that prohibit the platforms from listing unlicensed short term rentals. A U.S. District Court judge dismissed the legal challenge, prohibiting online platforms from facilitating illegal business transactions. On March 9, 2018, the City of Santa Monica won a lawsuit against the short term rental host platforms AirBnB and HomeAway after they tried to prevent the City from enforcing regulations in its City's Home-Sharing Ordinance. Specifically, the ruling stated that the City is allowed to enforce zoning regulations, such as the Home-Sharing Ordinance. Online platforms will now have to verify hosts are properly registered with the City of Santa Monica before any transactions may occur.

## **Analysis**

### **Enforcement**

All the cities studied in this section have amended the first version of their short term rental policies with more stringent regulations. In some instances, such as in San Francisco and Santa Monica, the cities have gone to court to defend their right to regulate the STR platforms that conduct commercial transactions with illegal listings.

The four cities New Orleans' City Council specified in the Ordinance: Austin, Charleston, Nashville and Savannah, do not have the same platform accountability regulations as cities such as Santa Monica, San Francisco, New York City, and Chicago. While regulations on the platforms are relatively recent and their application has challenges, they provide legal recourse when illegal short term rentals are listed on those sites.

All four cities to whom staff spoke expressed the same concerns regarding illegal listings and the inability to adequately regulate and enforce their regulations when the platforms do not cooperate with city laws. New Orleans echoes these concerns which is compounded by limited resources to properly enforce the City's regulations or to adjudicate all of the properties illegally operating or violating current policy. The City of Nashville has a five year contract with a company named Host Compliance that monitors STR listings and provides the city with a list of illegal operators. With this program, Nashville was able to increase the collection of fines and owed taxes, and relieve pressure on STR staff. This program, or a program that provides a similar service, may be a useful tool to help track illegal listings.

### **Application Requirements**

Currently, the City of New Orleans has an attestation form as part of the application to receive a short term rental permit. Most of the other cities researched require proof of insurance, a site and/or floor plan, notice to their adjacent neighbors, an inspection to ensure life safety standards are met, and a notarized form indicating a property owner has provided consent to a lessee to utilize the property as a short term rental.

## **Notice**

Austin, Charleston, Nashville and Savannah have a requirement that the adjacent neighbors are notified if a property is applying to be used as a short term rental, and proof of the notification is required to apply for the STR permits. In Austin, the director mails out a notice of the STR contact information for properties 100 feet from the proposed STR at the operator's expense. In Charleston, the applicant must display a sign indicating the intentions of the property owner to use their property as an STR for 15 days prior to the issuance of the STR license. Issuing a notification to the surrounding neighbors would ensure the contact information for the host is distributed to those most affected by the change-of-use.

The City does not enforce private agreements between condominium owners and condominium associations nor does the City monitor deed restrictions or other private agreements that prohibit certain buildings from being used as short term rentals. Providing notification to surrounding property owners of STR licenses could be a way of alerting such interested parties, so that they may enforce such private agreements.

## **Business License**

A commonality among several of the cities examined is the requirement of a business license. The STR license is linked to a business or tax number, which ensures tax collection for cities. Charleston, Savannah, and San Francisco all mandate the applicant receive a business license in order to obtain an STR license or permit.

## **Inspections**

Austin, Charleston and Nashville have a requirement that an inspection be performed on the property prior to the issuance of the STR license. In Charleston and Nashville, the inspection is performed by the fire marshal. Similar to a Bed and Breakfast establishment and any other business, the safety of those using the space should be ensured through basic measures such as working fire extinguishers, carbon monoxide detectors and smoke alarms. New York requires a Certificate of Occupancy and an inspection is required if the use transitions from long-term rentals to transient uses, requiring an "amendment" of the certificate. The inspection ensures that the residence complies with the New York City fire and building codes which are more stringent than those for long-term rentals. New Orleans could require a Certificate of Occupancy for Commercial STRs to ensure that the proper building and life safety codes are met.

## **Insurance**

Currently, New Orleans requires that STR applicants attest that they have current, valid liability insurance of \$500,000 or more, but no proof of insurance is required. Austin and Savannah require proof via a declaration page that insurance of a specified amount is maintained on a property used as a short term rental. Similar to other businesses such as a Bed and Breakfast, if a property is utilized to house individuals, the applicant should need to prove insurance is maintained on their property with more than an attestation.

## **Floor Plans**

New Orleans currently has a regulation that there can be no more than five guest bedrooms per short term rental, or 10 guests. The Department of Safety and Permits has indicated a disproportionately large number of five bedroom dwellings have applied for STR permits. Charleston and Nashville require a floor plan as part of their application criteria. Requiring a floor plan as part of the application should help mitigate false reporting of the number of guest bedrooms available in STR residences.

## **Displacement of Residents**

Finally, Charleston has a requirement for their Category 1 STR that it not displace an existing dwelling unit that had been occupied within one year prior to the filing date of the application. The City Planning Commission heard several concerns and stories that residences have been converted to short term rentals resulting in a displacement of the tenants who resided there prior to the change-of-use. While staff acknowledges these concerns, the practicality of restricting certain dwelling units that have been occupied by a tenant in the past year would be arduous to enforce.

## **Best Practices Findings:**

- Many cities have enacted short term rental regulations in the past few years, but have since amended their policies with further restrictions to counteract and help mitigate the unanticipated negative effects STRs have had on the communities in which they are located.
- The different cities researched utilize different policy tools to regulate short term rentals. Each approach has been catered to their specific city's needs. There is no one-size-fits-all policy for STRs.
- Many of the cities studied require a host on-site during the stay of the STR guests. Requiring a host during the stay of STR guests helps to mitigate negative impacts sometimes associated with short term rentals such as noise, trash and inappropriate behavior. Ostensibly, a host who lives in the property has greater agency than an off-site manager.
- Several of the cities studied in this section require concrete proof, rather than an attestation, for insurance, life safety standards of the STR unit, amount of guestrooms, and permission from the property owner if non-owner-occupied. Requiring certification of the attestations could be one way in which to mitigate false reporting and to help ensure the safety of the guests.
- Providing notice to nearby property owners or occupants of a STRs is a common practice among the cities surveyed. Residents within 75-100 feet, who would be most affect by the STR should be provided with notice as well as the contact information for the manager, operator, or owner.
- Utilizing a third party may help relieve pressure on the STR staff to find, adjudicate, and fine illegally operating STR units and those in violation of the STR policies.

## **G. Information Sources & Studies**

### **Inside Airbnb**

According to its website, “Inside Airbnb” is an independent, non-commercial, set of tools and publicly available information data that allows the exploration of Airbnb listing in cities around the world. “Inside Airbnb provides filters and key metrics so you can see how Airbnb is being used to compete with the residential housing market.” It contains information such as a City’s percentage of entire homes/apartments being listed on the Airbnb website and estimated annual number of nights a listing is rented short term. It is funded by an individual named Murray Cox and many others volunteered time. The website accepts donations but states that it is not associated with any of Airbnb’s competitors.

Many groups use this interactive website to help inform their public policy positions with data. Specifically, Inside Airbnb hopes to help local people determine: (1) whether the number of bookings makes it impossible for a listing to be used for residential purposes; and (2) the impact of renting to tourists full-time rather than residents in neighborhoods and cities.

### **“Short Term Rentals, Long Term Impacts”**

Jane Place Neighborhood Sustainability Initiative produced a report called “Short Term Rentals, Long Term Impacts”. The report states that its recommendations are based on “data collected from the City’s publicly available permit database, reports on monthly usage from STR platforms, and scrapes of Airbnb listings available through Inside Airbnb. The report concludes that the City’s short term rental regulations “accelerate gentrification and the displacement of residents by permitting the limitless removal of homes from the housing market”. The report makes a number of recommendations including: (1) Require permits for STR platforms; (2) Streamline the data-sharing process across platforms; (3) One host, one home – limiting STR licenses to residents with a homestead exemption; (4) Giving a six-month grace period for existing STRs to come into compliance with new regulations; (5) Increasing STR fees and dedicating those funds for the development of affordable housing.

### **Local News Coverage**

In 2017 after STRs became legal in many zoning districts, local news coverage used City permit data to call attention to the numbers, distribution, and ownership. Numbers of permits were similar to the estimates of illegal STRs prior to legalization. The large number of the Temporary STR locations and the displacement of renters gained some of most intense coverage. The news called attention to the concentrations of STRs in the Historic Core zoning districts around the Vieux Carré. They drew correlations between concentrations of STRs and higher rents and property assessments.

### **University of New Orleans Study**

The Alliance for Neighborhood Prosperity funded a study by the University of New Orleans Hospitality Research Center that estimated the economic impact of the New Orleans area STR industry in 2017. They found a rapid increase of the STR industry from when they last studied the industry in 2013. The report concluded that:

- Approximately 595,000 visitors stayed in STRs
- The average number of STR days was 4.8
- 70% of STR visitors arrived by airplane
- 43% of STR visitors were 25-34 years old

- Economic impact estimated at \$899 million
- Estimated to create or support nearly 10,200 full and part time jobs
- Estimated to generate \$63.9 million in tax revenue for the state and local governments: \$38.9 million to the State and \$24.9 to local governments in the New Orleans area

### **Economic Impact of Commercial Short-Term Rentals in New Orleans**

This report was prepared by Dr. James A. Richardson, Alumni Professor of Economics and Public Administration, Louisiana State University, for Responsible STR NOLA. Noting the distinctions of Commercial STRs from other STR license types, the report analyzes the economic impact of Commercial STRs and concludes that the Commercial STRs do not “negatively affect the city’s overall housing market, based on information regarding housing prices and rental rates.” Based on tax collections by the Louisiana Department of Revenue, the report states that Commercial STR visitors are estimated to:

- Spend “\$350 million in 2018 on lodging, restaurants and bars, recreational and entertainment enterprises, retail stores, local transportation and other places in the city.
- Be responsible for “4,140 jobs and \$47 million of the state and local taxes based on information from the U.S. Department of Commerce.”

The report also promotes Commercial STRs’ ability to encourage and facilitate new construction projects.

## **H. Public Input**

### **Public Hearings and Written Comments**

In 2018, the City Planning Commission held two public hearings prior to the formulation of recommendations to listen to the public's testimony in regard to the impacts of STRS – both good and bad – as well as potential regulatory actions that could address negative impacts. Additionally, the CPC has received hundreds of written public comments, all of which are posted on the CPC website and attached to this report. In this section, the CPC staff attempts to group and summarize the many points made for and against STRs in their various types.

### **On-Site Supervision**

Based on real experiences, many speakers expressed concern about large groups of guests creating an ongoing party atmosphere at whole-home rentals. Neighbors report frequent problems with STRs operating absent of staff or the owner on site to monitor noise levels and assure proper trash disposal.

### **Homestead Exemptions, One Host – One Home**

A broad spectrum of speakers including both STR operators and neighbors expressed a preference for short term rentals to be limited to sites where the owner lives. Of particular irritation is corporations owning multiple STR properties in residential districts. Many support a requirement to provide proof of owner occupancy through a homestead exemption. Others would at least require that the owner live in New Orleans. Many have also advocated limiting the number of listings one host may have, regardless of whether the person lives on site. The New Orleans Assessor issues homestead exemptions, which exempt the property owner from being taxed on the first \$75,000 in value of their primary residence. The Assessor has its own system that requires proof of owner-occupancy and has resources at its disposal to combat any potential fraud.

### **Loss of Neighbors and Residential Neighborhood Atmosphere**

Especially in certain neighborhoods with higher densities of Temporary STRs, speakers lament the loss of full-time neighbors who look out for one another and engage with one another in way that establishes lasting relationships and friendships. Another concern is that the loss long term neighbors makes the neighborhood less safe, as those neighbors know the signs of potential crime when conditions seem awry.

### **Housing Affordability**

Especially in neighborhoods popular for STRs, opponents complain of fast-rising property values that lead to renter displacement and rising taxes. Less affluent owners who want to stay in their home for the long term may also complain of rising property taxes. Some residents have also stated that they depend on STR income to stay in their homes – whether they are talking about a spare room, an on-site unit, or units elsewhere.

### **Dwelling Types**

Many speakers support Accessory STR uses because the owner is on site to monitor the noise level and activity of guests. However, the Accessory STR license is only available when the owner is in the same unit or in one unit of a two-family dwelling. Some speakers note similar situations that are not eligible for this type of license. For example, an owner residing on a lot with three units cannot have an STR in either of the two other units. Also, an owner cannot have an STR in a separate building on the same lot. In these

cases, the property owner is on site to provide the much-supported supervision, but cannot have an STR in a separate unit.

### **Changing the Rules After Investments Have Been Made**

STR Operators – especially those who own or operate the “Temporary” STR type – are concerned about regulations being quickly changed after they have already invested in STR properties. They state that government regulations should not be a moving target and that it is unfair to legalize and then make illegal the same types of uses. In certain neighborhoods close to the Vieux Carré, housing prices may have increased due to the ability to convert the residences into STRs. Buyers may have purchased at premium prices with plans to operate an STR. Additionally, STR operators are likely to renovate properties to enhance aesthetics and features that short term renters expect.

### **Changing the City’s Character in a way that ultimately hurts tourism (or Killing the Goose that Laid the Golden Egg)**

Neighborhood residents feel that vibrant neighborhoods with local people are a big part of what makes New Orleans special and when neighborhoods lose a large number of permanent residents, the place loses much of its appeal. In addition, the concern about displacement extends even more strongly to the creative class who provide the art, entertainment, and culture that makes New Orleans unique. On the other hand, STR operators point to their renovation of historic buildings as a benefit to the city’s historic preservation, also an appealing feature in attracting visitors. Many STR operators also state that by staying with local hosts, visitors experience more local culture by “living like a local”.

### **Licensing the STR Platforms and Data Sharing**

Many people have commented that the City should require STR platforms with listings in the city to have a license, like a physically-present business. Along those lines, public recommendations include compelling platforms to share data about STR hosts in a manner that facilitates enforcement and requiring valid license numbers on all listings.

### **Excluding/Including Neighborhoods**

Many Vieux Carré and Garden District residents and neighborhood organization representatives advocate for prohibiting STRs in those areas. In the Vieux Carré, all STR types are illegal except within the VCE District on Bourbon Street. There are no special exemptions for the Garden District. For both neighborhoods, the rationale relates to the already-heavy tourist presence. Some owners in the Vieux Carré have called for STRs in some form to be allowed there in additional districts. Property owners in the small VCE-1 District near House of Blues advocate for allowing STRs in that one additional Vieux Carré zoning district.

### **Treating STRs like Hotels/Motels or Bed & Breakfasts**

Hotel representatives note that in terms of taxation and operational standards, STRs do not have to pay the same hotel/motel taxes or provide the same level of safety, security and regulatory compliance as hotels. Furthermore, hotels pay property taxes at a commercial rate while even Commercial STRs pay at a residential rate. Despite mostly being owner-occupied, Bed and Breakfasts (B&Bs) pay a different tax on nightly occupancy as well as tax on the furnishings and equipment within the B&B. The bottom line for representatives of both the hotel and B&B industries is that the relative permissiveness of STR regulations is unfair.

## **STRs are Commercial Uses should not be Allowed in Residential Districts**

Many argue that short term rentals, especially Temporary STRs, should not be permitted in residential zoning districts, where most commercial uses are prohibited. They contend that STRs are a commercial use because money changes hands and there is not a permanent resident on site.

## **Removing the 90 Day Limit on “Temporary” STRs**

Owners of STRs with the Temporary license type advocate for removing the 90 day per year cap, while opponents generally advocate for eliminating this type of STR. STR owners and opponents seem to acknowledge that this license type does not lead to the temporary use of a unit as an STR, but rather tends to be the unit’s only use year-round. Many temporary operators are admittedly not complying with the 90 day limit. Additionally enforcing the 90-day limit is incredibly difficult for the STR administration staff.

## **Imposing Density Limits**

Many citizens call for density limits of some kind, especially for the Temporary STR type. Some suggestions are limiting the number of STRs on a block, in a neighborhood, Census tract, zip code, or a total cap on the number of license in the city.

## **Strengthening Enforcement and Making Regulations Easily Enforceable**

While several have lauded the efforts of the STR administration staff that inspect, cite, adjudicate and fine STRs operating illegally, many also say that the staff size and resources are insufficient to effectively enforce the regulations. Several citizens have urged for easily enforceable regulations that reduce strain on the STR administration staff.

## **Allowing STRs when needed to finance the renovation of a blighted, historic building**

Financing the renovation of a severely-deteriorated historic structure can be difficult; many people seek demolition permits rather than renovate historic structures. The CPC has heard from several people that say the City should use STRs as an incentive to rehabilitating historic structures. The suggestion is that – assuming new STRs are limited or prohibited – a property owner should be allowed to operate an STR for a certain number of years to recoup their costs before converting the building into regular housing.

## **Economic Benefits of STRs to the City**

Many STR owners enumerate STR economic benefits to the City. The economic benefits can best be described by the UNO study, which was summarized in the previous section. Many STR operators say their housekeeping and handyperson staff are paid at a higher rate than hotel staff. They point to their need to keep properties in top condition and employment of local people to do so. They also say STR visitors who need a kitchen or additional space for family members, might not otherwise visit New Orleans unless they can stay in an STR.

## **Stakeholder Meetings**

In studying Short Term Rental issues, the City Planning Commission staff met with the following offices, organizations, groups, and individuals:

- Airbnb (phone conference)
- Assessor Errol Williams and staff
- City Attorney’s Office
- City of Austin (phone conference)

- City of Charleston (phone conference)
- City of Nashville (phone conference)
- City of Savannah (phone conference)
- Commercial STR Operators including Sonder and Stay Alfred
- David Krauss, Noiseaware noise monitoring company
- Department of Safety & Permits
- Downtown Development District
- Elizabeth Cook, Ben Gordon, Wanda Jones, Destiny Toro
- Greater New Orleans Hotel Motel Association, New Orleans & Company (Tourism interests)
- Home Away/Expedia
- HousingNola and Fair Housing Action Center
- Jane Place Sustainability Initiative
- Jeff Goodman
- New Orleans City Economist
- Professional Innkeepers Association of New Orleans (PIANO)
- Residential STR Operators/Alliance for Neighborhood Prosperity
- Short Term Rental Committee (Brian Furness)
- The Data Center
- Vieux Carré Property Owners & Residents Assoc. (VCPORA), Louisiana Landmarks, Faubourg Marigny Improvement Assoc., Garden District Assoc.
- Webre Consulting representatives, STR Operators Chris Cochran, Pat Dubendorfer, Kurt Klebe

# **I. Short Term Rental Regulation Issues & Analysis**

## **Land Use Regulations**

### **Location Restrictions**

#### *Historic Core Neighborhoods*

In other cities, STRs are generally only permitted in those areas that are near visitor attractions. The only neighborhood in New Orleans that currently has an outright prohibition on short term rentals is the French Quarter, which has been in place since the 1970s. However, several representatives from the Garden District have stated the ban should be extended to their neighborhood as well. Representatives of both neighborhoods have argued that due to the large number of tourists they experience annually, the presence of short term rentals is overly impactful to their communities. Despite these concerns, the Garden District has a relatively low number of short term rentals compared with other neighborhoods in the city. The staff also heard other neighborhood representatives from the community state the prohibition should extend to the historic core neighborhoods, the Marigny, Tremé and Bywater for these same reasons.

In the 2015 Short Term Rental Study, the staff recommended that all neighborhoods should be treated equally, including the French Quarter, which would have effectively lifted the STR prohibition. However, the regulations that passed and that currently exist, maintain the French Quarter short term rental prohibition with the exception of those properties located in the VCE Vieux Carré Entertainment District. The VCE District is located along Bourbon Street for seven blocks from Iberville Street to St. Ann Street. Due to the high volume of bars and entertainment venues in the VCE District, the presence of short term rentals along these seven blocks should have negative impact on the surrounding areas, and would help revitalize vacant upper floors.

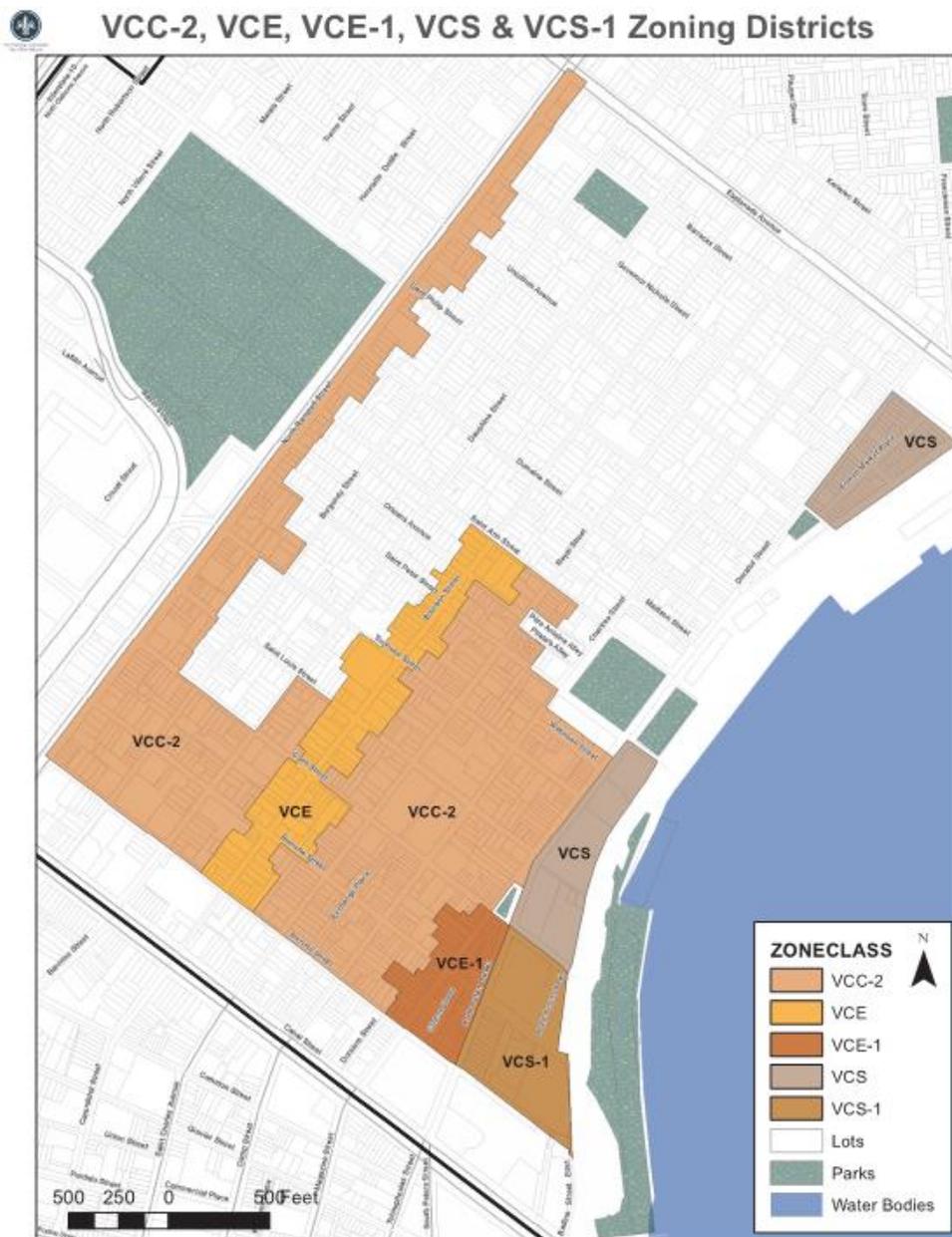
Staff has heard individuals who have argued the prohibition on short term rentals in the French Quarter unjustly treats this neighborhood differently than all of the other neighborhoods in the City. The prohibition has prevented French Quarter property owners, including owner-occupants, from having the same rights as any other property owner in the City. Additionally, some of the French Quarter neighborhood residents have argued that the prohibition in the French Quarter may be partially the cause of the high concentration of STRs in the surrounding neighborhoods like the Marigny, Bywater and Tremé. With the recommendation to eliminate the Temporary STR license type, the concern about loss of permanent residents to whole-home STRs should be greatly reduced.

The staff believes the French Quarter should be treated similarly to the other historic neighborhoods in the City. Therefore, the staff recommends the same regulations that correspond to the different zoning districts in the historic neighborhoods also apply to the French Quarter. Staff recommends the VCE District continue to permit commercial short term rentals and extend commercial short term rentals as a permitted use to the VCE-1 Vieux Carré Entertainment District, the VCC-2 Vieux Carré Commercial District, the VCS Vieux Carré Service District, and the VCS-1 Vieux Carré Service District subject to a cap that would be largely consistent throughout the City. These districts are concentrated on the upriver part of the French Quarter and along N. Rampart Street, seen in the image below. Properties located in these districts contain historic structures that have vacant upper floors. Permitting commercial short term rentals in these properties would most likely not have a negative impact on surrounding properties, many of which are used as bars, restaurants, t-shirt shops, novelty retail stores, spas and entertainment venues. Furthermore, the permitted use of STRs could incentivize reconstruction of the upper floors or activate second homes that are underutilized. However, any permitted commercial short term rentals granted would still be subject to the density cap limitations.

The VCC-1 Vieux Carré Commercial District is intended to provide for restricted retail stores and service establishments that will attract and service local residents and tourists, and that will not adversely affect the character of nearby residences or detract from the overall character of the Vieux Carré. This district is located directly adjacent to residential districts. Therefore, the staff recommends commercial short term rentals continue to be prohibited in the VCC-1 Vieux Carré Commercial District.

Additionally, the ban of accessory short term rental licenses should be lifted in the French Quarter in its entirety, as there are no other neighborhoods in the City that currently, or are recommended to have a prohibition of accessory STRs. Treating this neighborhood differently from other parts of the City prevents owner-occupied residents or tenants of the French Quarter the ability to offset living costs in the same manner as any other resident in the city. Removing the prohibition on accessory short term rentals could help with the weakening neighborhood base in the French Quarter by providing long-term renters and property owners additional resources to stay in the neighborhood.

**Figure 13: VCC-2, VCE, VCE-1, VCS, & VCS-1 Zoning Districts**



In the following zoning district where Commercial STRs are currently prohibited, change from “prohibited” to “permitted”:

- VCE-1 Vieux Carré Entertainment District
- VCC-2 Vieux Carré Commercial District
- VCS Vieux Carré Service District
- VCS-1 Vieux Carré Service District

#### *Neighborhood Commercial Districts*

The zoning districts that authorize Commercial STRs include neighborhood business and low-intensity mixed use districts that – especially in the City’s Historic Core and Historic Urban places – can be found on corners surrounded by residences or small nodes and corridors within the hearts of neighborhoods. City Planning staff believes the impacts of Commercial STRs have proven more significant than many of the neighborhood-friendly uses authorized in neighborhood business zoning districts. This warrants a structure of zoning district permissions somewhat more restrictive than currently written.

In the following zoning districts where Commercial STRs are currently permitted uses, change from “permitted” to “prohibited”:

- HMC-1 Historic Marigny, Tremé, Bywater Commercial District
- S-B1 Suburban Neighborhood Business District
- S-LB1 Suburban Lakeview Neighborhood Business District

In the following zoning district where Commercial STRs are currently conditional uses, change from “conditional use” to “prohibited”:

- HU-B1A Historic Urban Neighborhood Business District

#### *Maintaining Mixed-Use Areas*

Mixed-use environments that include small-scale commercial on ground floors with residential uses upstairs are an integral part of older neighborhoods in New Orleans. To preserve ground floor commercial that is critical to the pedestrian environment in historic commercial corridors, the staff recommends a restriction on the first floor of multi-story buildings in certain zoning districts.

- Prohibit Commercial STR licenses on the first floor of a multi-story building that can or may contain residential uses on subsequent floors, in historic commercial corridor districts.

#### *Capping Measures*

Certain neighborhoods, especially in the Historic Core and Historic Urban Neighborhoods, have high concentrations of short term rental licenses. These neighborhoods typically have higher densities of residential units due to the compact development pattern. Most of these areas were constructed before the automobile and are walking distance to tourist attractions and destinations, which make them desirable to tourists. The most common license type in these neighborhoods is the Temporary Short Term Rental. Currently, there is no limit on the number of temporary licenses per lot, which exacerbates this problem. For example, a lot developed with a two-family dwelling may only have one accessory license but it may have two temporary licenses. Figure 14 demonstrates the whole-unit possibilities with accessory licenses and with accessory and temporary licenses.

## Figure 14: Sample Configurations of Accessory & Temporary Whole-Unit Short Term Rentals

Sample configuration of accessory whole-unit short term rentals



Sample configuration of accessory & temporary whole-unit short term rentals



A potential solution is to limit the density of short term rental licenses by geography, by lot, or by building or an overall cap. Examples of geography include block, neighborhood, census tract, or a buffer area, such as not allowing STRs within 500 feet of each other. Cities such as Nashville have previously used this approach but found it difficult to enforce. Using neighborhood or census tract limitations requires maintaining a database of current licenses, which may expire or be revoked at various times, and available dwelling units, which requires constant tracking of new residential units. Utilizing a block limitation or a buffer radius would also require tracking and verification that would complicate permitting and may require zoning determinations on unusually shaped blocks or street grids. Another suggestion is an overall cap on licenses, which would also require significant staff time to monitor the current number of licenses and manage waiting lists. It is easier to enforce a limitation per lot, which would eliminate the issue of multiple temporary licenses per lot. With the recommendation to eliminate the Temporary STR license type, the concern of limiting STR density should be less of a concern.

- Limit short term rental licenses by lot or building, and not by census tract, neighborhood, or block.

### *Building Restrictions*

Another concern is the extent to which Commercial STRs may occupy multiple units within multi-family residential or mixed use structures. A good portion of the City's apartments or condominiums are found within Mixed Use or Neighborhood Business zoning districts, which allow a variety of businesses as well as Commercial STRs. With an unlimited percentage of the building allowed as STRs, some buildings have become entirely STRs. There are operational benefits to STR operators with multiple units in the same building; however, in certain neighborhoods popular with STR visitors, this can result in a significant loss of rental property for long-term residents. Due to the dependence on some of the neighborhood business and mixed use districts to provide multi-family dwellings and the tendency of STRs to replace them in concentrations, the staff also believes that there should be a cap of some type on Commercial STRs. This should be a cap based on the lot, which is the way zoning area regulations typically impose limitations and the easiest way to regulate and monitor STRs.

The staff believes there should be a limitation on the number of Commercial Short Term Rentals permitted in each building in certain districts to preserve long-term housing units and prevent the conversion of multi-family buildings to commercial uses. This cap should not apply to districts or areas where development on upper floors has been complicated in the past, such as along Canal Street or in the VCE District.

- The staff recommends imposing a cap of 1 unit or 25% of all units per lot or within a single building constructed across lot lines, whichever is greater in certain zoning districts.
- This cap should not apply to the VCE District or properties with frontage along Canal Street between the River and Rampart Street.

*District Permission Recommended Changes:*

The table below summarizes recommended district permissions and **new** standards for Commercial STRs. If a district is not listed, Commercial STRs are recommended as prohibited. All current standards for Commercial STRs listed in the Comprehensive Zoning Ordinance would remain, in addition to any new recommended standards or limitations. The recommended text changes for definitions, district permissions (use charts), and standards are printed in the Recommendations section of the Short Term Rental Study.

<b>Place Designation</b>	<b>Zoning District</b>	<b>Permitted?</b>	<b>New Standards/Limitations</b>
Rural Development Districts	M-MU Maritime Mixed Use	Yes*	*25% cap
Historic Core Neighborhoods Non-Residential Districts	VCE Vieux Carré Entertainment	Yes*	*Ground floor restriction – no cap
	VCE-1 Vieux Carré Entertainment	Yes*	*25% cap and ground floor restrictions
	VCC-1 Vieux Carré Commercial	No	N/A
	VCC-2 Vieux Carré Commercial	Yes*	*25% cap and ground floor restrictions
	VCS Vieux Carré Service	Yes*	*25% cap and ground floor restrictions
	VCS-1 Vieux Carré Service	Yes*	*25% cap and ground floor restrictions
	HMC-1 Historic Marigny, Treme, Bywater Commercial	No	N/A
	HMC-2 Historic Marigny, Treme, Bywater Commercial	Yes*	*25% cap and ground floor restrictions
	HM-MU Historic Marigny, Treme, Bywater Mixed Use	Yes*	*25% cap and ground floor restrictions
Historic Urban Neighborhoods Non-Residential Districts	HU-B1A Historic Urban Neighborhood Business	No	N/A
	HU-B1 Historic Urban Neighborhood Business	Yes*	*25% cap and ground floor restrictions
	HU-MU Historic Urban Mixed Use	Yes*	*25% cap and ground floor restrictions
Suburban Neighborhoods Non-Residential Districts	S-B1 Suburban Neighborhood Business	No	N/A
	S-LB1 Suburban Lake Area Neighborhood Business	No	N/A

Place Designation	Zoning District	Permitted?	New Standards/Limitations
	S-B2 Suburban Pedestrian Corridor Business	Yes*	*25% cap and ground floor restrictions
	S-LB2 Suburban Lake Area Neighborhood Business	Yes*	*25% cap and ground floor restrictions
	LC Lake Area Commercial	Yes*	*25% cap and ground floor restrictions
Commercial Center and Institutional Campus Districts	C-1 General Commercial	Yes*	*25% cap and ground floor restrictions
	C-2 Auto Oriented Commercial	Yes*	*25% cap and ground floor restrictions
	C-3 Heavy Commercial	Yes*	*25% cap and ground floor restrictions
	MU-1 Mixed Use Medium Intensity	Yes*	*25% cap and ground floor restrictions
	MU-2 Mixed Use High Intensity	Yes*	*25% cap and ground floor restrictions
	EC Educational Campus	Yes	None
	MC Medical Campus	Yes	None
	LS Life Sciences	Yes	None
Centers for Industry	MI Maritime Industrial Commercial & Recreational Subdistrict	Yes	None
Central Business Districts	CBD-1 Core Central Business	Yes*	*25% cap
	CBD-2 Historic Commercial and Mixed Use	Yes*	*25% cap
	CBD-3 Cultural Arts	Yes*	*25% cap
	CBD-4 Exposition	Yes*	*25% cap
	CBD-5 Urban Core Neighborhood Lower Intensity Mixed Use	Yes*	*25% cap
	CBD-6 Urban Core Neighborhood Mixed Use	Yes*	*25% cap
	CBD-7 Bio-Science	Yes*	*25% cap

### Commercial Short Term Rentals

In the past, short term rentals have been considered primarily residential uses in terms of the zoning ordinance, building code, and property taxation. Currently there are disparities between Commercial Short Term Rentals and other similar uses, such as hotels, motels, or bed and breakfasts. Uses such as hotels and motels are classified commercially for the purposes of property taxes, while most short term rentals are assessed as residential. Additionally, hotels/motels and bed and breakfasts are required to pay personal

property tax on furniture, fixtures, machinery, and other equipment used in the operation of the business.<sup>18</sup> If Commercial Short Term Rentals were classified commercially, additional revenue could be generated for the City of New Orleans; however, this would increase costs for those utilizing short term rentals to offset the high costs of housing in New Orleans.

The Louisiana Tax Commission is currently considering an amendment to their rules that would add a new definition for Short Term Rental. This new short term rental classification would be listed under the “Improvements: Commercial or Industrial” class description and the current residential description would be modified from “Improvements: Residential” to “Improvements for Residential Purposes”. If adopted, it is unclear what repercussions the new classification will have for properties with a homestead exemption but rent a portion of their home on a short term basis. This may affect the use of a homestead exemption as a verification of property ownership for short term rentals, and other uses in the CZO such as Bed and Breakfasts. The Tax Commission will consider the amendment at its September 19<sup>th</sup> hearing, the day after the release of this report.

- If deemed appropriate, lobby the legislature to adjust property taxation for Short Term Rentals.
- If the Tax Commission proposal is adopted, make necessary adjustments to verify ownership for Short Term Rentals and Bed and Breakfasts.

Another concern with Commercial Short Term Rentals is the safety of guests and visitors to the city. Commercial Short Term Rentals and Principal Bed and Breakfasts, regardless of zoning classification or number of guestrooms, are classified as a Residential Group R-3 occupancy under the International Building Code, as adopted by the City of New Orleans.<sup>19</sup> Hotels and motels with higher occupancies are subject to more stringent life safety codes than Commercial Short Term Rentals. Some cities, such as New York, require a Certificate of Occupancy and an inspection to ensure that short term rentals meet the applicable building and life safety codes for the proposed occupancy. Therefore the staff recommends the following proviso:

- Require Commercial short term rentals to obtain a Certificate of Occupancy to ensure that the appropriate building and life safety standards are met.

Additionally, there are State laws specific to hotels that require certain safety and sanitary standards. Every new or renovated hotel or motel room shall have sleeping rooms equipped with approved fire detection and alarm systems for the deaf or hard of hearing in case of fire.<sup>20</sup> Similar to the STR regulations located in Chapter 26 of the City Code, state law requires that fire exit maps be posted on the back of every hotel room door.<sup>21</sup> Every hotel, motel, or innkeeper shall furnish clean and fresh bed linens and ensure that closets, bathrooms, and toilet facilities provided for the use of its guests and patrons cleaned and maintained in a sanitary condition.<sup>22</sup>

- If deemed appropriate, hold Commercial Short Term Rentals to the same safety and sanitary standards as hotels and motels.

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<sup>18</sup> Louisiana Revised Statutes 47:2322

<sup>19</sup> Memo: Building Code Requirements for Short Term Rentals and Bed and Breakfasts, City of New Orleans, December 30, 2016

<sup>20</sup> Louisiana Revised Statutes 40:1580.1

<sup>21</sup> Louisiana Revised Statutes 40:1580

<sup>22</sup> RS 21 HOTELS AND LODGING HOUSES

## Temporary Short Term Rentals

The Temporary Short Term Rental license was intended to be a minimally impactful short term rental type that is only utilized during major events, such as Mardi Gras, or Jazz Fest for permanent residents. The City Planning Commission originally recommended allowing a resident to rent out a whole unit for a predetermined time via the Temporary Use Permit process. A permanent resident would be allowed to obtain up to four Temporary Use Permits totaling 30 days each year. The final regulations that were ultimately adopted by City Council allowed temporary rentals for up to 90 days per year, and perhaps more significantly, the Temporary Short Term Rental was no longer required to be someone's occupied dwelling unit, which greatly expanded the pool of potential short term rental units. Unlike the accessory license type, which has a one license per building limit, the temporary had no density limit. As a result, a person could have an unlimited number of temporary licenses in a building, further increasing the number of licenses.

The 90 day limit has proven difficult to enforce. Short Term Rental licenses are valid for a period of one year. While there is a 90-day cap on temporary licenses, given the intermittent nature of a short term rental, most short term rental operators must advertise their property year-round to reach 90 nights of booking per year. Currently the only way to enforce the 90-day cap is through information provided by the short term rental platforms via their monthly reports. Only Airbnb and Expedia are providing these reports at this time, which leaves the City with no mechanism to track those listing on other platforms. The current information provided in the reports is not sufficient to take enforcement action against a particular property because it does not provide any identifiable information. While a subpoena process is available, the information provided in the responses is inadequate for effective enforcement. Processing the reports, issuing subpoenas, and tracking information, takes significant staff time and City resources to administer. In addition, a person could potentially avoid enforcement against the 90-day limit by renting on both platforms or by listing on a platform that is not currently reporting to the City.

The lack of a permanent resident requirement, the generous 90-day limit, and the absence of density restrictions has led to a proliferation of temporary STR licenses. The Temporary Short Term Rental license type has become a de-facto whole-home rental, with no permanent resident or owner present. This can lead to quality of life issues, such as noise, loss of neighborhood character, and other impacts discussed further in this report. These negative impacts are exacerbated in residential areas, where most of the temporary licenses are located.

In the 2016 Short Term Rental Study, the staff recommended that whole-home rentals only be allowed with a temporary conditional use for three years with strict density standards. The CPC instead found that whole-home STRs in residential districts, even with onerous requirements and strict density limitations were not appropriate under any circumstances. According the staff's recommendation is to eliminate the Temporary STR type:

- Eliminate the current Temporary Short Term Rental license type.

While the current Temporary Short Term Rental license type has significant impacts on neighborhoods, the original intent of the temporary license was to provide extra income for permanent residents. This additional income can assist with housing costs, property taxes, insurance, home improvements, or other costs. A third type of short term rental could be allowed so that permanent residents could benefit from short term rentals during predetermined periods of the year; however, this would be incredibly labor-intensive for staff to process and enforce. The practice of using day limits has proven ineffective in the past and would be easy to exploit. If the City Council desires to allow this type of STR, there should be standards in place to prevent

manipulation of the regulations and resources should be dedicated to processing the licenses and enforcement:

If so desired, the Council could create a Special Event Short Term Rental whereby property owners or renters, with owner consent, may rent a whole unit for up to 14 days a year, with a maximum of two permits a year. This would allow owners or renters to rent their units during large events, such as Mardi Gras, Jazz Fest, the Sugar Bowl, Voodoo Festival, large conventions, and the many other special events that take place in New Orleans. The host would have to apply in advance of the rental and specify the exact dates of the rental. A licensed short term rental property manager should be listed as the 24 hour contact for the rental. The license number should be significantly different than that of a regular STR license, so that it can be identified in postings and listings.

- Consider the creation of a Special Event Short Term Rental permit where property owner or renters, with owner consent, may rent a whole unit for up to 14 days a year, with a maximum of two permits a year.
- The application for a Special Event Short Term Rental shall specify the exact dates to be rented and designate a licensed short term rental property manager as the 24 hour contact.
- The license number should be significantly different than that of a regular STR license, so that it can be identified in postings and listings. The exact dates that a STR may be rented should also be posted on the listing.
- Considerations in the decision whether to create this license type should include: (1) such rentals have long been unregulated and occurred for major events such as Mardi Gras and Jazzfest; (2) there may be high administrative costs; (3) enforcement may be difficult and the City may wish to prioritize resources elsewhere.

### **Other CZO Amendments**

Additional changes to the Comprehensive Zoning Ordinance regulations are required to ensure that the regulations are consistent and clear:

#### *Define Guest Bedroom & Use Consistently*

One issue that has come up is that there are multiple terms used in the Short Term Rental and Bed and Breakfast regulations used to describe bedrooms where guests sleep. These terms include “bedroom,” “guest bedroom,” and “guest room,” and none of these terms are defined in the Comprehensive Zoning Ordinance. The staff recommends only using one of these term, “guest bedroom,” which should be defined in the CZO. The use of “bedroom” and “guest room” in the short term rental and bed and breakfast regulations should all be changed to “guest bedroom.” The CPC staff recommends the following change:

- Define the term “guest bedroom.”
- In the short term rental and bed and breakfast definitions, use standards, and parking requirements, change references from “bedroom” and “guest room” to “guest bedroom.”

#### *Prohibit Rental of Common Spaces*

The Short Term Rental administration has come across examples of operators trying to rent out common spaces, kitchens, and other non-bedroom spaces in a dwelling unit as guest bedrooms. The purpose of the initial regulations were to only allow for the rental of bedroom to guests, so an additional use standard should be created to clarify that only guest bedrooms can be rent on a short term basis. For studio

apartments, the bedroom and common spaces are generally combined in one space. Studio dwellings shall be considered as having one (1) guest bedroom. Therefore, the CPC staff recommends the following:

- Add a use standard to make it clear that only guest bedrooms can be rented to guests and not common spaces.
- Studio apartments shall be considered as having one (1) guest bedroom.
- Require site and floor plans at application to designate rentable rooms covered by the license.

#### *Simplify Off-street Parking Requirements*

The off-street parking requirements for bed and breakfasts and commercial short term rentals are generally equal; however, the way that they are written is somewhat confusing, especially for bed and breakfasts. The staff recommending simplifying the parking requirements to “1 spaces per 2 guest bedrooms.” In addition, the Accessory Short Term Rental parking requirement currently refers to the requirement for the applicable dwelling; however, all of the dwelling types have the same parking requirement of 1 per dwelling unit and the Residential Short Term Rental off-street parking requirement should be change to be “1 per dwelling unit.” Therefore, the CPC staff recommends the following:

- The bed breakfast off-street vehicle parking requirement shall be changed to “1 per 2 guest bedrooms,” and the Residential Short Term Rental shall be changed to “1 per dwelling unit.”

#### *Use Chart Listing of Commercial STRs*

Currently, the Commercial STR type is listed in the Comprehensive Zoning Ordinance’s use charts under the “Residential” heading. Since this type of STR has “Commercial” in the name and is intended to be located in districts with more intense uses, the CPC staff recommends moving the row showing this use and the district permissions to be under the “Commercial” heading.

- In all CZO chapters where Commercial STRs are listed as a use, move the row with the use to be under the “Commercial” heading.

### **Accessory Short Term Rentals**

Of the three types of short term rentals, there is general acceptance that the Accessory Short Term Rental is the least problematic type since there is a requirement for a Homestead Exemption and the property owner is present during the time of the rental. There are some modifications that CPC staff recommends to improve the Accessory Short Term Rental type.

#### **Change Name to Residential Short Term Rental**

After conversations with the Department of Safety and Permits, CPC staff has discovered that there is some confusion with what is allowed at an Accessory Short Term Rental because of its name. The word “accessory” is intended to imply that the STR is accessory to the main use of the property, which is a residential dwelling. It has been interpreted by many that it allows the rental of an accessory structure, which is prohibited by the definition and use standards. To avoid any confusion, the CPC staff recommends the following name change:

- The Accessory Short Term Rental shall be renamed the Residential Short Term Rental.

### **Create Partial-Unit and Whole-Unit Definitions**

Under the current requirements, an Accessory Short Term Rental requires an owner occupant, who is present at the time of the rental, to rent either one half of a double or a portion of their dwelling unit on a short term basis. So while there is a commonality that it is on an owner occupied lot with the owner present, the whole unit and partial unit are rented and advertised differently. This difference is further increased if a renter who is a permanent resident is allowed to operate a partial-unit short term rental. In addition, separating a whole-unit and partial-unit short term rental will make it easier to enforce the regulations. If a partial-unit Residential Short Term Rental is advertising an entire unit, it makes it easier for the City and neighbors to tell if the operator is violating the regulations. Finally, by creating a whole-unit type and a partial-unit type it is much easier to see the total number of whole house short term rentals there are in the City. Therefore, the CPC staff recommends the following:

- Create two definitions and license types for the Residential Short Term Rental; Partial-Unit and Whole-Unit.

### **Allow Permanent Resident Renters to Operate**

As seen in other cities such as San Francisco and San Antonio, renters can benefit from partial unit short term rentals to generate income and afford the increasing cost of housing. However, the current Accessory Short Term Rental regulations are limited only to property owners so renters are unable to take advantage of the benefits of short term rentals. The CPC staff believes that renters should be able to rent out a spare bedroom(s) as a partial-unit short term rental if they have received permission from the property owner. This would create more equitable regulations where the most vulnerable population, renters, would be able to benefit from the additional revenue generated by short term rentals. The renters would still be subject to the same standards as property owners with a homestead exemption in that they would be required to prove that they are a permanent resident at this unit and would be required to be present during the time of the rental (i.e. they would not be able to advertise and rent the entire dwelling unit). With these limitations in place, the CPC staff recommends the following:

- Renters, with the property owner's permission, shall be permitted to operate a partial-unit Residential Short Term Rental by renting out additional bedrooms in their permanent, primary residence.
- These renters should be required to provide additional documentation to verify that this is their permanent residence, that they have permission from the property owner, and provide a lease or affidavit that they will reside at the dwelling unit through the term of the short term rental license.<sup>23</sup>

### **Expand whole-unit beyond one unit of a two-family dwelling**

Under the current regulations, the whole-unit Accessory Short Term Rental is only permitted in a two-family dwelling where the owner lives in one half and the other half is licensed as a short term rental. While doubles are one of the most common housing types in the City, there are other housing types (small multi-family and properties with more than one main structure) that are unable to take advantage of the whole-unit Accessory Short Term Rental. The rationale behind allowing the whole-unit Accessory Short Term Rental is that the property owner lives onsite to regulate the activity of the guest so there is limited impact on the surrounding neighborhood. It does not matter if the property owner lives in one unit of a four-plex

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<sup>23</sup> These submittal requirements should be placed in the license application requirements in Sec. 26-614 of City Code. This will be further addressed in the application requirements section of this study.

or the main house and the short term rental is in a back carriage house,<sup>24</sup> the property owner is still onsite to regulate the guest's activity. Therefore, the CPC staff recommends expanding the whole-unit Residential Short Term Rental to one unit on an owner-occupied lot with up to four dwelling units.<sup>25</sup>

- Expand the definition to allow one unit to be used as a whole-unit Residential Short Term Rental on an owner occupied lot with up to four units where one of the units is the owner's permanent residential dwelling unit.

### **Requiring Homestead Exemptions/Prohibiting Corporate Ownership**

The requirement that the Accessory STR type provide proof of a homestead exemption is a much-supported way to assure the owner indeed lives on the property where the Accessory STR is licensed. This requirement is currently in place for the Accessory STR. This is a way to assure on-site supervision of STR visitors. However, the CPC staff is concerned about the loss of opportunity for long-term renters to also benefit from STRs. If agreed to by the landlord, long-term renters should be able to rent a spare bedroom within their unit. To prove their residency, the renter may be required to provide similar documentation as would be required to obtain a homestead exemption, such as a state-issued identification card bearing an address on the same lot as the short term rental. Additionally, an attestation should be required, which would have significant penalties if found to be fraudulent.

Another concern is the prohibition of corporate ownership and out-of-state owners to operate short term rentals. Corporations are not eligible for homestead exemptions, so current regulations would not allow them to obtain an Accessory STR license. City Attorneys have advised that it is illegal to prohibit out-of-state owners from obtaining an STR license on simply those grounds. There were no concerns raised about requiring a homestead exemption or on-site supervision. However, since Commercial STRs do not and should not require a homestead exemption, corporate leasing and ownership are fine. Indeed, most large apartment buildings are owned by corporations.

### **Zoning Changes for the Purpose of Authorizing Commercial STRs**

Since the implementation of new STR regulations in 2017, the City Planning Commission has considered a number of zoning change requests that were based on the owner's desire to establish Commercial STRs. The CPC has long had a policy against "spot zoning" which is defined in the CPC's Administrative Rules, Policies and Procedures as "zoning changes that have the effect of singling out a lot or other relatively small tracts of land for treatment different from similar surrounding parcels". There is also an exception to this policy for spot zone requests "in instances where the physical character and historic use of the parcel(s) are significantly dissimilar from surrounding properties in a manner that justifies differential treatment." An important criterion in the exception policy is that the "petitioned zoning classification must be the most restrictive available to accommodate the class of uses to serve the neighborhood." Therefore, only the low-intensity neighborhood business districts should be approved for spot zones. With the staff's recommendations to prohibit Commercial STRs in the lowest intensity neighborhood commercial districts, zoning changes approved under the spot zoning policy should not enable Commercial STRs. If the applicant

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<sup>24</sup> There should be a determination by the Zoning Division of Safety and Permits to ensure that these are legal dwelling units and not accessory structures converted to short term rentals.

<sup>25</sup> This would include one half of a double, one unit in a three- or four-unit multi-family residential dwelling, one unit of two single-family dwelling on a lot, or one unit of two doubles on a lot, so long as one unit is reserved for the owner occupant.

requests a higher-intensity district in order to obtain authorization of a Commercial STR, there is ample reason for denial.

## **Affordable Housing Impacts**

### **Reduction in Long-Term Rental Dwelling Units**

Finding a home to rent or purchase within an affordable range has become a significant challenge for many New Orleans residents.<sup>26</sup> This reality has been escalating since the destruction and devastation to the city's housing stock from Hurricane Katrina in 2005 and in the policy decisions made by the City, State and Federal government in the years following. In 2008, the nationwide recession and credit crisis intensified the affordable housing shortage. The city's housing condition has now escalated into a crisis level situation where the lack of affordable housing is affecting residents at the very-low, low, median, and in some cases the above-median income levels – this is especially difficult for those who need to live in high opportunity neighborhoods, which are categorized as such due to their proximity to jobs, services, schools, and public transportation. These neighborhoods are located in the Central Business District, Historic Core, and Historic Urban neighborhoods of the City's Comprehensive Zoning Ordinance and include the Bywater, Marigny, St. Claude, French Quarter, Tremé, Algier's Point, Central Business District, Mid City, Bayou St. John, Tulane-Gravier, Lower Garden District, Garden District, and the Irish Channel neighborhoods. This is not to say other neighborhoods aren't experiencing housing price increases and shortages; in fact, over the past decade, most of city's neighborhoods have become unaffordable to its residents.<sup>27</sup>

One of the concerns raised at the CPC public hearings on Short Term Rentals (STR), in meetings between CPC staff and residents, and by several advocacy groups is that the rise of short term rentals is exacerbating the city's housing crisis causing a further reduction in long-term rental dwellings that are available to residents. The 2015 HousingNOLA plan posits New Orleans will need 33,000 additional housing units of all types by 2025 to keep up with the City's demand for housing. This number poses a great challenge to meet for housing the city's current and future residents, especially renters who make up more than 60% of all residents and are more vulnerable to rising housing costs. Any policy consideration, including STR regulations, must consider these factors to ensure that the city is working toward meeting its housing demand for those who live and work in the city.

For the purposes of this report, the staff considered impacts that may be affecting the supply and demand for housing as a whole as well as in specific neighborhoods. According to the U.S. Census Bureau American Community Survey data, New Orleans housing stock included 186,987 dwelling units in 2012 and 192,358 dwelling units in 2016.<sup>28</sup> That is an increase of just 5,371 units (2.8%) over this five year time period which shows an annual growth rate of .05 percent. In addition, the *New Orleans 2016-2017 Market Value Analysis (MVA)* recently completed by the Reinvestment Fund, which has tracked the real estate market in New Orleans since 2012, found that the number of new construction and renovation permits fell 17% since the previous MVA analyzed the 2013-2014 market. The table below shows the slow growth rate of housing units, including newly constructed and renovated units, being added to the housing stock over this time period while also showing a downward trend in the percent of new housing units coming online.

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<sup>26</sup> For the purposes of this report, the staff references the Housing and Urban Development's (HUD) definition of affordable, which considers housing for which the occupant(s) is/are paying no more than 30% of his or her income for gross housing costs, including utilities, [https://www.huduser.gov/portal/glossary/glossary\\_a.html](https://www.huduser.gov/portal/glossary/glossary_a.html)

<sup>27</sup> HousingNOLA 10-Year Strategy and Implementation Plan, 2015

<sup>28</sup> <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

**Table 14: Number of Available Housing Units from 2012 to 2016<sup>29</sup>**

Year	Number of Housing Units	Increase in # of Housing Units	% Increase
2012	186,987	————	————
2013	190,127	3,140	1.67
2014	191,310	1,183	.06
2015	191,951	641	.03
2016	192,358	407	.02

Though there are several reasons that point to how or why there is a shortage of housing. One reason is a reduced supply of newly constructed units coming on line to keep up with the demand. Other reasons, according to a report written by the Center for Community Progress in 2016 for the New Orleans Redevelopment Authority (NORA) looked at the reasons for a rental housing shortage in the post-Katrina years, particularly 2012-2015, and provides the following data that provide a snapshot of New Orleans renter households during this period:

- 55% of all New Orleans households were renters in 2013 compared to 36% nationally;
- 70% of New Orleans renters live in one- to four-family properties, compared to just over half of all renters nationally;
- One out of every three single family houses in New Orleans is rented, rather than owner-occupied;
- 58% of African-American households were renters in 2013, which remained unchanged since 2000; and
- 39% of white households were renters in 2013, which increased 8% from 31% in 2000.

The report also states that though the rental housing inventory, including both vacant and occupied rental units, exceeded the pre-Katrina level for the first time in 2013, the revival came largely from rehabilitation of existing properties and putting them back in use, along with a shift of a substantial number of single family properties from owner-occupancy to renter-occupancy. New construction, particularly multi-family construction, appears to have played a minor role in the revival of the City's housing stock since 2010.

### **Increasing Rent Prices**

High housing costs and the inability to afford housing has been the reality for many New Orleanians since before the levee failures in 2005 and definitely in the post-disaster years. The 2015 *HousingNOLA, 10 Year Strategy and Implementation Plan*, provides data showing rents drastically increased between 2000 and 2013 by 102% (50% when adjusted for inflation).<sup>30</sup> The effects of the sustained increase in rent prices are continuing to be felt today as wages have remained basically stagnant. The data provided in the 2016 Census Bureau's American Community Survey shows there were 83,055 occupied rental units.<sup>31</sup> Of these, 61 percent of the city's renters, or 50,663 households, were cost-burdened paying more than 30 percent of their income toward housing costs of which 35 percent, or 17,732 households were considered severely cost burdened paying more than 50 percent of their income toward housing costs. The rise of rent prices have impacted the majority of renters in the past decade and despite the Housing Authority of New Orleans (HANO) allocating 18,193 vouchers to assist low-income renters in 2016, that meant there were 32,470 renter households with low and moderate incomes who struggled to afford housing. The removal of

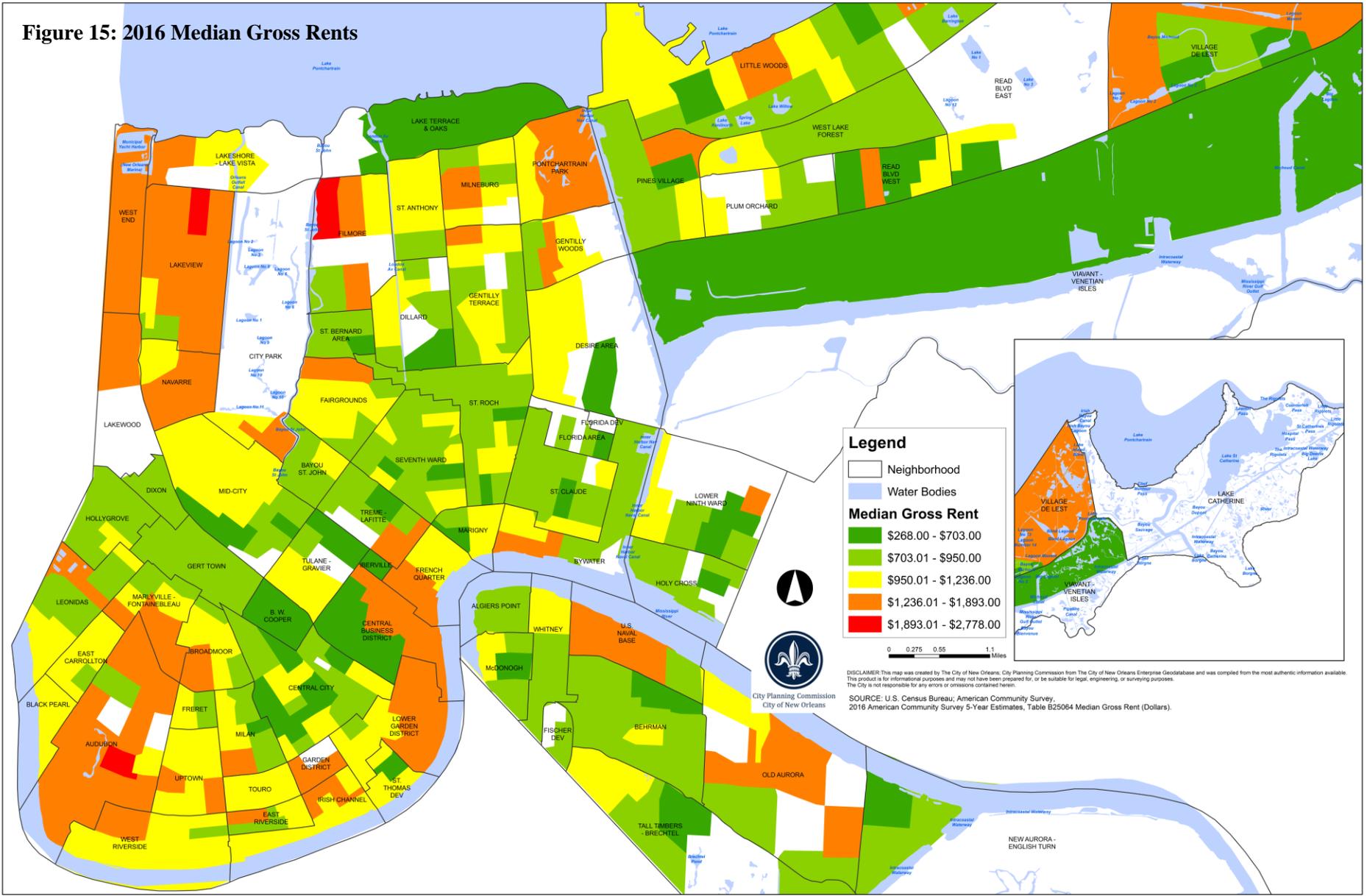
<sup>29</sup> <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

<sup>30</sup> <http://housingnola.org/main/plans>

<sup>31</sup> <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

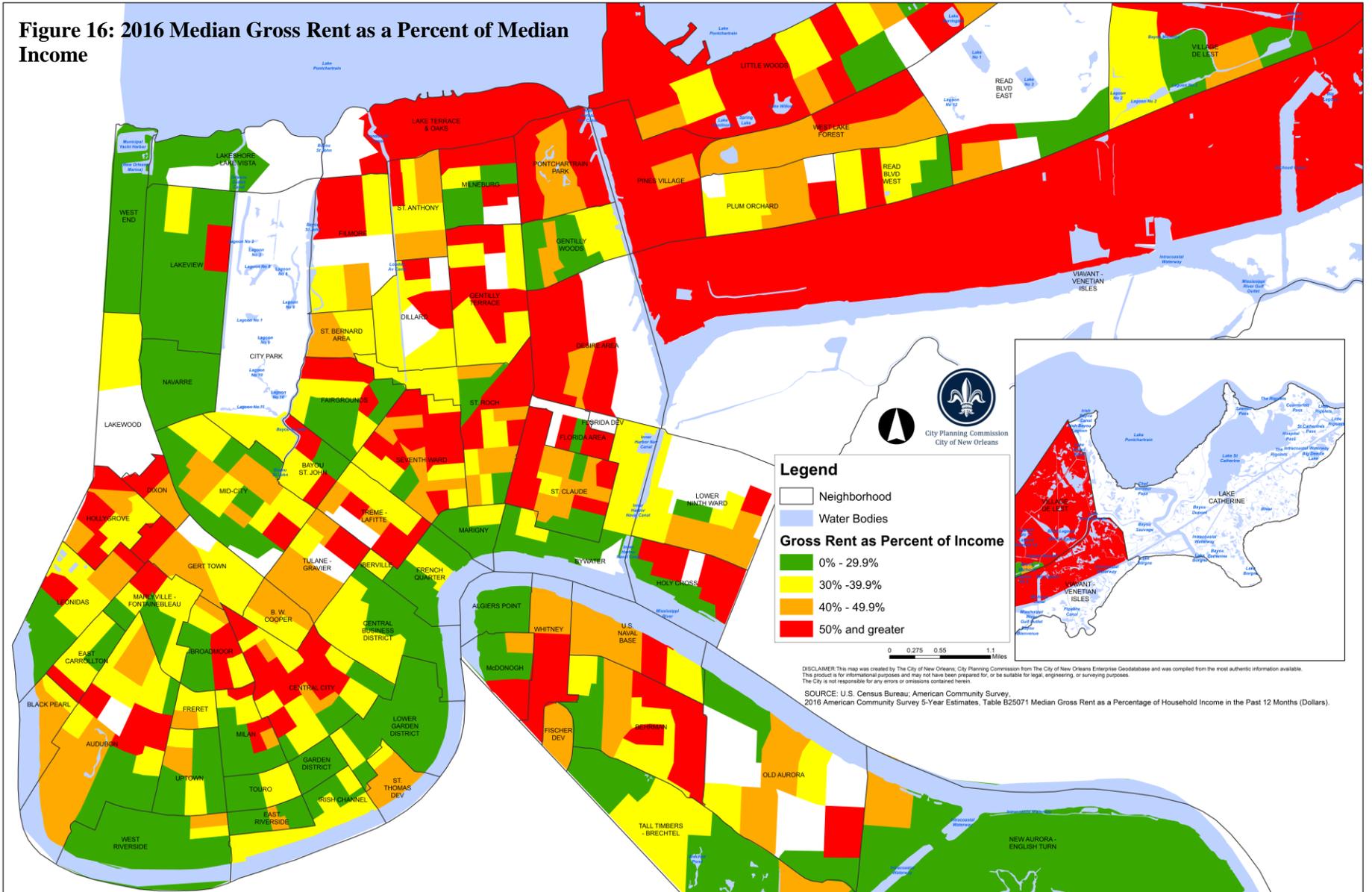
available rental units for uses other than long-term rentals means residents will continue to compete for housing units creating a market where prices continue to rise. The following maps show the city's median gross rents in 2016 along with the percentage of income needed to afford these rents.

**Figure 15: 2016 Median Gross Rents**



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**Figure 16: 2016 Median Gross Rent as a Percent of Median Income**



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## STRs Affecting the Housing Shortage and Affordability Crisis?

Opponents claim STR activity is contributing to, or in some instances the reason for, the city's housing situation. There are also claims, made by some proponents, that the income from STRs are saving homeowners who would otherwise not be able to afford their homes. New Orleans is in the midst of an affordable housing shortage making every housing unit essential. Therefore, if housing units are being taken off the market for STR use that would otherwise be available to the city's residents or if the proliferation of STRs is causing an increase in sale and rent prices, it is important to ensure the regulations for STRs are considering these factors as well as considering homeowners' ability to benefit from the regulations.

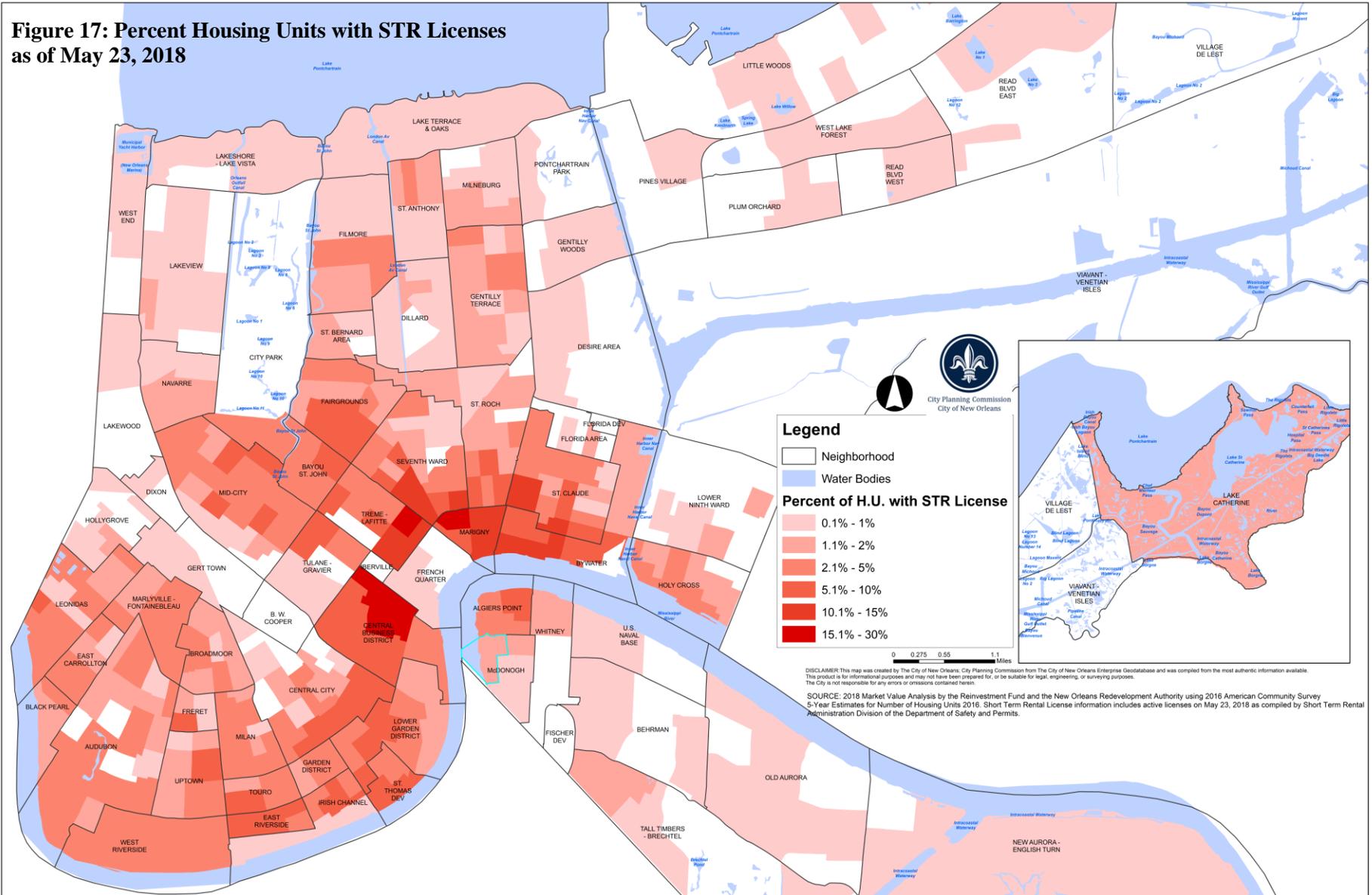
As of May 23, 2018, there were 4,210 active STR licenses issued, of which 51% were for temporary licenses, 23% for a commercial license, and 26% were issued for an accessory license. As is shown in the above map, the percent of housing units per neighborhood with STR licenses range from none to 30%. In most neighborhoods STRs are located in less than 2% of the housing units. However, some neighborhoods, such as the Central Business District, Marigny, Bywater, the 7<sup>th</sup> Ward, and Treme, are experiencing a proliferation of STRs as the percent of STRs compared to the number of housing units has reached levels between 15% and 30% STR.

As is shown in the map in Figure 17, the majority of the licenses have been issued in the neighborhoods in and around the city's core. The proliferation of STR use in these neighborhoods is concerning as the city deals with its housing crisis as these are the neighborhoods that typically provide jobs, are within walking and biking distance to jobs, have access to transit, and are nearest to amenities. Currently, the U.S. Census lists the city's median monthly rent at \$929. However, a review of real estate sites, such as Zillow and Rent Cafe show that as of July 2018, the average rent of an apartment in New Orleans was \$1,100 while the median rental price of a one-bedroom apartment was listing at \$1,250 per month.<sup>32</sup> **Error! Not a valid bookmark self-reference.** provides neighborhood specific average rental rates as of August 2018 which show even higher rental rates in certain neighborhoods.

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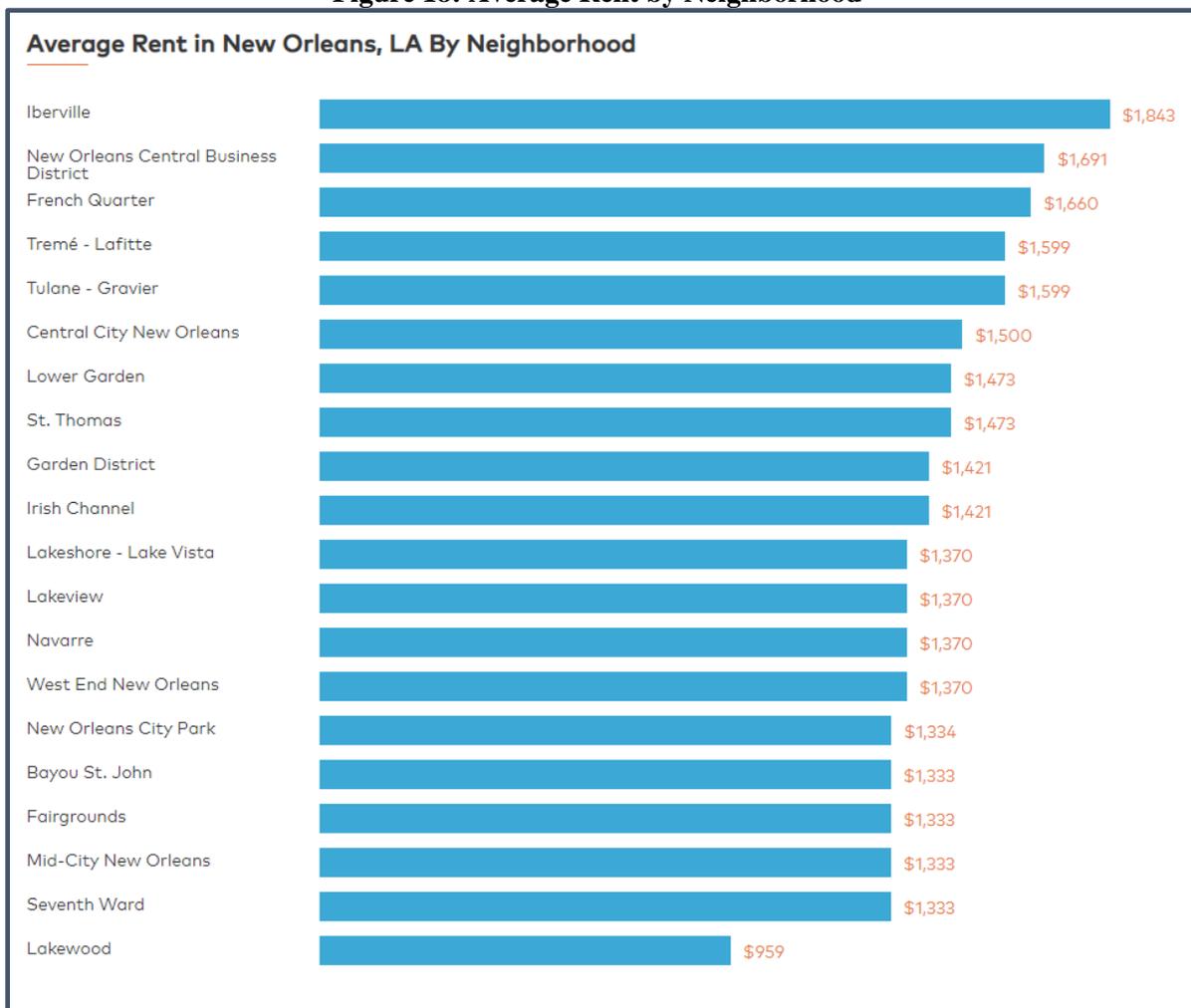
<sup>32</sup> <https://www.zillow.com/research/data/>  
<https://www.rentcafe.com/average-rent-market-trends/us/la/new-orleans/>

**Figure 17: Percent Housing Units with STR Licenses as of May 23, 2018**



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**Figure 18: Average Rent by Neighborhood<sup>33</sup>**



Source: <https://www.rentcafe.com/average-rent-market-trends/us/la/new-orleans/>

### Loss of Rental Housing

It is nearly impossible to estimate how many rental units have been taken off the long-term rental market and converted to STRs or to estimate how many tenants have been evicted or not had their lease extended to free up units for STR. At the same time, it is also difficult to definitively state that the reason that rental housing is being lost is solely due to STRs. But what is clear, given the city’s housing situation, is that residents are feeling the cumulative effects of the loss of available and affordable housing options.

In a report, *Airbnb and the Rent Gap: Gentrification Through the Sharing Economy*, forthcoming in *Environment and Planning: A Economy and Space*, that looks at the rent gap created by the STR market, the authors offer an explanation for why STRs have had the effect on the housing rental market that they have.<sup>34</sup> The report states that STRs have created a new category of rental housing that has not been

<sup>33</sup> The neighborhoods listed in this table are defined by RentCafe.com

<sup>34</sup> Wachsmuth and Weisler, *Airbnb and the Rent Gap: Gentrification Through the Sharing Economy*, Forthcoming in *Environment and Planning: A Economy and Space*, 2016.

subjected to same economic and regulatory processes that typical housing has been subjected to. For instance, converting a long-term unit to an STR can be done without having to spend a significant amount of money on improvements – a property owner can simply convert from one use to another where the only necessary step is converting the unit. The rent gap, as explained in the report, states that when the gap between actual and potential economic returns on investment increases, particularly in distressed neighborhoods, property owners and investors are incentivized to direct money into rehabilitating properties and acquiring new investments. This scenario leads to gentrification and displacement as landlords increase the rents. In the case of STR, the rent gap is happening at an even faster rate, especially in neighborhoods that attract a high number of tourists, as investors are able to obtain a new revenue stream through short term rentals. Furthermore, it does not make a difference whether the neighborhood is experiencing devaluation or not. In some neighborhoods, STRs have become the “highest and best use” of residential housing where monthly income from STR can greatly exceed long-term rental.

### **How many nights does an STR have to be rented to be profitable?**

As shown in Figure 18, the average monthly rent according to rentcafe.com, in the Treme/Lafitte neighborhood is \$1,599 per month. Using this example, that would mean that in order for an STR to be as profitable as a long-term lease, the STR operator would need to rent out their unit for at least \$150 per night 11 times each month to break even. However, if the nightly rate was \$200, the unit would only need to be rented 8 times in a month to break even. There are many variables that go into deciding whether it is more profitable to convert a unit to STR, such as location, demand, season, expense of license and taxes, etc. It is apparent that renting an STR has been profitable, since there has been an interest by investors in acquiring New Orleans properties. Researching real estate and investor sites show that there is great interest in acquiring investment property and that there are companies that will do the comparisons for potential investors for properties listed for-sale. One of these companies, Mashvisor.com advertises that it finds “lucrative traditional or Airbnb properties in a matter of minutes.”<sup>35</sup> An example of the kind of analysis that they provide is shown in Figure 19 on the next page.

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<sup>35</sup> <https://www.mashvisor.com/>

**Figure 19: Mashvisor example of economic analysis of Airbnb v. Traditional rent returns**

	AIRBNB	TRADITIONAL	
COMPARABLE RENTAL INCOME ⓘ	\$3,262 ⓘ	\$1,410 ⓘ	<input type="button" value="Edit"/>
▶ MONTHLY EXPENSES ⓘ	\$2,079	\$1,345	
CASH FLOW ⓘ	\$1,182	\$64	
CASH ON CASH RETURN ⓘ	6.45%	0.35%	
CAP RATE ⓘ	6.45%	0.35%	
OCCUPANCY RATE ⓘ			% <input checked="" type="radio"/> Days <input type="button" value="Edit"/>
<b>Expenses ⓘ</b>			
ONE TIME STARTUP COSTS ⓘ	RECURRING ⓘ	AIRBNB	TRADITIONAL
INSPECTIONS ⓘ <input type="text" value="\$ 500"/>	INSURANCE ⓘ <input type="text" value="\$ 91"/>	<input type="text" value="\$ 91"/>	<input type="text" value="\$ 91"/>
TOTAL REPAIR COSTS ⓘ <input type="text" value="\$ 3500"/>	UTILITIES ⓘ <input type="text" value="\$ 170"/>	<input type="text" value="\$ 170"/>	<input type="text" value="\$ 170"/>
FURNITURE & APPLIANCES ⓘ <input type="text" value="\$ 1000"/>	PROP. MANAGEMENT ⓘ <input type="text" value="\$ 326"/>	<input type="text" value="\$ 141"/>	<input type="text" value="\$ 141"/>
CLOSING COSTS ⓘ <input type="text" value="\$ 3000"/>	PROP. MAINTENANCE <input type="text" value="\$ 183"/>	<input type="text" value="\$ 183"/>	<input type="text" value="\$ 183"/>
OTHER ⓘ <input type="text" value="\$ 0"/>	PROPERTY TAX ⓘ <input type="text" value="\$ 130"/>	<input type="text" value="\$ 130"/>	<input type="text" value="\$ 130"/>
TOTAL <b>\$8,000</b>	HOA DUES ⓘ <input type="text" value="\$ 433"/>	<input type="text" value="\$ 433"/>	<input type="text" value="\$ 433"/>
	RENTAL INCOME TAXES ⓘ <input type="text" value="\$ 457"/>	<input type="text" value="\$ 457"/>	<input type="text" value="\$ 197"/>
	CLEANING FEE REVENUE <input type="text" value="\$ 289"/>	<input type="text" value="\$ 289"/>	<input type="text" value="\$ 0"/>
	OTHER ⓘ <input type="text" value="\$ 0"/>	<input type="text" value="\$ 0"/>	<input type="text" value="\$ 0"/>
	TOTAL <b>\$2,079</b>	<b>\$2,079</b>	<b>\$1,345</b>

In June, 2018, the National Low Income Housing Coalition (NLIHC) released a report on the mismatch between wages and rent.<sup>36</sup> The report uses a Housing Wage to consider how much a renter would need to make by zip code to afford a one- or two-bedroom dwelling unit. In New Orleans, a renter would need to make the wages as shown in the Table below to live in certain housing types in these zip codes. In 2017, the Bureau of Labor Statistics listed the mean hourly wage for New Orleans workers at \$20.82.<sup>37</sup> However, the median hourly wage for workers in food service (\$10.11), healthcare support (\$12.49), protective service (\$17.60), and personal care and services (\$11.08) make far less than that. As evidenced in the table, there are very few zip codes workers, including those employed as police, fire, food service, and healthcare

<sup>36</sup> <http://nlihc.org/oor/zip?code>

<sup>37</sup> [https://www.bls.gov/regions/southwest/news-release/2018/occupationalemploymentandwages\\_neworleans\\_20180627.htm](https://www.bls.gov/regions/southwest/news-release/2018/occupationalemploymentandwages_neworleans_20180627.htm)

personnel, are able to afford. Workers in the service industry and in healthcare support would not be able to afford rent for even a one-bedroom unit.

**Table 15: Hourly wage required to afford a one-or two-bedroom rental unit by zip code<sup>38</sup>**

<b>Zip Code</b>	<b>Hourly Wage required to afford a one-bedroom unit</b>	<b>Hourly Wage required to afford a two-bedroom unit</b>	<b>Poverty Rate</b>
70112	\$21.35	\$25.77	41.6%
70117	\$16.15	\$19.42	30.9%
70114	\$15.38	\$18.46	32.8%
70130	\$22.50	\$27.12	20.30%
70113	\$13.85	\$16.73	46%
70116	\$17.31	\$20.77	31.2%
70119	\$17.31	\$20.77	28.7%
70125	\$17.69	\$21.15	29.2%
70115	\$20.00	\$24.04	17%
70118	\$18.27	\$21.92	29.4%
70124	\$20.96	\$25.19	6.7%
70122	\$15.96	\$19.04	23.4%
70126	\$15.38	\$18.46	37%
70127	\$15.58	\$18.65	35.7%
70128	\$15.77	\$19.04	23.3%
70129	\$13.85	\$16.73	26.8%

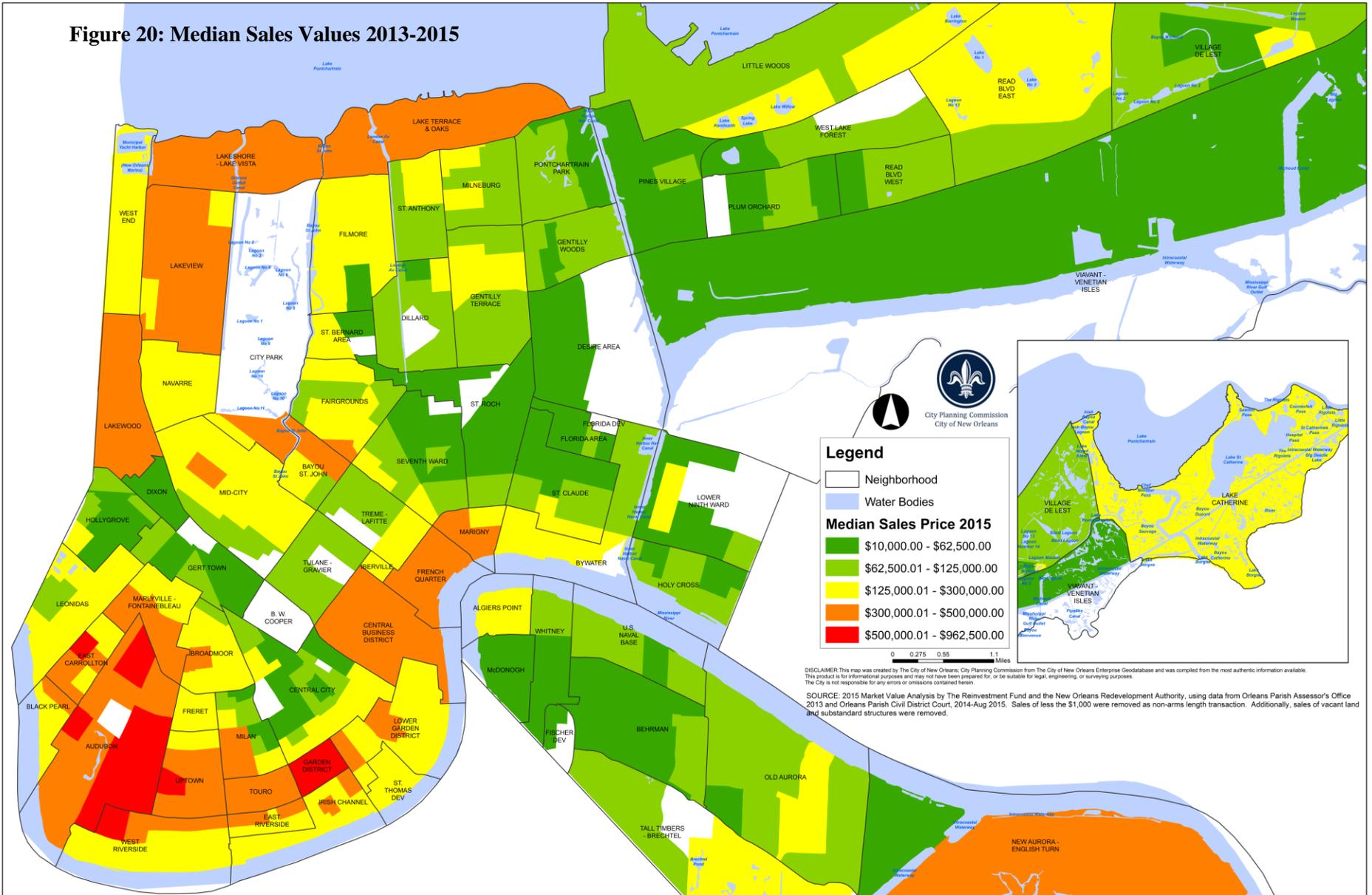
### Home Sale Price Increases

Given the rise in rental rates and the downward trend of housing production throughout the city, it is no surprise that the home sale prices are also increasing as properties have become more valuable. The *2017-18 Market Value Analysis (MVA)* recently completed by the Reinvestment Fund has tracked the real estate market in New Orleans since 2012 and found that home values have risen in several high opportunity neighborhoods (Mid City, Irish Channel, Uptown, and Lower Garden District) more than \$150,000 and that median home values have increased 29% between 2015 and 2018 as is shown in Figure 20 and Figure 21 on the next pages.<sup>39</sup>

<sup>38</sup> <http://nlihc.org/oor/zip?code=70112>

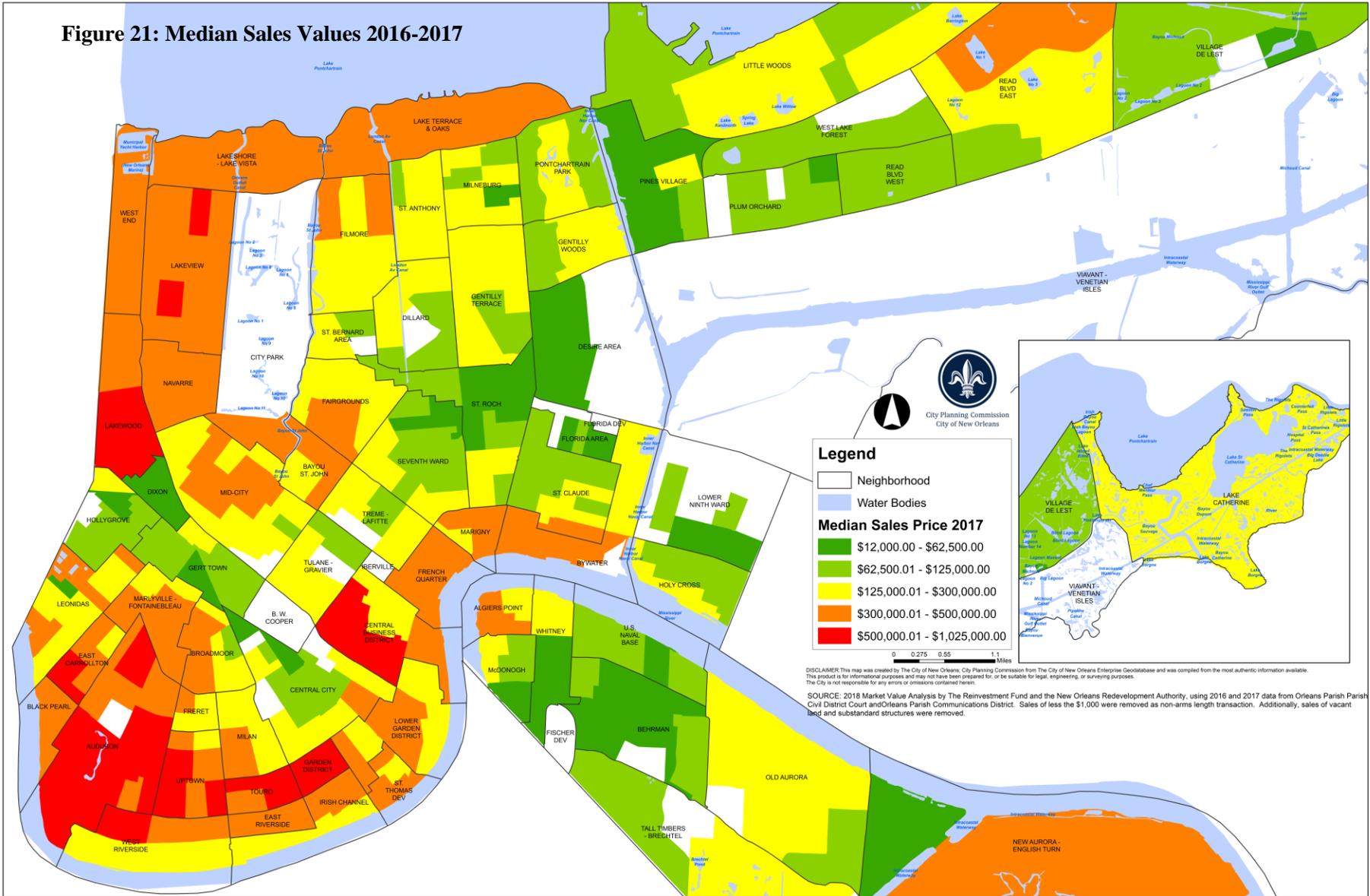
<sup>39</sup> <https://data.nola.gov/Economy-and-Workforce/New-Orleans-2015-Market-Value-Analysis-Final-Report/tbyf-mn78/data>  
<https://data.nola.gov/Real-Estate-Land-Records/Market-Value-Analysis-Final-Report-2018/svze-8ffj>

**Figure 20: Median Sales Values 2013-2015**



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**Figure 21: Median Sales Values 2016-2017**



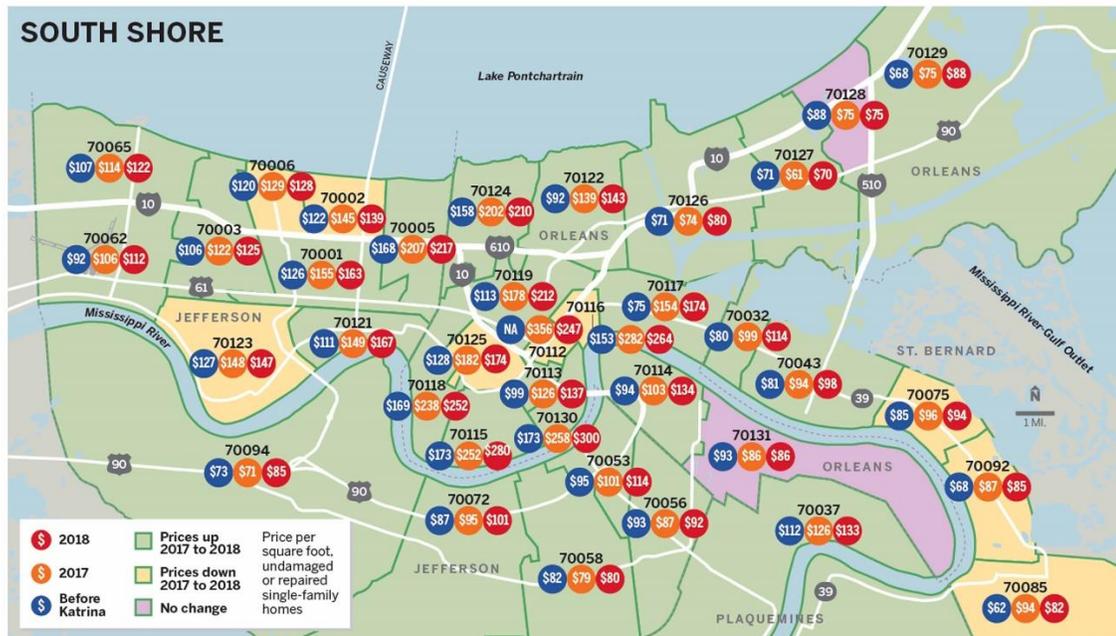
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Another recently released analysis was conducted by Real Property Associates using data obtained from the New Orleans Metropolitan Association of Realtors and the Gulf South Real Estate Information Network shows New Orleans sale prices for single-family homes rose 5.6% in the first six months of 2018 compared to the same period in 2017. According to this data the price per square footage cost for homes in some areas have seen increases of more than 150% since 2005.

**Table 16: Percent Increase in Price per Square Foot from 2005-2018 and 2017-Jan to June 2018**

Zip Code	% Increase 2005-2018	% Increase/Decrease 2017-2018
70130	73%	16.28%
70114	43%	9.6%
70117	132%	13%
70116	73%	-6.4%
70113	136%	8.7%
70115	62%	11.5%
70118	49%	5.88%
70125	36%	-4.4%
70119	88%	19.1%
70124	33%	4.0%
70122	55%	2.9%
70126	13%	8.1%
70127	-1%	14.8%
70128	-15%	0%
70129	29%	17%

**Figure 22: Map of Single-Family Price per Square Foot by Zip Code<sup>40</sup>**



<sup>40</sup> [https://realestate.nola.com/realestate-news/2018/08/home\\_prices\\_new\\_orleans\\_2018.html](https://realestate.nola.com/realestate-news/2018/08/home_prices_new_orleans_2018.html)

## **Entire homes converted to short term rentals**

Airbnb and Homeaway spokespersons posit that their companies provide a home sharing service that allows homeowners to occasionally rent their homes to meet their mortgage payments. This testimony from homeowners was heard at both of the public hearings held by the City Planning Commission and was submitted in writing by numerous homeowners for consideration as part of this report. One of the arguments is that STRs allow people to rent out their property temporarily to make the necessary money to pay for the dwelling unit's taxes, insurance, maintenance, etc. and that doing so does not remove available housing from the market. After meeting with several STR operators, it is apparent that there are properties that have been purchased by investors in commercial and residential neighborhoods that are intended to be rented solely as STRs. Many proponents of STRs, including representatives of the STR platforms and STR operators state that their listings do not take long-term units off the market, since before the Council enacted the moratorium there was a 90-day cap on Temporary STR licenses. Meeting with operators and the City's STR administration, the staff has learned that some operators have continued to rent their STR beyond the 90-day cap. It is most likely that these units are no longer a principal residence even if the unit is not available for STR use 365 days per year.

## **Affordable Housing Impact Statement**

In 2016, the City Council passed Motion M-16-167 directing the City Planning Commission to conduct a study to investigate how affordable housing impact could be assessed through land-use and building applications. The City Planning Commission recommended and the City Council adopted the following regulations regarding an Affordable Housing Impact Statement (AHIS) requirement for developments that add or remove housing units:

1. An AHIS is to be completed when a building permit application is filed that includes adding, modifying, subtracting housing units;
2. To require an AHIS for all applications seeking a density bonus as provided in the Comprehensive Zoning Ordinance (Ordinance No. 27,377 M.C.S.); and,
3. An AHIS could be requested of any policy analysis done by the City Planning Commission or the Office of Community Development, including Master Plan amendments, special studies, neighborhood plans, etc.

As stated earlier in this section of the analysis, it is difficult to determine exactly how many housing units have been removed or added specifically for full-time short term rental use. Going forward, the staff's recommendation is to only allow limited whole home or whole unit short term rentals in commercial zoning districts. The staff sees value in collecting data on short term rentals to ensure compliance with existing regulations and evaluating current and future policy decisions on short term rentals. Therefore, the staff recommends an AHIS form be created and be filled out by anyone applying for a short term rental license. The staff envisions the form to include a series of questions regarding the potential short term rental unit's intended and prior use. This information could then be entered into the city's data system in the "details" section, or other appropriate location, and could be used to assess how many housing units or commercial uses have been converted to short term rental use and would also be able to track how many short term rental units are being created through blight remediation or new construction.

- Any person or entity submitting an application for a short term rental license shall complete an Affordable Housing Impact Analysis (AHIS) form. This form shall be required for an application to be considered complete.

## Neighborhood Housing Improvement Fund (NHIF)

### *What is the NHIF?*

In 1991 New Orleans voters passed Proposition D of R-91-100, which established a city fund through a thirty-year tax millage to create the Neighborhood Housing Improvement Fund (NHIF) that would combat blight and improve housing in neighborhoods.<sup>41</sup> From its time of adoption, the NHIF was generally used to address blight remediation through the Office of Code Enforcement, which included paying inspector salaries and attorney costs to address blighted structures throughout the city. In 2015, the City Council voted to amend the NHIF ordinance, which codified Sections 70-415.1 through 70-415.7 of the City Code, to restrict the funds spending to the creation and rehabilitation of housing for low- to moderate-income residents while removing language that restricted rental development by size and location in certain neighborhoods.<sup>42</sup> The amendments to the ordinance went into effect in 2017.

### *Short Term Rental funding to the NHIF*

The authorization of STRs in 2016 to the Comprehensive Zoning Ordinance included several additional pieces of enabling legislation – one of which address the NHIF. The ordinance amended Section 70-415.1 of the City Code to include \$1.00 of revenues collected relative to the nightly occupancy of Short Term Rentals, as defined in the Comprehensive Zoning Ordinance.<sup>43</sup> Thus, for every night a STR is occupied a \$1.00 fee shall be submitted the City and deposited in the NHIF. Legislation also authorized the Mayor to enter into a Cooperative Endeavor Agreement (CEA) with Airbnb, Inc. for the remittance of hotel sales and use taxes and hotel occupancy privilege taxes for booking transactions conducted on their platform.<sup>44</sup> The CEA did not address the remittance of NHIF revenues, but there was a Voluntary Collection Agreement made between the City and Airbnb, Inc. Airbnb, Inc. would remit the \$1.00 nightly occupancy fee to the City's Finance Department along with the hotel sales and use tax and the hotel occupancy privilege taxes. In the event that an STR license holder advertises on another platform or conducts their own lodging transaction, that license holder is responsible for submitting the monthly report showing how many nights the STR was rented in the previous month and including the \$1.00 fee to the City for deposit in the NHIF.

As of June 18, 2018, \$652,721 was collected by the Department of Finance, Bureau of Revenue for the NHIF and includes all fees collected since the May 1, 2017 STR implementation date.<sup>45</sup> The report submitted by the Department of Finance, Bureau of Revenue shows there were 802 separate submittals sent to the cashier and one submittal filed through the parish e-file system. \$652,634.42, or 99.99%, of the total appears to have been submitted through a single account while two submittals showing the amounts of \$72.00 and \$15.00 appear to have been submitted through other accounts. Given the agreement with Airbnb, Inc., the staff assumes Airbnb, Inc. has collected and submitted the bulk of these fees on behalf of their operators. Other platforms have not submitted on behalf of operators using their platforms and there has been very little contribution made independently by operators, despite being required as part of the tax/fee collection and reporting requirements for operating an STR.

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<sup>41</sup> Ordinance No. 14,630 MCS

<sup>42</sup> Ordinance No. 26,644 MCS

<sup>43</sup> Ordinance No. 27,210 MCS

<sup>44</sup> City staff met with other short term short term rental platforms during negotiations in 2016-17, but did not solidify agreements with any platforms other than Airbnb, Inc.

<sup>45</sup> \$346,104.50 of the fee was collected May 1-December 31, 2017. \$306,616.92 was collected between Jan 1 and June 18, 2018.

### *NHIF Uses*

The Office of Community Development (OCD) manages the NHIF disbursements. In the 2018 budget proposal presented to the City Council in November 2017, OCD projected that the 2018 NHIF would take in \$3.5 million, which included \$500,000 raised through the short term rental fee. OCD allocated the funds to the following uses:

- Administrative Costs
- Code Enforcement
- Special Needs Home Repair Program
- Home Match
- Affordable Housing Development
- Low Barrier Shelter
- Aging in Place Program

OCD allocated \$610,000, which was to be combined with approximately \$2.5 million from prior year rollovers for affordable housing development. In meetings with stakeholders, including housing advocates, neighbors, and STR operators the staff learned that there is general consensus for raising the NHIF fee on nightly STR rentals to create more affordable housing.

Other cities are addressing the concern about the removal of housing units for short term rental use and the affordable housing shortage in their cities by considering or implementing higher fees, dedicating tax revenue, or creating affordable housing trust funds for the creation of affordable housing units.<sup>46</sup> Some examples of this include requiring a percentage of the nightly rental rate be allocated into the fund while others require a flat fee per nightly rental as has been required in New Orleans. There are also instances where money raised through fines is dedicated to an affordable housing development fund. As stated, New Orleans STR regulations already require a contribution to the NHIF; however, the staff believes the fee is too low and should be raised to make more of an impact on addressing the city's affordable housing crisis. In meeting with housing advocates, STR license holders, and platform operators, the suggestion to raise the NHIF fee ranged from \$4 to \$15 per nightly rental. It has also been suggested that the city should base the NHIF fee on a percentage of the nightly rental rate, for example, 15% of each nightly rental. To ensure the fee is less complicated, collected correctly, and that license holders submit the fee, the staff recommends the continuation of a flat fee per nightly rental. The staff recommends raising the NHIF fee to an amount that will make a notable difference in affordable housing unit production – to \$8.00 per nightly whole unit rental. However, the \$1.00 per night fee should remain for Partial Unit Residential STRs as these are partial rentals for an owner or renter occupied unit. The staff also believes that the fee collected through STRs should only be used for the creation of affordable housing units and administrative costs to create the units.

- The per night fee for the NHIF required by STR license holders should be increased to \$8.00 per occupied nightly while unit rental while keeping the per night fee for partial rentals at \$1.00.
- The NHIF fee should be a flat fee rather than a percentage of the rental rate for easy verification and compliance monitoring.

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<sup>46</sup> Staff is aware of efforts to dedicate fees or tax revenue raised through short term rental regulations to affordable housing in San Diego, Seattle, Miami, Chicago, and most recently the state of Massachusetts. New Orleans is one of the first cities to have implemented this requirement in May 2017.

- The money raised in the NHIF by STRs should be attributed to affordable housing development and administrative fees to develop the affordable housing and should not be used for code enforcement regulation or other code compliance.
- The STR administration should be required to verify fees are being submitted by license holders that have active listings to the Department of Finance, Bureau of Revenue.

### **STR used as gap financing**

There are development projects in the city that have been made possible, according to STR operators, because they signed long-term leases for certain units in the development to be used as STRs. The projects, one of which included affordable housing units, were apparently at risk of losing their funding or were not able to secure the proper financing until the STR leases were in place. The leases provided the security that there would be a guaranteed revenue stream for the project. Prior to conducting research for this study, the staff was unaware that this was occurring or that it was an option, which is an indicator of how much the industry is growing and changing. Using STRs as a gap financing tool is an interesting concept and may be a way for developments to become viable; however, the staff takes the position that there should be density controls for STRs to address the proliferation of STRs. A recommendation for leveraging STRs for affordable housing is addressed in the next section.

### **Leveraging STRs for affordable housing**

In reaction to the ever-growing illegal use of properties for STR, the Council and Administration implemented STR laws in 2017 to create regulations that would be enforceable and provide a path for illegal operators to come into compliance. As we revisit these regulations that have been in effect for more than a year, we must re-examine not only the STR regulations, but also consider the City's overall housing policy. The City's STR policy could include more than just financial benefits for STR operators and the City's general fund. As is shown earlier in this report, most STRs are in areas of the city that are close to jobs and services in the city's core, which raises concern about the proportion of housing that is or has been converted to STR. Addressed earlier in this report, the staff recommends limiting STRs in commercial and mixed use districts to address density and saturation. To address the need for affordable housing, the staff believes that if determined to be in line with the City's policy goals on housing by the Administration and the City Council, affordable housing could be leveraged through the issuance of STR licenses. A policy could include leveraging STR commercial licenses by requiring that an affordable housing unit be created in exchange for each unit granted above the cap for commercial STRs. Another policy consideration could be similar to a program created in Venice, Italy where potential STR income is used to secure gap financing for home purchasers.<sup>47</sup> As in New Orleans, the cost for purchasing a home has increased in recent years making the realization of becoming a homeowner an out of reach dream for many residents. The gap financing tool allows new home owners to secure a mortgage loan based on income generated from renting out a room in the home.

Currently, the Administration and the City Council are considering several programs to address the city's affordable housing crisis. The City Council recently passed Motion M-18-320 requesting the City Planning Commission consider a text amendment to the Comprehensive Zoning Ordinance to incorporate certain recommendations and initiatives in the *Smart Housing Mix Ordinance Study*.<sup>48</sup> Included in Motion-18-320, is a directive to complete a financial feasibility study for the development of affordable housing. This study

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<sup>47</sup> <https://web.wpi.edu/Pubs/E-project/Available/E-project-121517-055504/unrestricted/VE17-STAY-Report.pdf>

<sup>48</sup> The Smart Housing Mix Ordinance Study considered a mandatory inclusionary zoning program for the City of New Orleans. The study was completed in Feb. 2017 and is available here

is currently in the process and upon completion will provide guidance on factors such as, zoning, market, Area Median Income targets, percentage set aside, and other variables for creating an affordable housing policy. This information could be used to inform the exact numbers in providing an incentive for commercial STRs to exceed the cap and other affordable housing incentive programs that are established in accordance the city’s overall affordable housing policy.

- In accordance with the City’s housing policies, including affordable housing and home buyer programs, the Administration and City Council could consider leveraging Commercial STRs above the cap in exchange for an affordable housing unit or by creating a program to assist potential homebuyers in securing gap financing.

## **Neighborhood Character and Quality of Life Issues**

### **Loss of permanent residents and sense of community**

New Orleans is a City of Neighborhoods with each neighborhood claiming its own unique history, architecture, and characteristics. In 2006, only a few short months after the levees failed in August 2005, the Urban Institute opened its report, *Rebuilding the Cultural Vitality of New Orleans*, with this statement:

*New Orleans has been called the soul of America. It is a cultural Mecca famed for fusion, the soil from which many uniquely American art forms have grown. Its neighborhoods are where cultural seeds are sown, where traditions have been invented and preserved—including music, cuisine, oral tradition, performance art, visual art, and architecture. These cultural expressions, and the people who gave birth to them, are what give the city its flavor—its international, national, and local identity and its cultural stature. They are, at the core, what make the city a tourist destination and an American icon. Yet, many cultural bastions are the poor of New Orleans—mostly African American residents from low-income communities that were flooded, torn apart, and in some cases, destroyed by Hurricane Katrina and the neglect in its wake.<sup>49</sup>*

New Orleans neighborhoods are rooted in a historical blend of culture, people, and traditions that have been passed on through the generations. Since the levee breeches in 2005, the city’s 73 neighborhoods, including Treme (the country’s oldest African American neighborhood), Algiers Point (the city’s 2<sup>nd</sup> oldest neighborhood behind the French Quarter), the Garden District, St. Roch, the 7<sup>th</sup> Ward, Bayou St. John, Mid-City, Central Business District, and many others have struggled to retain or return their long-standing culture and traditions. The neighborhoods also provide a sense of social cohesion where residents socialize and spend time together, look out for one another, and work together toward common goals. It is because of this, the deep rooted cohesion, uniqueness, and authenticity, that visitors are drawn to New Orleans wanting to experience the genuineness that the city’s neighborhoods and its residents offer. When too many STRs are allowed in any one neighborhood, residents have stated their neighborhoods become less “neighborly” and more tourist/visitor centric.

According to a report by the Data Center released in July of this year, the city’s demographics in 2017 have changed since 2000.<sup>50</sup> For instance, with a total population of 393,292 there were 91,274 fewer African Americans and 7,945 fewer whites living in the city in 2017 than in 2000, which had a population of 484,674. In other words, the city had 91,382 less people living in it in 2017 than in 2000, but lost more of

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<sup>49</sup> <https://www.urban.org/sites/default/files/publication/51056/900927-Rebuilding-the-Cultural-Vitality-of-New-Orleans.PDF>

<sup>50</sup> <https://www.datacenterresearch.org/data-resources/who-lives-in-new-orleans-now/>

its African American population than its white population. In addition, the city experienced more people moving into the city from outside of Louisiana in 2017 than ever before.

### **Effects of non-resident property owners**

In a report by Wachsmuth and McGill, *Airbnb and the Rent Gap: Gentrification Through the Sharing Economy*, the authors reference a study on gentrification that makes the distinction between “direct displacement” and “exclusionary displacement”.<sup>51</sup> The direct displacement scenario is associated with landlords evicting tenants, or not renewing leases, to raise rents or redevelop while exclusionary displacement makes dwellings unobtainable by excluding households from living where they would otherwise live. STR data shows that this may be happening in New Orleans, prior to the implementation of the moratorium on temporary STRs. As of May 23, 2018, the City had a total of 4,210 active STR licenses of which 2,144 were temporary whole-unit listings that permitted the dwelling to be rented for up to 90 days per calendar year. The remaining 2,066 active licenses for Accessory and Commercial STRs. A homestead exemption was claimed on 1,557 of the licenses meaning the majority of licenses, 2,653, were not someone’s principal residence.

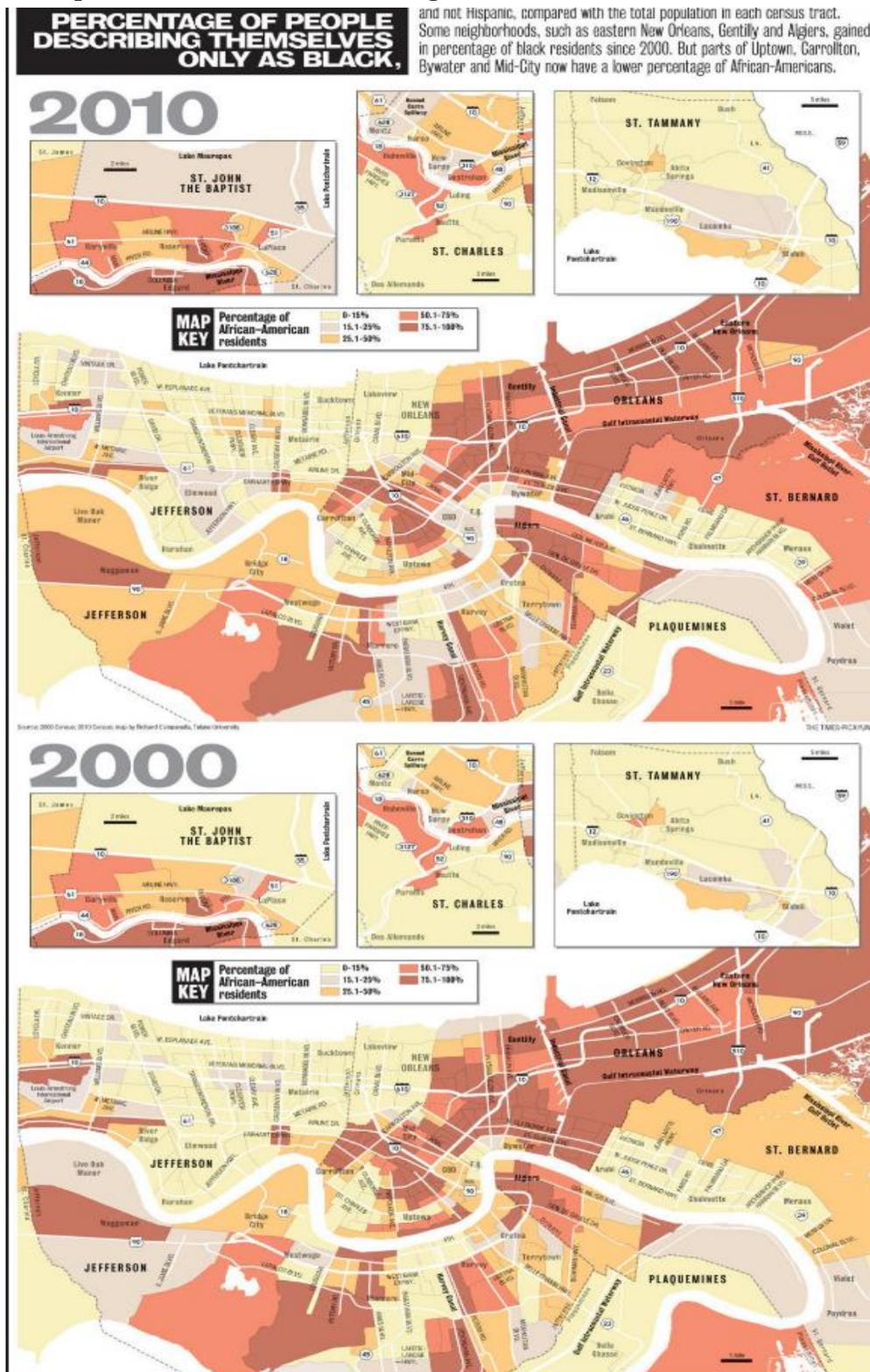
Most of the City’s African American neighborhoods have historically been low-income, making them vulnerable to becoming gentrified when investment without an anti-displacement strategy. Looking at the maps below showing the percentages of African American residents throughout New Orleans neighborhoods between 2000 and 2010, the Bywater, Marigny, Uptown, Irish Channel, Mid City, Algiers Point and Lower Garden District all show a lower percentage of African American residents in 2010.<sup>52</sup> This is an important indicator that these neighborhoods are already at high risk for displacement and that additional removal of available housing will continue to change these neighborhoods’ make-up and will likely displace more long-term residents. The demand for STR use is outpacing the construction of new housing in some distressed neighborhoods, which is exacerbated by nonresident home purchasers. Strategies to promote first-time homeownership and to maintain affordable rents can serve to mitigate the impacts and benefit existing residents.

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<sup>51</sup> <https://davidwachsmuth.files.wordpress.com/2017/07/wachsmuth-weisler-airbnb-draft.pdf>

<sup>52</sup> Krupa, M. “Racial divides among New Orleans neighborhoods expand.” *The Times Picayune*, June 2011. [https://www.nola.com/politics/index.ssf/2011/06/pockets\\_of\\_new\\_orleans\\_grow\\_fa.html](https://www.nola.com/politics/index.ssf/2011/06/pockets_of_new_orleans_grow_fa.html)

**Figure 23: Comparison of African American neighborhood residents between 2000 and 2010**



## **Nuisances - Noise, Trash, and Parking**

Depending on the neighborhood and the typical or seasonal activity that occurs, the citizens of New Orleans are generally accustomed to hearing some noise and seeing activity in their neighborhood or building. Nonetheless, it is customary to think of a neighborhood as a place where residents live and spend most of their down time. A person's home, whether in a single structure, double, condo, or apartment, is where residents retreat to after work, school, or enjoying the city's many activities for sleeping, lounging, eating, and enjoying their outdoor space. In conducting research for this report, the staff heard resident accounts of large parties all through the day and night inside and outside of STRs. Residents with numerous tourists staying in their neighborhood find that their neighborhood is no longer a place where residents are able to enjoy the sanctuary of their dwelling due to STR activity. In many instances, neighborhoods see a new set of visitors every few days. In some instances, neighboring residents are left to bring the STRs' trash receptacles to the curb for trash collection when STR guests are not aware of the need to do so or the operator is not responsible.

Residents have expressed that they feel they are the enforcement agents in their neighborhoods, since STR enforcement is generally complaint-based. This means that if there is a noise, trash, parking, or other issue with an STR, a resident must call and report it to the City's STR Administration or in escalated cases contact the police. This is burdensome and troubling for many residents. The current regulations require an STR license holder to provide the contact information for the STR unit being rented, but this has not always proven effective.

The staff met with a couple of the Commercial STR operators, Stay Alfred and Sonder to learn about their operations. In these meetings the staff learned about their practices for monitoring noise in their STRs, which in the case of Sonder includes a noise monitoring device that is set to a certain noise level that if exceeded alerts the property manager. The staff also spoke with one of the founders of a noise control device monitoring company, NoiseAware, and learned that La Quinta, California has passed legislation that allows the City to impose a requirement for installation of a noise monitoring device.<sup>53, 54</sup> Due to the potential for increased noise in non-owner occupied STRs, the staff recommends that all Commercial STR rentals be required to install noise monitoring devices to ensure compliance with the City's noise ordinance and established quiet times. The staff does not believe the requirement to install noise monitoring equipment should be required once a complaint has been made, but should be required at the time of licensing to ensure there aren't any problems from the date of issuance of the STR license.

- Contact information shall be included in the application for the owner of the STR and the property manager, if applicable, to be listed on the STR license. In the event that either is contacted by a neighbor, the contact shall be required to respond to the neighbor with a complaint within 30 minutes of the complaint.
- Noise monitoring devices should be considered as a requirement in all Commercial STR units to ensure compliance with the City's Noise Ordinance and established quiet times.

## **Effects of Short Term Rentals on Neighborhood Commercial Character**

As stated previously in this report, the staff met with several groups with interests associated with short term rental activity, including those who are operating the various types of short term rentals and residents

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<sup>53</sup> <https://www.laquintaca.gov/home/showdocument?id=36432>

<sup>54</sup> David Krauss co-founder of Noise Control prepared a Noise Management Plan for New Orleans. This recommendation is included in the Attachments at the end of this report.

who are affected by short term rental activity in their neighborhood or near their place of business. In these conversations, participants told the staff about neighborhood businesses changing their operations and merchandise to cater to short term visitors and new jobs being created. The staff also learned that many neighborhood residents are don't believe the claim that businesses profit margins are greater while serving tourists when residents also spend money in their neighborhoods at local stores, service establishments, restaurants, etc. Though the staff received most of the information through subjective testimonials rather than through actual accounts from neighborhood business operators, there is reason to consider whether short term rentals is having an effect on neighborhood commercial activity.

The spending behavior of tourists is notably different than the behavior of long-term residents. Tourists tend to need quick convenient goods, specialized items, and places to eat and drink. While long-term residents want these types of amenities as well, they also want neighborhood services, such as groceries, dry cleaners, personal service establishments, clothing stores, and banks. When a neighborhood becomes more populated with tourists demanding these types of goods and services, businesses are either drawn or faced with no other choice than to cater to visiting tourists' needs rather than offering products for residents' needs. In addition to the changes in types of neighborhood businesses, they may change in scale. For example, a grocery store that offers a variety of items for food preparation at reasonable prices may change its inventory to offer mostly prepared food items that are more upscale. This creates a problem for families working within a budget and needing to be able to purchase a variety of food items for in-home preparation. Also, it would tempting for a neighborhood coffee shop, bar, or restaurant to raise its prices to a higher amount to establish "tourist prices", since it is typical for prices to be higher in tourist areas. One of the benefits of STRs according to users and proponents is that an STR typically provides cooking facilities and allows users to dine in rather than spending money in restaurants. In conducting research for this report, meeting with residents and short term rental operators, and reading the hundreds of written public comments, the staff heard of these scenarios playing out in New Orleans. In some instances, it was seen as beneficial for business operators. In other situations, it is considered devastating to neighborhood residents.

### **STR as Blight Remediation**

The city has struggled for decades and certainly since Hurricane Katrina to address the blighted properties that are scattered throughout the city's neighborhoods. In 2010, there was an estimated 43,755 blighted properties or overgrown lots in New Orleans. By creating a data system and establishing an improved code enforcement system, the number of blighted properties has been greatly reduced. Several STR license holders spoke at the public hearings and at meetings with staff about how they rehabilitated a blighted property that had been a vacant nuisance for neighbors for many years. They stated how these places were havens for a myriad of illegal activity in the neighborhood and through their investment, the nuisance properties are now assets to the neighborhood. The staff recognizes that it there may be an opportunity to incentivize further blight remediation in residential neighborhoods by offering an STR license opportunity. This should be considered in the broader context of the city's housing policy, since there are also opportunities to rehabilitate blighted properties for first time homeowners, affordable housing, and as part of larger revitalization efforts.

The allowance of Commercial STRs can be a useful tool in financing expensive and complicated renovations of historic buildings. Commercial STRs have been used to help finance the renovation of the Pythian building in the CBD as well as other historic buildings. The CPC staff also recommends allowing this strategy for the renovation of historic buildings along Canal Street in the CBD. With a Commercial STR cap in place for virtually all of the city, there is an opportunity to leverage additional benefits for the citizens by allowing Commercial STRs to exceed the cap in certain circumstances. The benefits may include the renovation of historic buildings or the provision of affordable units in the same structure.

- If a policy decision is made to use this tool as an incentive for the renovation of historic structures, the CPC staff recommends certain conditions or standards, such as:
  - The structure must have been vacant for the past 5 or 10 years;
  - The structure must be a contributing structure located in a national or local historic district, or be designated an historic landmark;
  - If the structure is not already located in a full-control local historic district or is not a locally designated historic landmark, renovations to the exterior must be approved by the staff of the appropriate Historic District Landmarks Commission.
  - This tool might also be applied to historic structures in residential areas, but with a sunset clause on the length of use as an STR, such as 5 years.

### **Permitting & Licensing Issues**

Based on discussions with the Department of Safety and Permits, the Short Term Rental administration, short term rental operators, and neighborhood stakeholders, CPC staff has identified a number of issues with the short term rental license requirements and review process. The purpose of this section is to identify the issues and make recommendations to address those issues.

#### **Applying for a Short Term Rental License**

In order to legal rent a dwelling unit on a short term basis, the application would need to apply and receive a short term rental license. There are currently two ways to apply for a license:

- In person at the Department of Safety and Permit on the 7<sup>th</sup> floor of City Hall
- Online through the One Stop App
- Using the “pass-through” registration on Airbnb (has been suspended since June 2018)

Applying in person at the One Stop Shop and online through the One Stop App are the two ways for people to apply for any permit or license with the Department of Safety and Permits. These two ways should be retained. The third way to apply was with the “pass-through” registration system that was developed with Airbnb, but Airbnb has not used the “pass-through” registration since the Short Term Rental Interim Zoning District was adopted by City Council. This system made it easier for people to apply, but there were a number of issues with this, which are addressed more fully in the Platform Accountability section of this report. To maintain the ease of applying while addressing the issues of the “pass-through” registration, the staff recommends updating the online registration through the One Stop App to create a widget to allow people to apply directly to the City from the platforms’ websites.

#### **Application Submittal Requirements**

The “pass-through” registration and allowing people to “attest” that they meet all of the short term rental requirements without providing documentation has made it much easier to for people to apply for and receive a license. There are a number of unintended consequences with this system. First, a number people do not understand the rules or the limitations of the short term rental regulations. The attestation, especially the one online, makes it easy for people to agree to something without completely reading or understanding the restrictions. As a result, people are receiving licenses that they should not receive and/or are operating the short term rental in a manner that does not comply because they are not fully aware of the rules, in part because they have not been required to submit documentation showing compliance with the rules.

This has also created enforcement challenges. It is easier to enforce the regulations against someone who does not have a license than from someone who has a license but is not operating the STR in compliance

with the license requirements. It is fairly easy to bring a case against someone who does not have a license, but it is more difficult to prove that someone has been renting a licensed short term rental outside of the rules (i.e. too many guests, too many bedrooms, too many days per year, etc.).

The CPC staff recommends placing more of a burden on the short term rental operator to document compliance with the code requirements during the application process instead of placing the burden on the City to prove noncompliance with the regulations after the short term rental operator has received a license. This would require additional information and documentation at the beginning of the process, but should hopefully ensure greater compliance after people have received their license. Requiring more documents will discourage people from applying; however, the City should try to make it as easy as possible while ensuring that short term rentals do comply with the regulations.

#### *Attestations & Inspection or Documentation*

As discussed above, the problem with the current licensing application is that the operator completes an attestation, but the City does not require any verification that short term rental complies with the requirements. Based on a review of best practices in other cities, the CPC staff recommends that in addition to the attestation, the City requires either additional documentation at the time of application. In some cases, it may be necessary for the proposed short term rental to be inspected prior to the issuance of the license to ensure compliance with the short term rental regulations.

Requiring additional documents or conducting an inspection will help verify that the operator is renting a dwelling unit, complies with the bedroom limits, has fire extinguishers and smoke detectors, provides any required off-street parking, and meets the other requirements. The additional documents could include the following items: site plan, floor plan, unit layout with all rooms listed and smoke detectors and fire extinguishers, proof of insurance, interior and exterior photographs, and number of nights rented and verification of tax payment for renewals. Inspections would allow the Department of Safety and Permits to enter the unit and verify the information.

One item on the application form is platforms where the short term rental will be listed. The data shared by the platforms provides information on the host and not the listing, it would be useful to have information on all of the other listings operated by the same person. This would assist the City in connecting the data from the platform to the correct listing.

Finally, as some of the proposed changes will allow for renters to be Residential Short Term Rental operators, there needs to be application submittal requirements to show proof of permanent residency. This should include at least one Louisiana state-issued identification (i.e driver's license), and should include a second form that could include voter registration, bank statement, pay stub, W2 form, or utility bill mailing address. In addition, if the renter is operating a partial-unit Residential Short Term Rental, then there needs to be a permission form that is signed and notarized by the property owner. This form should be provided by the Department of Safety and Permits and should note that the property owner grant permission for the renter to operate a partial-unit short term rental, that the renter will reside in the dwelling unit for the term of the license, and notifying that the property owner could held responsible for any violations associated with this short term rental.

The CPC staff recommends the following changes to the short term rental application submittal requirements:

- In addition to the attestations, the City should require additional documentation by the applicant at the time of application. In some cases, it may be necessary for the proposed short term rental to be

inspected prior to the issuance of the license to ensure compliance with the short term rental regulations.

- Additional documentation should include the following items:
  - Site plan,
  - Floor plan with unit layout with all rooms listed and smoke detectors and fire extinguishers locations,
  - Proof of insurance,
  - Property owner permission form (if applicable),
  - Interior and exterior photographs, and
  - Number of nights rented and tax payment for renewals.
- If applicable, links to all listings for any other short term rental run by the same operator.
- If residency is required, two documents to include at least one Louisiana state-issued identification (i.e driver's license), and should include a second form that could include voter registration, bank statement, pay stub, W2 form, or utility bill mailing address.
- If a renter is the short term rental operator of a partial-unit Residential Short Term Rental, then the applicant shall submit a form provided by the Department of Safety and Permits that is signed by the property owner and notarized. The form should grant permission for the renter to operate a partial-unit short term rental, confirm that the renter will reside in the dwelling unit for the term of the license, and serve as notice that the property owner could held responsible for any violations associated with this short term rental.

## **Review Process**

Once the Department of Safety and Permits receives an application, the staff reviews it, and if appropriate, issues a license. People who apply in person with all of the necessary information can leave the One Stop Shop with an approved license the same day. If additional information is required, the review can take additional time. Here is an analysis of certain aspects of the review process.

### *Zoning Review*

Every short term rental license application receives a zoning review, usually by the Short Term Rentals Administration. This differs from some other permits and licenses, where the zoning review is conducted by the Zoning Division of the Department of Safety and Permits. While the permit analysts in the Short Term Rental Administration have short term rental specific knowledge, there is often additional knowledge about the Comprehensive Zoning Ordinance that is useful in conducting a zoning review. First, there needs to be a determination that the short term rental applicant is proposing to rent a legal dwelling unit and is not attempting to rent an accessory structure or is creating a second unit in a single-family residential district, which is a prohibited use. Therefore, it could be beneficial for the Zoning Division, and not the Short Term Rental administration, to conduct the zoning review for short term rental licenses.

One example where there has been an issue in the zoning review was for the off-street parking requirements for Commercial Short Term Rentals. While the Accessory and Temporary Short Term Rental parking requirements are the same as a dwelling unit (1 space per dwelling unit), the Commercial Short Term Rentals' parking requirement are similar to that of a hotel or a bed and breakfast (1 space per 2 rooms). Therefore, if someone converted a dwelling unit with 3 or more bedroom to a Commercial Short Term Rental, it could trigger the need for 1 or 2 more parking spaces. For a time, this requirement was not reviewed nor enforced by the Short Term Rental administration, but this situation has been corrected. This raises the issue if the parking requirement is appropriate and it just need to be enforced or if the parking

requirement is too much and should be reduced to be consistent the other types of short term rentals. At this point, the staff does not see the need to change the off-street parking requirements.

There are benefits to requiring a zoning review by the Zoning Division which would result in fewer licenses being incorrectly issued to short term rentals in non-dwelling units or with insufficient off-street parking. There is also a downside to requiring a Zoning Division review. This would also require additional review time, meaning that licenses might not be able to be issued the same day. In addition, this would require additional resources for the Zoning Division. The CPC staff has the following recommendation regarding the zoning review:

- The Department of Safety and Permits should consider if a zoning review by the Zoning Division is necessary for the review of short term rental licenses.

### *Inspections*

Currently, inspections are not done prior to the issuance of a license. Inspections are done on a case by case basis if something does not seem right or after a complaint has been received. In many other cities, inspections are mandatory for all short term rental licenses. In New Orleans, most permits and some licenses require an inspection prior to a Certificate of Occupancy for a permit or issuance of a license. Permit inspections are important to ensure that construction work was done according to the approved plans and in compliance with building and zoning codes. In most cases, construction work is not being done in conjunction with a short term rental license; however, an inspection could ensure that the proposed short term rental complies with the standards in City Code and the Comprehensive Zoning Ordinance. This is even more important if only attestations, and not full documentation, are required to receive a license as discussed previously. Therefore, an inspection could be required if the applicant is only required to attest to compliance with the short term rental regulations.

There are some negative aspects to requiring an inspection. An inspection requires time, which means licenses could not be issued the same day. Inspections would require more operating and personnel resources for the Department of Safety and Permits as well. Finally, some people might not apply for a license if an inspection is required. This could be an issue if some potentially “good” operators decide not to apply for a license, but there are benefits of dissuading people who would attempt to rent out a short term rental that they know would not pass an inspection. Either way, requiring an inspection would reduce the short term rental compliance rate as fewer operators would apply for a license. The CPC staff recommends the following:

- The Department of Safety and Permits should consider requiring an inspection if the applicant is allowed to attest to complying with the short term rental requirements.
- An inspection could be required in all cases, but that would require additional license review time, require additional resources for the Department of Safety and Permits, and could be a disincentive for some people to apply which would reduce the compliance rate.

### *Notice*

In the current regulations, the applicant is required to attest that they have made the best efforts to notify immediately adjacent properties. As opposed to requiring the applicant to contact neighbors prior to receiving a license, it would be more useful to inform people once the license has been issued with all of the license data, contact information, and how to report any violations to the City. If the applicant is required to do this prior to attesting and receiving the license, all of this information might not be available.

Ideally this information would come from the City to ensure that the notification takes place, the correct people are notified, and the accurate information is provided; however that would require additional resources for the Department of Safety and Permits. Therefore, a decision needs to be made on what type of notice will be required, if this notice will be done by the City, or if the City will give the short term rental operator the information to properly notify the adjacent residents. The current regulations require noticing immediate neighbors; however that would not result in notice to properties across the street or two doors down that could be impacted by the short term rental. A buffer of 75 feet would ensure proper notice. Finally, the City Planning Commission uses NoticeMe to provide early notification of certain types of land use applications.<sup>55</sup> The City could use NoticeMe to provide notice to interested parties when a short term rental license is issued. Therefore, the CPC staff has the following recommendations:

- Notice should be provided once the license has been issued, which should include the license number, type, limitation, contact information, and how to report violations.
- The City needs to decide if electronic notice, similar to NoticeMe or notifications with the One Stop App, is sufficient or if mailed notice should be required.
- If mailed notice is required, the notice area should include all properties with 75 feet of the subject property as measured from the property's boundary.
- Preferably, this notice should be provided by the City, but that would require additional time and resources for the Department of Safety and Permits. Alternatively, this could be a requirement of license holder, with the City providing addresses within the buffer zone.
- The Department of Safety and Permits should work with ITI to explore using NoticeMe to provide notification to interested parties when a short term rental license is issued.

#### *Issuing License by Parcel*

One issue identified for further review and study in City Council Motion 18-194 is adopting the use of parcels, as opposed to municipal addresses, in issuing permits and licenses. This was discussed with the Department of Safety and Permits, who prefer the current practice of issuing the license by address. If licenses were issued by parcel, there would not be a way to identify the exact dwelling unit used as the short term rental, which would make enforcement of the regulations more difficult. Even though the licenses are issued by address, it is still possible to implement regulations that would limit the number or percent of units of short term rentals by parcel or lot, as recommended elsewhere in this study.

- The CPC staff recommends maintaining the practice of issuing licenses by municipal address.

#### *Resources for the Department of Safety and Permits*

It is important to note that adequate resources must be provided to the Department of Safety and Permits. If additional time is required to review documents and conduct inspections, it is important that there is enough personnel in the Department of Safety and Permits to do this work. Otherwise, it would result in delays in issuing licenses. In addition, if the City will be responsible in providing notices to nearby neighbors, that will result in additional staff time and financial resources to complete these mailed notices. Therefore, the CPC staff recommends the following:

- The City Council shall budget adequate resources for personnel and other operating expenses to the Department of Safety and Permits for short term rental license review.

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<sup>55</sup> <http://noticeme.nola.gov/>

## *Renewal*

All short term rental licenses are valid for a period of one year and then may apply for a renewal. When the license is up for renewal, the applicant should be required to submit all of the same documentation that is required of the original application. This will ensure that the applicant attests that the short term rental is still in compliance with the regulations and provides documentation. An inspection could be required to verify compliance, especially if something has changed.<sup>56</sup> In addition, the short term rental operator should be required to report back to the City their short term rental activity over the past year. This should include number of nights rented, documentation from the operator, tax clearance form from the Department of Finance, and/or documentation from the platform that verifies that the correct amount taxes were paid or remitted to the City.

Since licenses are privileges and not rights, the Department of Safety and Permits has the discretion not to issue or renew licenses. Currently, the Department of Safety and Permits is not renewing licenses with open violations. This should include non-renewal of license with unpaid taxes or fines. In addition, if there are operators that are constantly violating the short term rental regulations, the Department of Safety and Permits should have the authority to revoke or not renew the license. Currently, there are no standards for revoking or non-renewal of licenses, so the Department of Safety and Permits should develop a policy for revoking and non-renewal of licenses for habitual violators of the regulations. In addition, there should be an appeal process established for the license holder to be able to challenge the revocation or non-renewal of the license. The CPC has the following recommendations on license renewals:

- Renewals should require all of the same information documentation, attestations, and/or inspections as the original application submittal.
- The operator should provide the links to all online listings, and update any links for other listings managed by the same operator.
- In addition, the short term rental operator should report the number of nights rented the previous year and provide proof of tax payment in the form of a tax clearance from the Department of Finance and/or documentation from the platform verifying that the correct amount of taxes remitted to the City for the each licensed short term rental.
- The Department of Safety and Permits should not renew licenses for short term rentals with open violations and unpaid taxes or fines. In addition, the Department of Safety and Permits should develop a policy and appeal process for the revoking and non-renewal of licenses and/or operators with a history of noncompliance with the regulations.

## **Short Term Rental Operator Regulations**

One issue that has been identified since the new short term rental regulations have gone into place is the lack of accountability for local property managers or operators of short term rentals. Many people who have a short term rental license pay a property manager or operator to rent and operate the short term rental. There are not issues with most operators, but when there is a problem with an operator it is very difficult to them accountable. The City is able to cite the property owner, but if the operator is not the property owner, then it is nearly impossible to hold them accountable. This can be especially problematic if there is a property owner that lives out of town and relies on a property manager or operator to manage all aspects of the short term rental. In some cases, operators are renting the short term rental beyond the maximum guest or bedroom limit, over the 90 night maximum for Temporary Short Term Rentals, is using a valid license

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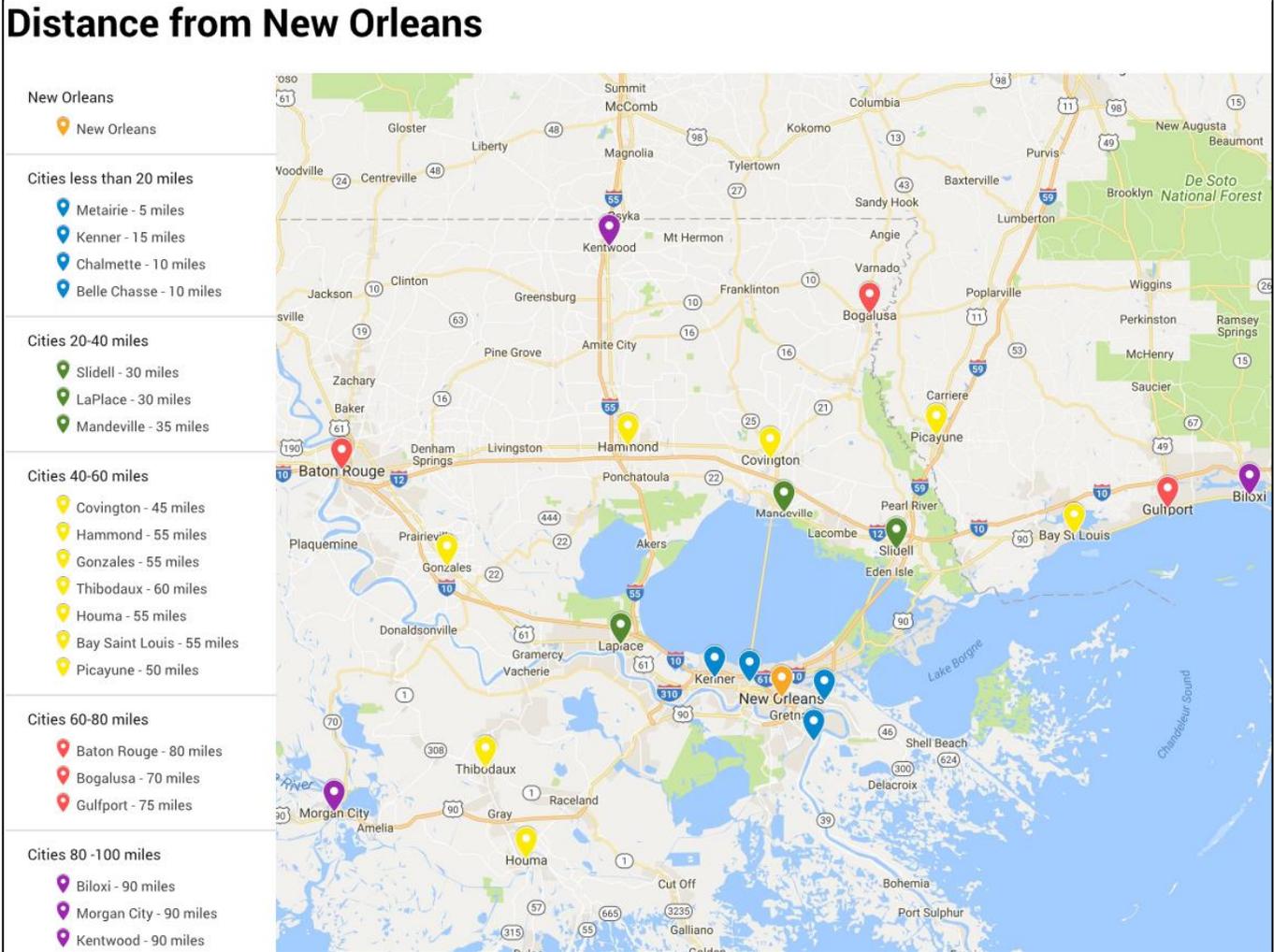
<sup>56</sup> For example if the short term rental had 2 guest bedrooms in the previous year and now the operator applies for a license for a 3 guest bedroom short term rental. An inspection could reveal if the

number on multiple unlicensed listings, among other issues. The property owner might not be aware of the property manager's activity until they receive a violation notice from the Department of Safety and Permits.

Therefore, the CPC recommends adding a licensing requirement for short term rental property managers or operators. This short term rental operator license requirement would apply to all license holders, property managers, and 24 hour contacts. There should be two types of short term rental operator licenses; Residential and Commercial. The Short Term Rental Operator license holder must be a natural person and not a corporation. Similar to tour guides, taxi cab drivers, and other comparable licenses, the short term rental operator should be required to pass a test on the City's short term rental regulations. This test could be a multiple-choice test that can be given either online or in-person. In addition, there should be a requirement that the off-site operator shall reside within a certain driving distance of the short term rental location to ensure that they can be onsite in a timely manner to respond to any complaints. Finally, these operator regulations should make it a violation to rent or operate a short term rental in violations of the City's short term rental requirements, which would allow the City to hold the short term rental operators accountable because the Department of Safety and Permits would be able to cite and fine the operators. In summary, the CPC staff has the following recommendations for regulation short term rental operators:

- The Department of Safety and Permits should license all short term rental operators.
- There shall be two types of Short Term Rental Operator license; Residential Short Term Rental operators (on-site owner or permanent resident) and Commercial Short Term Rental operators.
- The Short Term Rental Operator license holder must be a natural person and not a corporation.
- The license will require a fee and passing an online or in-person test to ensure knowledge of the short term rental regulations and the responsibilities of an operator.
- The license fee shall be less for on-site operators who will only operate one short term rental than the fee for off-site operators who can manage multiple properties.
- Short term rental operators shall reside within a certain driving distance from the short term rental location. That distance should not be greater than 100 miles, but could be much less depending on how soon the property manager should be able to respond to any complaints. Below and in **Figure 24** are some examples of possible distances from the New Orleans CBD:
  - 20 miles (Metairie, Kenner, Chalmette, Belle Chasse),
  - 40 miles (Slidell, La Place, Mandeville),
  - 60 miles (Covington, Gonzales, Hammond, Thibodaux, Houma, Bay St. Louis, Picayune),
  - 80 miles (Baton Rouge, Bogalusa, Gulfport), or
  - 100 miles (Biloxi, Morgan City, Kentwood).
- It should be a violation to be a short term rental operator without a license and operate a short term rental in violation of the short term rental regulations in the Comprehensive Zoning Ordinance and City Code.

**Figure 24: Sample City Distances from New Orleans**



**Enforcement Limitations**

Effective enforcement is crucial to mitigate the potential negative impacts of short term rentals. The enforcement of the City’s existing short term rental regulations has proven to be a challenge. The City currently utilizes data obtained from online rental platforms, complaints from the public, as well as independent investigation to identify violations of the short term rental regulations of the City Code and the Comprehensive Zoning Ordinance. The current data provided by the platforms is ineffective and processing the reports, issuing subpoenas, and tracking information, takes significant staff time and City resources to administer. The rules regarding short term rentals should be easy to enforce and not require platform cooperation to verify compliance. Instead of relying on the platforms, the Short Term Rental Administration of the Department of Safety and Permits should be equipped with the resources to proactively identify violators through webscraping and other methods. This could be accomplished through a third-party provider or by providing additional operating funds to STR staff for training and continued education.

- Ensure that STR regulations are enforceable without requiring platform cooperation.
- Provide additional funding for proactive STR enforcement, whether it be through a third-party provider or ongoing education of City staff.

It is often difficult to discern whether short term rental activity is occurring at a property because it appears outwardly as a residential use. Neighbors may not realize a property is being rented on a short term basis until there are negative impacts generated from the rental. When nuisances occur, they typically occur during the evenings and weekends. During these times, there is no one available to receive complaints except for the police. Inspectors and office staff work Monday to Friday from 8am to 5pm, so by the time they are available to receive a complaint, the nuisance has stopped, the occupants of the short term rental may have left, or the neighbor decides not to file the complaint. Further, if a complaint is filed after the incident occurred, it can be difficult to prove there was a transaction or a violation. The City should provide a 24/7 complaint mechanism for STR violations, which can be staffed by the City or a third party provider. Additionally, the City should staff inspectors to work during non-business hours when violations are more likely to occur, such as at night, on the weekends, and during large events. These inspectors could respond to real-time complaints received from the 24/7 complaint system and do proactive field enforcement to identify STR violations.

- Develop a 24/7 mechanism where citizens can report suspected violations of the STR regulations.
- Staff inspectors during the evenings, weekends, and during large tourist events.

Once an alleged violation has been identified, the City must initiate the process of an adjudication hearing in order to legally determine if a violation of the STR regulations has occurred. Currently, the enforcement of short term rentals is one of many tasks handled by the One Stop Shop Adjudications Bureau, which consists of two employees. In addition to short term rental violations, administrative adjudication hearings for the One Stop Shop also include violations relating to the Zoning Division, Historic District Landmarks Commission, and Vieux Carré Commission. Hearings are typically held once a week on Wednesday mornings. Since the current pool of administrative hearing officers is very limited, the hearings must be shared with other violations, and the processing of violations requires significant administrative support, the amount of short term rental violations that can be adjudicated at a given time is limited. Additionally, defending appeals of adjudication judgment violations and recording liens against properties takes significant staff time for the City Attorney's Office. The staff recommends adding several positions to specifically handle the adjudication of short term rentals in the Department of Safety and Permits.

- Develop a separate administrative adjudication process for short term rental violations.
- Ensure there is adequate funding in the Department of Safety and Permits and the City Attorney's office to process adjudications and appeals to Civil District Court.
- Increase the pool of available administrative hearing officers.

The fines that may be imposed by the hearing officer are limited to \$500 per day for each violation of the ordinance by state law. For many short term rental operators, these fines are not a deterrent. To effectively enforce short term rentals, the City needs to amend State Law to increase the maximum daily fine to above \$500. One consideration would be to implement a progressive fine structure that allows the City to increase fines on subsequent offenses. For example, a first time offender could be fined \$1000 per offense, which could increase to \$1,500, and/or \$2,000 on the second, third, and subsequent offenses. Another consideration would be to require additional application fees if the application for a short term rental license is submitted after the notice of violation.

- Amend State Law to increase the maximum daily fine to above \$500.
- Fines should be amended to allow for a progressive fine structure that increases after multiple offenses that would punish repeat offenders.
- Require additional application fees if an application for a short term rental license is submitted after a notice of violation.

## **Platform Accountability**

One of the most common refrains from public comments is that the City needs to regulate STR platforms. This section investigates the current platform requirements, examines the legal issues around platform regulations, looks at platform regulations in other cities, discusses “pass-through” registration, addresses current platform compliance with data sharing requirements, and recommends modifications to the platform regulations.

### **Current Platform Regulations in New Orleans**

There are existing requirements on STR hosting platforms in Section 26-620 of City Code, which focus on data sharing. These regulations were drafted with certain legal limitations in mind which are addressed below. Platforms are required to share data on a monthly basis which shall include: (1) number of STRs listed on the platform; (2) number of nights that each listing was rented to guests; (3) tally the number of nights that each listing is booked for the rest of the year; (4) the permit type for each listing; and (5) the total amount of tax collected by the platform and remitted to the city. The platform is not required to provide personally identifiable information.

In addition, Section 26-620 authorizes the City to subpoena additional information from platforms. The subpoena must: (1) be submitted in writing by the City attesting that the City has a reasonable belief based on evidence that a STR may be in violation; (2) be sent to the platforms via regular and certified mail; and (3) be related to a specific investigation into a single STR and alleges the specific violations. The platform shall notify their user of the information requested in the subpoena within 10 days of receipt and produce the responsive records within 21 days of providing notice to the user, except to the extent that the user has sought relief in a court.

### **Legal Issues around Platform Regulations**

#### *First Amendment*

In some cases, the STR platforms have argued that posting of STR listings is a First Amendment protected form of free speech. In general, court decisions in California and Illinois have found that STR listings are a commercial transaction and are not constitutionally protected free speech. These courts have applied a lower level of constitutional scrutiny to restrictions on STR listings.

#### *Communication Decency Act*

The Communications Decency Act (CDA) protects publishers from content provided on their website by third parties. In *Park La Brea v. Airbnb*, an apartment complex filed suit against Airbnb for failing to remove illegally subtletted listings of apartments in the complex from their website.<sup>57</sup> The court determined that Airbnb had immunity in this case as a publisher of the content because it was not the information provider. The City of New Orleans requires that the license number be provided in any STR listing. Under the CDA, the City can cite the STR operator, which it does. However, should the *Park La Brea* standard apply it is likely the City would not be successful in a court challenge if it enacted regulations holding a STR platform accountable for publishing these listings.

The CDA does have its limits. San Francisco and Santa Monica instituted regulations prohibiting and fining platforms for collecting a fee for booking an unregistered STR. When these regulations were challenged, the courts found that the platforms can publish any listing without liability under the CDA, but they are not

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<sup>57</sup> *La Park La Brea A LLC v. Airbnb, Inc.*, 285 F.Supp.3d (C.D.Ca. 2017).

immune from local governments regulating the booking transaction.<sup>58</sup> Therefore, if the City wants to place any regulations on the platforms, it would likely be best to focus on the transaction instead of the listing. In addition, some courts had a positive view on regulations that treated all booking services (online or brick and mortar) similarly and that contained a “Safe Harbor” provision. This provides protection for platforms that operate in compliance with the hosting platform responsibilities in the ordinance.<sup>59</sup> The key takeaway of recent cases around STR platforms and the CDA is that the platforms are generally protected from liability for the content of the listings on the platform; however, regulation of the booking transaction could be outside of CDA protections.

### *Stored Communications Act*

The Stored Communications Act (SCA) governs whether and under what circumstances a provider of remote computing services must disclose the contents of any electronic communication to a governmental entity.<sup>60</sup> The law allows governmental entities to require such contents to be disclosed “with prior notice from the governmental entity to the subscriber or customer if the governmental entity...uses an administrative subpoena authorized by a Federal or State statute.”<sup>61</sup> Furthermore, certain specified information—customers’ names, addresses, telephone connection records, length of service and types of service utilized, telephone or other subscriber numbers, and means and sources of payment for service—may be obtained through administrative subpoena without notice to customers or subscribers.<sup>62</sup> The Act also prevents service providers from voluntarily disclosing this information.<sup>63</sup>

Many platforms cite the SCA as the reason why they cannot share certain types of data with the City on either a regular basis (i.e. their monthly reporting) or in response to a subpoena. There is not much case law on using the SCA to challenge a municipality’s reporting requirements. HomeAway used the SCA to challenge certain data sharing requirements in *HomeAway v. Santa Monica*, but the court found that the challenge was not ripe since the City had not begun enforcement. More on the SCA and data sharing regulations are addressed in a following section.

## **Platform Regulations in Other Cities**

### *Require Platforms to Share Data*

Many cities require platforms to share certain types of data or provide regular reports to municipalities. Here are some examples for data sharing requirements from other jurisdictions:

- Boston requires platforms to provide a monthly report that includes where the listings are located, whether the listing is a room or a whole unit, and number of nights each unit was reported as occupied during the period.<sup>64</sup>
- Chicago requires platforms to provide a report with anonymized data every two months that includes nights rented per listing, total rent paid per listing per reporting period, taxes paid to the

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<sup>58</sup> *Airbnb, Inc. v. City and County of San Francisco*, 217 F.Supp.3d (N.D.Ca. 2016) and *Homeaway.com, Inc. v. City of Santa Monica*, 2018 WL 1281772 (C.D.Ca. 2018).

<sup>59</sup> *Homeaway.com, Inc. v. City of Santa Monica*, 2018 WL 1281772 (C.D.Ca. 2018) at \*2.

<sup>60</sup> 18 U.S.C. §2703(b).

<sup>61</sup> 18 U.S.C.2703(b)(1)(B)(i)

<sup>62</sup> 18 U.S.C. §2703(c).

<sup>63</sup> 18 U.S.C. §2702.

<sup>64</sup> City of Boston Code, Chapter IX, Section 9-14.11.

City per listing, and number of nights prebooked in the future.<sup>65</sup> The City can then subpoena de-anonymized information from the Intermediary under certain conditions.<sup>66</sup>

- New York City recently passed a requirement for platforms to share host names and addresses with the City.
- San Francisco does not require regular data sharing from platforms (it does for the hosts), but does require platforms to maintain records for 3 years and respond to requests for information from the City.<sup>67</sup>
- Santa Monica requires platforms to share names and addresses associated with a listing, length of stay, and price paid for each listing.<sup>68</sup>

Airbnb has been willing to provide certain anonymized reports to cities as long as the information is compliant with the SCA. This is similar to the information the City currently receives from Airbnb. Historically, Expedia has not been willing to share data, because their model was more of an advertising model. Expedia is moving to a model to directly facilitate the transaction, so it is unclear if they will be more willing to share data in the future. Some cities have recently required platforms to provide listing address data, but CPC staff has not found examples where platforms regularly report listing address data. If the City were to require additional data sharing, it is unlikely that the platforms would comply and it would be difficult for the City to compel the platforms to share that data.

#### *Require Platform to get a License from the City*

One common public comment received by the City is that platforms should be licensed. This has been tried in a few cities, to varying levels of success. Here are a few examples of cities that require the platforms to get a license:

- Boston does not require a license, but its regulations do require the platforms to enter into agreements with the City to help enforce the regulations by requiring valid registration numbers and remove listings over the day limit or ineligible for listing. Otherwise platforms are prohibited from conducting business in the City of Boston.<sup>69</sup>
- Chicago requires platforms to get a license. There are two types, depending on if they facilitate a transaction (Short Term Residential Rental Intermediary) or if they just advertise listings (Short Term Residential Rental Advertising Platform).<sup>70</sup> A Short Term Residential Rental Intermediary is charged a fee of \$10,000 plus \$60 per unit, and Short Term Residential Rental Advertising Platform has a fee of \$5,000 for less than 1,000 listings and \$10,000 for 1,000 or more listings. These regulations have been in place for a couple of years, and currently, only Airbnb is licensed in Chicago.<sup>71</sup>

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<sup>65</sup> Municipal Code of Chicago, Section 4-13-240 (a).

<sup>66</sup> Municipal Code of Chicago, Section 4-13-240 (f). Chicago's data sharing and subpoena requirements are similar to the current data sharing requirements in New Orleans City Code.

<sup>67</sup> San Francisco Administrative Code, Section 41A.5.(g)(4)(E).

<sup>68</sup> Santa Monica Municipal Code Section 6.20.050(a).

<sup>69</sup> City of Boston Code, Chapter IX, Section 9-14.10 (b).

<sup>70</sup> Municipal Code of Chicago, Chapter 4-13.

<sup>71</sup> <http://www.chicagotribune.com/business/ct-biz-airbnb-ordinance-two-years-later-20180504-story.html#>

- Seattle recently adopted new STR regulations that will go into effect in January 1, 2019. STR platforms will be required to have a valid platform license.<sup>72</sup> The platforms will be charged a quarterly fee based on the total number of nights booked through the platform.<sup>73</sup>

Chicago's platform regulations have had mixed results regarding licensing platforms, and it is too soon to tell if platforms will comply with the licensing requirements in Boston and Seattle. There does seem to be more willingness, at least from Airbnb, to get a license from the City.<sup>74</sup> Expedia has resisted getting licenses in the past; which is partially due to their business model as more of an advertising platform than a booking platform. As their business model changes to be more of a booking platform, they may be more willing to get a municipal license. There are some benefits of requiring platforms to get a license in that the City could charge the platforms a license fee to help cover administrative costs, and licensing the platforms could help in enforcement. However, if the platforms do not support the City's regulations, they are unlikely to get a license, and it would be very difficult for the City to enforce the licensing requirements. There is not much downside in requiring that the platforms get a license from the City; however, it might be difficult to enforce if the platforms are not willing to comply with this requirement.

#### *Prohibit Platforms from Conducting Transactions for Unlicensed Listings*

In many cities, there are regulations requiring platforms to verify a listing with the city in order to advertise the listing on the platform and requiring platforms to remove listings that are unlicensed. This type of regulation could be put into place, but there could be issues with respect to the CDA which could protect publishers from liability for the listing content. Some cities have successfully defended regulations on transactions in California courts. Here are two successful regulations in California and one new regulation that was recently put into place in Boston:

- Boston adopted a new STR ordinance in June 2018, which makes it a penalty to both offer an ineligible unit as a STR or for a booking agent to accept a fee for booking an ineligible unit as a STR.<sup>75</sup>
- In San Francisco "a Hosting Platform may provide, and collect a fee for, Booking Services in connection with short-term rentals for Residential Units located in the City and County of San Francisco only when the Hosting Platform exercises reasonable care to confirm that those Residential Units are lawfully registered on the Short-Term Residential Rental Registry at the time the Residential Unit is rented for short-term rental. Whenever a Hosting Platform complies with administrative guidelines issued by the Office of Short-Term Residential Rental Administration and Enforcement to confirm that the Residential Unit is lawfully registered on the Short-Term Rental Registry, the Hosting Platform shall be deemed to have exercised reasonable care for the purpose of this subsection (g)(4)(C)."<sup>76</sup> In addition, the platforms have to attest every month that they complied with this requirement.<sup>77</sup> It should be noted that this was the result of a settlement agreement and was not something litigated and won in court.

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<sup>72</sup> Seattle City Council Ordinance 125490 & Seattle Municipal Code Chapter 6.600, subsection 6.6000.040.A.

<sup>73</sup> Currently the platform license fee amount is listed as \$0 per night booked per Seattle Municipal Code Chapter 6.600, subsection 6.600.090.A.

<sup>74</sup> In a phone conversation with CPC staff, representatives from Airbnb expressed a willingness to a requirement that platforms get a license; however, that conversations was prior to the City Council adopting the Short Term Rental Interim Zoning District, so it is possible that their position might have changed.

<sup>75</sup> City of Boston Code, Chapter IX, Section 9-14.9 (a).

<sup>76</sup> San Francisco Administrative Code, Section 41A.5.(g)(4)(C).

<sup>77</sup> San Francisco Administrative Code, Section 41A.5.(g)(4)(D).

- Santa Monica Municipal Code Section 6.20.050(c) states the following “Hosting platforms shall not complete any booking transaction for any residential property or unit unless it is listed on the City’s registry created under Section 6.20.020 subsection (b), at the time the hosting platform receives a fee for the booking transaction.”

San Francisco and Santa Monica demonstrate clear examples of municipalities that have successfully regulated platforms and overcome court challenges. While there is no guarantee that these regulations will continue to be upheld if they are appealed to higher courts or that courts in Louisiana will decide the same way as courts in California, this is a good place to start. Therefore, the CPC staff would recommend regulations that prohibit and penalize platforms for completing or charging a fee for booking a transaction for a STR that is not licensed with the City. In addition, there should be a “safe harbor” or similar provision that presumes that the platform is in compliance with reasonable hosting platform responsibilities.<sup>78</sup> Finally, this should be required of all booking agents, whether they are internet-based platforms or a brick and mortar operation. The CPC staff would not recommend putting in regulations that require the platform to require and/or confirm license numbers to advertise on the platform (speech), instead the City should focus on the platforms conducting a business transaction (commerce). Regulations on platforms’ role in advertising are less likely to be upheld in court; therefore, the CPC staff recommends focusing the platform requirements on the business transactions.

### *Lessons Learned for New Orleans*

The CPC staff has taken the following insights given the current legal framework, recent court decisions, and similar regulations in other cities:

- The City currently requires platforms to share certain types of data. Some cities go further than New Orleans and require platforms to share listing locations; but they have yet to enforce those regulations. The City could require platforms to share additional data, but platforms will likely resist. There is not much legal precedent on this subject if it were challenged in court.
- The City should require platforms to get a license from the City. Airbnb has complied with similar regulations in other cities. While there are benefits to licensing platforms, it is not a panacea and will require additional well-crafted platform regulations.
- Additional regulations on platforms should focus on the business transactions. If the City wants to put in place stricter regulations on platforms, it should prohibit platforms from collecting a fee for a booking transaction of an unlicensed STR in New Orleans. In addition, internet and brick and mortar operations should be treated equally, and there should be a “Safe Harbor” provision to not place an undue burden on platforms, which courts could use to strike-down the regulations.
- Any new regulations on platforms need to be well-crafted, done in consultation with the Law Department, and include a substantial legal budget contingency should the new regulations be challenged in court.

### **Data Sharing and Subpoenas**

The City has been receiving data from Airbnb and Expedia on a monthly basis. This information that the City receives on the individual listings tend to include a non-identifiable listing identification, the number of nights rented for the month, the number of nights booked for future months, and sometimes the listing

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<sup>78</sup> For example, this might require to the platform to confirm the license and address for the listing from the City but it would not hold the platform liable if the City issued a license in error or if the host gave false information to the platform.

type (if pass-through registration was used). In addition, the City receives information on the total amount of taxes collected and remitted by the platform each month.

In order for the City to receive identifiable data on a listing (host name, his/her contact information, etc.), the City must subpoena the platform. This subpoena needs to be based on a specific violation of the STR regulations. The platforms' response have been mixed. The City first issued subpoenas in October 2017.

It took Airbnb until January 2018 to respond to the subpoenas issued in October; however, Airbnb has subsequently responded in a timelier manner to subpoenas issued by the City. Expedia did not respond to the first subpoena request; instead it issued a letter stating the request was premature, overly broad, and that due to the Stored Communications Act, it could not disclose the requested user information. Expedia has responded to subsequent subpoena requests providing user names, mailing addresses (as opposed to the STR listing address), and phone numbers in June 2018.

The subpoena responses from both Airbnb and Expedia include the non-identifiable listing identification and information on the user, but do not include specific information on the STR itself (license number, address, etc.). Even with user/host data, it may not be possible to connect that person to an individual listing because they might have multiple listings, the Airbnb/Expedia host might be different than the license holder with the City, and/or the Airbnb/Expedia host might not be registered with the City.

Since there is no identifiable data that is shared with the City, it is impossible to compare across platforms. If someone rents a Temporary STR for 60 days each on Airbnb and Expedia, it will appear as if the STR is compliant, even though they will be 30 days over the 90 day limit. The platforms argue that SCA does not allow them to share any personally identifiable data with the City. Some cities have enacted regulations requiring platforms to share data that would identify the listing data; however, platforms generally have not provided this data. The courts have not directly addressed these data sharing requirements, so it is unclear how the courts would rule if the City enacted similar requirements and tried to enforce them.

Right now the data shared by Airbnb and Expedia has relatively little value since there is no way to associate the data with a license number, address, or online listing. The days rented data can be useful in very limited circumstances, but that has only been used to create a very limited number of enforcement cases, with almost none successfully adjudicated. For the data sharing to have any value for the City, it should include the following: listing identification or the listing link, the address, and the license number. It is not very likely that the platforms will share this information, most likely citing the SCA, but the City should require this data because the current data submitted by the platforms provides little useful information to the City.

There is a similar flaw in the subpoena process in that platforms will turn over the name and mailing address of a person associated with the listing, but not the address of the listing. This has made it difficult for the City to match the subpoena information with a specific listing. The SCA states that in response to a subpoena, the responding entity shall disclose to a governmental entity certain specific information including the name and address.<sup>79</sup> The SCA, however, was not enacted with STR's in mind, so it is unclear if a case could be made that platforms need to turn over the listing address or just the host's residential or business address. The platforms are unlikely to disclose this information unless compelled by a court to do so, and there is no clear precedent on how a court might rule in such a case.

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<sup>79</sup> 18 U.S. Code §2702.

With regards to platform data sharing and subpoenas, the CPC staff makes the following recommendations:

- The existing platform data sharing requirements does not provide useful information to the City for enforcement.
- The City should require platforms to share additional data including addresses, listing identification or link, and license numbers in monthly reports. Platforms are unlikely to provide this information unless ordered to do so by a court, and it is unclear if a court would decide that this is allowed under the S C A.
- The City should be prepared to defend these regulations and/or enforce the platform requirements in Court.

### **“Pass-Through” Registration**

As part of the new STR regulations that went into effect in the Spring of 2017, the City worked with Airbnb to develop a “pass-through” registration system. This allowed people to apply for a STR license as they listed their STR on Airbnb’s website. As part of setting up their listing, they could opt to pass this information through to the City to apply for a license. The STR administration would then review this information, request any additional required information, and require the applicant to pay the license fee in order to receive their STR license.

There are many benefits to this pass-through registration system. The pass-through registration system creates higher rates of licensing of STRs in New Orleans than in almost any other city. It is easier for the STR operators to easily apply for a license when listing their property instead of coming to City Hall or applying on the One Stop App website.

There are some challenges with the pass-through registration system. The largest challenge is that it is Airbnb’s system controlling the information going to the City as opposed to being the City’s registration system that is available on Airbnb’s (or Expedia’s) website. Because of this, Airbnb controls most of the data with only the bare minimum going to the City. This results in less information for the City, requires more back and forth with the applicant to get all of the necessary information for the license. Therefore, the staff recommends that the City updates its online registration system so that it can be available as a widget to place on the various platforms as opposed to relying on the platforms to pass the information to the City.

A pass-through registration system requires the applicant to attest that he or she meets the applicable STR requirements. If the applicant were required to submit documentation to the City to show compliance with these requirements (floor plans, proof of insurance, verification of tax payment, etc.), it would cause a delay in the issuance of the license and could limit the effectiveness of the pass-through registration system.

The pass-through registration system was set up in coordination between the Department of Safety and Permits and Airbnb. The pass-through registration launched in May 2017 as the new STR regulations went into effect. The pass-through registration was successful until Airbnb stopped in June 2018 in response to the City Council passing the Short Term Rental Interim Zoning District; prohibiting the issuance of new or renewed Temporary STR licenses and some new Commercial STR licenses in many zoning districts. Once new STR regulations are adopted, the City should work with platforms in order to make the City’s online license registration available as a widget on the platforms’ websites.

## **Amendments to Platform Regulations**

### *Requiring the Platforms to be Licensed*

Many cities that have recently adopted regulations requiring platforms to apply for a license. Historically, platforms have resisted these regulations and failed to get a license when required to do so. This seems to be changing as Airbnb has acquired a license in other cities and previously expressed a willingness to get a license in New Orleans.<sup>80</sup> There are some benefits of requiring platforms to get a license. The City would be able to charge a license fee (which, should the platforms not pay, the City could sue for in court), and licensing platforms could help with enforcement. However, the platform license requirement would be difficult to enforce if the platforms decide not to get a license. Whether or not the platforms get a license likely depends on the individual platform's support of the amendments to the City's regulations. There is not much harm in requiring the platforms from getting a license, but it will be very difficult to enforce the requirement if the platforms are not willing to comply. Therefore, the staff has the following recommendation:

- The CPC staff recommends requiring platforms to get a license. There are some benefits to requiring a license and Airbnb is licensed in some cities, but it will be very difficult to enforce if the platforms do not support the overall amendments to the regulations and decide not to get a license.

### *Collect and Remit Taxes*

The City of New Orleans does not have a requirement that platforms collect and remit taxes back to the City. The City entered into a Cooperative Endeavor Agreement with Airbnb for the collection and remittance of taxes previously, but that CEA is currently no longer in effect. It is common in some cities, including San Francisco and Santa Monica, to require the platforms to collect and remit taxes to the City. This practice is more efficient and likely results in higher collection rates than simply requiring the individual STR operators to remit the taxes. This requirement does not absolve the STR operators from keeping records, reporting to the City, and paying any taxes that have not been remitted by the platforms. Therefore, the CPC staff has the following recommendation:

- The City Council should amend City Code to require that all platforms and booking agents (internet-based or not) that facilitate or make a STR transaction possible collect and remit the applicable taxes to the City of New Orleans. This shall not absolve the STR operators from any requirements for record keeping, reporting to the City, and paying any taxes that have not been remitted by the platforms.

### *Data Sharing*

The existing data sharing requirements do not result in platforms sharing useful information with the City. The current data shared by the platforms is completely anonymous and fairly limited, so the only useful information is the number of nights rented. If the City suspects a violation (such as a Temporary STR rented for more than 90 days), the City can subpoena additional data. The data provided by the platforms only includes information on the person and not the listing. In many cases, this is not sufficient to connect that person with a specific listing if that person is not licensed with the City, is different from the person associated with the license, or has multiple licenses in the City. Therefore, the CPC staff has the following

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<sup>80</sup> This was before the Short Term Rental Interim Zoning District, so Airbnb's stance may have changed.

recommendation to ensure that the platforms are required to share data that connects to a specific address, listing, or license:

- The City should require platforms to share additional data including site addresses, listing identification or link, and license numbers in the monthly reports. Platforms are unlikely to provide this information unless ordered to do so by a court, and it is unclear if a court would decide that this is allowed under the Stored Communications Act.

#### *Requiring Platforms to Post License Numbers & Remove Listings*

Many citizens have implored for, and some other cities require, platforms to make an STR host provide a valid license number before a listing may be posted on a platform. It is possible to impose such a regulation, but compliance would likely depend on the platform. In the summary of court cases, the courts have generally sided with platforms when it comes to regulating the content of an STR listing or advertisement. The City currently requires STR operators to provide their license number in a listing. There is not a problem regulating the operator this way, but it may be difficult to require the platforms to help the City enforce this requirement.

There is a similar logic when it comes to requiring the platforms to remove unlicensed STR listings from their website. Airbnb has done this in San Francisco and other cities, and even New Orleans in the past; however, these were either a show of good will or the result of a settlement between a municipality and a platform. Other cities have this type of regulation in place, but it is only enforced when the platform is in support of the overall regulatory regime, and they are unlikely to comply in New Orleans if STRs are significantly curtailed. Therefore, the CPC staff has the following recommendations:

- When looking at regulations around requiring license numbers, the City should maintain its requirement that the STR operator provide license information in all listings. The City should not require the platform to confirm the license number in advertisements, but instead focus regulation on the booking transaction.
- Some cities have requirements that platforms remove unlicensed listings. The City could enact a similar regulation, but it will be difficult to enforce if the platforms are not willing to comply.

#### *Prohibit Collecting Fees from Unlicensed STRs*

As previously stated, the most successful way to regulate the platforms is to place limitations on transactions with unlicensed STRs. While courts have not been willing to hold platforms accountable for the content of the listing, they have supported restrictions on facilitating a business transaction where the platform collects a fee from the rental of an unlicensed STR. The CPC staff recommends a similar regulation for New Orleans. In addition, there should be a “Safe Harbor” provision in the ordinance that protects the platforms as long as they are operating in compliance with the platform responsibilities. As such, the City should put in place requirements on itself to give the platforms immediate access to the license database facilitate the platforms in making it standard practice to verify license validity. Therefore, the CPC staff has the following recommendations:

- The City should prohibit all financial transactions for booking an unlicensed STR. There should be a per day penalty for each transaction.
- The City should put in place a “Safe Harbor” provision as part of these regulations and adopt standard procedures for verifying license data to allow for the platforms to easily comply with this requirement. In addition, internet platforms and local booking agents should be treated the same way if they both conduct a financial transaction for a STR.

### *Pass-Through Registration*

In general, pass-through registration has been beneficial for the hosts, the City, and the platforms. It makes it easier for the hosts because they do not need to come to City Hall or use the City's One Stop App to apply for a license. It benefits the City because more people apply for a license. Finally, this pass-through registration benefits platforms because it makes it easier for their customers to get licenses, which is in their financial interest. However, there are situations where the City is not getting all of the information that it needs. Therefore, the CPC staff recommends that instead of a "pass-through" registration where the platforms turn over some data to the City, that the City create a widget that can be used on platforms' websites which allows the host to apply directly to the City for a license. Also, if the City requires additional documentation of compliance with certain requirements, it will impact the effectiveness of the pass-through registration system. Therefore, the CPC staff has the following recommendations:

- The City should update its online registration system so that it can be available as a widget on the various platforms so hosts can apply directly to the City, as opposed to relying on the platforms to pass-through the information to the City.
- The City should keep in mind that if we increase the required documentation STR license applicants are required to provide, it will result in increased time to receive a license and lower rates of compliance.

### **Revenue**

Currently there are five main sources of revenue directly generated by short term rentals for the City; permit fees, hotel/motel sales tax, hotel occupancy tax, neighborhood housing improvement fund fee, and fines collected from violators of the regulations. The costs to administer the program by the Department of Safety and Permits discussed above do not account for the full cost to implement and enforce the City's short term rental regulations, and mitigate secondary effects of STRs. The work extends well beyond the confines of the Department of Safety and Permits, and into nearly every City agency. While some fulltime staff in the Department of Finance, Bureau of Revenue, Department of Safety and Permits, City Attorney's Office, and City Planning Commission do work primarily on short term rental related issues such as tax collection, responding to complaints, investigating violations, defending appeals of administrative hearing decisions in Civil District Court, and developing regulations and recommendations, funding for those staff alone in no way represents the full costs borne by the City.

Increased litter from overflowing trash receptacles impacts the operations and of the Department of Sanitation. Debris from over flowing trash blocking catch basins and sewerage back-ups add costs for the Department of Public Works and Plumbing Inspections. Police respond regularly to disruption of the peace related to loud and suspicious activity caused by visitors staying at short term rentals in residential neighborhoods. The Chief Administrative Office, the Mayor, and all City Council members are involved in policy formulation and revisions. 311 operators, Neighborhood Engagement Office staff, and ITI staff support the publishing and sharing of the City's registry and taking in complaints from residents affected by short term rentals. Literally, every city agency from Bureau of Accounting, who reconciles contributions to the Neighborhood Improvement Fund generated by short term rentals, to the Vieux Carré Commission, who fields complaints and gathers documentation for adjudication from French Quarter residents where illegal short term rentals operate despite the prohibition, bear the burden and costs associated with the operation of short term rentals.

As the City Council considers amendments to the STR regulations, they should be cognizant that the more stringent the STR regulations, the more personnel will be required to enforce the regulations with potentially decreased revenues from currently operating STRs.

### **Permit fees**

The current fee structure was based on the assumption that Temporary STRs would be limited to 30 days per year and thus the fee for this type should be the lowest to encourage compliance. As a result, the fee for temporary STRs is \$50 with a homestead exemption and \$150 without a homestead exemption. In the middle range is the Accessory Short Term Rental, which is limited to owner-occupied partial unit rentals, which is \$200 per year. The highest fee is for Commercial Short Term Rentals where the entire unit can be rented for the entire year, which is \$500 per year. The fee structure for short term rentals needs to be high enough to pay for regulation and enforcement, but not so high that it discourages people from applying for licenses. The fee should also not be cost prohibitive for property owners or renters who are utilizing short term rentals to cover financial costs related to housing. The staff recommends the following fee structure for STRs:

- Residential Short Term Rental, Partial Unit: \$100 per year
- Residential Short Term Rental, Whole Unit: \$500 per year
- Commercial Short Term Rental: \$1000 per year

### **Hotel/Motel Sales Tax & Hotel Occupancy Tax**

Unlike the taxing structure for hotel/motels, a larger portion of the state's hotel/motel sales tax is directed to the City of New Orleans via the New Orleans Quality of Life Fund. As per state law, the funds are to be used for "code enforcement by the City of New Orleans Short Term Rental Administration." This could be interpreted rather narrowly and may not allow flexibility in the funding. If deemed appropriate, the City should consider amending this language to provide more clarity in the use of the funds. The Hotel Occupancy Tax is \$0.50/per night of rental for facilities with 299 rooms or less and \$1.00/per night of rental for facilities with 300 or more rooms. This tax is collected by the City of New Orleans' Bureau of Revenue. The funds collected are placed into the "New Orleans Tourist and Convention Promotion and Support Fund", which provides funding for the New Orleans Tourism Marketing Corporation. The staff believes the current tax structure is appropriate as both hotels and short term rentals benefit from the efforts of the New Orleans Tourism Marketing Corporation.

- If deemed appropriate, the City should consider advocating for amendment of state law to provide more clarity in the use of the funds generated from the State hotel/motel sales tax.

### **Fines**

After determining that a violation has occurred, an administrative hearing officer may levy fees, costs, and penalties for each violation of the regulations for short term rentals. The maximum fine amount is currently limited to \$500 per fine, per day by state law. The majority of fines relating to STRs that have been assessed have not been collected by the City. In order to increase collection of fines and increase the number of fines assessed, the City should fund additional positions specifically for adjudication of short term rentals. City Planning Commission staff also recommends amending state law to increase the maximum daily fine amount above \$500 per day.

- Develop a separate administrative adjudication process for short term rental violations.
- Advocate for amendment of State law to increase the maximum daily fine above \$500.

## **Requiring business license for tax collection**

After being issued a Short Term Rental License by the Department of Safety and Permits, operators must register with the Department of Finance, Bureau of Revenue to obtain an account number so that they can remit the required taxes and fees to the City of New Orleans. This current process does not require Short Term Rental operators to obtain Occupational Licenses or a Mayoralty Permit from the City prior to obtaining a license; instead the STR license is used. The hotel occupancy tax, the Neighborhood Housing Improvement Fund fee, and the City's portion of the hotel/motel sales tax must be reported to the City of New Orleans' Bureau of Revenue on a monthly basis using Form 8010-STR. The reports must be submitted by the 20th day of the month following the month of collection. The state's portion of the hotel/motel sales tax must be remitted separately to the state.

Currently, only Airbnb has a Cooperative Endeavor Agreement with the City for the voluntary collection of hotel/motel sales tax and hotel occupancy privilege taxes to remit taxes on behalf of its users. Short term rental operators who rent using other platforms must register with and remit taxes directly to the City. The information provided by Airbnb to the Bureau of Revenue is aggregated and does not reflect the gross rentals and nights rented for each operator. While hosts on Airbnb may register individually with the City to report their monthly gross rentals and nights rented, it is not required.<sup>81</sup> As per the CEA, the City has the ability to audit Airbnb but may not audit an individual guest unless an audit of Airbnb has been conducted. It is unknown how many STR operators who do not utilize Airbnb are remitting taxes and fees to the City. Additionally, since hosts on Airbnb are exempt from reporting individually, it is unclear if the taxes and fees remitted by Airbnb accurately reflect the gross sales and nights rented.

To ensure that short term rental operators are paying all applicable taxes and fees, every STR license holder should be required to register with the Department of Finance, Bureau of Revenue as a prerequisite to obtaining a license. The short term rental operator should keep a log of short term rental activity which includes dates the unit was rented on a short term basis and fees for the rental. This log shall be maintained up-to-date and is subject to audit by the City's Department of Finance upon request. During the license renewal period, the operator must present the Department of Safety and Permits with verification that all applicable taxes and fees have been paid.

- Require STR operators to register with the Bureau of Revenue as a prerequisite to obtaining a license.
- The short term rental operator shall keep a log of short term rental activity which includes dates the unit was rented on a short term basis and fees for the rental. This log shall be maintained up-to-date and is subject to inspection by the City upon request and during the license renewal.
- Upon renewal, the operator must present the Department of Safety and Permits with verification that all applicable taxes and fees have been paid.

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<sup>81</sup> As per the CEA, Airbnb "hosts shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report Hotel Tax, provided Airbnb is in compliance with its obligations herein"

## J. Summary of Recommendations & Text Changes

### Proposed Comprehensive Zoning Ordinance Text

#### Definitions (Article 26)

**Short Term Rental.** Rental of all or any portion thereof of a residential dwelling unit for dwelling, lodging or sleeping purposes to one party with duration of occupancy of less than thirty (30) consecutive days. Hotels, motels, bed and breakfasts, and other land uses explicitly defined and regulated in this ordinance separately from short term rentals are not considered to be short term rentals. Common bathroom facilities may be provided rather than private baths for each guest bedroom. A short term rental is further defined as follows:

- A. **Short Term Rental, Residential.** A short term rental where the owner or resident has his or her permanent primary residential dwelling unit onsite and is present during the guest's stay.
1. **Partial-Unit Residential Short Term Rental.** An owner- or permanent resident-occupied dwelling with a principal use as a permanent dwelling unit and which rents a portion of the dwelling unit, no more than three (3) guest bedrooms and six (6) total guests, for overnight paid occupancy as an accessory use.
  2. **Whole-Unit Residential Short Term Rental.** An owner-occupied lot with no more than four (4) dwelling units where one (1) unit is the owner's permanent residential dwelling unit and where only one (1) dwelling unit per lot is rented with no more than three (3) guest bedrooms and six (6) total guests for overnight paid occupancy as an accessory use.
- B. **Short Term Rental, Commercial.** An entire dwelling unit in a non-residential district that rents no more than five (5) guest bedrooms for overnight paid occupancy.

#### *Other Definitions*

**Guest Bedroom.** An enclosed room designed for and outfitted to be used for sleeping and/or lodging of guests. A guest bedroom shall not be a shared space or a space designed for or outfitted to be used for any purpose other than sleeping or lodging of guests (e.g. kitchens, dining rooms, living rooms, parlors, attics, offices, game rooms, or utility rooms).

**Bed and Breakfast.** A residential structure that provides sleeping rooms for overnight paid occupancy. Bed and breakfast is further defined as follows:

- A. **Bed and Breakfast, Accessory.** An owner-occupied building designed as either a single-family or a two-family dwelling that has been converted to a single-family dwelling, which provides no more than four (4) guest bedrooms for overnight paid occupancy of up to thirty (30) nights. Common bathroom facilities may be provided rather than private baths for each guest bedroom.
- B. **Bed and Breakfast, Principal.** An owner- or operator-occupied residential structure that provides no more than nine (9) guest bedrooms for overnight paid occupancy of up to thirty (30) nights. Common bathroom facilities may be provided rather than private baths for each guest bedroom.

## Use Standards (Article 20)

### 20.3.LLL SHORT TERM RENTALS

#### 20.3.LLL.1 SHORT TERM RENTALS GENERAL STANDARDS

- a. In addition to the use standards below, all short term rentals shall comply with the regulations of the Department of Safety and Permits and the Department of Finance, Bureau of Revenue.
- b. All short term rentals shall require a license. The license shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all period of occupancy and contain the license number, the contact information for the owner or in-town property manager, the license type (Temporary, Residential, or Commercial) and the bedroom and occupancy limit.
- c. Short term rentals shall not be operated outdoors, in an accessory structure, or in a recreational vehicle.
- d. Only one party of guests shall be permitted per short term rental unit.
- e. The short term rental shall appear outwardly to be a residential dwelling.
- f. Use of the short term rentals for commercial or social events shall be prohibited.
- g. The short term rental shall not adversely affect the residential character of the neighborhood.
- h. The short term rental shall not generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his or her residence.
- i. If required, proof of ownership shall be required via a valid homestead exemption.
- j. Only guest bedrooms shall be rented to guests on a short term basis. The rental of kitchens, dining rooms, living rooms, offices, and other common spaces as guest bedrooms shall be prohibited.
- k. Studio units shall be considered to have one (1) guest bedroom and allowed a maximum of two (2) guests.

#### 20.3.LLL.2 SHORT TERM RENTAL, COMMERCIAL STANDARDS

- a. A short term rental license shall be secured prior to operation; and short term rental operators shall comply with all applicable license requirements provided in the Code of the City of New Orleans.
- b. The license shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all period of occupancy and contain the license number, the contact information for the owner or in-town property manager, the license type (Temporary, Accessory, or Commercial) and the guest bedroom and occupancy limit.
- c. Up to five (5) guest bedrooms may be rented to guests and occupancy shall be limited to two (2) guests per guest bedroom with a maximum ten (10) guests.
- d. No signs are allowed for a Commercial Short Term Rental.
- e. No more than 1 unit or 25%, whichever is greater, of total units on a lot or single building constructed across lot lines shall be permitted as a Commercial Short Term Rental. This cap shall not apply to the VCE Vieux Carré Entertainment District, to structures which front on Canal Street between the Mississippi River and Rampart Street, nor to the EC Educational Campus, MC Medical Campus, and LS Life Science Districts nor the MI Maritime Industrial Commercial and Recreational Subdistrict.

- f. Commercial Short Term Rentals shall be prohibited on the first floor of a multi-story structure that contains or can contain residential uses on subsequent floors, but (1) does not apply to buildings that are single or two-family dwellings; (2) does not apply to single-story structures; (3) does not apply to the CBD Central Business Districts, EC Educational Campus, MC Medical Campus, LS Life Science, and M-MU Maritime Mixed Use Districts, nor the MI Maritime Industrial Commercial and Recreational Subdistrict.

*Other Use Standards*

**20.3.I BED AND BREAKFAST**

In addition to the regulations below, all bed and breakfasts shall comply with the regulations of the Department of Safety and Permits and the Department of Finance, Bureau of Revenue.

**20.3.I.1 BED AND BREAKFAST GENERAL STANDARDS (ACCESSORY OR PRINCIPAL)**

In any residential district, only one (1) bed and breakfast, whether accessory or principal, is permitted per blockface.

**20.3.I.2 BED AND BREAKFAST ACCESSORY STANDARDS**

- a. Proof of owner occupancy shall be established by submission of proof of a homestead exemption submitted to the Department of Safety and Permits. The owner-occupant's ownership interest must be at least fifty percent (50%).
- b. If more than one (1) principal building exists on a lot, or two (2) or more contiguous lots have been historically acquired together and the second building was originally constructed and has been used for habitable space, as defined by the Building Code, at least five (5) years prior to the establishment of the bed and breakfast, it may be included in the operation of the bed and breakfast.
- c. The bed and breakfast shall appear outwardly to be a single-family dwelling, giving no appearance of a business use other than a permitted sign.
- d. The bed and breakfast may have one (1) attached projecting sign not to exceed four (4) square feet in area. The sign shall complement the architecture of the structure.
- e. The bed and breakfast is limited to a maximum of four (4) guest bedrooms for overnight accommodation.
- f. Cooking facilities are prohibited in individual guest bedrooms.
- g. If meals are provided, only registered guests may be served.
- h. Leasing of a common dining area for social events is prohibited.

**20.3.I.3 BED AND BREAKFAST PRINCIPAL STANDARDS**

- a. Proof of owner or operator occupancy shall be established by submission of proof of a homestead exemption (owner) or legal leasing agreement (operator) submitted to the Department of Safety and Permits.
- b. If more than one (1) principal building exists on a lot, or two (2) or more contiguous lots have been historically used together and the second building was originally constructed and has been used for habitable space, as defined by the Building Code, for at least five (5) years prior to the establishment of the bed and breakfast, then it may be included in the operation of the bed and breakfast.

- c. All signs shall comply with applicable sign regulations for the zoning district.
- d. The bed and breakfast is limited to a maximum of nine (9) guest bedrooms for overnight accommodation.
- e. Cooking facilities are prohibited in individual guest bedrooms.
- f. If the zoning district allows restaurants, meals may be served to guests other than those registered with the bed and breakfast, provided the facility meets all other applicable city and state codes for food service.
- g. Leasing of common areas for social events shall be allowed, provided the facility meets all applicable off-street parking requirements and complies with the noise ordinance and all other provisions of the City Code.

**Residential Use Standards (Article 21)**

**21.6.II RESIDENTIAL SHORT TERM RENTALS**

**21.6.II.1 RESIDENTIAL SHORT TERM RENTALS GENERAL STANDARDS**

- a. In addition to the use standards below, all Residential Short Term Rentals shall comply with the regulations of the Department of Safety and Permits and the Department of Finance, Bureau of Revenue.
- b. All short term rentals shall require a license. The license shall be prominently displayed on the front facade of the property in a location clearly visible from the street during all period of occupancy and contain the license number, the contact information for the owner or in-town property manager, the license type (Residential or Commercial) and the bedroom and occupancy limit.
- c. A short term rental license shall be secured prior to operation; and short term rental operators shall comply with all applicable license requirements provided in the Code of the City of New Orleans.
- d. Short term rentals shall not be operated outdoors, in an accessory structure, or in a recreational vehicle.
- e. Only one party of guests shall be permitted per short term rental unit.
- f. The short term rental shall appear outwardly to be a residential dwelling.
- g. Use of the short term rentals for commercial or social events shall be prohibited.
- h. The short term rental shall not adversely affect the residential character of the neighborhood.
- i. The short term rental shall not generate noise, vibration, glare, odors, or other effects that unreasonably interfere with any person's enjoyment of his or her residence.
- j. Only guest bedrooms shall be rented to guest on a short term basis. The rental of kitchens, dining rooms, living rooms, offices, and other common spaces as guest bedrooms shall be prohibited.
- k. Studio apartments and dwelling units shall be considered to have one (1) guest bedroom and allowed a maximum of two (2) guests.
- l. All Residential Short Term Rental licenses shall be issued to a natural person. Since the Residential Short Term Rental is defined as a permanent, primary residence, only one license is permitted for short term rental operator.
- m. No signs are allowed for a Residential Short Term Rental.
- n. The resident shall occupy the unit and be present during the party's stay.

**21.6.II.2 SHORT TERM RENTAL, WHOLE-UNIT RESIDENTIAL STANDARDS**

- a. Proof of ownership and owner occupancy shall be required with a homestead exemption.
- b. Occupancy shall be limited to two (2) guests per guest bedroom for a total of up to six (6) guests.

**21.6.II.2 SHORT TERM RENTAL, PARTIAL-UNIT RESIDENTIAL STANDARDS**

- a. Only a portion of the dwelling shall be rented, which shall be limited to three (3) guest bedrooms, and occupancy shall be limited to two (2) guests per bedroom or six (6) guests total. There shall be at least one bedroom for the fulltime owner- or resident-occupant.
- b. The listing can only be advertised as partial-unit rental, and not a whole-unit, rental.
- c. Proof of permanent occupancy shall be required with a Louisiana State issued identification and a secondary form of identification approved by the Department of Safety and Permits.
- d. For a non-owner permanent resident, the operator shall provide proof of the property owner’s consent and documentation, as determined by the Department of Safety and Permits. In addition, the non-owner permanent resident shall reside at the residence throughout the term of the license or the license shall be withdrawn by the operator or the property owner.

[...]

**Off-Street Parking and Loading (Article 22)**

**22.4 Required Off-Street Vehicle Parking Spaces**

**22.4.A General Requirements**

[...]

<b>Table 22-1: Off-Street Vehicle and Bicycle Parking Requirements</b>			
Use	Minimum Required Vehicle Spaces	Minimum Required Bicycle Spaces	
		Required Short-Term Bicycle Spaces	Percentage of Long-Term Bicycle Spaces
[...]			
Bed and Breakfast	1 per 2 guest bedrooms	1 per 5 guest bedrooms	25%
[...]			
Short Term Rental, Residential	1 per dwelling unit		
Short Term Rental, Commercial	1 space per 2 guest bedrooms	1 per 5 guest bedrooms	25%
[...]			

**Permitted and Conditional Uses (Articles 7 to 17)**

Below are the use tables that show the zoning districts where Commercial Short Term Rentals are permitted (“P”), conditional (“C”), and prohibited uses (blank space). Residential and Special Event Short Term Rentals do not appear in these use tables below because these short term rental types are permitted in a dwelling unit in any zoning district, subject to the definition and use standards for each type. Commercial short term rentals are not currently permitted in Open Space Districts (Article 7), Historic Core Neighborhoods Residential Districts (Article 9), Historic Urban Neighborhoods Residential Districts (Article 11), and Suburban Neighborhoods Residential Districts (Article 13), and thus the use tables for these districts are not shown below.

Use Table: Rural Development Districts (Article 8)		
Uses	District	
	R-RE	M-MU
[...]		
Short Term Rental, Commercial		P
[...]		

Use Table: Historic Core Neighborhoods Non-Residential Districts (Article 10)										
Uses	District									
	VCC-1	VCC-2	VCE	VCE-1	VCS	VCS-1	VCP	HMC-1	HMC-2	HM-MU
[...]										
Short Term Rental, Commercial		P	P	P	P	P		P	P	P
[...]										

Use Table: Historic Urban Neighborhoods Non-Residential Districts (Article 12)			
Uses	District		
	HU-B1A	HU-B1	HU-MU
[...]			
Short Term Rental, Commercial		P	P

Use Table: Historic Urban Neighborhoods Non-Residential Districts (Article 12)			
Uses	District		
	HU-B1A	HU-B1	HU-MU
[...]			

Use Table: Suburban Neighborhoods Non-Residential Districts (Article 14)								
Uses	District							
	S-B1	S-B2	S-LB1	S-LB2	S-LC	S-LP	S-LM	S-MU
[...]								
Short Term Rental, Commercial		P		P	P		P	
[...]								

Use Table: Commercial Center & Institutional Campus Districts (Article 15)										
Uses	District									
	C-1	C-2	C-3	MU-1	MU-2	EC	MC	MS	LS	
[...]										
Short Term Rental, Commercial	C	C	C	P	P	P	P			P
[...]										

Use Table: Centers for Industry (Article 16)				
Uses	District			
	LI	HI	MI	BIP
[...]				
Short Term Rental, Commercial			P*	
[...]				

*\* Please note that Commercial Short Term Rentals are only permitted in the MI District's Commercial and Recreational Sub-District.*

Use Table: Central Business Districts (Article 17)							
Uses	District						
	CBD-1	CBD-2	CBD-3	CBD-4	CBD-5	CBD-6	CBD-7
[...]							
Short Term Rental, Commercial	P	P	P	P	C	P	P
[...]							

**Temporary Provisions (Article 19)**

**Short Term Rental Interim Zoning District**

The current Short Term Rental Interim Zoning District should be repealed with the effective date of any new regulations.

**City Code**

**Permit and License Requirements**

*Application Submittal Requirements*

- In addition to the attestations, the City should require additional documentation by the applicant at the time of application. In some cases, it may be necessary for the proposed short term rental to be inspected prior to the issuance of the license to ensure compliance with the short term rental regulations.
- Additional documentation should include the following items:
  - Site plan,
  - Floor plan with unit layout with all rooms listed and smoke detectors and fire extinguishers locations,
  - Proof of insurance,
  - Property owner permission form (if applicable),
  - Interior and exterior photographs, and
  - Number of nights rented and tax payment for renewals.
- If applicable, links to all listings for any other short term rental run by the same operator.
- If residency is required, two documents to include at least one Louisiana state-issued identification (i.e driver’s license), and should include a second form that could include voter registration, bank statement, pay stub, W2 form, or utility bill mailing address.
- If a renter is the short term rental operator of a partial-unit Residential Short Term Rental, then the applicant shall submit a form provided by the Department of Safety and Permits that is signed by the property owner and notarized. The form should grant permission for the renter to operate a partial-unit short term rental, confirm that the renter will reside in the dwelling unit for the term of the license, and serve as notice that the property owner could held responsible for any violations associated with this short term rental.

### *License Review Process Recommendations*

- The Department of Safety and Permits should consider if a zoning review by the Zoning Division is necessary for the review of short term rental licenses.
- The Department of Safety and Permits should consider requiring an inspection if the applicant is allowed to attest to complying with the short term rental requirements.
- An inspection could be required in all cases, but that would require additional license review time, require additional resources for the Department of Safety and Permits, and could be a disincentive for some people to apply which would reduce the compliance rate.
- Require Commercial short term rentals to obtain a Certificate of Occupancy to ensure that the appropriate building and life safety standards are met.
- Notice should be provided once the license has been issued, which should include the license number, type, limitation, contact information, and how to report violations.
- The City needs to decide if electronic notice, similar to NoticeMe or notifications with the One Stop App, is sufficient or if mailed notice should be required.
- If mailed notice is required, the notice area should include all properties with 75 feet of the subject property as measured from the property's boundary.
- Preferably, this notice should be provided by the City, but that would require additional time and resources for the Department of Safety and Permits. Alternatively, this could be a requirement of license holder, with the City providing addresses within the buffer zone.
- The Department of Safety and Permits should work with ITI to explore using NoticeMe to provide notification to interested parties when a short term rental license is issued.
- The CPC staff recommends maintaining the practice of issuing licenses by municipal address.
- The City Council shall budget adequate resources for personnel and other operating expenses to the Department of Safety and Permits for short term rental license review.

### *License Renewals*

- Renewals should require all of the same information documentation, attestations, and/or inspections as the original application submittal.
- The operator should provide the links to all online listings, and update any links for other listings managed by the same operator.
- In addition, the short term rental operator should report the number of nights rented the previous year and provide proof of tax payment in the form of a tax clearance from the Department of Finance and/or documentation from the platform verifying that the correct amount of taxes remitted to the City for the each licensed short term rental.
- The Department of Safety and Permits should not renew licenses for short term rentals with open violations and unpaid taxes or fines. In addition, the Department of Safety and Permits should develop a policy and appeal process for the revoking and non-renewal of licenses and/or operators with a history of noncompliance with the regulations.

### *Short Term Rental Operator Regulations*

- The Department of Safety and Permits should license all short term rental operators.
- There shall be two types of Short Term Rental Operator license; Residential Short Term Rental operators (on-site owner or permanent resident) and Commercial Short Term Rental operators.

- The Short Term Rental Operator license holder must be a natural person and not a corporation.
- The license will require a fee and passing an online or in-person test to ensure knowledge of the short term rental regulations and the responsibilities of an operator.
- The license fee shall be less for on-site operators who will only operate one short term rental than the fee for off-site operators who can manage multiple properties.
- Short term rental operators shall reside within a certain driving distance from the short term rental location. That distance should not be greater than 100 miles, but could be much less depending on how soon the property manager should be able to respond to any complaints. Below are some examples of possible distances from the New Orleans CBD:
  - 20 miles (Metairie, Kenner, Chalmette, Belle Chasse),
  - 40 miles (Slidell, La Place, Mandeville),
  - 60 miles (Covington, Gonzales, Hammond, Thibodaux, Houma, Bay St. Louis, Picayune),
  - 80 miles (Baton Rouge, Bogalusa, Gulfport), or
  - 100 miles (Biloxi, Morgan City, Kentwood).
- It should be a violation to be a short term rental operator without a license and operate a short term rental in violation of the short term rental regulations in the Comprehensive Zoning Ordinance and City Code.

## **Platform Regulations**

### *Licensing Platforms*

- The CPC staff recommends requiring platforms to get a license. There are some benefits to requiring a license and Airbnb is licensed in some cities, but it will be very difficult to enforce if the platforms do not support the overall amendments to the regulations and decide not to get a license.

### *Collect and Remit Taxes*

- The City Council should amend City Code to require that all platforms and booking agents (internet-based or not) that facilitate or make a STR transaction possible collect and remit the applicable taxes to the City of New Orleans. This shall not absolve the STR operators from any requirements for record keeping, reporting to the City, and paying any taxes that have not been remitting by the platforms.

### *Data Sharing*

- The City should require platforms to share additional data including addresses, listing identification or link, and license numbers in the monthly reports. Platforms are unlikely to provide this information unless ordered to do so by a court, and it is unclear if a court would decide that this is allowed under the Stored Communications Act.

### *Requiring Platforms to Post License Numbers & Remove Unlicensed Listings*

- When looking at regulations around requiring license numbers, the City should maintain its requirement that the STR operator provide license information in all listings. The City should not require the platform to confirm the license number in advertisements, but instead focus regulation on the booking transaction.
- Some cities have requirements that platforms remove unlicensed listings. The City could enact a similar regulation, but it will be difficult to enforce if the platforms are not willing to comply.

### *Prohibit Collecting Fees from Transactions with Unlicensed STRs*

- The City should prohibit all financial transactions for booking an unlicensed STR. There should be a per day penalty for each transaction.
- The City should put in place a “Safe Harbor” provision as part of these regulations and adopt standard procedures for verifying license data to allow for the platforms to easily comply with this requirement. In addition, internet platforms and local booking agents should be treated the same way if they both conduct a financial transaction for a STR.

### *Pass-Through Registration*

- The City should update its online registration system so that it can be available as a widget on the various platforms so hosts can apply directly to the City, as opposed to relying on the platforms to pass-through the information to the City.
- The City should keep in mind that if we increase the required documentation STR license applicants are required to provide, it will result in increased time to receive a license and lower rates of compliance.

### **Fee, Tax, Fine Structure**

In order to pay for the administration and enforcement of short term rentals, the following financing structure should be put into place.

#### *Recommended Fees*

The yearly license fees should be as follows:

- Residential Short Term Rental, Partial Unit: \$100 per year
- Residential Short Term Rental, Whole Unit: \$500 per year
- Commercial Short Term Rental: \$1000 per year

#### *Recommended Taxes*

If deemed appropriate, the City should consider advocating for amendment of State law to provide more clarity in the use of the funds generated from the State hotel/motel sales tax.

#### *Recommended Fines*

The current fine structure cannot be changed simply by the City of New Orleans. Changes to State law are required to modify the fine structure for any violations.

- To effectively enforce short term rentals, the City needs to advocate for the amendment of State Law to increase the maximum daily fine to above \$500
- Fines should be amended to allow for a progressive fine structure that increases after multiple offenses that would punish repeat offenders.
- Consider requiring additional application fees if an application for a short term rental license is submitted after a notice of violation.

### *Neighborhood Housing Improvement Fund Fee*

- The per night fee for the NHIF required by STR license holders should be increased to \$8.00 per occupied night, while keeping the per night fee for partial rentals at \$1.00.
- The NHIF fee should be a flat fee rather than a percentage of the rental rate for easy verification and compliance monitoring.
- The money raised in the NHIF by STRs should be attributed to affordable housing development and administrative fees to develop the affordable housing and should not be used for code enforcement regulation or other code compliance.
- The STR administration should be required to verify fees are being submitted by license holders that have active listings to the Department of Finance, Bureau of Revenue.

### *Tax Collection*

To ensure that short term rental operators are paying all applicable taxes and fees, every STR license holder should be required to register with the Department of Finance, Bureau of Revenue as a prerequisite to obtaining a license.

- Require STR operators to register with the Bureau of Revenue as a prerequisite to obtaining a license.
- The short term rental operator shall keep a log of short term rental activity which includes date the unit was rented on a short term basis and fees for the rental. This log shall be maintained up to date and is subject to inspection by the City upon request and during the license renewal.
- Upon renewal, the operator must present the Department of Safety and Permits with verification that all applicable taxes and fees have been paid.

### **Department of Safety & Permits Recommendations**

In order to administer and regulate short term rentals, the following should occur:

- The City Council shall budget adequate resources for personnel and other operating expenses to the Department of Safety and Permits for short term rental license review.
- The Department of Safety and Permits should consider if a zoning review by the Zoning Division is necessary for the review of short term rental licenses.
- The Department of Safety and Permits should consider requiring an inspection if the applicant is allowed to attest to complying with the short term rental requirements.
- An inspection could be required in all cases, but that would require additional license review time, require additional resources for the Department of Safety and Permits, and could be a disincentive for some people to apply which would reduce the compliance rate.

### *Enforcement Recommendations:*

- Provide additional funding for proactive STR enforcement, whether it be through a third-party provider or ongoing education of City staff.
- Develop a 24/7 mechanism where citizens can report suspected violations of the STR regulations.
- Staff inspectors during the evenings, weekends, and during large tourist events.
- Develop a separate administrative adjudication process for short term rental violations.
- Ensure there is adequate funding in the Department of Safety and Permits and the City Attorney's office to process adjudications and appeals to Civil District Court.

- Increase the pool of available administrative hearing officers.

*Safety Recommendations:*

- If deemed appropriate, hold Commercial Short Term Rentals to the same safety and sanitary standards as hotels and motels.

**Further Study**

With a cap on Commercial STRs throughout the City, there is an opportunity to leverage benefits for the citizens by allowing Commercial STRs to exceed the cap in certain circumstances. The benefits may include the renovation of historic buildings or the provision of affordable units in the same structure. If a policy decision is made to explore using this tool as an incentive, additional study should inform the decision. The City Council has commissioned a financial feasibility study for the development of affordable housing. This study is currently underway and upon completion will provide guidance on factors such as zoning, market, Area Median Income (AMI) targets, percentage set aside, and other variables for creating an affordable housing policy. This information could be used to inform the exact numbers in a commercial STR cap and other affordable housing incentive programs that are established in accordance the city's overall affordable housing policy.

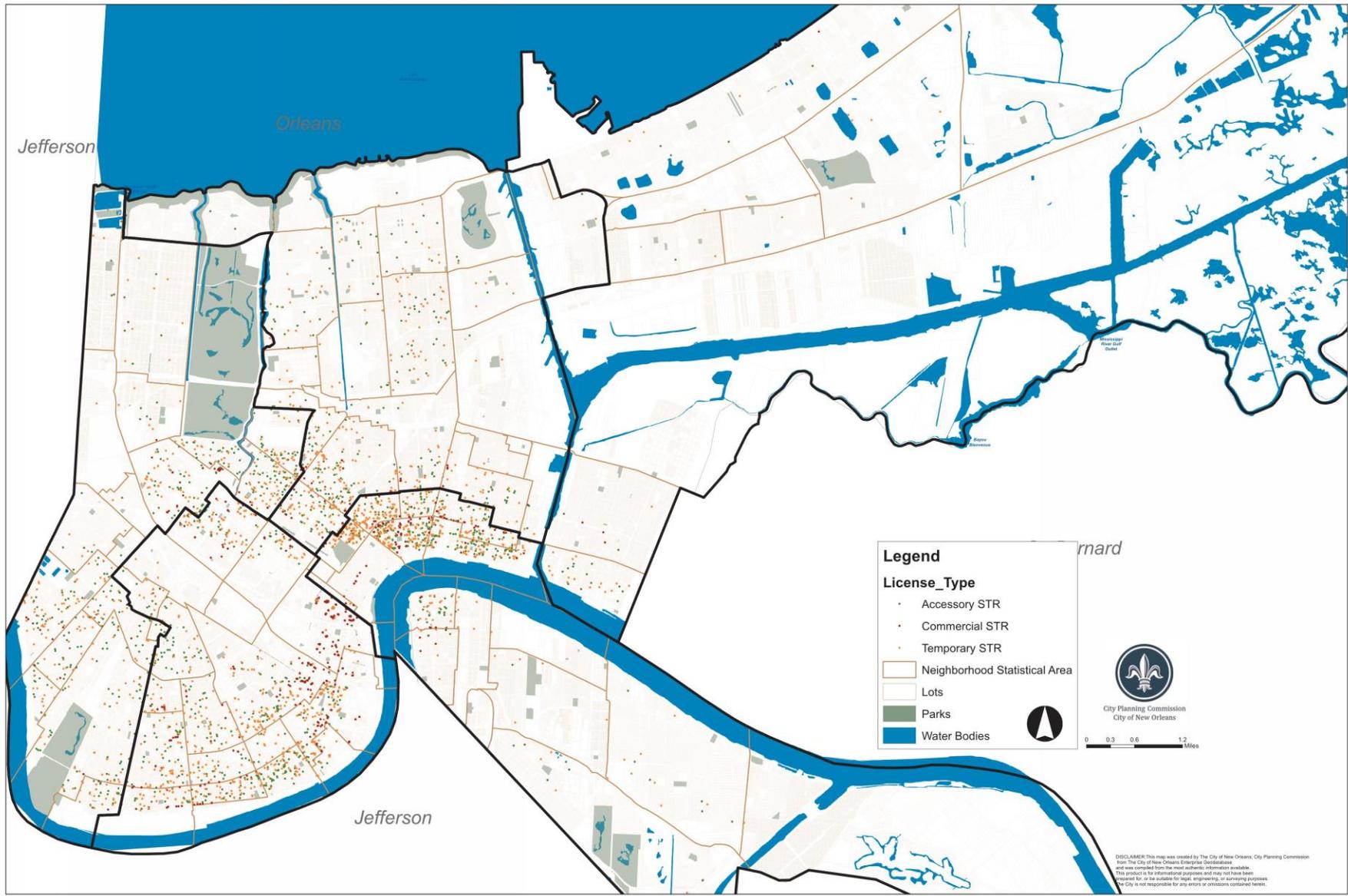
- If a policy decision is made to use this tool as an incentive for the renovation of historic structures, the CPC staff recommends certain conditions or standards, such as:
  - The structure must have been vacant for the past 5 or 10 years;
  - The structure must be a contributing structure located in a national or local historic district, or be designated an historic landmark;
  - If the structure is not already located in a full-control local historic district or is not a locally designated historic landmark, renovations to the exterior must be approved by the staff of the appropriate Historic District Landmarks Commission.
  - This tool might also be applied to historic structures in residential areas, but with a sunset clause on the length of use as an STR, such as 5 years.

**Next Steps**

The 2018 Short Term Rental Study directed by City Council Motion M-18-194 will be presented to the City Planning Commission on September 25, 2018. Before it considers the Study, the CPC must first hold a public hearing; special rules were adopted at the September 11, 2018 meeting that will (1) limit each speaker to a maximum of one (1) minute, and (2) disallow speakers from ceding time to another speaker. Taking public input into mind, the CPC can choose to forward the Study to the City Council with or without changes to the staff recommendations. If the CPC chooses to modify the Study recommendations, the staff will incorporate those recommendations and forward the revised Study to the City Council by the deadline of October 5, 2018. The City Council may choose to hold its own public hearing on the Study, though it is not required. The City Council may then direct the CPC to consider all or part of the recommendations as text changes to the Comprehensive Zoning Ordinance. If that is done, the CPC will docket the request and write a staff report with recommendations for specific zoning text changes. The zoning docket would require an additional public hearing before the CPC and again the CPC may choose to recommend text changes to the City Council with or without modification of the staff recommendations, or they could recommend denial of the proposal. Next, the City Council must hold a public hearing before considering adoption of zoning text changes. The Council may adopt, adopt with modifications, or deny the recommendations of the CPC.

The Short Term Rental Study also makes recommendations for changes to the City Code, processes around Short Term Rental administration, and advocacy at the State level. The City Planning Commission would not be formally involved in implementation of those changes.

# K. Appendix



Date Saved: 9/18/2018