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# The Short-Term Rental Economy in Rural Maine Communities: An Opportunity for Economic Growth Instead of a Target for Regulation

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# THE SHORT-TERM RENTAL ECONOMY IN RURAL MAINE COMMUNITIES: AN OPPORTUNITY FOR ECONOMIC GROWTH INSTEAD OF A TARGET FOR REGULATION

*Nicholas Anania*

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# THE SHORT-TERM RENTAL ECONOMY IN RURAL MAINE COMMUNITIES: AN OPPORTUNITY FOR ECONOMIC GROWTH INSTEAD OF A TARGET FOR REGULATION

*Nicholas Anania\**

## ABSTRACT

State and local governments across the country are grappling with the rise of short-term housing rentals and how to enact effective regulation regarding their use. The increase of short-term rentals (STRs) is almost entirely the result of online platforms that make STRs easy, efficient, and accessible. While STRs undoubtedly have positive economic outcomes for both property owners and local economies, there are also many negative repercussions which must be effectively regulated. Regulation in this area reflects differing priorities and viewpoints of states and municipalities. Specifically, rural Maine municipalities, many of which are popular seasonal destinations, face not only the challenges of regulating the STR market, but also challenges from stagnant economic growth. By promoting the STR economy and enacting limited and balanced regulations, rural Maine municipalities can profit at the individual and municipal level from this growing economic activity.

## I. INTRODUCTION

The “sharing economy” has become a dominant force in American society. The sharing economy is a phrase broadly used to identify a wide array of economic transactions in which individuals are sharing their time, resources, vehicles, and housing with others.<sup>1</sup> Some commentators see the innovation currently at play as a means to “save money, space, and time; make new friends; and become active citizens once again.”<sup>2</sup> Others, though, take issue with the term “sharing” because the transactions at play are becoming more and more business-driven and less about “sharing.”<sup>3</sup> One prominent aspect of the sharing-economy is the use of short-term rentals (STRs). This is when property owners (hosts) list for rent as little as a single bedroom or as much as a whole house for use as short-term lodging

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1. See Kellen Zale, *When Everything Is Small: The Regulatory Challenge of Scale in the Sharing Economy*, 53 SAN DIEGO L. REV. 949, 951 n.3 (2016).

2. Inara Scott & Elizabeth Brown, *Redefining and Regulating the New Sharing Economy*, 19 U. PA. J. BUS. L. 553, 559 (2017) (quoting RACHEL BOTSCHAN & ROO ROGERS, *WHAT’S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION* xv-xvi (2010)).

3. See Steven Greenhouse, *Opinion, The Whatchamacallit Economy*, N.Y. TIMES (Dec. 16, 2016), <http://www.nytimes.com/2016/12/16/opinion/the-whatchamacallit-economy.html> [<https://perma.cc/9T9S-NPVJ>] (commenting that it is not really “sharing” if someone is paying for a service).

accommodations.<sup>4</sup> This Comment delves into the sharing economy and looks specifically at STRs primarily through the popular and internationally-used STR platform Airbnb. It applies analysis of this economic activity specifically to rural communities in Maine, many of which are currently attempting to tailor their regulatory approach to this growing activity.

Airbnb was founded in 2008 in San Francisco by two young entrepreneurs looking for innovative ways to pay their rent.<sup>5</sup> The founders provided their guests with a place to sleep and breakfast in the morning.<sup>6</sup> Less than ten years later, Airbnb had grown exponentially and was being used in every state and many countries around the world.<sup>7</sup> On New Year's Eve in 2017, for instance, two million people used Airbnb worldwide in one night,<sup>8</sup> and there were roughly 100 million stays during the course of that year.<sup>9</sup>

While some see the use of online sharing platforms as a detractor from more conventional lodging options, this is not always the case. Others argue that Airbnb is not taking business away from hotels, but instead adding another element to the lodging economy.<sup>10</sup> This is due to the fact that the "pre-sharing" economy limited lodging businesses to larger entities that were able to take advantage of "economies of scale."<sup>11</sup> However, technology has driven transaction costs down and enabled individuals to enter a market normally reserved for large corporations.<sup>12</sup> Communities previously less-traveled by visitors are becoming places where large amounts of short-term lodging exist.<sup>13</sup> For example, the CEO of Marriott Hotels, Arne Sorenson, opined that the value of Airbnb is that it gives travelers access to neighborhoods and areas that hotels cannot.<sup>14</sup> Therefore, it is hard to categorize STRs on a national or even state level because they have drastically different effects in different communities and contexts.

Sorenson's opinion is further reflected in the intentions of Airbnb users. A recent study found that seventy-six percent of Airbnb users wanted to "explore a specific neighborhood" during their travel and eighty-nine percent wanted to "live

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4. See Elaine S. Povich, *Why Most States Are Struggling To Regulate Airbnb*, STATELINE (May 7, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/05/07/why-most-states-are-struggling-to-regulate-airbnb> [https://perma.cc/BZB5-6VD6].

5. See *About Us*, AIRBNB, <https://press.airbnb.com/about-us/> [https://perma.cc/N3G3-H4M5]; see also Dwight H. Merriam, *Peering into the Peer Economy: Short-Term Rental Regulation*, ZONING PRAC., Oct. 2015, at 3.

6. Merriam, *supra* note 5, at 3.

7. See Jared Meyer, *How To Save Airbnb From Local Governments*, FORBES (Feb. 1, 2017, 10:49 AM), <https://www.forbes.com/sites/jaredmeyer/2017/02/01/how-to-save-airbnb-from-local-governments/> [https://perma.cc/E4LH-JSR8].

8. *Id.*

9. Rani Molla, *Airbnb Is on Track To Rack up More Than 100 Million Stays This Year—and That's Only the Beginning of Its Threat to the Hotel Industry*, RECODE (July 19, 2017, 7:00 AM), <https://www.recode.net/2017/7/19/15949782/airbnb-100-million-stays-2017-threat-business-hotel-industry> [https://perma.cc/363C-9VSR].

10. See Povich, *supra* note 4.

11. Zale, *supra* note 1, at 977.

12. See *id.*

13. See Stephen R. Miller, *First Principles for Regulating the Sharing Economy*, 53 HARV. J. ON LEGIS. 147, 183 (2016).

14. *Id.*

like a local.”<sup>15</sup> This sentiment naturally makes smaller, more rural communities appealing to the twenty-first century traveler who is looking for more “authentic” local experiences.<sup>16</sup> In 2017 alone, Airbnb saw 3.3 million guest arrivals in rural American communities, which was an increase of 138% from the previous year.<sup>17</sup> While the spread of Airbnb has been beneficial for travelers, in many cases, it has been more beneficial for hosts, especially in rural communities, where STR earnings comprise a large amount of household income.<sup>18</sup>

Airbnb has undoubtedly become a rising player in the lodging economy with its modern and innovative approach. Innovation and economic growth have increased demands for regulation of the marketplace. To understand the background of how positions regarding the proper regulatory approach arise, Part II looks at the positive and negative economic effects of Airbnb. Part III looks at states and municipalities around the nation that have struggled with the role of regulation in the STR market, and, ultimately, the drastically diverse approaches different governments have taken. Part IV explores Maine’s current regulatory approach to STRs, as well as the approaches of a selection of rural Maine communities to these same problems. Part V discusses the path forward for Maine and rural municipalities regarding STRs and analyzes the best practices on how to regulate this economic activity without stifling beneficial aspects of the marketplace in communities where economic growth is relatively stagnant.

## II. THE SHORT-TERM RENTAL ECONOMY AND ITS EFFECT ON COMMUNITIES

Communities that offer Airbnb options are affected, both positively and negatively, by the presence of STRs. While supporters of STRs focus on the benefits to individual hosts and guests,<sup>19</sup> opponents of STRs will focus on the adverse cumulative effects on communities.<sup>20</sup> This section takes a brief look at the overarching negative and positive effects that ultimately shape the regulatory landscape.

### A. Negative Economic Effects

The adverse effects of STRs are generally directed at four entities: surrounding individuals, STR users, lodging businesses, and municipal governments. First, in regard to the effects on surrounding residents, an influx of transient visitors into otherwise residential neighborhoods is bound to create problems. Common issues

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15. *Id.* (quoting David Hantman, *Airbnb Economic Impact Around the World*, AIRBNB (Mar. 25, 2014), <http://publicpolicy.airbnb.com/airbnb-economic-impact-around-the-world/> [<http://perma.cc/2DQG-CD72>]).

16. See Nancy Trejos, *Airbnb’s Popularity Grows in Rural Communities*, USA TODAY (June 27, 2017), <http://www.usatoday.com/staff/2150/nancy-trejos/> [<https://perma.cc/FV2G-4KVZ>].

17. *Id.*

18. *Id.*; AIRBNB, *BEYOND CITIES: HOW AIRBNB SUPPORTS RURAL REVITALIZATION* 31 (2017), <https://www.airnbccitizen.com/beyond-cities-how-airbnb-supports-rural-revitalisation-2/> [<https://perma.cc/4J2Z-F3JY>].

19. See Stephanie J. Knightly, *Regulating Innovation: The Positive Economic Impact of Taxing Airbnb Like the Hotel Industry*, 51 SUFFOLK U. L. REV. 457, 462 (2018).

20. See Miller, *supra* note 13, at 169.

arise from noise disturbances, congestion, parking concerns, and trash disposal.<sup>21</sup> Additionally, STRs contribute to the breakdown of once-residential neighborhoods composed of long-term residents.<sup>22</sup> On a larger scale, the cumulative effect of converting long-term residences into short-term housing is the decrease in housing supply, which inevitably increases housing costs and rental prices.<sup>23</sup>

Next, there can be adverse effects on the visitors renting STRs. Because Airbnb is simply a platform to connect producer and consumer, there are concerns in less-regulated markets about the safety of the units.<sup>24</sup> Critics question the degree of insurance, inspections, and upkeep required of STRs—standards that are mandated in more traditional forms of lodging.<sup>25</sup> Furthermore, many smaller buildings are exempt from fair housing regulations<sup>26</sup> when renting to long-term tenants.<sup>27</sup> There is uncertainty surrounding whether these exemptions also apply when renting property for short-term use. Documented discrimination by some Airbnb hosts when selecting guests would be illegal if done by traditional lodging businesses.<sup>28</sup>

Additionally, some traditional lodging businesses challenge Airbnb's current practices due to unfair competition. For example, in areas where occupancy taxes are not collected and remitted to municipalities by Airbnb, rentals cost twenty-one percent less than the average hotel room in the same area.<sup>29</sup> This is in part because the Airbnb host does not need to account for taxes and fees paid out of their rental revenue.<sup>30</sup> Airbnb started as a way for individuals to rent spare rooms in their primary residence but has now become a larger commercial enterprise run by, in many cases, business entities that buy property to convert to Airbnb units.<sup>31</sup> In effect, many in the STR market are able to charge less and profit more because they are not held to the same standards and requirements as traditional lodging establishments.<sup>32</sup>

Finally, some local and state governments are affected adversely by Airbnb rentals with respect to tax revenue. In unregulated markets, STR owners are not collecting and remitting occupancy taxes as required of providers of more traditional forms of short-term lodging.<sup>33</sup> If the state has not reached an agreement with Airbnb

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21. See Janine Pineo, *Short-term Rentals Becoming More Common in Vacationland*, ME. TOWNSMAN, June 2017, at 11, 14; Peter McGuire, *Maine Towns Pressured To Rein in Short-Term Rentals of Homes as Popularity Grows*, PORTLAND PRESS HERALD (Aug. 8, 2016), <https://www.pressherald.com/2016/08/08/maine-towns-pressured-to-rein-in-short-term-rentals-of-homes-as-popularity-grows/> [<https://perma.cc/P8DP-BRPP>].

22. See Zale, *supra* note 1, at 983-85.

23. See Miller, *supra* note 13, at 169.

24. See Pineo, *supra* note 21, at 11; Merriam, *supra* note 5, at 4.

25. Pineo, *supra* note 21, at 11.

26. The Federal Fair Housing Act prohibits discrimination on the basis of race, religion, disability, sex, family status or national origin when renting residential units. The law applies to non-owner-occupied multi-units and owner-occupied multi-units with more than four units. 42 U.S.C. §§ 3603(b)(2), 3604 (2012).

27. See Povich, *supra* note 4.

28. Stephen R. Miller, *Decentralized, Disruptive, and on Demand: Opportunities for Local Government in the Sharing Economy*, 77 OHIO L.J. 47, 52 (2016).

29. Miller, *supra* note 13, at 176-77.

30. *Id.*

31. See Scott & Brown, *supra* note 2, at 567.

32. See Miller, *supra* note 13, at 177-78.

33. See Merriam, *supra* note 5, at 4.

regarding the remittance of occupancy taxes, then money garnered from visitors to pay for additional municipal services used by the visitors (police, roads, transportation, etc.) is not realized.<sup>34</sup>

### B. Positive Economic Effects

Conversely, there are many positive economic effects of Airbnb and STRs to local economies. First, there potentially are enormous financial benefits for hosts willing to rent their additional or unused space.<sup>35</sup> The reason Airbnb is so appealing to potential hosts is because it is a relatively low-cost, low-risk venture.<sup>36</sup> While a portion of STRs undoubtedly are driven by business-like entities, there are numerous individual hosts who report the added income allows them to pay their mortgage and remain in their house.<sup>37</sup> Airbnb statistics show fifty-three percent of their hosts nationwide reported that the income earned from hosting helped them keep their home.<sup>38</sup> Additionally, almost half of respondents of the same survey reported that the income made through Airbnb was directly spent on household expenses.<sup>39</sup>

Wider impacts come from the effects that an influx of visitors has on communities regularly untraveled.<sup>40</sup> Because Airbnb provides lodging options in areas where traditional options may not exist, the concept is that these visitors boost local economies by shopping in their stores, eating in their restaurants, and drinking in their bars.<sup>41</sup> Some commentators contend that the presence of Airbnbs and their positive economic impact on communities far outweigh the negative impact on the rental market and housing prices.<sup>42</sup> Airbnb alleges that such an overwhelmingly positive effect is because Airbnb guests stay over two times longer and spend over two times more than average visitors.<sup>43</sup> Airbnb has also led to the creation of new local businesses that specifically provide services to Airbnb hosts, such as property management, housekeeping, and landscaping services.<sup>44</sup>

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34. See *Zale*, *supra* note 1, at 987-88. As discussed more below, Airbnb has proactively engaged with forty-four states in order to establish agreements that detail collection and remittance of occupancy taxes by Airbnb to the proper state entities. See *In What Area Is Occupancy Tax Collection and Remittance by Airbnb Available?*, AIRBNB, <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available> [<https://perma.cc/EN9T-XR3H>].

35. Knightly, *supra* note 19, at 462.

36. See *id.* (discussing the relative ease for hosts to offer and profit from their unused space).

37. See Merriam, *supra* note 5, at 4; Emily A. Reyes, *L.A. Officials Want To Keep Airbnb-type Rentals from Being "Rogue Hotels,"* L.A. TIMES (Aug. 25, 2015), <http://www.latimes.com/local/lanow/la-me-ln-airbnb-rental-regulations-20150825-story.html> [<https://perma.cc/CV59-Z3TC>].

38. *The Economic Impacts of Home Sharing in Cities Around the World*, AIRBNB <https://www.airbnb.com/economic-impact> [<https://perma.cc/QK2U-LV7A>].

39. *Id.*

40. See Miller, *supra* note 13, at 157.

41. See Povich, *supra* note 4.

42. See Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 YALE L. & POL'Y REV. 215, 259 (2016).

43. *The Economic Impacts of Home Sharing in Cities Around the World*, *supra* note 38. In addition to the longer stays and more money spent while visiting, Airbnb also claims that forty-two percent of guest spending occurs in the communities where the guests are staying. *Id.*

44. See Andrew Bender, *New Regulations To Wipe Out 80% of Airbnb Rentals in California's Santa Monica*, FORBES (Jun. 15, 2015), <https://www.forbes.com/sites/andrewbender/2015/06/15/new->

Supporters of STRs believe they are also beneficial to local governments. By permitting STRs, local governments allow different lodging offerings that may be more intriguing to potential visitors.<sup>45</sup> Furthermore, in cities that have maximized lodging growth and have limited useable land, STRs provide for economic growth using existing property resources.<sup>46</sup> Supporters of Airbnb also counter the argument that municipalities are losing out on valuable occupancy taxes by showing that forty-four states have successfully negotiated with Airbnb for the collection and remittance of occupancy taxes by Airbnb.<sup>47</sup>

These positive effects are particularly apparent in rural communities. In rural American areas, where median incomes are lower than in urban areas, the average host is earning more from Airbnb than the average urban host.<sup>48</sup> These earnings represent a much larger percentage of household income than in urban households as well.<sup>49</sup> Additionally, rural economies have rebounded at a much slower pace than urban areas following the economic recession of 2008—revenue from people staying in STRs and spending money in rural areas is a boost for both the host and the local area.<sup>50</sup> Finally, rural STRs provide lodging options that otherwise may not exist, which allows for an influx of visitors who will likely spend their money within that community.<sup>51</sup>

The effects of the positive and negative aspects of STRs are highly contested. These positive and negative factors drive the regulatory approach of municipalities. While an unregulated market is unlikely and potentially problematic, there is an argument that the positive economic effects arising from Airbnb and other STR platforms should not be unduly restricted or over-regulated.

### III. REGULATORY RESPONSES TO THE SHORT-TERM RENTAL ECONOMY: BALANCING THE POSITIVES AND NEGATIVES

#### A. *Competing Visions of the Appropriate State-Level Response*

Land use and zoning regulations are primarily dictated by municipalities.

regulations-to-wipe-out-80-of-airbnb-rentals-in-californias-santa-monica/#577bfe1e169a [https://perma.cc/LC7P-NF92]; Niki Cervantes, *Santa Monica Gets Even Tougher on Short-Term Vacation Rental “Hosts,”* SANTA MONICA LOOKOUT (Jan. 12, 2017), [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2017/January-2017/01\\_12\\_2017\\_Santa\\_Monica\\_Gets\\_Even\\_Tougher\\_on\\_Short\\_Term\\_Vacation\\_Rental\\_Hosts.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/January-2017/01_12_2017_Santa_Monica_Gets_Even_Tougher_on_Short_Term_Vacation_Rental_Hosts.html) [https://perma.cc/56QQ-WXG4].

45. See Miller, *supra* note 13, at 159.

46. See *id.* at 157-58.

47. See *In What Area Is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 34; see also Zale, *supra* note 1, at 987.

48. See Lisa Fu, *Airbnb Is Bringing Money to Rural America*, FORTUNE (June 29, 2017), <http://fortune.com/2017/06/29/airbnb-money-rural/> [https://perma.cc/TW5N-TV2G]; see also *Beyond Cities: How Airbnb Supports Rural Revitalization*, *supra* note 18.

49. See *Beyond Cities: How Airbnb Supports Rural Revitalization*, *supra* note 18 (noting that Airbnb earnings in rural communities represented five to twenty percent of household income).

50. *Id.*; see also Fu, *supra* note 48.

51. See *Beyond Cities: How Airbnb Supports Rural Revitalization*, *supra* note 18 (noting that there are almost six percent more active Airbnb listings in rural areas than hotel rooms available in those same areas).



However, regulation of STRs has been difficult due to Airbnb's rapid growth and irregular structure.<sup>52</sup> In some cases, states have stepped in and created state-wide approaches to regulating STRs.<sup>53</sup> Where municipalities have banned STRs or regulated them so heavily that the market is nonexistent,<sup>54</sup> some states have created laws banning the prohibition of Airbnb.<sup>55</sup> However, in other cases, where state governments believe STRs are damaging to local communities, bans have been placed on STRs at the state level.<sup>56</sup> This section looks at examples of the regulatory approaches of state governments that have set statewide limits on both the use of STRs and the allowable amount of municipal prohibition of STRs.

### 1. The "Pro-STR" Approach

As Airbnb usage continued to scale-up nationwide, Arizona established itself as a supporter of the STR economy.<sup>57</sup> As opposed to the hands-off approach many states were taking, Arizona enacted legislation that prevents municipalities from banning STRs based solely on "classification, use, or occupancy."<sup>58</sup> Effectively, municipalities are only permitted to regulate STRs for purposes of health and public safety; by enacting zoning or residential uses that are applied to all residences equally; or by forbidding the use of STRs for certain "immoral" activities or to house potentially dangerous people.<sup>59</sup>

Supporters of this law believe that it accomplishes many goals and alleviates regulatory burdens on municipalities. First, the law requires Airbnb to collect and remit occupancy taxes to the State of Arizona, which then distributes them to the proper municipalities.<sup>60</sup> Additionally, the law eliminates "patchwork" municipality legislation that makes it difficult for hosts and visitors to interpret and understand different laws in different cities.<sup>61</sup> Finally, officials in Arizona believed a ban on Airbnb and STRs generally would send hosts "underground" and prevent the state from collecting the proper taxes.<sup>62</sup>

Similarly, Idaho passed legislation that prevented an all-out ban on Airbnb but allowed their municipalities slightly more leeway with STRs in their jurisdictions.<sup>63</sup>

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52. See Zale, *supra* note 1, at 991-92 (commenting on regulatory challenges of a three-sided economy where there is a producer, a consumer, and platform that enables the transaction).

53. See Meyer, *supra* note 7; N.Y. MULT. DWELL. LAW § 280 (McKinney 2019).

54. See Meyer, *supra* note 7.

55. See *id.*

56. See N.Y. MULT. DWELL. LAW §§ 3(1), 4(8)(a)(1).

57. See Macaela J. Bennett, *Is Airbnb Good for Arizona?*, AZCENTRAL (July 28, 2016), <https://www.azcentral.com/story/news/politics/legislature/2016/07/27/airbnb-arizona-benefits/86314492/> [<https://perma.cc/4C3L-HEPC>].

58. Meyer, *supra* note 7.

59. ARIZ. REV. STAT. ANN. § 9-500.39 (2018).

60. Bennett, *supra* note 57.

61. *Id.*; see also *Ducey Signs Bill Barring Cities from Banning Short-term Rentals*, MOHAVE VALLEY DAILY NEWS (May 13, 2016), [http://www.mohavedailynews.com/news/ducey-signs-bill-barring-cities-from-banning-short-term-rentals/article\\_8ffe0f3e-18dd-11e6-ad7b-c7e8ba175b54.html](http://www.mohavedailynews.com/news/ducey-signs-bill-barring-cities-from-banning-short-term-rentals/article_8ffe0f3e-18dd-11e6-ad7b-c7e8ba175b54.html) [<https://perma.cc/TB7W-2Y3Q>].

62. *Ducey Signs Bill Barring Cities from Banning Short-term Rentals*, *supra* note 61.

63. See Betsy Z. Russell, *New Idaho Law on Vacation Rentals Seeks Middle Ground*, THE SPOKESMAN-REVIEW (Apr. 30, 2017), <http://www.spokesman.com/stories/2017/apr/30/new-idaho-law-on-vacation-rentals-seeks-middle-gro/> [<https://perma.cc/2FPJ-4T5B>].

Municipalities are permitted to regulate Airbnb with regard to “public health, safety, and general welfare in order to protect the integrity of residential neighborhoods.”<sup>64</sup> However, the law requires municipalities to recognize STRs as a residential use for zoning purposes.<sup>65</sup>

With the exception of a few states, like Arizona, that have expressly prohibited municipalities from banning STRs, the lack of state-wide legislation pertaining to STRs implies that most states have taken a “hands-off” approach and allow municipalities to regulate STRs as they deem appropriate.

## 2. *The Restrictive Approach*

The State of New York offers a unique example of statewide regulation that effectively bans STRs.<sup>66</sup> New York prohibits residential houses and apartments in municipalities with populations over 325,000 from being occupied for less than thirty days if the unit’s permanent resident is not present while the guest is there.<sup>67</sup> This is technically a ban on non-owner/tenant occupied units dating back before STRs were widespread and accessible on the internet. The reason that it has not, until recently, been an issue is because there was no way for the state or its municipalities to enforce the law since exact addresses of listings are not viewable on STR platforms.<sup>68</sup> However, New York City, and other municipalities, used the state regulation to specifically target Airbnb and other platforms by creating regulations that force STR platforms to disclose units that are being listed.<sup>69</sup> So, while the state did not create STR regulation by specifically targeting these growing web-based platforms, the long-standing law bolstered municipalities attempting to regulate in their own jurisdictions.

### B. *Competing Visions of the Appropriate Municipal Response*

As noted above, Airbnb usage, at the individual level, is a small-scale event with minor effects on the surrounding community. One person renting out a spare bedroom or even a second house to a small group of people is unlikely to change the makeup of a neighborhood, unduly burden a city, or shortchange a municipality’s tax revenue stream. However, as Airbnb usage has increased drastically over the last decade, municipalities have become increasingly concerned that the small-scale activity in the aggregate is having a significant effect and that such activity is no longer something that can go unregulated.<sup>70</sup> Justifications for past leniency by municipalities in this sphere range from concerns about violating property-owner privacy, costs of enforcement, and the de minimis nature of the activity.<sup>71</sup>

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64. IDAHO CODE § 67-6539(1) (2018).

65. *Id.*

66. N.Y. MULT. DWELL. LAW §§ 3(1), 4(8)(a)(1) (McKinney 2019).

67. See Aaron Gordon, *Will New York’s New Airbnb Law Stop Illegal Listings?*, VILLAGE VOICE (Aug. 8, 2018), <https://www.villagevoice.com/2018/08/08/will-new-yorks-new-airbnb-law-stop-illegal-listings/> [<https://perma.cc/U9WU-5XR3>].

68. *See id.*

69. *See id.*

70. See Zale, *supra* note 1, at 956-57.

71. *See id.* at 954.

Furthermore, in many cases, the act of renting one's property is a private transaction, but because it is becoming more and more businesslike, the once private transaction is looking increasingly public, which supports arguments for municipal involvement.<sup>72</sup>

In addition to their economic concerns, municipalities are rightfully worried about myriad issues involving STRs including the altering of the city landscape, burden on infrastructure and public services, and discrimination by hosts.<sup>73</sup> Furthermore, lodging in general is an activity that has strong policy reasons for regulation. With the growing commercial usage of Airbnb, private activities in the home once immune from intrusive regulation are now areas that arguably should be regulated.<sup>74</sup> Nonetheless, many cities are attempting to regulate these negative externalities without stifling the market.<sup>75</sup> Municipalities will, generally speaking, be in a better financial position by providing more options for a larger pool of visitors.<sup>76</sup> While some states are picking and choosing their regulatory path in regard to STRs, municipalities are on the front lines and are facing difficult decisions affecting a broad range of people.

How should municipalities balance the pros and cons of the STR market when enacting legislation? Municipalities have approached this problem with a wide range of solutions. There are outright bans, use limits, inspections, licensing requirements, amendments to existing regulations, and so on.<sup>77</sup> However, the most pragmatic approach for municipalities is to decide where the STR market fits in the broader long-term growth of the local economy, rather than focusing on the short-term effects.<sup>78</sup> Following are brief illustrations of municipal regulatory approaches that have both heavily restricted STRs and not restricted them at all.

### 1. *The "Pro-STR" Approach*

While some communities in Texas such as Austin, Houston, and Fort Worth have enacted legislation that highly regulates the use of STRs, Dallas's approach has been limited.<sup>79</sup> Traditionally, Dallas had lagged behind some of the other large Texas cities in STR usage.<sup>80</sup> However, 2017 saw its largest STR growth to date.<sup>81</sup> Airbnb usage increased by thirty-four percent from the prior year and average rental rates

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72. See Scott & Brown, *supra* note 2, at 573.

73. *Id.* at 579-81.

74. See Zale, *supra* note 1, at 994-98.

75. See generally Davidson & Infranca, *supra* note 42, at 278-79.

76. See Miller, *supra* note 13, at 170.

77. See *id.* at 168, 184-88.

78. See Davidson & Infranca, *supra* note 42, at 276.

79. See Andrew Moylan, *Roomscore 2016: Short-Term Rental Regulation in U.S. Cities*, R STREET POLICY STUDY, Mar. 2016, at 10, <https://2o9ub0417chl2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/RSTREET55-1.pdf> [<https://perma.cc/6YTZ-SSEM>] (In a March 2016 comprehensive survey that analyzed the severity of municipal STR-type regulations in 59 U.S. cities, Dallas received an "A-" score while Austin and Houston both received a "D" and Fort Worth received an "F"); see also Shawn Shinneman, *Exclusive: Airbnb Saw Major Growth in Dallas Last Year*, DALL. BUS. JOURNAL (Jan. 22, 2018), <https://www.bizjournals.com/dallas/news/2018/01/22/exclusiveairbnb-saw-major-growth-in-dallas-last.html> [<https://perma.cc/252U-2GGR>].

80. Shinneman, *supra* note 79.

81. *Id.*

and host income have become competitive with the other large Texas cities.<sup>82</sup> Any negative effects of STRs in Dallas remain unclear. However, while other more regulated Texas STR markets have started to slow, Dallas has seen a staggering increase in STR-related tourism and usage,<sup>83</sup> and that may be attributed to the lack of regulatory challenges that Dallas hosts face.

## 2. *The Restrictive Approach*

The City of Santa Monica, California, has taken some one of the most restrictive approaches to STRs in the nation. City government officials believed that the rise of STR platforms was causing an influx of business entities that were purchasing residential properties for use as STRs.<sup>84</sup> This influx of STR-type businesses was, in their opinion, driving up housing costs and decreasing the availability of rental property.<sup>85</sup> The enacted legislation to combat these problems requires hosts to live on-site while their unit is being rented, obtain business licensing, remit the city's fourteen percent occupancy tax, register their property with the city, and pay applicable fees.<sup>86</sup> Failure to abide by these regulations could result in misdemeanor charges with fines as high as \$500 or even jail time.<sup>87</sup>

These regulations are similar to the steps that many municipalities around the country have taken. However, what makes Santa Monica's regulation so restrictive is that it forces hosts to be present at the rented property while the property is being rented. This effectively precludes all business entities from operating STRs. Additionally, individuals who are renting out second homes, or even primary homes, are prohibited from earning income while they are away. Because many hosts were not registered with the city prior to legislation, it is difficult to know the exact numbers, but one estimate is that Santa Monica's Home Sharing Ordinance caused the closure of eighty percent of the City's STRs.<sup>88</sup> Additionally, local businesses that earned income by providing services to STR hosts have noticed a huge decline in their own operations as a result of the ordinance, some even going out of business.<sup>89</sup>

## IV. THE CURRENT MAINE APPROACH WITH A FOCUS ON RURAL COMMUNITIES

### A. *State-Level Regulatory Response to the Short-Term Rental Economy*

Maine has long been known as a summer retreat for individuals and families who rent beach houses and cabins throughout the state.<sup>90</sup> That reputation has contributed to Maine's motto as "Vacationland." In a general sense, the presence of

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82. *Id.*

83. *Id.*

84. See Bender, *supra* note 44; Cervantes, *supra* note 44.

85. See Bender, *supra* note 44; Cervantes, *supra* note 44.

86. SANTA MONICA, CAL. MUN. CODE §§ 6.20.020–.090 (2017).

87. *Id.* § 6.20.100.

88. See Bender, *supra* note 44; Cervantes, *supra* note 44.

89. See Cervantes, *supra* note 44 (providing an example of a person that started a cleaning business to cater to Airbnb hosts in Santa Monica who went out of a business as a result of decreased numbers of STRs in the aftermath of the ordinance).

90. See McGuire, *supra* note 21.

Airbnb and other STR platforms has made this practice increasingly easy and more accessible for property owners and visitors alike.<sup>91</sup>

In 2017, 282,000 Maine visitors used Airbnb, a sixty-two percent increase from the previous year.<sup>92</sup> Furthermore, the combined revenue from visits in 2017 was forty-three million dollars, or upwards of \$6,900 per host.<sup>93</sup> Of particular note, seventy percent of Maine Airbnb rentals occurred in rural communities.<sup>94</sup> The top four Airbnb “wish-list” properties in Maine were rural cottages in small towns and unincorporated townships.<sup>95</sup> Additionally, Maine has the oldest average host age in the country with one-third of hosts sixty years of age or older.<sup>96</sup>

Due to the drastic increase of Airbnb and other STR platforms in Maine, many people have called for a state-level policy regarding this emerging economic activity.<sup>97</sup> In 2015, a proposed bill in the Maine legislature would have required STR hosts to license their properties with the state.<sup>98</sup> The bill would have also set minimum rental periods of seven days.<sup>99</sup> The bill was rejected and there is currently no state-wide STR regulation in Maine.<sup>100</sup> The state’s approach is to let municipalities decide what regulations should be enacted. Despite a lack of state-wide legislation, Airbnb voluntarily agreed to collect and remit local and state taxes on behalf of its hosts to the Maine Revenue Services.<sup>101</sup> The following sections offer an analysis on both sides of the regulatory spectrum among Maine rural communities.

## *B. The Regulatory Response of Rural Communities to the Short-Term Rental Economy*

### *1. The “Pro-STR” Approach*

Ellsworth, Maine is a small town located in rural Hancock County, near Acadia

91. See Knightly, *supra* note 19, at 462.

92. Peter McGuire, *As Airbnb Rentals Skyrocket, Maine Communities Grapple with Impact*, PORTLAND PRESS HERALD (Jan. 29, 2018), <https://www.pressherald.com/2018/01/29/short-term-rentals-through-airbnb-surge-in-maine-as-communities-pass-new-rules/> [<https://perma.cc/LD5D-EU9A>].

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. McGuire, *supra* note 21.

98. L.D. 436 (127th Legis. 2015); see also McGuire, *supra* note 21.

99. L.D. 436 (127th Legis. 2015).

100. McGuire, *supra* note 21.

101. See Kate Cough, *Airbnb Revenues and Rentals Up in Hancock County*, ELLSWORTH AM. (Sept. 5, 2018), <https://www.ellsworthamerican.com/maine-news/airbnb-revenues-and-rentals-up-in-hancock-county/> [<https://perma.cc/4LM8-TQYR>]; *In What Area Is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 34; see also Peter McGuire, *Airbnb Agrees To Automatically Collect Maine Lodging Tax from Short-term Renters*, PORTLAND PRESS HERALD (Feb. 28, 2017), <https://www.pressherald.com/2017/02/28/airbnb-agrees-to-automatically-collect-maine-lodging-tax/> [<https://perma.cc/LV3J-2F8Q>]. In 2017, Airbnb remitted over five million dollars of collected occupancy taxes to Maine Revenue Services. See Peter McGuire, *Airbnb Paid Maine \$5.3 Million in Taxes Last Year*, PORTLAND PRESS HERALD (June 5, 2018), <https://www.pressherald.com/2018/06/05/airbnb-paid-maine-5-3-million-in-taxes-last-year/> [<https://perma.cc/A8JG-9KW8>].

National Park off the Atlantic coast.<sup>102</sup> In 2017, the town was listed in the top five most popular Maine Airbnb destinations.<sup>103</sup> There appears to be more room for growth in the Ellsworth STR market as well, with a twenty-seven percent increase in host listings during 2018.<sup>104</sup> Most impressively, the average Ellsworth host's revenue is on par with host averages in Portland, Maine, the state's urban and economic hub.<sup>105</sup>

Despite the STR growth in Ellsworth, there are currently no regulations specifically targeting STRs and it does not appear that any are planned.<sup>106</sup> Ellsworth has seen many of the positive effects of a more accessible STR economy such as more residential development, increases in home values, growth of businesses that provide services for STR hosts, and growth of tourism and recreational businesses.<sup>107</sup> Furthermore, in many cases, STRs present the opportunity for an important use of under-utilized residential property.<sup>108</sup> Ellsworth's town management has not experienced many of the negative aspects of STRs, hence the reluctance to create regulations. The town, however, realizes it may reach a point where it must create specifically tailored regulations to ensure guest safety.<sup>109</sup> Aside from that, STRs seem to be a welcomed aspect of the local economy.

Similarly situated is Bethel, in rural Oxford County.<sup>110</sup> Home to Sunday River Ski Resort, Bethel is a popular Maine winter retreat, and there are currently no regulations or zoning ordinances specifically targeting STRs.<sup>111</sup> In the absence of current complaints regarding STRs, the town does not intend on imposing restrictions.<sup>112</sup> Most Maine towns have taken the approach of Ellsworth and Bethel because the negative aspects have yet to outweigh the benefits that a more accessible STR market brings to these communities.

## 2. *The Restrictive Approach*

On the opposite end of the spectrum is Rockland, in rural Knox County.<sup>113</sup> With the exception of the urban centers of Portland and South Portland, Rockland is one

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102. See *Urban and Rural Classification*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html> [https://perma.cc/5UGQ-63F7] (classifying Hancock County as composed of 90.1% rural area).

103. Cough, *supra* note 101.

104. *Id.* (showing the growth of Airbnb hosts in Ellsworth from 110 in 2017 to 140 in 2018).

105. See Samuel Shepherd, *Airbnb Hosts Draw Violations*, MOUNT DESERT ISLANDER (July 13, 2018), <https://www.mdislander.com/uncategorized/airbnb-hosts-draw-violations> [https://perma.cc/7DN7-VZ56].

106. See Cough, *supra* note 101 (quoting Ellsworth Town Manager, David Cole, saying, "I don't get the sense that [STRs have] been a big issue [in Ellsworth].").

107. Phone conversation on October 26, 2018, with David Cole, Ellsworth Town Manager.

108. *Id.*

109. *Id.* (commenting that the town has received complaints about STRs from permanent residents long before the creation of Airbnb; in his opinion, Airbnb is just another medium for a long-established use of property).

110. See *Urban and Rural Classification*, *supra* note 102 (classifying Oxford County as composed of 83.1% rural area).

111. McGuire, *supra* note 21.

112. See *id.*

113. See *Urban and Rural Classification*, *supra* note 102 (classifying Knox County as composed of 67.9% rural area).

of the few Maine towns to consider stringent STR regulations. Rockland, a coastal destination in Maine, became concerned with the increase in Airbnb rentals in the town. The primary concerns were that rental properties were out of compliance with local codes and therefore unsafe for visitors,<sup>114</sup> as well as increased traffic, parking, and noise in residential areas.<sup>115</sup> Additionally, Rockland was concerned about the number of outside investors buying residential properties to convert to STRs.<sup>116</sup>

As a result of these concerns, the town enacted a very stringent STR ordinance that set regulations on STRs classified in three categories.<sup>117</sup> First, an “STR-1” is an owner-occupied single-family residence renting out a single bedroom, or a two-unit building in which the owner lives in one unit and is renting out the other.<sup>118</sup> Next, an “STR-2” is a non-owner-occupied single-family residence or a non-owner-occupied two-unit building in which one unit is being rented.<sup>119</sup> Finally, an “STR-3” is a non-owner-occupied building with three or more units, at least one of which is an STR.<sup>120</sup> In order to receive an STR permit in a residential zone, an STR-1 needs approval from the Code Enforcement Office whereas STR-2 and -3 need approval from the Planning Board. Additionally, an STR-3 receives a more stringent “review level” and the town requires that the buildings abide by the building and fire code that traditional lodging establishments must follow.<sup>121</sup>

The approval process to receive a permit presents a high hurdle. To apply, a person must be the owner of the entire space being rented and must live, or have a management company, in Rockland or one of several designated surrounding towns.<sup>122</sup> The host must pay a fee, insure the space as an STR, provide off-street parking, and allow town inspections.<sup>123</sup> Hosts are prohibited from serving any food to their guests without a food license.<sup>124</sup> Finally, if approved, there can be only one set of renters in any seven-day period, regardless of how long the visitor stays.<sup>125</sup>

Rockland’s ordinance also provides language to curb future growth of the STR market. For example, owners of condominium units built after October 2015 are not eligible to apply for STR permits.<sup>126</sup> Additionally, the total number of non-owner occupied units is capped at forty-five and because that number of units is currently registered, new permits will only be issued if one of the existing unit-owners decides not to register in following years.<sup>127</sup> Finally, individuals found to be listing STR

114. See McGuire, *supra* note 21 (in an interview with a Rockland Code Enforcement officer, he opined that one of the main reasons for the ordinance was because, due to the limited enforcement available, it became impossible to monitor the number of properties that were not in compliance with safety codes).

115. Rockland, Me., Zoning Ordinance § 11-210(2)(A) (June 13, 2018).

116. McGuire, *supra* note 21.

117. Rockland, Me., Zoning Ordinance § 11-210(2)(B)(4)(a)-(c) (June 13, 2018).

118. *Id.* § 11-210(2)(B)(4)(a).

119. *Id.* § 11-210(2)(B)(4)(b).

120. *Id.* § 11-210(2)(B)(4)(c).

121. *Id.* § 11-210(2)(G) (the commercial fire code includes sprinklers, fire walls, and proper exits throughout the building).

122. *Id.* § 11-210(2)(D)(1)-(4).

123. *Id.* § 11-210(2)(G).

124. *Id.* § 11-210(2)(H)(15).

125. *Id.* § 11-210(2)(B)(2); see also Pineo, *supra* note 21, at 12.

126. Rockland, Me., Zoning Ordinance § 11-210(2)(H)(4) (June 13, 2018).

127. *Id.* § 11-210(2)(H)(16).

units without a permit will receive fines of up to \$1,000.<sup>128</sup>

Rockland's STR regulations are without a doubt the most stringent among smaller, more rural Maine communities, if not throughout the entire state.<sup>129</sup> The regulations, in effect, cap STRs at their current rate and allow almost no opportunity for long-term growth.

#### V. DISCUSSION: THE REGULATORY PATH FORWARD FOR MAINE AND RURAL MUNICIPALITIES

Maine's economy, while improving, has been slow to recover from the economic recession of 2008 and from years of economic decline that pre-dated the recession.<sup>130</sup> Compared to relatively steady regional and national growth, at the close of 2017, Maine had still not surpassed pre-recession gross domestic product levels.<sup>131</sup> In Maine's rural areas, the economic downturn and the effect of the recession has been even more dire. Economic growth in rural Maine fell for seven consecutive years between 2006 and 2013.<sup>132</sup> Additionally, middle-wage jobs, which have slightly increased between 2001 and 2016 in Southern Maine's metropolitan areas, by contrast have fallen significantly in rural areas during that same period.<sup>133</sup> In generalized terms, Maine's rural economy is stagnant.

As discussed in Part II, Airbnb has had a positive economic effect on rural hosts and communities throughout the country. Although Airbnb will not cure Maine's stagnant rural economy, municipalities should not so heavily regulate STRs as to deter people from entering the market. Instead, Maine and rural municipalities should adopt common-sense regulatory measures that promote STRs and the value they bring to individuals and communities, as well as set long-term regulatory goals that build on the STR economy while still protecting communities from the negative impacts.<sup>134</sup>

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128. *Id.* § 11-210(3)(A).

129. The more urban municipality of South Portland, Maine, published STR regulatory measures on June 5, 2018, that were approved by voters on November 6, 2018. The regulations ban STRs in all residential zones where hosts are not present. Additionally, where hosts reside on the property being listed, STRs are limited to four-unit buildings and smaller. For permitted STRs, there are no limits on the amount of days eligible to be rented, but no more than one set of renters is allowed in a non-owner-occupied unit in any seven-day period. Lastly, hosts are required to show proof that the property is insured for use as an STR with minimum liability coverage of one million dollars. *See* South Portland, Me., Short-term Rental Ordinance §§ 14-801-14-805; *see also* Kelley Bouchard, *South Portland Voters Uphold Contested Short-Term Rental Rules*, PORTLAND PRESS HERALD (Nov. 6, 2018), <https://www.pressherald.com/2018/11/06/south-portland-voters-uphold-contested-short-term-rental-rules/> [<https://perma.cc/ST8V-3BV7>].

130. *See* ME. CTR. FOR ECON. POLICY, STATE OF WORKING MAINE 2 (2017), <https://www.mecep.org/wp-content/uploads/2017/09/MECEP-State-of-Working-Maine-2017.pdf> [<https://perma.cc/S4CE-37AE>].

131. *Id.*

132. *See id.* at 3.

133. *See id.* at 9 (middle and high-wage jobs fell by almost 42,000 in rural Maine communities between 2001 and 2016).

134. Scott & Brown, *supra* note 2, at 594.



*A. Maine: How Should the State Promote or Restrict the Short-Term Rental Economy?*

Currently, Maine does not regulate STRs at the state-level.<sup>135</sup> Maine has, however, reached an agreement with Airbnb which holds Airbnb—the company—responsible for collecting and remitting occupancy taxes.<sup>136</sup> This is a hugely beneficial practice because it guarantees that Maine receives valuable and necessary revenue from its visitors without burdening Airbnb hosts with calculating and remitting their own taxes. Moreover, the data shows that there is low compliance in states where hosts are required to collect and remit occupancy taxes on their own.<sup>137</sup>

Maine's current approach allows municipalities to decide the level of regulation for the STR market. Generally speaking, this is a "pro-STR" approach, but there is room for regulation. Banning Airbnb at the state-level is not the answer and would be a blunt one-size-fits-all approach to STRs statewide.<sup>138</sup> Conversely, having no statewide regulation potentially allows rural (and other) communities to heavily regulate the STR market based on short-term concerns while missing opportunities for economic growth that rural communities desperately need.<sup>139</sup>

While tight regulation or even an outright ban may be appropriate for Portland and other urban communities, the valuable economic activity created by STRs may benefit rural communities. Therefore, Maine should consider the approach adopted in Idaho. Idaho's STR law prohibits municipalities from expressly or practically prohibiting STRs.<sup>140</sup> The law allows municipalities flexibility in adopting regulations for certain purposes and relies on existing noise and zoning ordinances to ensure protection of residents.<sup>141</sup>

*B. Rural Municipalities: An Approach That Maximizes Economic Benefits by Focusing on Limited Regulation*

As stated, the STR market has great potential as a provider of economic growth.<sup>142</sup> Additionally, this Comment has noted the negative consequences that an unregulated STR market can have on municipalities. With a state plan that prohibits the outright ban of STRs but still provides flexibility, municipalities would be able to create regulatory measures that enable economic growth while protecting their constituents and communities.

The four common goals in regulating the STR economy in municipalities throughout the country are (1) providing safety, (2) maintaining the residential integrity of neighborhoods, (3) preventing an influx of business-like entities from buying up large amounts of property to rent as STRs, and (4) avoiding unfair competition with traditional lodging establishments. Common-sense solutions to

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135. See Cough, *supra* note 101.

136. See *In What Area is Occupancy Tax Collection and Remittance by Airbnb Available?*, *supra* note 34.

137. Russell, *supra* note 63.

138. See Povich, *supra* note 4; see also Scott & Brown, *supra* note 2.

139. See Davidson & Infranca, *supra* note 42.

140. See IDAHO CODE § 67-6539 (2018).

141. See Russell, *supra* note 63.

142. See Zale, *supra* note 1, at 1016.

these issues are examined in turn.

### 1. Safety

One of the primary goals in municipal STR regulation is safety. Hotels and other lodging establishments are heavily regulated in terms of safety.<sup>143</sup> Some municipalities believe that STRs should be regulated in the same way. In many cases, this is impossible from an enforcement standpoint. To overcome this, some municipalities regulate so heavily that property owners are deterred from even attempting to list their residences as STRs.<sup>144</sup> One solution to this problem is an insurance requirement. First, homeowner's insurance policies could protect guests in owner-occupied units. Second, a municipality could require hosts of non-owner-occupied STR's to purchase the host insurance offered by Airbnb<sup>145</sup> or from another source that specifically identifies the property as a rental unit. The insurance provider would then be responsible for providing insurance adequate for rental property and, if necessary, inspecting the unit and ensuring that it is safe for residential purposes and STRs. A similar alternative used in South Portland requires hosts, regardless of the type of STR, to provide insurance with a liability policy of one million dollars. This prevents the issuance of STR insurance with inadequate liability coverage.

By requiring adequate STR-specific liability insurance, municipalities would have less need to spend valuable time and resources to inspect units. As a further incentive to insure, rural communities could require registration and proof of insurance, but waive any permitting fee. A fee waiver would likely cause more people to come forward and register their units. For those who still refuse to license their units, penalties would be appropriate.

### 2. Neighborhood Integrity

Next, there is a concern that as the popularity of Airbnb grows there will be a shift in neighborhood communities from almost entirely long-term residential use to short-term visitor occupancies. This concern is not as significant in rural communities where the size and density of neighborhoods is less than in urban areas. However, because neighborhoods tend to be smaller in rural areas, every additional STR has a larger impact on the long-term identity of a community than in an urban setting. Rockland's approach to owner-occupied STRs is positive because it addresses the concerns regarding the breakdown of neighborhoods while not limiting property owners, who are present during the rental period, from listing their unused space. In effect, there is no limitation to the number of owner-occupied rentals allowed in the city,<sup>146</sup> presumably because the other concerns are lessened if the residence is being used and occupied by the owner.

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143. See Pineo, *supra* note 21, at 11; Merriam, *supra* note 5, at 4.

144. See Knightly, *supra* note 19, at 472 (opining that New York City imposes a \$7,500 fine for listing STRs because people do not understand the regulations surrounding them and enforcement is too difficult).

145. See McGuire, *supra* note 21 (Airbnb offers host liability insurance of up to one million dollars through its platform).

146. Rockland, Me., Zoning Ordinance § 11-210(2)(H)(16) (June 13, 2018).

However, Rockland's approach to non-owner-occupied STRs is highly restrictive. It automatically bars additional growth without considering long-term changes in the community. Effectively, Rockland is making long-term economic decisions for its community and population based on short-term concerns. A more common-sense approach would be to allow for differential treatment in various neighborhoods, such as developing limitations based on a percentage of households within a specific zone or sector of the town.<sup>147</sup> This would allow for more granular and customized regulations to enable the STR economy to grow consistently with the growth of the town. By connecting STR growth to the growth of certain zones or sectors of a municipality, the municipality can ensure that long-term residential communities are not at risk of becoming overpopulated with short-term housing.

### 3. *Business Intrusion*

There is a concern about business entities intruding into municipalities, buying residential property, and converting the units to STRs. To prevent this type of action, municipalities could establish limits on the number of non-owner-occupied units an individual or entity can list as STRs. A single-digit limitation would deter larger business entities from buying property in rural communities. If a business entity was restricted to only being able to list one, two, or three units in a town, the risk would likely not be worth the reward.

### 4. *Unfair Competition*

Finally, regulatory measures, in some cases, are used to offset the unfair competition between STRs and more traditional lodging establishments. As noted above, the concern of unfair competition is not as prevalent in rural communities because fewer large lodging establishments exist in these communities. However, where there is unfair competition, Maine and its municipalities can enact limited regulation to equalize the playing field.

First, Airbnb already collects and remits occupancy taxes from host revenue. Therefore, the unfair advantage in rental pricing, displayed by STRs in communities where taxes are not collected, is not at play in Maine. Next, with limited insurance, registration, and permitting requirements, STR owners are required to invest in the safety, upkeep, and maintenance of their property. These limited, financially-based requirements mimic, on a much smaller scale, the financial requirements of traditional lodging establishments. Therefore, the lower number of traditional lodging establishments in rural communities, the already-existing occupancy taxes in Maine, and the enactment of limited regulation with associated transaction costs all lessen the likelihood of unfair competition between STRs and traditional lodging establishments.

## VI. CONCLUSION

As popularity of STRs continues to increase, more and more municipalities will need to take steps to ensure the best regulatory approach for their community. There

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147. See *Zale*, *supra* note 1, at 1013 (discussing a scaled-approach to regulation).

is no doubt that STRs offer both positive and negative economic effects. There will continue to be municipalities that do not see STRs as harmful and enact little or no regulation. Other municipalities will see STRs as highly detrimental and will heavily regulate or even ban their use.

What approach makes sense for rural Maine communities that do not face the large-scale negative economic repercussions of STRs, but instead could benefit, as individuals and as communities, from an increase of these transactions? The suggestion here is that those communities should take a balanced approach—enact regulations that protect hosts and guests, but that also do not prohibit or restrict individuals from entering the market.

Rural communities should measure the level of regulation using a long-term vision that factors in the positive economic effects and allows those effects to come to fruition: (1) limited regulation that acts to ensure safety by requiring proof of adequate liability insurance; (2) protection of neighborhoods by providing flexible STR limitations based on population density; (3) deterring a commercial-STR influx by controlling the number of non-owner-occupied units allowed per person or entity within a municipality; and (4) prevention of unfair competition by ensuring hosts are following the applicable laws. However, regulations should not be applied as a blanket, one-size fits all approach that prevents the positive effects of STRs.

Taking any regulatory approach is challenging in the STR context because not only are rural and urban municipalities vastly different, but rural municipalities compared with each other are vastly different. These communities must make decisions based on a plethora of factors unique to their specific situations. In stagnant rural Maine communities, the STR economy can be a factor that propels economic growth by providing much needed income to hosts, bringing visitors and money into local economies, and enabling the creation of a secondary market for businesses that provide services to STRs. Rather than enacting more restrictive approaches found in urban communities, Maine's rural municipalities should consider how they can tailor STR regulation to their particular context and needs and contribute to responsible long-term growth.

