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## Regulating Short-Term Rentals in California's Costal Cities: Harmonizing Local Ordinances with the California Costal Act

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# REGULATING SHORT-TERM RENTALS IN CALIFORNIA'S COASTAL CITIES: HARMONIZING LOCAL ORDINANCES WITH THE CALIFORNIA COASTAL ACT

*Lucy Humphreys\**

*In the past several years, local governments throughout California have debated and implemented new ordinances in order to regulate short-term rentals, such as those listed on peer-to-peer vacation rental platforms like Airbnb. California's coastal cities face distinct challenges when trying to regulate short-term rentals due to the popularity of short-term rentals in their jurisdictions, rising housing prices along the coast, and California Coastal Act requirements. One of the primary goals of the California Coastal Act is to maximize public access to the coast. This Article explores the interplay between state policy embodied by the Coastal Act and the ordinances passed by local governments in order to provide recommendations as to how coastal cities can create regulations that best balance the varying interests surrounding short-term rentals.*

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## I. INTRODUCTION

In the past several years, municipalities throughout California have debated and implemented new ordinances in order to regulate short-term rentals, or “STRs,” such as those listed on peer-to-peer vacation rental platforms like Airbnb, HomeAway, and FlipKey.<sup>1</sup> Yet, the passage of such regulations has not been without controversy. STRs and the platforms that promote them have developed a mixed reputation, with advocates lauding the potential financial benefits STRs afford both hosts and city coffers via taxation, and opponents warning of the deteriorative effect STRs have on neighborhood character and the available housing stock. While all local governments developing guidelines must grapple with these competing perspectives, California’s coastal cities face distinct challenges due to the sheer number of STRs in their jurisdictions, housing prices, and California Coastal Act requirements.

As a practical matter, because coastal cities offer distinctive recreational activities, which make them particularly desirable travel destinations for many tourists, the number of STRs are often greater in these targeted areas.<sup>2</sup> Additionally, housing and rental prices are higher in coastal areas compared to the rest of the state,<sup>3</sup> so concerns about the potential negative impact STRs have on the availability of adequate affordable housing options are amplified.<sup>4</sup> Furthermore, local governments located in the “coastal zone,”<sup>5</sup> as defined by the

1. Ashley M. Peterson, *Sharing Space*, L.A. LAW., Jan. 2017, at 28.

2. Los Angeles, San Francisco and San Diego, three major cities along California’s coast, have the most Airbnb listings in California and accounted for almost half of the total rental revenue in the state in 2016. *California Airbnb Data and Pricing Analytics*, AIRDNA, <https://www.airdna.co/region/us/california> (last visited Oct. 19, 2018) (AirDNA reports that Los Angeles, San Francisco and San Diego are the most popular cities for Airbnb in California); Lori Weisberg, *Airbnb Details Sharp Growth in California Last Year*, L.A. TIMES (Mar. 2, 2017, 12:40 PM), <https://www.latimes.com/business/la-fi-airbnb-hosts-20170302-story.html>.

3. CAL. DEP’T OF HOUS. & CMTY. DEV., CALIFORNIA’S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES FINAL STATEWIDE HOUSING ASSESSMENT 2025, 23 (2018), [http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA\\_Final\\_Combined.pdf](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf) [hereinafter *California’s Housing Future*].

4. See, e.g., Dayne Lee, *How Airbnb Short-Term Rentals Exacerbate Los Angeles’s Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 HARV. L. & POL’Y REV. 229, 234–39 (2016).

5. The coastal zone encompasses an area stretching three miles out to sea and inland anywhere from 1,000 yards to several miles. Robert García & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 STAN. J. C.R. & C.L. 143, 180 (2005).

California Coastal Act of 1976,<sup>6</sup> may also need to consider the policies and procedures set forth by the Coastal Act when crafting new STR restrictions.<sup>7</sup> This latter consideration is the chief focus of this Article.

California places high value on the public's right to access the coast. The Coastal Act codified this principal and created the California Coastal Commission, tasking it with regulating "development"<sup>8</sup> in the coastal zone and maximizing public access to the coast.<sup>9</sup> The Commission views STRs as an important source of visitor accommodations in the coastal zone, and thus regulations that seek to ban STRs entirely or greatly reduce their numbers in coastal cities are deemed to be contrary to its mandate.<sup>10</sup> Some local governments within the coastal zone, however, have proceeded to pass regulations that either largely limit or outlaw STRs in their jurisdictions. Plaintiffs have thus challenged these rules on the grounds that they overly restrict public access and fail to follow certification procedures required by the Coastal Act.<sup>11</sup> As of writing, there has yet to be a decisive court ruling as to whether STR regulations constitute "development" under the Coastal Act to which the Act must apply.<sup>12</sup>

This Article explores the interplay between state policy embodied by the Coastal Act and local governance in order to provide recommendations as to how coastal cities can create provisions that best balance the varying interests surrounding STRs. Part II provides background on the sharing economy and the rise of housing platforms and explains how these platforms have boosted the scale and intensity of STR activity. Expounding on the California Coastal Act, Part III provides background on the Act, focusing on its definition of "development." Additionally, this Part addresses some of the coastal

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6. CAL. PUB. RES. CODE § 30103 (2018).

7. *See infra* Part V.

8. "Development" is defined broadly under the California Coastal Act. *See infra* Part III.B.

9. Lee A. Kaplan, *Whose Coast Is It Anyway? Climate Change, Shoreline Armoring, and the Public's Right to Access the California Coast*, 46 ENVTL. L. REP. NEWS & ANALYSIS 10971, 10974 (2016); *see* CAL. PUB. RES. CODE §§ 30001.5, 30330 (2009).

10. Letter from Steve Kinsey, Coastal Commission Chair, to Coastal Planning/Community Development Directors (Dec. 6, 2016), [https://documents.coastal.ca.gov/assets/la/Short\\_Term\\_Vacation\\_Rental\\_to\\_Coastal\\_Planning\\_&\\_Dev't\\_Directors\\_120616.pdf](https://documents.coastal.ca.gov/assets/la/Short_Term_Vacation_Rental_to_Coastal_Planning_&_Dev't_Directors_120616.pdf) [hereinafter *Coastal Commission Letter*].

11. *See infra* Part V.

12. *Id.*

access issues present in California today and how STRs may present a more cost-effective lodging option for guests compared to traditional hotels. Lastly, this Part discusses cities' existing authority to regulate STRs as part of their police powers.

Part IV argues that courts should interpret STR ordinances as constituting “development” within the Act, and thus cities should work with the Coastal Commission when developing STR regulations and follow Coastal Act procedures, such as amending an existing Local Coastal Program (LCP) or applying for a coastal development permit (CDP), to ensure the implementation of valid regulations. Finally, Part V provides recommendations for coastal cities, advising against all-out prohibitions of STRs, even in residential areas, and advocates for the creation of narrowly tailored regulations that curb the specific kind of STR activity that is deemed harmful to the community while still allowing for other STR activity that benefits homeowners and protects lower-cost visitor accommodation choices. The Article explores how both caps and “vacation rental overlay districts” can be used to achieve thoughtful regulations that maximize STR activity along the coast while still considering overall community character and welfare.

## II. SHORT-TERM RENTALS IN THE SHARING ECONOMY

### A. *What is the Sharing Economy?*

The on-demand economy. The platform economy. The sharing economy.<sup>13</sup> While the model may go by different names, each moniker describes the same fundamental story. Over the past few years, disruptive innovators have revolutionized the way consumers and suppliers transact with one another to such an extent that new labels evolved to describe the phenomenon.<sup>14</sup> These pioneering peer-to-peer platforms have had a transformative effect on traditional businesses, as evidenced by the significant impact companies like Uber and

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13. Additional names include the gig economy and the peer economy. Nathan Heller, *Is the Gig Economy Working?*, NEW YORKER (May 8, 2017), <https://www.newyorker.com/magazine/2017/05/15/is-the-gig-economy-working>.

14. See U.S. FED. TRADE COMM’N, THE “SHARING” ECONOMY: ISSUES FACING PLATFORMS, PARTICIPANTS & REGULATORS 10 (2016), [https://www.ftc.gov/system/files/documents/reports/sharing-economy-issues-facing-platforms-participants-regulators-federal-trade-commission-staff/p151200\\_ftc\\_staff\\_report\\_on\\_the\\_sharing\\_economy.pdf](https://www.ftc.gov/system/files/documents/reports/sharing-economy-issues-facing-platforms-participants-regulators-federal-trade-commission-staff/p151200_ftc_staff_report_on_the_sharing_economy.pdf) [hereinafter *FTC Guide on the Sharing Economy*].

Airbnb have had on the for-hire transportation and short-term lodging sectors, respectively.<sup>15</sup>

Despite infiltrating a variety of different industries,<sup>16</sup> these new enterprises share certain characteristics. A sharing economy marketplace involves three chief participants: the platform, which provides the marketplace, the consumer (which, in the STR space, is often referred to as a “renter” or “guest”) and the supplier or “host.”<sup>17</sup> Additionally, the platforms typically employ a rating system whereby the consumer and the supplier can both review one another, consumers can pay for their services using in-app payment systems, and the platforms give suppliers the flexibility to earn money based on their own schedules.<sup>18</sup> At the center of this Article are the home-sharing or vacation rental platforms that have transformed the practice of renting out part or all of one’s residence.

### *B. Airbnb and the Rising Popularity of Short-Term Rentals*

Home-sharing is not a new practice. Historically, renting out a room in one’s home to a short-term boarder was perhaps even commonplace, particularly in urban areas where affordable housing was especially scarce.<sup>19</sup> Nevertheless, the inception of online booking platforms has fundamentally altered the scale of this activity, leading to increased attention and debate.<sup>20</sup>

Airbnb is arguably the most recognizable of these platforms. Founded in 2008 and based in San Francisco, Airbnb describes itself as a “trusted community marketplace for people to list, discover, and book unique accommodations around the world.”<sup>21</sup> It is an online marketplace by which hosts can rent all or part of their personal residence to a guest as short-term housing accommodation.<sup>22</sup> The

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15. *See id.* at 1.

16. Examples include Postmates for food delivery, TaskRabbit for everyday chores and services, Handy for housecleaning, and Dogvacay for pet-sitting. Heller, *supra* note 13.

17. *FTC Guide on the Sharing Economy*, *supra* note 14, at 3.

18. Heller, *supra* note 13.

19. Jamila Jefferson-Jones, *Airbnb and the Housing Segment of the Modern “Sharing Economy”: Are Short-Term Rental Restrictions an Unconstitutional Taking?*, 42 HASTINGS CONST. L.Q. 557, 561–63 (2015) (“Historians estimate that one in five to one in three nineteenth century American households took in boarders.”).

20. *See id.* at 561.

21. *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Feb. 10, 2018).

22. *FTC Guide on the Sharing Economy*, *supra* note 14, at 19.

platform boasts more than three million listings worldwide in more than sixty-five thousand cities and 191 countries.<sup>23</sup>

Airbnb and the like have shaken up the old, long-established tourism model. While traditionally the average traveler would book accommodation through formal businesses such as hotels, the sharing economy allows ordinary people to rent out their apartments, homes, or spare bedrooms to the general public.<sup>24</sup> The average person is now able to effortlessly enter the tourism accommodation sector and compete for tourists.<sup>25</sup> As a result, commentators have observed how STRs in the sharing economy have blurred the line between personal and commercial activity, leading to new regulatory challenges.<sup>26</sup>

For many homeowners, Airbnb provides an easy way to earn extra income by utilizing an already purchased personal asset, namely their residence, to help offset the cost of maintaining a home.<sup>27</sup> STRs are generally defined as transient occupancy for less than 30 days.<sup>28</sup> Some hosts may rent out a portion of their home to a guest and remain in the unit during their stay, while others rent out their entire residence. For purposes of this Article, the former will be referred to as “home-sharing,” and the latter will be referred to as a “vacation rental,” though both practices are understood to fall under the STR umbrella. These hosts rent out their spaces for short periods of times to supplement their livelihood, but are not in the “business” of short-term renting per se.

Distinct from the above-mentioned activity, Airbnb may also facilitate more commercial pursuits as well, or what some critics have referred to as the “hotelization” of entire buildings.<sup>29</sup> This refers to a practice where landlords convert their property into pseudo-hotels and rent every unit to short-term lodgers rather than leasing to long-term tenants.<sup>30</sup> Some argue that hosting platforms like Airbnb may actually

23. *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Feb. 10, 2018).

24. Daniel Guttentag, *Airbnb: Disruptive Innovation and the Rise of an Informal Tourism Accommodation Sector*, 18 CURRENT ISSUES TOURISM 1192, 1194–95 (2015).

25. *Id.* at 1195.

26. Jefferson-Jones, *supra* note 19, at 561.

27. *FTC Guide on the Sharing Economy*, *supra* note 14, at 16.

28. See Peterson, *supra* note 1, at 30 (discussing how “a short-term rental guest who rents a single room in an owner-occupied dwelling for less than 30 days would likely be considered a lodger”).

29. Lee, *supra* note 4, at 238.

30. *Id.*



incentivize this kind of use because of the ease by which property owners can advertise a room on the platform and earn a substantial profit over the rent that would ordinarily be paid by a long-term tenant.<sup>31</sup>

Ultimately, local governments that wish to regulate STRs must recognize the different ways property owners are utilizing platforms like Airbnb and avoid making broad generalizations as to the character and nature of all STR activity. This will help ensure that regulations effectively and accurately consider the competing interests surrounding STRs, from private property owners' rights to the preservation of a community's character and welfare.<sup>32</sup> Additionally, this Article argues that coastal cities in California must also consider the policies within the California Coastal Act in their calculus when implementing and enforcing STR regulations.

### *C. Cities' Existing Authority to Regulate Short-Term Rentals: Zoning and Land Use*

In contrast to state lawmakers' early response to address other activity brought about by the so-called sharing economy, like the rise of the ride-sharing industry made popular by companies such as Lyft and Uber, California does not regulate STRs at the state level.<sup>33</sup> State-wide legislation has failed due, in part, to cities' reluctance to have the state involved in local tax collection and Airbnb's success in rallying hosts to oppose legislation.<sup>34</sup> Thus, the decision to regulate STRs has been left up to local governments.

There is clear legal precedent in California endowing cities with the ability to regulate STRs as a land use matter.<sup>35</sup> A local

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31. *Id.* at 230.

32. Emily M. Speier, *Embracing Airbnb: How Cities Can Champion Private Property Rights Without Compromising the Health and Welfare of the Community*, 44 PEPP. L. REV. 387, 398–99 (2017).

33. Liam Dillon, *California Lawmakers Can't Figure Out What to Do with Airbnb. Here's Why*, L.A. TIMES (Feb. 3, 2017, 12:05 AM), <http://www.latimes.com/politics/la-pol-sac-airbnb-laws-california-legislature-20170203-story.html>; Tomio Geron, *California Becomes First State to Regulate Ridesharing Services Lyft, Sidecar, UberX*, FORBES (Sept. 19, 2013, 3:40 PM), <https://www.forbes.com/sites/tomiogeron/2013/09/19/california-becomes-first-state-to-regulate-ridesharing-services-lyft-sidecar-uberx/#3412033e1804>.

34. Dillon, *supra* note 33.

35. Andrea S. Visveshwara & Kevin R. Heneghan, *Emerging Issues in the Enforcement of Short-Term Rental Regulations*, LEAGUE OF CAL. CITIES: RESIDENTIAL RENTAL REGULATION ISSUES (May 4, 2017), <https://www.cacities.org/Resources-Documents/Member-Engagement/>

government's authority to impose restrictions on STRs derives from its right to implement zoning regulations,<sup>36</sup> which is a well-established, legitimate exercise of its police power.<sup>37</sup> Police power broadly describes the right of governments to implement laws that further public safety, public health, peace and quiet, and law and order.<sup>38</sup> Thus, local ordinances that are enacted in order to maintain the character of a residential neighborhood are a proper use of a city's zoning power.<sup>39</sup> Even before the rise of the sharing economy, the issue of whether local governments could regulate STRs had been raised.<sup>40</sup>

In 1991, owners of a single-family home challenged an ordinance adopted by the City of Carmel-By-The-Sea that prohibited transient occupancy for remuneration<sup>41</sup> in residentially zoned areas on the grounds that it violated various constitutional rights, including their right of privacy and association.<sup>42</sup> A Coastal Act claim was not raised. The Sixth District of the California Court of Appeal upheld the defendant city's ordinance, holding that the ordinance was rationally related to the legislative intent behind the ordinance, which was to preserve the residential character of the city's neighborhoods.<sup>43</sup> The Court opined that "[i]t stands to reason that the 'residential character' of a neighborhood is threatened when a significant number of homes . . . are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days" because "[s]hort-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league . . . [or engage] in the sort of activities that weld and strengthen a community."<sup>44</sup>

Remarkably, the Court upheld the ordinance despite Plaintiffs' compelling argument that the ordinance was overly vague and, thus,

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Professional-Departments/City-Attorneys/Library/2017/Spring-Conf-2017/Heneghan-ResidentialRentalRegulationIssues.

36. *Ewing v. City of Carmel-by-the-Sea*, 286 Cal. Rptr. 382, 385 (Ct. App. 1991).

37. *Id.* (citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386 (1926)).

38. *Berman v. Parker*, 348 U.S. 26, 32 (1954).

39. *Ewing*, 286 Cal. Rptr. at 388.

40. *Id.* at 386.

41. The ordinance defined remuneration as "compensation, money, rent, or other bargained for consideration given in return for occupancy, possession or use of real property." *Id.* at 384.

42. *Id.*

43. *Id.* at 387–88.

44. *Id.* at 388.

could be applied too broadly. Plaintiffs criticized, and the city attorney admitted, that the ordinance's definition of "remuneration" was worded in such a way that it could be read to include a prohibition on house-sitting, pet-sitting, or even allowing a homeowner to have a guest stay in exchange for dinner or yard work.<sup>45</sup> The Court opined that while it was uncertain exactly how the City would interpret the ordinance, and acknowledged a broad reading of "remuneration" could lead to absurd applications, the purpose of the ordinance was clearly to prohibit transient *commercial* use of residential property.<sup>46</sup>

Yet, at what point does housing a guest at one's home for compensation amount to the kind of forbidden "commercial" uses that conceivably do have a deteriorative effect on neighborhood character? Is hosting a paying guest on days that a homeowner is out of town, for example, really so disruptive to a community's integrity that banning it is justified given the ordinance's purported intent? As discussed more in Part V, this Article recommends that cities acknowledge and thoroughly evaluate how varying kinds of STR activity realistically impact their jurisdictions in order to avoid drafting regulations that needlessly restrict homeowners and limit coastal accommodation options for visitors.

### III. THE CALIFORNIA COASTAL ACT AND TODAY'S COASTAL ACCESS ISSUES

#### A. *Background on the Coastal Act*

In 1976, the California Coastal Act was enacted in order to combat degradation in the quality and availability of recreational land along the coast.<sup>47</sup> One of the primary goals of the Act is to maximize public access to the coast, in addition to protecting natural resources, encouraging public participation in decisions affecting coastal planning, and balancing conservation efforts with development and private property rights.<sup>48</sup> The Coastal Act requires local governments,

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45. *Id.* at 391.

46. *Id.* The Court noted, "The word 'commercial' appears repeatedly at every critical juncture in the Ordinance." It continued, "we view Carmel's repeated use of the word as strong evidence that Carmel intends only to prevent homeowners in the R-1 District from operating like a 'bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging . . .'" *Id.*

47. García & Baltodano, *supra* note 5, at 181.

48. *Id.*; CAL. PUB. RES. CODE § 30001.5 (2009) ("[T]he basic goals of the state for the coastal zone are to . . . [m]aximize public access to and along the coast and maximize public

businesses, and private individuals found in the designated coastal zone to comply with its policies.<sup>49</sup> To implement its policies, the Act established the California Coastal Commission as a permanent public entity, and its primary responsibility is the regulation of “development” in the coastal zone.<sup>50</sup>

### B. Development Under the Coastal Act

“Development” is defined broadly under the Coastal Act.<sup>51</sup> As relevant to this Article, the Coastal Act defines development as any “change in the density or intensity of use of land.”<sup>52</sup> The Supreme Court of California opined that “[a]n expansive interpretation of ‘development’ is consistent with the mandate that the Coastal Act is to be ‘liberally construed to accomplish its purposes and objectives.’”<sup>53</sup> Furthermore, the Court added, “the Coastal Act’s definition of ‘development’ goes beyond ‘what is commonly regarded as a development of real property.’”<sup>54</sup> The Supreme Court’s broad interpretation of development under the Coastal Act is pertinent to understanding how ordinances that impede STR activity may constitute development and thus fall under the auspices of the Act and the Coastal Commission, discussed *infra*.

Under the Act, the Coastal Commission is responsible for permitting development within the coastal zone, but this power is delegated to local agencies upon preparation and certification of a Local Coastal Program.<sup>55</sup> There is no single design for an LCP except that each is comprised of a Land Use Plan (LUP) and an

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recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.”)

49. JORDAN DIAMOND ET AL., *THE PAST, PRESENT, AND FUTURE OF CALIFORNIA’S COASTAL ACT* 5 (2017), <https://www.law.berkeley.edu/wp-content/uploads/2017/08/Coastal-Act-Issue-Brief.pdf>.

50. Kaplan, *supra* note 9, at 10974.

51. J. David Breemer, *What Property Rights: The California Coastal Commission’s History of Abusing Land Rights and Some Thoughts on the Underlying Causes*, 22 UCLA J. ENVTL. L. & POL’Y 247, 252 (2004).

52. CAL. PUB. RES. CODE § 30106 (2018).

53. *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 288 P.3d 717, 722 (Cal. 2012).

54. *Id.*

55. Kaplan, *supra* note 9, at 10974.

Implementation Plan (IP).<sup>56</sup> An LUP contains policies that are consistent with the Coastal Act and tailored to the geographic area it covers, while an IP contains ordinances or regulations that implement the policies outlined in the LUP.<sup>57</sup> LCPs must be certified by the Coastal Commission to ensure that they accurately reflect the fundamental objectives of the Coastal Act.<sup>58</sup> Additionally, certified LCPs can be subject to review by the Coastal Commission and amendments can and should be made as needed.<sup>59</sup>

While the Coastal Act incentivizes local governments to develop LCPs in order to gain coastal development permitting authority, there are still a number of jurisdictions that have not developed LCPs,<sup>60</sup> and about two-thirds of existing LCPs are out of date.<sup>61</sup> If a jurisdiction in the coastal zone does not have a certified LCP, the Coastal Commission retains its authority to issue coastal development permits.

### C. Coastal Access Issues in California Today

As discussed above, one of the primary goals of the Coastal Act is to maximize public access to and along the coast. Yet, in spite of this legal protection that has been in place for over forty years, California residents have not had equal access to the coastline.<sup>62</sup> In general, economically disadvantaged and minority residents live further from coastal access points compared to wealthy, white residents.<sup>63</sup> Furthermore, as California's population continues to grow, disparities in coastal access may be stretched even further.<sup>64</sup>

California's coastal cities are among the most popular tourist destinations in the state. In 2016, around five million visitors booked

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56. CAL. PUB. RES. CODE § 30108.6 (2018). For an example of an LCP, see CITY OF SEASIDE, EXHIBIT C: PROPOSED LUP AND IP WITH SUGGESTED MODIFICATIONS (2012), <https://documents.coastal.ca.gov/reports/2012/12/Th15a-12-2012-a1.pdf>.

57. See CITY OF SEASIDE, *supra* note 56.

58. Joel Jacobs, *A Bug in The Programs: The Need to Create Greater Incentives for Local Coastal Program Updates*, 36 STAN. ENVTL. L.J. 3, 5 (2016).

59. *Id.*

60. In fiscal year 2016–2017, 33 segments were reported as having no certified LCP, though some of the jurisdictions had received grants from the Coastal Commission to assist in developing one. CAL. COASTAL COMM'N, SUMMARY OF LCP PROGRAM ACTIVITY IN FY 16–17, 1–2 (2017), [https://documents.coastal.ca.gov/assets/rflg/FY16\\_17\\_LCPStatusSummaryChart.pdf](https://documents.coastal.ca.gov/assets/rflg/FY16_17_LCPStatusSummaryChart.pdf).

61. DIAMOND ET AL., *supra* note 49, at 8.

62. Dan R. Reineman et al., *Coastal Access Equity and the Implementation of the California Coastal Act*, 36 STAN. ENVTL. L.J. 89, 99 (2016).

63. *Id.* at 102.

64. *Id.* at 99.

temporary lodging through Airbnb in California.<sup>65</sup> Los Angeles, San Francisco, and San Diego, all situated on California's stunning coastline, accounted for nearly half of the state's total rental revenue.<sup>66</sup> And the popularity of short-term rentals just continues to grow. In just a year, the number of Californians sharing their homes on the platform rose 51%.<sup>67</sup>

The Coastal Act specifically requires lower cost visitor and recreational facilities to be protected and encouraged in order to ensure maximum public access.<sup>68</sup> In a memo written by the California Coastal Commission, the agency criticized outright bans as well as regulations that significantly limit the availability of STRs.<sup>69</sup> According to the memo, overnight accommodations are vital to enabling those who live far away from the coastline to visit and enjoy the recreational opportunities available at the beach and ocean.<sup>70</sup> Over the years, nightly room rates have increased significantly.<sup>71</sup> As a result, the Commission seeks to promote more affordable options to ensure coastal access, and STRs present a unique solution.

San Diego's popular Comic-Con weekend provides an example that illustrates how STRs may present a more affordable accommodation option for coastal visitors compared to traditional hotels.<sup>72</sup> Airbnb hosts reportedly accommodated 14,000 guests during Comic-Con in 2016, and 19,000 guests were projected to stay at Airbnb listings for the 2017 convention weekend.<sup>73</sup> While Airbnb's average nightly rates do tend to go up at this peak time, the average Airbnb short-term rental still undercuts San Diego hotels' \$261

65. Weisberg, *supra* note 2.

66. *Id.* Also, note that the San Francisco Bay Conservation and Development Commission, not the California Coastal Commission, has regulatory authority over the San Francisco Bay, the Bay's shoreline band, and the Suisun Marsh. S.F. BAY CONSERVATION & DEV. COMM'N, <http://www.bcdc.ca.gov/> (last visited Nov. 5, 2018).

67. Weisberg, *supra* note 2.

68. CAL. PUB. RES. CODE § 30213 (2018).

69. Memorandum from John Ainsworth, Acting Executive Director, Cal. Coastal Comm'n, et al., to Coastal Commission and Interested Parties, (Oct. 26, 2016), <https://documents.coastal.ca.gov/reports/2016/11/th6-11-2016.pdf>.

70. *Id.*

71. *Id.*

72. Lori Weisberg, *Who is Winning During Comic-Con: Airbnb or Hotels?*, SAN DIEGO UNION-TRIB. (July 17, 2017, 6:00 AM), <http://www.sandiegouniontribune.com/business/tourism/sd-fi-airbnb-comiccon-20170714-story.html>.

73. *Id.*

average room cost by roughly \$70 to \$100 a night.<sup>74</sup> Even if Airbnb's private and shared rooms are excluded from the calculus, and only bookings for studio apartments and one-bedroom units are considered since they are more comparable to traditional hotel rooms, the typical STR still provides a less expensive option for visitors compared to hotels.<sup>75</sup>

#### IV. SHORT-TERM RENTAL ORDINANCES SHOULD CONSTITUTE "DEVELOPMENT" UNDER THE CALIFORNIA COASTAL ACT

Residents in coastal cities have turned to the courts to challenge the enforcement of local STR ordinances on the grounds that they fall under the purview of the California Coastal Commission and should be subject to Coastal Commission approval before implementation.<sup>76</sup> The crux of their arguments is that ordinances that restrict STRs have a demonstrable impact on the intensity of use of land and access to the coast and thus constitute "development" as it is broadly defined within the Coastal Act.<sup>77</sup>

While it is unsettled whether STR ordinances are development under the Coastal Act to which the Coastal Act *must* apply, this Article argues that based on California Supreme Court precedent that development be liberally construed,<sup>78</sup> courts *should* interpret STR ordinances as falling within its broad definition. The following subsections first discuss the legal basis for such a finding by examining cases that have challenged STR ordinances under a theory that they violate the Coastal Act. The Article then considers some of the practical benefits for coastal cities in working with the Coastal Commission to develop STR regulations.

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74. *Id.*

75. *Id.*

76. *E.g.*, *Rosenblatt v. City of Santa Monica*, No. 2:16-cv-04481-ODW-AGR, 2017 WL 1205997, at \*5 (C.D. Cal. Mar. 30, 2017) ("Plaintiff claims that Defendants failed to submit to the Commission a certified LCP prior to enacting the Ordinance, and further, that the ban constitutes 'development' under the Act as it represents a change in access to the coast."); *Kracke v. City of Santa Barbara*, No. 56-2016-00490376-CU-WM-VTA, 2017 WL 9989863, at \*4 (Cal. Super. Ct. June 26, 2017) ("[T]he City's implementation of the STVR ban and its broad enforcement efforts has intentionally caused a substantial, direct and quantifiable change in the density and intensity of use of land and the intensity of use of water, or of access to the coast . . .").

77. *Rosenblatt*, 2017 WL 1205997, at \*5; *Kracke*, 2017 WL 9989863, at \*4.

78. *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 288 P.3d 717, 722 (Cal. 2012).

### A. A Look at the Legal Arguments

Various homeowners along California's coast have filed lawsuits alleging that the California Coastal Commission should have a say over the enactment of STR laws. In January 2017, Santa Monica homeowner Arlene Rosenblatt argued that a vacation rental ban instituted by the City of Santa Monica violated the Coastal Act.<sup>79</sup> The Santa Monica STR ordinance authorizes home-sharing (owner remains at the residence throughout a guest's stay) as long as the resident obtains a business license and registers their property, but prohibits vacation rentals (owner is absent during a guest's stay) entirely.<sup>80</sup> Rosenblatt, an eighty-year-old retired schoolteacher, would rent out her home in Santa Monica when she and her husband left town to visit their seven grandchildren.<sup>81</sup> Because Santa Monica's ordinance now requires that the resident remain in the house during a guest's stay, Rosenblatt reported that she and her husband could lose up to \$20,000 a year.<sup>82</sup> She decided to challenge the rule in court.

Rosenblatt argued that Santa Monica's ban on STRs constituted "development" under the Coastal Act because it impacted access to the coast by diminishing the pool of visitor serving accommodations.<sup>83</sup> Additionally, Rosenblatt contended that the City failed to obtain a certified LCP from the Coastal Commission prior to enacting its ordinance, which consequently violated the Act.<sup>84</sup> The City of Santa Monica filed a motion to dismiss.<sup>85</sup>

In its March 30, 2017 ruling, the district court denied the City's motion to dismiss Rosenblatt's Coastal Act claim, opining that while "California case law makes it likely that the Commission does not have unrestricted authority to override local land use regulations," the City failed to show that Ms. Rosenblatt had not stated a claim under the Coastal Act when she alleged that "[the City] failed to submit an

79. First Amended Complaint, *Rosenblatt*, 2017 WL 1205997.

80. CITY OF SANTA MONICA, CITY OF SANTA MONICA HOME-SHARING ORDINANCE RULES 3-4 (2017), <https://www.smgov.net/uploadedFiles/Departments/PCD/Permits/Santa%20Monica%20HomeSharing%20Rules.pdf>.

81. Sam Sanders, *Rental Rules in California Raise Questions About Who's Using Airbnb*, NPR (May 17, 2015, 5:17 PM), <https://www.npr.org/2015/05/17/407529301/does-airbnb-help-folks-by-or-help-businesses-get-sly>.

82. *Id.*

83. *Rosenblatt*, 2017 WL 1205997, at \*5.

84. *Id.*

85. *Id.* at \*1.



LCP and that the Ordinance conflicts with the overall policies of the Act.”<sup>86</sup> Ultimately, however, the district court declined to exercise supplemental jurisdiction over Rosenblatt’s state law claim, and dismissed the case.<sup>87</sup> Rosenblatt has appealed to the Ninth Circuit.<sup>88</sup>

While no decision on the merits has been rendered in this case as of writing, Rosenblatt’s unresolved suit raises new questions of law that could substantially impact how local governments in the coastal zone regulate STR activity. Do coastal cities proposing to introduce STR ordinances need to first amend their city’s LCP? In the event that they do not have a certified LCP, do cities need to apply for a coastal development permit instead? These questions will be answered in the affirmative if it is determined that STR regulations constitute development under the Act. Courts, however, have just started to grapple with these questions on a case-by-case basis.<sup>89</sup>

One difficulty courts face is that it is hard to analogize STR ordinances to previous case holdings that have addressed the definition of development under the Coastal Act. In March 2017, Theodore Kracke, a Santa Barbara resident who owns a local business that operates vacation rentals around the City, filed his First Amended Writ of Mandate and Complaint.<sup>90</sup> He argued that Santa Barbara violated the Coastal Act by enforcing an STR ban, which prohibits short-term vacation rentals in any zone other than commercial and R-4 zones, without first obtaining a CDP or amending its LCP and obtaining certification from the Coastal Commission.<sup>91</sup>

The Superior Court for the County of Ventura noted that “[m]ost cases in which a ‘development’ has been found have involved more substantial and discrete conduct.”<sup>92</sup> It went on to list examples including the approval of a mobile home park conversion, the building

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86. *Id.* at \*5.

87. *Rosenblatt v. City of Santa Monica*, No. 2:16-cv-04481-ODW-AGR, 2017 WL 2909404, at \*2 (C.D. Cal. May 24, 2017).

88. *Id.*, *appeal docketed*, No. 17-55879 (9th Cir. June 22, 2017).

89. *Rosenblatt, Kracke, and Johnston v. City of Hermosa Beach*, No. B278424, 2018 WL 45892 (Cal. Ct. App. 2018) were all filed within the last few years.

90. First Amended Writ of Mandate and Complaint for 1) Civil Penalties for Violation of the California Coastal Act; 2) Injunctive Relief Under the Coastal Act; 3) Declaratory Relief Under the Coastal Act, *Kracke v. City of Santa Barbara*, No. 56-2016-00490376-CU-WM-VTA, 2017 WL 9989863 (Cal. Super. Ct. Mar. 30, 2017), 2017 WL 10507452.

91. *Id.* at 20–22.

92. *Kracke*, 2017 WL 9989863, at \*8.

of a fireworks display, the installation of gates with “no trespassing” signs, lot line adjustments, and offshore sand extraction.<sup>93</sup> STR regulations appear to be distinct from the aforementioned examples of development, at least as the word is colloquially understood, because they do not entail the construction of new structures or physical alterations made to existing structures. Rather, STR ordinances regulate how owners utilize their existing property.

The Superior Court went on to say, however, that despite the earlier precedent involving somewhat different kinds of activities than the implementation of STR regulations, “the provisions of the Coastal Act do not limit the scope of ‘development’ to particular conduct.”<sup>94</sup> Rather, “[t]he action required is simply a ‘change.’”<sup>95</sup> The language in the Coastal Act regarding the “change in the density or intensity of use of land . . . focuses on the *nature of the impact* necessary to find ‘development’ and does not restrict the *manner in which the change comes about*.”<sup>96</sup>

Plaintiff Kracke sufficiently alleged that the City council made a deliberate choice to increase enforcement of the prohibition of STRs, and that this resulted in a quantifiable change in the density and intensity of the use of land as evidenced by the resulting 87% reduction in the number of guests staying in properties managed by Kracke located in the coastal zone.<sup>97</sup> The court concluded that:

Two fundamental purposes of the Coastal Act are protecting California’s coastline and ensuring state policies prevail over local government concerns. Requiring the City to obtain a CDP before implementing a prohibition on STVRs in residential areas of Santa Barbara’s coastline is in harmony with both. For these reasons, the court finds that Kracke has alleged facts constituting a “development” within the meaning of Public Resources Code section 30106.<sup>98</sup>

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93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at \*9 (citing CAL. PUB. RES. CODE § 30106 (2018)).

97. *Id.* at \*7.

98. *Id.* at \*9 (citations omitted).

Though Kracke's allegations were sufficient to survive demurrer, the Superior Court denied his request for a preliminary injunction.<sup>99</sup> The questions raised by Kracke and Rosenblatt in their respective cases are similar, and the courts in both cases determined that there were sufficient allegations to make out a cognizable legal claim. While no ruling on the merits has been made as of writing in either case to decisively answer the question of whether STR ordinances constitute development under the Coastal Act, at the very least, there seems to be an indication that this legal argument has some viability.

Not all courts agree, however. A homeowner in Hermosa Beach sought to enjoin enforcement of an ordinance banning STRs, arguing that the California Coastal Act preempted the ordinance.<sup>100</sup> The trial court found that the ordinance did not violate the Coastal Act, since it did not constitute a development as that word is used in the Coastal Act, which would require a coastal development permit.<sup>101</sup> On appeal, the preemption issue was reviewed *de novo*, and the trial court's judgment was affirmed.<sup>102</sup> The appellate court noted that the Coastal Commission had not sought leave to intervene in the trial court, nor did it seek to submit an amicus brief on appeal.<sup>103</sup>

Ultimately, the court decided, that "[t]he Ordinance was enacted pursuant to the City's police power and did not fall under the auspices of the Coastal Commission."<sup>104</sup> Unlike the plaintiffs in *Rosenblatt* and *Kracke*, however, the plaintiffs in this case conceded in the trial court, and made no contrary argument on appeal, that "the Ordinance did not constitute a 'development' requiring a CDP."<sup>105</sup> This concession likely influenced the court's ruling in this instance and distinguishes it from the other cases.

A final and persuasive argument supporting the finding that the regulation of STRs constitutes development under the Coastal Act

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99. *Kracke v. City of Santa Barbara*, No. 56-2016-00490376-CU-WM-VTA, 2017 WL 9989862, at \*2 (June 26, 2017) (denying Kracke's request because the court was not persuaded that an exception to the rule that an injunction is not available to restrain public officers from enforcing laws made for the public benefit applied).

100. *Johnston v. City of Hermosa Beach*, No. B278424, 2018 WL 458920, at \*1 (Cal. Ct. App. 2018).

101. *Id.* at \*2.

102. *Id.* at \*4.

103. *Id.* at \*5.

104. *Id.* at \*4.

105. *Id.*

comes from the Coastal Commission itself. In a letter written by the former Chairman of the Coastal Commission, the Commission's view on this subject was made clear. The letter plainly stated:

[V]acation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.<sup>106</sup>

The Coastal Commission may very well be STR proponents' biggest ally in the struggle to preserve their right to rent out their residence on a short-term basis in the coastal zone. The Commission aims to work with local government to implement STR regulations that respect the local context while preserving coastal recreational access opportunities.<sup>107</sup>

Now that the legal groundwork has been laid to support the theory that STR ordinances constitute development under the Coastal Act, I turn to some of the practical considerations for why coastal cities should work with the Coastal Commission when developing STR regulations.

### *B. A Look at the Practical Arguments*

As a preliminary matter, it has now been established that some coastal cities that have not elected to regulate STRs within the context of their existing LCP or apply for a CDP have had their ordinances challenged on this ground in court. Thus, by working with the Coastal Commission to craft more balanced regulations, cities can help shield themselves from attacks, at least as to challenges made on this basis.

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106. *Coastal Commission Letter*, *supra* note 10, at 1.

107. *Id.* at 3.

Additionally, the Coastal Commission might be the only thing standing in the way to prevent all-out bans on STRs in the coastal zone. While coastal cities have their own valid reasons for wanting to limit STRs in their communities, often nuisance abatement and preservation of neighborhood character, coastal cities should still be mindful of public access issues. Access to California's coast is a growing problem, and one of the biggest barriers Californians cite that prevent them from being able to access the coast is the high costs associated with staying overnight in coastal communities.<sup>108</sup> In a statewide voter poll conducted in the summer of 2016, 62% of voters cited access to the coast as a problem, with between 73% and 76% of California voters citing limited options for affordable overnight accommodations as a significant barrier.<sup>109</sup> Latino voters and families with children cited this as a big problem at an even higher rate.<sup>110</sup>

The coast is an important resource and guaranteed for all under the Coastal Act, yet the Coastal Commission cannot preserve and expand the supply of lower-cost overnight accommodations on its own. The cooperation of local coastal governments is paramount to ensure that the public has ample access to the coastline and the recreational activities it provides. Since the Coastal Commission takes public access into consideration in all of its permitting and planning decisions, coastal cities should consult the Coastal Commission when crafting their STR regulations.

#### V. RECOMMENDATIONS FOR REGULATING SHORT-TERM RENTALS IN CALIFORNIA'S COASTAL CITIES

As a preliminary matter, in order for STR regulations to comply with the Coastal Act, policymakers should avoid total prohibitions of any kind, even in areas zoned as residential areas. Not only is this the Coastal Commission's position,<sup>111</sup> but there are economic benefits to having STRs in coastal cities whereby having a total ban would be adverse to the cities' interests. Rather, narrowly tailored regulations

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108. JON CHRISTENSEN & PHILIP KING, ACCESS FOR ALL—A NEW GENERATION'S CHALLENGES ON THE CALIFORNIA COAST 2 (2017), <https://www.ioes.ucla.edu/wp-content/uploads/UCLA-Coastal-Access-Policy-Report.pdf> (last visited Oct. 19, 2018).

109. *Id.* at 3.

110. *Id.*

111. *See* Coastal Commission Letter, *supra* note 10, at 2.

must be crafted to suit each locale, while still considering the goals underlying the Coastal Act.

Instead of confining STRs to traditionally established zoning districts, such as only permitting them in commercial zones and prohibiting them in residential zones, coastal cities can control the spread of STRs, and the potential effects they may have on any given neighborhood, by imposing selected limits. This may include caps on the number of units allowed in any given zone, the number of units a single individual can list for rent, or the number of nights a unit can be rented out over a designated period of time. Additionally, coastal cities can explore creating “vacation rental overlay districts” that also help to regulate STR activity in certain areas without prohibiting them entirely.

#### *A. Coastal Cities Should Avoid Complete Bans on Short-Term Rentals*

Ultimately, cities are faced with two options when it comes to regulating STRs. They may allow them or restrict them. However, some cities have seemingly wanted to restrict STRs to the point of prohibiting them. In order to be consistent with the Coastal Act, coastal cities should avoid total prohibitions of STRs. Proposed amendments to LCPs that have advocated for total bans, as well as total bans in residential zones, have been denied by the Coastal Commission.<sup>112</sup>

In December 2017, the Coastal Commission denied a proposed LCP amendment submitted by the City of Laguna Beach that would ban STRs in residential zones throughout the City, while still permitting them to operate in most commercial districts.<sup>113</sup> The City reported that the increase of STRs in Laguna Beach had begun to cause

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112. The Coastal Commission denied proposed STR bans submitted by Pismo Beach, the City of Imperial Beach, and Laguna Beach because they were overly restrictive and conflicted with LCP requirements for promoting access to shoreline access areas by limiting the potential number of STRs which serve as alternate lodging opportunities for coastal visitors. CAL. COASTAL COMM’N, SAMPLE OF COMMISSION ACTIONS ON SHORT TERM RENTALS 2–3 (2016), [https://documents.coastal.ca.gov/assets/la/Sample\\_of\\_Commission\\_Actions\\_on\\_Short\\_Term\\_Rentals.pdf](https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals.pdf); Memorandum from Karl Schwing, Deputy Director, Cal. Coastal Comm’n, et al., to Commissioners and Interested Persons at 2, 22 (Dec. 1, 2017), <https://documents.coastal.ca.gov/reports/2017/12/th19b/th19b-12-2017-report.pdf> [hereinafter *Laguna Beach LCP Amendment Request*].

113. *Laguna Beach LCP Amendment Request*, *supra* note 112, at 1–2.

problems such as excessive noise, instances of disorderly conduct, and exacerbated traffic congestion, leading them to the decision to ban STRs in all residential zoning districts.<sup>114</sup>

The Coastal Commission remarked that despite Laguna Beach's intent to expand the commercial districts to allow more STRs where they previously were not permitted and to authorize existing, legally permitted STRs to continue operating in residential zones, the proposed amendment would still unduly reduce the potential aggregate number of STRs in the City.<sup>115</sup> By entirely foreclosing the possibility of such use in all residential areas, between 5,200 and 8,900 residential lots would be excluded from ever functioning as an STR.<sup>116</sup>

Additionally, the Commission noted, the City's certified LUP already contains language that protects and prioritizes lower-cost visitor facilities and requires that public access to the coast be maximized, and thus the proposed ban would undermine this policy.<sup>117</sup> STRs in residential areas supplement visitor accommodation choices in a fundamentally different way than STRs located within the commercial zones, since they allow for immediate shoreline access where no commercial overnight opportunities exist.<sup>118</sup>

While the Coastal Commission has made it clear that it disfavors total prohibitions of any kind, there are economic considerations that favor a more balanced STR regulation approach as well. Cities have their own reasons for wanting to limit STRs in their communities—often nuisance abatement and preservation of neighborhood character—but there are undeniable benefits to STR activity that should not be overlooked.

One economic advantage is the tax dollars cities can collect through a Transient Occupancy Tax. Airbnb has even entered into agreements with some local governments to collect and remit taxes on behalf of hosts<sup>119</sup> in an effort likely meant, at least in part, to encourage

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114. *Id.* at 2.

115. *Id.*

116. *Id.*

117. *Id.* at 2.

118. *Id.* at 19–20.

119. *How Does Occupancy Tax Collection and Remittance by Airbnb Work?*, AIRBNB, <https://www.airbnb.com/help/article/1036/how-does-occupancy-tax-collection-and-remittance-by-airbnb-work> (last visited Oct. 19, 2018).

these cities to impose fewer restrictions on STRs.<sup>120</sup> One mechanism, a Voluntary Collection Agreement (VCA), allows Airbnb to collect local taxes from guests as they book their transaction and then dispatch those tax dollars to the proper tax administrator.<sup>121</sup> Occupancy tax collection and remittance by Airbnb is available in various cities and counties throughout the entire state of California, including Los Angeles, San Diego, and Santa Monica.<sup>122</sup> These VCA agreements have purportedly generated millions of dollars for city coffers.<sup>123</sup>

Additionally, hosts often house guests in neighborhoods that are outside of the traditional tourist districts which brings money into local economies that have not previously benefitted from the tourism industry.<sup>124</sup> Advocates of STRs and the sharing economy more generally know that unnecessary or excessive regulations can raise barriers to entry and increase costs of operation for hosts, which in turn can reduce the substantial consumer and community benefits that accrue when these new competitors enter the marketplace.<sup>125</sup>

The City of Laguna Beach also raised concerns about the negative impact STRs have on the availability of housing.<sup>126</sup> Because house and rental prices are higher in coastal areas compared to the rest of the state,<sup>127</sup> local governments are understandably wary of the potential impact STRs may have on the available housing stock in such densely populated regions. It is unsettled, however, whether the proliferation

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120. Kia Kokalitcheva, *Airbnb to Cities: Cooperate and We'll Get You Tax Revenue*, FORTUNE (Jan. 22, 2016), <http://fortune.com/2016/01/22/airbnb-tax-revenue>.

121. *Airbnb: Generating \$2.5 Billion in Potential Tax Revenue for America's Cities*, AIRBNB, <https://2sqy5r1jf93u30kwzc1smfqt-wpengine.netdna-ssl.com/wp-content/uploads/2017/01/US-Tax-Report3.pdf> (last visited Oct. 19, 2018) [hereinafter *Airbnb Tax Report*].

122. *Occupation Tax Collection and Remittance by Airbnb in California*, AIRBNB, <https://www.airbnb.com/help/article/2297/occupancy-tax-collection-and-remittance-by-airbnb-in-california> (last visited Oct. 25, 2018).

123. *E.g.*, Airbnb entered into a VCA with Los Angeles in August 2016, which purportedly generated \$13 million in tax dollars in five months. Additionally, San Diego reportedly earned \$7 million in tax revenue. *Airbnb Tax Report*, *supra* note 121.

124. *See Home Sharing Activity Report: Los Angeles*, AIRBNBCITIZEN, <https://los-angeles.airbnbcitizen.com/airbnb-home-sharing-activity-report-los-angeles> (last visited Oct. 19, 2018).

125. *FTC Guide on the Sharing Economy*, *supra* note 14, at 6.

126. *Laguna Beach LCP Amendment Request*, *supra* note 112, at 15.

127. *California's Housing Future*, *supra* note 3, at 23, 25.



of STRs adversely affects the supply of housing available to permanent residents in any considerable way.<sup>128</sup>

One independent study which analyzed data from 2012 to 2016 estimated that a 10% increase in Airbnb listings leads to a 0.42% increase in rents, as well as a 0.76% increase in house prices at the zip code level.<sup>129</sup> This is, in part, because platforms such as Airbnb make it easier for hosts to connect with potential guests. This, in turn, may encourage some landlords to convert their long-term rentals, which cater to residents, into STRs, which cater more to tourists.<sup>130</sup> Because the supply of housing is fixed in the short run, rental rates are driven up in the long-term market.<sup>131</sup>

Additionally, it has also been argued that rising rents and home prices can lead to gentrification. Gentrification occurs when mounting costs force lower income households to leave a neighborhood, which are then replaced by wealthier residents.<sup>132</sup> This shift in demographics can remake a locality's entire ambiance and character.<sup>133</sup> There may be a correlation between the expansion of STRs in a district and the subsequent increase in rent and gentrification in adjacent districts.<sup>134</sup>

With that being said, the study noted that Airbnb's impact on the long-term market "depends on the number of landlords who are on the margin of switching between allocating their housing to long-term tenants versus short-term visitors."<sup>135</sup> In instances where hosts only supply a spare room while they remain in the residence, or rent out their entire residence for a short-time while the hosts themselves are

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128. Compare Lee, *supra* note 4 (arguing that "Airbnb reduces supply by encouraging illegal conversion, hotelization, and evictions"), and Kyle Barron et al., *The Sharing Economy and Housing Affordability: Evidence from Airbnb*, SSRN (Oct. 5, 2017) (finding that "a 1% increase in Airbnb listings leads to a 0.018% increase in rents and a 0.026% increase in house prices at the median owner-occupancy rate zipcode"), with CALIFORNIA ECONOMIC FORECAST, THE EFFECT OF SHORT TERM RENTALS ON THE SUPPLY OF HOUSING IN SANTA BARBARA CITY AND COUNTY (2016), [https://independent.media.clients.ellingtoncms.com/news/documents/2016/07/20/STR\\_Effect\\_on\\_Housing\\_Supply\\_-\\_2016-05-12.pdf](https://independent.media.clients.ellingtoncms.com/news/documents/2016/07/20/STR_Effect_on_Housing_Supply_-_2016-05-12.pdf) (finding that "[a]n increase of 1/10th of 1% in the long-term rental supply is created by prohibition of STRs, and does not represent a significant number of housing units that would be converted from STR use to a longer term supply of housing for purchase or rent").

129. Barron et al., *supra* note 128, at 19.

130. *Id.* at 2.

131. *Id.*

132. Lee, *supra* note 4, at 240.

133. *Id.*

134. *Id.* at 240–41.

135. Barron et al., *supra* note 128, at 6.

temporarily out of town, the effects of Airbnb rentals on the market for long-term housing are moderated.<sup>136</sup> This is because these units would not be available to long-term tenants anyway, so home-sharing merely provides owners with an extra stream of income for times when their residences would otherwise be underutilized.<sup>137</sup>

In the past ten years, there has been limited housing production in California's urban and coastal communities, where jobs and services are concentrated, leading to increased housing prices.<sup>138</sup> Allowing residents to rent out parts or all of their primary residence on a short-term basis may be vital to helping them stay in their homes as the cost of living rises.<sup>139</sup> Thus, it is critical that local governments recognize the different ways property owners utilize platforms like Airbnb and avoid making broad generalizations as to the character and nature of all STR activity.

Concerns regarding the impact STRs may have on the affordable housing stock are not trivial, but local governments should not ignore how STRs may actually help current residents afford their homes. By thoroughly evaluating how varying kinds of STR activity realistically impact their jurisdictions and the people that reside there, better regulations can be drafted that do not unduly limit the potential economic benefits afforded by such activity to both homeowners and the cities in which they live.

### *B. Regulating Short-Term Rental Activity Through Caps*

Given the variance in coastal resources, housing, and population across California's coastal cities, narrowly tailored regulations must be crafted to suit each locale, and there is no one-size-fits-all solution. However, coastal cities can impose various caps or limits on STRs, such as setting a minimum or maximum number of days a unit can be rented, limiting the number of units a single individual can advertise for rent, or designating occupancy limits and minimum separation requirements between STRs in order to customize their regulations to suit the needs and concerns of their particular community.

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136. *Id.* at 3, 5.

137. *Id.* at 3.

138. *California's Housing Future*, *supra* note 3, at 42.

139. *E.g.*, Otis R. Taylor, Jr., *Oakland Woman Is Example of Airbnb's Benefits*, S.F. CHRON. (Mar. 24, 2017, 6:00 AM), <http://www.sfchronicle.com/bayarea/article/Oakland-woman-is-example-of-Airbnb-s-benefits-11024054.php>.

Such caps can be instituted to address two main concerns: the purported adverse effect wide-spread home-sharing may have on housing availability and the negative effects on neighborhood character, safety and congestion. Both consequences may be considered negative “externalities” associated with the growth of STRs.<sup>140</sup> A negative externality is best understood as “an indirect cost of a commercial activity that is borne by society or bystanders outside of the industry rather than the commercial enterprise or individuals conducting the activity.”<sup>141</sup> Community members who do not participate in the home-sharing craze experience the costs associated with STRs without receiving any direct, immediate benefit. Thus, their criticism of STRs and desire to limit them seem well-founded. The traditional tourist accommodation industry, such as hotels and bed-and-breakfasts, joins neighborhood activists in their criticism, albeit for a different reason, urging regulators to set standards that apply equally across the board in order to avoid what they deem to be unfair competition.<sup>142</sup>

To address concerns raised regarding the effects STRs may have on the available housing stock, setting a maximum number of days a unit can be rented and limiting the number of units a single individual or company can advertise for rent will likely discourage people from converting housing units from long-term to short-term accommodation. Los Angeles, for example, has proposed implementing a 180-day cap on STRs, whereby a single unit could not be rented out for more than 180 days in one year, in order to help protect the long-term housing stock.<sup>143</sup> Some hosts have said that the 180-day cap is too restrictive, but city officials are contemplating developing a process that would allow hosts to apply for permission to exceed the cap if needed.<sup>144</sup> Additionally, limiting the number of units a single individual or company can obtain an STR permit for to

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140. Tristan P. Espinosa, Comment, *The Cost of Sharing and the Common Law: How to Address the Negative Externalities of Homesharing*, 19 CHAP. L. REV. 597, 601–03 (2016).

141. *Id.* at 601.

142. *FTC Guide on the Sharing Economy*, *supra* note 14, at 54, 57.

143. Jenna Chandler, *Los Angeles Is Still Dragging Its Feet on Airbnb Regulations*, CURBED (Feb. 6, 2018, 4:52 PM), <https://la.curbed.com/2018/2/6/16981720/los-angeles-airbnb-short-term-rentals-regulations-plum>.

144. *Id.*

one or two would likely prevent people from purchasing numerous units and converting them to short-term tourist accommodations.

To address concerns over the effects STRs may have on neighborhood integrity and congestion, local governments may designate caps on the number of guests that can stay in a unit at one-time, minimum separation requirements between STRs in certain residential neighborhoods, and caps on the number of cars a guest can bring. Such caps may help reduce potential noise and parking issues. Additionally, as part of the STR permitting process, ordinances could require vacation rental owners to submit nuisance response plans.<sup>145</sup> The City of Ventura, for example, requires owners to submit a plan that includes their name and contact information so they can be easily reached if guests engage in behavior that is disruptive to neighbors.<sup>146</sup> If a certain STR unit receives continued complaints, a city can administer fines or revoke a host's permit. Furthermore, neighbors that encounter STRs that present a substantial disruption to their area still have the ability to sue private property owners to abate the nuisance.

Instead of broadly prohibiting STRs, caps can be used to curb the specific kind of STR activity that is deemed harmful to the community (e.g., the “hotelization” of entire buildings) while still allowing for other STR activity that helps supplement homeowner's income and preserve the number of lower-cost visitor accommodations (e.g., renting out an under-utilized room or an entire residence when the primary resident is out of town themselves).

### *C. Regulating Short-Term Rental Activity via the Creation of a “Vacation Rental Overlay District”*

In addition to imposing caps that apply to traditionally established zoning districts, coastal cities can explore creating “vacation rental overlay districts” that help control certain STR activity—specifically non-owner-occupied vacation rentals—in targeted areas without issuing a total ban on all types of STR activity. The City of Carpinteria implemented this approach to help limit vacation rentals in high-traffic areas.<sup>147</sup> The Coastal Commission has regarded Carpinteria's

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145. See, e.g., *Short-Term Vacation Rentals*, CITY OF VENTURA, <https://www.cityofventura.ca.gov/172/Short-Term-Vacation-Rentals> (last visited Oct. 19, 2018).

146. *Id.*

147. See *Laguna Beach LCP Amendment Request*, *supra* note 112, at 3.

regulation as a model ordinance.<sup>148</sup> The overlay district applies to the city's beach neighborhood that is closest to coastal recreation areas as well as the City's commercial core.<sup>149</sup> This area is also where the majority of vacation rentals already exist.<sup>150</sup>

Carpinteria's vacation rental overlay district is broken up into four zones.<sup>151</sup> Each zone has their own established caps on the number of vacation rentals permitted.<sup>152</sup> When the City originally created the ordinance, it set the caps slightly above the already existing number of rentals in order to accommodate some growth.<sup>153</sup> If each cap were reached, then a total of 60%, 50%, 15%, and 15% of units in each zone (moving from the coast and going inland), respectively, would be vacation rentals.<sup>154</sup>

STR owners and prospective owners can apply for a permit, and licenses are awarded through a lottery system.<sup>155</sup> A license holder must apply for a new permit every year.<sup>156</sup> The ordinance also provides that, if transient-occupancy tax is not collected for two years, then that license will expire.<sup>157</sup> This was included in order to allay some residents' fears that people could apply for, and be awarded licenses, but never use them.<sup>158</sup> Additionally, the ordinance implements maximum occupancy standards and parking requirements for each license on a case-by-case basis in order to avoid adverse impacts on residential areas.<sup>159</sup> Furthermore, the ordinance allows "home stays," where the owner is present during a guest's stay, and does not impose any cap on this type of STR activity.<sup>160</sup>

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148. Sam Goldman, *Carpinteria Prepares to Enact Short-Term Vacation Rental Rules*, NOOZHAWK (Apr. 10, 2017, 11:02 PM), [https://www.noozhawk.com/article/carpinteria\\_prepares\\_to\\_enact\\_short\\_term\\_vacation\\_rental\\_rules](https://www.noozhawk.com/article/carpinteria_prepares_to_enact_short_term_vacation_rental_rules).

149. Memorandum from Steve Hudson, Deputy Director, Cal. Coastal Comm'n, et al., at 1 (Nov. 17, 2016), <https://documents.coastal.ca.gov/reports/2016/12/th8b-12-2016.pdf> [hereinafter *Carpinteria LCP Amendment*].

150. *Id.*

151. *Id.* at 7.

152. *See, e.g., id.*

153. *Id.* at 11.

154. Goldman, *supra* note 148.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Carpinteria LCP Amendment, supra* note 149, at 1.

160. *Id.*

Importantly, the City draws the distinction between vacation rentals and home-sharing or home stays and has adapted its ordinance in order to address both kinds of STR activity separately. By doing so, the ordinance does not ban or unduly hinder residents' ability to rent out their homes to tourists and helps preserve the public's ability to access the coast. Whether it be through the creation of a new overlay district or by designating caps tailored to existing zoning districts, local governments in coastal cities can create more balanced regulations that are in-line with the policies underlying the Coastal Act.

## VI. CONCLUSION

The law surrounding STRs is evolving, and California's coastal cities face distinct challenges due to the sheer number of STRs in their jurisdictions and rising housing prices. In order to maximize affordable accommodation options in the coastal zone, local governments should consider the policies and procedures set forth by the Coastal Act when crafting new STR restrictions. Ultimately, coastal cities should recognize that varying kinds of STR activities impact neighborhoods differently and work to craft rules that do not unduly limit the potential economic benefits afforded by some STR activity to both homeowners and the cities in which they live.

