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## To Be or Not to Airbnb: Regulation of Short-Term Rentals in South Carolina

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**TO BE OR NOT TO AIRBNB:**

**REGULATION OF SHORT-TERM RENTALS IN SOUTH CAROLINA**

Grant Wills\*

I. INTRODUCTION.....	822
II. BACKGROUND.....	824
<i>A. Tourism Industry in South Carolina</i> .....	824
<i>B. What is Airbnb?</i> .....	825
<i>C. The Rise and Economic Impact of Airbnb in South Carolina</i> .....	826
<i>D. Positive Impacts of Airbnb in Communities</i> .....	826
III. CURRENT REGULATION OF AIRBNB IN SOUTH CAROLINA.....	828
<i>A. Charleston- Strict Approach (Regulation Through Bans on Short-Term Rentals and Enforcement Actions)</i> .....	828
<i>B. Columbia- Relaxed Approach (Regulation Through Permitting and Focusing on Nuisance Violations)</i> .....	831
IV. REGULATION OF AIRBNB AT THE STATE-LEVEL.....	832
<i>A. State-Wide Regulation of Airbnb in Arizona</i> .....	833
<i>B. State-Wide Regulation of Airbnb in Florida</i> .....	834
V. REGULATION OF AIRBNB AT THE MUNICIPAL LEVEL.....	834
<i>A. Regulation of Airbnb in Savannah, Georgia</i> .....	834
VI. RECOMMENDATIONS FOR REGULATING AIRBNB IN SOUTH CAROLINA IN THE FUTURE.....	836
<i>A. Recommendation Against the State-Wide Preemption Model</i> .....	836
<i>B. Recommendation for Regulation at the Municipal Level</i> .....	837
1. <i>Proposed Regulations for Charleston</i> .....	838
<i>a. Lifting the Ban on Short-Term Rentals</i> .....	838
<i>b. Nuisance and Occupancy Regulations to Protect the Character and Integrity of Charleston's Neighborhoods</i> .....	839
<i>c. Regulations to Protect Housing Stock and Housing Affordability</i> .....	840
<i>d. Regulation of Airbnb via Taxes</i> .....	842

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VII. CONCLUSION ..... 843

## I. INTRODUCTION

With a large house, a daughter away at college, and a husband working out of town, renting out her basement suite to earn some extra money simply “made sense” to Charleston, South Carolina homeowner Bobbi Rose.<sup>1</sup> Renting through Airbnb, Rose’s guests were greeted with a complimentary bottle of cabernet and a pair of bicycles to explore the city.<sup>2</sup> Although many guests left glowing reviews praising the “Charleston charm” of her two-story colonial house, city officials held a very different opinion.<sup>3</sup> After being told that a neighbor had filed a complaint, Rose was served a court summons for violating Charleston’s ban on short-term rentals.<sup>4</sup> Whether the violation was willful or out of ignorance, Rose’s situation resembles that of the growing number of Charleston residents facing penalties after attempting to monetize extra space through the online rental platform Airbnb.<sup>5</sup>

Currently, Airbnb has about 7,000 active short-term rental listings in South Carolina, with over 1,000 of those listings in the Charleston region.<sup>6</sup> Despite Airbnb’s significant growth, the company remains largely unregulated throughout the state of South Carolina.<sup>7</sup> At the state level, Airbnb has recently come to a tax agreement with the state of South Carolina which took effect July 1, 2016 to collect and remit sales and use, local, and state accommodations taxes on behalf of the company’s “hosts.”<sup>8</sup> At the

1. Paul Bowers, *Charleston Fights an Uphill Battle Against Short-Term Rental Listings*, CHARLESTON CITY PAPER (Apr. 8, 2015), <http://www.charlestoncitypaper.com/charleston/charleston-fights-an-uphill-battle-against-short-term-rental-listings/Content?oid=5111170>.

2. *Id.*

3. *Id.*

4. *Id.*

5. In Charleston, short-term rentals—those for less than 30 days—are prohibited outside of the Cannonborough-Elliottborough neighborhood per city ordinance. *Id.*

6. *South Carolina: Airbnb Data and Pricing Analytics*, AIRDNA, <https://www.airdna.co/region/us/south-carolina> (last visited Jan. 16, 2017) [hereinafter *Airbnb Data*].

7. *See Airbnb to Start Collecting Hotel, Tourist Taxes from S.C. Hosts, Guests*, CHARLESTON REGIONAL BUS. J. (May 19, 2016), <http://www.charlestonbusiness.com/news/law/69638/>.

8. *See Allison Prang, Airbnb to Collect Taxes from S.C. Guests*, POST & COURIER (Charleston, S.C.) (May 17, 2016), [http://www.postandcourier.com/business/airbnb-to-collect-taxes-from-s-c-guests/article\\_c76b219c-09b8-58f3-b65c-b56d83148f81.html](http://www.postandcourier.com/business/airbnb-to-collect-taxes-from-s-c-guests/article_c76b219c-09b8-58f3-b65c-b56d83148f81.html) (noting that South Carolina joins a growing number of states—including Florida, North Carolina, Alabama, Oregon and more than 150 other municipalities globally—where Airbnb has voluntarily agreed to collect and remit taxes on behalf of hosts and guests).

municipal level, Airbnb has operated in a regulatory gray zone, as many municipalities around the state, such as Columbia and Myrtle Beach, allow short-term rentals through Airbnb while others, such as Charleston, prohibit them.<sup>9</sup>

Despite the recent tax agreement at the state level, this regulatory void poses significant concerns for state regulators, property owners, and the hotel industry.<sup>10</sup> Issues that have arisen due to a lack of transparent regulation include public health and safety concerns, a lack of available housing stock, noise complaints, and a boom of tourism that could change the character of neighborhoods and affect their property values.<sup>11</sup> Additionally, many in the hotel industry argue that Airbnb poses a threat of unfair competition through tax evasion and a lack of business licensing requirements.<sup>12</sup> On the other hand, Airbnb and those who support the company argue that regulation is premature and could stifle a growing business in the state and innovation.<sup>13</sup>

Regulatory action over Airbnb is warranted and, due to the unique character of properties in South Carolina's Lowcountry, should occur at the municipal level. Local governments must decide whether to regulate Airbnb under either (1) existing state-wide laws or (2) a new regulatory framework modeled after similar localities in other states. The first option is problematic as it would preclude many Airbnb "hosts" from operating and will lead to transparency issues and inconsistent enforcement. Regulating Airbnb listings under the second option is a superior alternative because the tourism industry and character of neighborhoods in municipalities in South Carolina's Midlands and Lowcountry regions differ markedly. The second option affords these municipalities greater flexibility that will provide both Airbnb users and municipalities the opportunity to realize the economic benefits of the platform.

This Note does not argue for deregulation of Airbnb, but instead argues for common-sense, transparent regulation that balances the benefits of the

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9. *Airbnb to Start Collecting Hotel Tourist Taxes from S.C. Hosts, Guests, supra* note 7.

10. Dan Burley, *Airbnb Lodging Site is Changing SC's Tourism Industry*, STATE (Columbia, S.C.) (July 23, 2015), <http://www.thestate.com/living/article28482946.html>.

11. *Id.*

12. *Id.*

13. See Thad Moore, *Spotlight on Short-Term Rentals: Charleston to Name Task Force, Study Airbnb-Type Model to Help Shape Rules*, POST & COURIER (Charleston, S.C.) (June 30, 2016), [http://www.postandcourier.com/business/spotlight-on-short-term-rentals-charleston-to-name-task-force/article\\_fc4a514-5b31-5f27-ba96-d1211dada53d.html](http://www.postandcourier.com/business/spotlight-on-short-term-rentals-charleston-to-name-task-force/article_fc4a514-5b31-5f27-ba96-d1211dada53d.html) (examining the efforts of local regulators to understand the effect of short-term rentals on Charleston's culture and economy before setting policy).

“sharing economy” with the need of South Carolina municipalities to preserve the unique character and integrity of the neighborhoods. Part II of this Note briefly discusses the growth and operation of Airbnb at both the national and state level. Part III describes two differing approaches taken by South Carolina municipalities in regulating Airbnb. Parts IV and V offer two potential models for lawmakers and state regulators in regulating Airbnb in South Carolina: (1) regulation at the state-wide level or (2) regulation at the municipal level. Finally, Part VI argues that regulation under the second option is a superior alternative because of the markedly different policy interests and tourism industries among municipalities in South Carolina.

## II. BACKGROUND

### A. *Tourism Industry in South Carolina*

Following a tidal wave of reservation cancellations from the “biblical” 1-1,000-year flood that resulted in losses of \$35 million in visitor spending in 2015, South Carolina’s tourism industry has resoundingly recovered.<sup>14</sup> The tourism industry in South Carolina has posted record numbers over three straight years, and it is now a \$19.1 billion industry supporting one in every ten jobs in the Palmetto State.<sup>15</sup> Charleston, recently named the “World’s Best City” and the number one tourist destination in the United States, has particularly attributed to the resilience of the South Carolina tourism industry.<sup>16</sup> With over five million visitors annually and a \$3.7 billion annual economic impact, the rich culture and history found in “Chucktown” has made the city a tourist hotspot that is undoubtedly vital to South Carolina’s tourism industry.<sup>17</sup> Throughout the state, lodging options for travelers range from motels, to bed and breakfasts, to luxury hotels. However, in recent years, travelers coming to South Carolina have opted for a new and increasingly popular option: Airbnb.

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14. Bruce Smith, *Tourism Now a \$19B Industry in South Carolina*, STATE (Columbia, S.C.) (Feb. 17, 2016), <http://www.thestate.com/news/business/article60965267.html>.

15. *Id.*

16. Melanie Lieberman, *The World’s Best Cities*, TRAVEL & LEISURE, <http://www.travelandleisure.com/worlds-best/cities#charleston> (last visited Jan. 16, 2017).

17. *Economic Drivers: Tourism*, CHARLESTON REGIONAL DEV. ALLIANCE, <http://www.crda.org/doing-business-here/economic-drivers/tourism/> (last visited Jan. 16, 2017).

B. *What is Airbnb?*

“Don’t go there. Live there.” This Airbnb mantra and business model has pressed consumers to rethink conventional travel.<sup>18</sup> Founded in 2008, Airbnb is an online community marketplace for people to list, find, and then rent vacation homes for a processing fee.<sup>19</sup> On its website, the company proclaims, “[w]hether an apartment for a night, a castle for a week, or a villa for a month, Airbnb connects people to unique travel experiences, at any price point, in more than 34,000 cities and 191 countries.”<sup>20</sup> Airbnb promotes an authentic experience as opposed to the often times dull and predictable quality of major hotel chains.<sup>21</sup> According to Airbnb co-founder and CEO Brian Chesky, the number one reason people choose to travel via Airbnb is to “live like a local.”<sup>22</sup>

Airbnb has become an integral part of the so-called “sharing economy” in South Carolina. The sharing economy challenges traditional notions of private ownership and is instead based on the shared production or consumption of goods and services.<sup>23</sup> The rise of social media and mobile technology have enabled the sharing economy and transformed it into big business.<sup>24</sup> In contrast to sharing platforms such as Lyft and Uber that turn private cars into common resources, Airbnb allows individuals to share their homes.<sup>25</sup> Dubbed the “poster child of sharing,” Airbnb recently received a valuation of \$30 billion, worth about 30% more than the world’s largest hotel company, Hilton, and nearly eight times more than HomeAway, its closest competitor in the sharing economy.<sup>26</sup> Additionally, Airbnb’s 2.3

18. Press Release, Airbnb, *Airbnb Launches New Products to Inspire People to “Live There”* (Apr. 19, 2016), <https://www.airbnb.com/press/news/airbnb-launches-new-products-to-inspire-people-to-live-there>.

19. *Id.*

20. *Id.*

21. Max Chafkin & Eric Newcomer, *Airbnb Faces Growing Pains as it Passes 100 Million Guests*, BLOOMBERG BUSINESSWEEK (July 11, 2016), <https://www.bloomberg.com/news/articles/2016-07-11/airbnb-faces-growing-pains-as-it-passes-100-million-users>.

22. Press Release, Airbnb, *supra* note 18.

23. Joanna Penn & John Wihbey, *Uber, Airbnb and Consequences of the Sharing Economy*, GLOBAL POL’Y J. (Apr. 14, 2015), <http://www.globalpolicyjournal.com/blog/14/04/2015/uber-airbnb-and-consequences-sharing-economy-research-roundup> [hereinafter Penn & Wihbey]. *But see*, Juliet Schor, *Debating the Sharing Economy*, GREAT TRANSITION INITIATIVE 1, 2 (Oct. 2014), [http://greattransition.org/images/GTI\\_publications/Schor\\_Debating\\_the\\_Sharing\\_Economy.pdf](http://greattransition.org/images/GTI_publications/Schor_Debating_the_Sharing_Economy.pdf) (noting that defining the “sharing economy” in a way that reflects common usage is nearly impossible).

24. Penn & Wihbey, *supra* note 23.

25. *Id.*

26. Chafkin & Newcomer, *supra* note 21.

million room inventory makes the company bigger than Hilton, Marriot, and Intercontinental combined.<sup>27</sup>

### C. *The Rise and Economic Impact of Airbnb in South Carolina*

Although not as prevalent as in other states, the Airbnb community in the Palmetto State has grown tremendously over the past few years.<sup>28</sup> Currently, Airbnb has well over 7,000 active short-term rental listings in South Carolina, with over 1,000 listings in both Myrtle Beach and Charleston.<sup>29</sup> Notably, the company experienced growth in South Carolina's Lowcountry by providing cheaper housing options for vacationers who otherwise could not afford to visit the region or stay in a hotel.<sup>30</sup> According to the company, the typical South Carolina "host" earns nearly \$6,000 a year while the typical listing is booked nearly 42 nights a year.<sup>31</sup> From April 1, 2015 to March 2016, 101,000 people visited South Carolina via Airbnb and stayed for an average of 3.3 nights.<sup>32</sup> These statistics represent 170% growth in South Carolina year-over-year.<sup>33</sup> Internationally, throughout the aforementioned time period, 81,000 South Carolina residents have traveled somewhere around the globe via Airbnb.<sup>34</sup>

### D. *Positive Impacts of Airbnb in Communities*

According to Airbnb, the economic benefits of home sharing can be viewed across three distinct categories: (1) positive impacts on consumers and the tourism industry; (2) positive impacts on neighborhoods and local businesses; and (3) positive impacts on residents and households.<sup>35</sup> The

27. *Id.*

28. See Scott Shatford, *2015 in Review - Airbnb Data for the USA*, AIRDNA: BLOG (Jan. 7, 2016), <http://blog.airdna.co/2015-in-review-airbnb-data-for-the-usa/> (noting that in 2015, California led all states with 125,803 total properties listed, followed by New York with 94,976 Airbnb rentals).

29. *Airbnb Data*, *supra* note 6.

30. Burley, *supra* note 10.

31. See *Airbnb to Begin Collecting Taxes in South Carolina*, STATE (Columbia, S.C.) (May 18, 2016), <http://www.thestate.com/news/business/article78413592.html> ("Airbnb is making it possible for thousands of South Carolinians to make ends meet, pay the bills and stay in their homes.").

32. *Id.*

33. *Id.*

34. *Id.*

35. *Shared Opportunity: How Airbnb Benefits Communities*, FED. TRADE COMM'N, [https://www.ftc.gov/system/files/documents/public\\_comments/2015/05/01740-96152.pdf](https://www.ftc.gov/system/files/documents/public_comments/2015/05/01740-96152.pdf) (last visited Mar. 1, 2017).

company has noted that Airbnb attracts new visitors who stay longer than traditional tourists, spend more on local businesses, and are more likely to be return-guests to the market as a result of their experiences.<sup>36</sup> This notion is reflected by internal data showing that 35% of Airbnb guests report that without Airbnb, they would have shortened their trip or not traveled in the first place.<sup>37</sup> Notably, on average, Airbnb guests stay 2.1 times longer and spend 1.8 times more than traditional visitors.<sup>38</sup> Additionally, Airbnb has changed where guests stay when they travel. The company notes that many of its guests stay in less concentrated neighborhoods and that 42% of guests' daytime spending remains in the neighborhoods in which they stay.<sup>39</sup> Moreover, by monetizing the extra space, vacation property owners and traditional property owners receive income that allows them to make ends meet, pay mortgages, and remain in their residential communities.<sup>40</sup> According to the company, over 80% of hosts share their primary residence.<sup>41</sup> In addition, 48% of income that hosts earn through Airbnb is used to pay for regular household expenses like rent and groceries, while 53% of hosts have reported that income earned through Airbnb has helped them remain in their homes.<sup>42</sup>

While global in scope, Airbnb has been local in impact. Notably, the company has taken on a new role of social responsibility through the Airbnb Disaster Response Program.<sup>43</sup> Through an "urgent accommodations tool," this program allows hosts in hurricane-prone regions throughout the U.S. to offer their space for free.<sup>44</sup> During the evacuations in anticipation of Hurricane Matthew in October 2016, this tool allowed hosts in the South Carolina Midlands to offer their home and for users to find a place to stay.<sup>45</sup>

Despite these benefits, Airbnb has faced many legal and regulatory challenges.<sup>46</sup> In contrast to hotels and other web-based platforms such as VRBO, "hosts" on Airbnb typically live in the homes while they rent them,

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36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Disaster Response Program*, AIRBNB, <https://www.airbnb.com/disaster-response> (last visited Jan. 16, 2017).

44. *Id.*

45. Jeff Kidd, *Need Shelter from Hurricane Matthew? Airbnb Has Tool that Could Help You for Free*, STATE (Columbia, S.C.) (Oct. 4, 2016), <http://www.thestate.com/news/local/article106023807.html>

46. Burley, *supra* note 10.

creating situations that aren't necessarily spelled out in state law.<sup>47</sup> Opponents of the short-term rental industry in South Carolina argue that Airbnb hosts essentially operate mini-hotels and engage in business activity without obtaining a business license.<sup>48</sup>

### III. CURRENT REGULATION OF AIRBNB IN SOUTH CAROLINA

Despite its tremendous growth over the past several years, Airbnb is not as prevalent in South Carolina as it is in other states.<sup>49</sup> Unsurprisingly, the greatest number of Airbnb listings in the state are concentrated in South Carolina's Lowcountry region in major travel destinations such as Myrtle Beach and Charleston.<sup>50</sup> Much like other regulations across the state, municipal regulation of short-term rentals in South Carolina can be viewed as a quilt-like patchwork of laws and ordinances. The varying approaches to short-term rentals between municipalities in South Carolina's Midlands and Lowcountry regions can be attributed both to markedly different policy interests and tourism industries. The current regulatory framework in South Carolina can be explored in two major areas: Charleston and Columbia.

#### *A. Charleston- Strict Approach (Regulation Through Bans on Short-Term Rentals and Enforcement Actions)*

Charleston, due to its vital and unique tourism and hospitality industries, currently stands as the strictest model of regulation of Airbnb in the state and perhaps the country.<sup>51</sup> Per city ordinance, short-term rentals of less than 30 days are illegal and violations carry a hefty fine.<sup>52</sup>

Despite this strict approach, the short-term rental market is exploding in Charleston.<sup>53</sup> After a quick online search, one can find over 1,000 Airbnb listings in Charleston.<sup>54</sup> Options for travelers are diverse: a charming historic

47. *Id.*

48. *Id.*

49. See Shatford, *supra* note 28 (showing that South Carolina comprised only 3,856 listings of 550,000 total Airbnb listings in the United States in 2015).

50. *Airbnb Data*, *supra* note 6.

51. See Andrew Moylan, *Roomscore 2016: Short-Term Rental Regulation in U.S. Cities*, 55 R STREET POL'Y STUDY, March 2016, at 11 (noting Charleston's designation of a "C-" grade in 2016 for failing to create a tailored legal framework to regulate short-term rentals).

52. CHARLESTON, S.C., ZONING ORDINANCE art. 2, § 54-227 (2016) [hereinafter ZONING ORDINANCE].

53. *Airbnb Data*, *supra* note 6.

54. *Id.*

downtown carriage house for \$224 a night, a “funky” bungalow with bikes, or even a private yacht on the Charleston Harbor.<sup>55</sup> The total number of Airbnb listings in Charleston increased dramatically over the last year, with six out of ten listings on the peninsula and two-thirds of the rentals for entire houses or apartments.<sup>56</sup> Despite the restrictions Charleston places on short-term rentals, these numbers should come as no surprise. In Charleston, Airbnb is big business.

Under the 2012 ordinance, in most parts of the city, short-term rentals are banned.<sup>57</sup> However, short-term rentals are allowed in commercially-zoned areas of the Cannonborough-Elliottborough neighborhood.<sup>58</sup> That area is bordered by Bee, Morris, President, and Meeting streets up to the Septima P. Clark Parkway.<sup>59</sup> Despite this exception, several zoning restrictions remain.<sup>60</sup> Hosts are prohibited from putting a sign in front of their house, must keep the commercial section of their property physically separate from the residential section, and must receive a City of Charleston business license.<sup>61</sup> Additionally, Charleston distinguishes short-term rentals from bed and breakfasts through two different ordinances.<sup>62</sup> The short-term rental ordinance, passed in 2012, is a relatively recent creation, while the regulations for bed and breakfasts date back to 1931.<sup>63</sup> Under the latter ordinance, only bed and breakfasts established prior to 1860 are permitted inside Charleston’s Old and Historic district.<sup>64</sup>

Many issues that Charleston has faced regarding Airbnb rentals have arisen from confusing and less-than-transparent zoning ordinances and regulations. Despite the ban on short-term rentals, one Charleston

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55. *The Best Airbnb Listings in Charleston, South Carolina: Top Airbnb Listings - Jan. 2017*, AIRDNA, <https://www.airdna.co/top/us/south-carolina/charleston> (last visited Jan. 16, 2017).

56. Steve Bailey, ‘Quality of Life’ Needs Airbnb Enforcement, POST & COURIER (Charleston, S.C.) (Feb. 27, 2016), [http://www.postandcourier.com/opinion/quality-of-life-needs-airbnb-enforcement/article\\_6400094b-ca3b-588f-8522-5dc6f1baf420.html](http://www.postandcourier.com/opinion/quality-of-life-needs-airbnb-enforcement/article_6400094b-ca3b-588f-8522-5dc6f1baf420.html).

57. ZONING ORDINANCE art. 2, § 54-227, *supra* note 52.

58. Short-term rentals may be permitted by the Zoning Division in the CT, LB, GB, UC, MU-1, MU-1/WH, MU-2, and the MU-2/WH commercial zone districts within the Short Term Rental, ST Overlay Zone as a conditional use. *See id.* (listing the above districts).

59. Allison Prang, *Short-Term Rentals a Growing Issue in Charleston*, POST & COURIER (Charleston, S.C.) (Feb. 5, 2016), [http://www.postandcourier.com/business/short-term-rentals-a-growing-issue-in-charleston/article\\_62ef7b04-9c0d-5290-a0b5-c6422a2d1aee.html](http://www.postandcourier.com/business/short-term-rentals-a-growing-issue-in-charleston/article_62ef7b04-9c0d-5290-a0b5-c6422a2d1aee.html).

60. *See* ZONING ORDINANCE art. 2, § 54-227, *supra* note 52 (listing restrictions on short-term rentals).

61. *Id.*

62. *See* Bowers, *supra* note 1 (describing two different ordinances).

63. *Id.*

64. CHARLESTON, S.C., ZONING ORDINANCE art. 2, § 54-208 (2016).

homeowner simply turned to Airbnb after failing to make the 1860s antebellum cut to establish a bed and breakfast.<sup>65</sup> To address this growing problem, the city has conducted undercover sting operations to catch and fine those who operate short-term rentals without permission.<sup>66</sup> Responsibility for enforcement has fallen to the Department of Planning, Preservation, and Sustainability, where city employees comb short-term rental sites for listings in the area and follow up on tips received from members in the community.<sup>67</sup> Those accused of offering illegal short-term rentals are tried in Livability Court, where the guilty face fines up to \$1,092 or thirty days in jail.<sup>68</sup> In addition to these sting operations, the continued presence of Airbnb listings in Charleston has prompted lawsuits against more than sixty-three property owners filed by an entity named the Global Real Property Trust.<sup>69</sup> One complaint alleges, “by renting their real estate illegally, [the] defendants are able to save money by not paying for business licenses and not paying accommodation taxes.”<sup>70</sup>

It is clear that Charleston currently faces a complexity of issues regarding its regulation of the short-term rental market. While many in Charleston have pushed for a less-restrictive approach, other local regulators seek to maintain the status quo and await further research before making any new policy changes.<sup>71</sup> Recently, the city named an eighteen-member task force to conduct a broad study of Airbnb’s impact on Charleston’s culture, tourism industry, and property values.<sup>72</sup> Additionally, Mayor John Tecklenburg is currently searching for a regulatory scheme that can accommodate Airbnb while still protecting the character and integrity of Charleston’s unique neighborhoods.<sup>73</sup> Even the mayor has a personal stake in the issue—his wife was cited in 2014 for illegally listing a home for rent on a vacation rental website.<sup>74</sup>

65. Bowers, *supra* note 1.

66. David Slade, *Concerns About Short-Term Rentals Moves to Mount Pleasant*, POST & COURIER (Charleston, S.C.) (Mar. 11, 2016), [http://www.postandcourier.com/archives/concerns-about-short-term-rentals-moves-to-mount-pleasant/article\\_8949d64a-05c7-55ed-90c8-0514e0ef7915.html](http://www.postandcourier.com/archives/concerns-about-short-term-rentals-moves-to-mount-pleasant/article_8949d64a-05c7-55ed-90c8-0514e0ef7915.html).

67. Bowers, *supra* note 1.

68. *Id.*

69. Prang, *supra* note 59.

70. *Id.*

71. Moore, *supra* note 13.

72. *Id.*

73. *See id.* (discussing concerns about the social and cultural ramifications of short-term rentals in Charleston).

74. Bowers, *supra* note 1 (citing Paul Bowers, *John Tecklenburg’s Wife Cited for Illegal Short-Term Rental*, CHARLESTON CITY PAPER (Apr. 3, 2015),

Faced with nearly unrivaled growth of short-term rental listings, it is clear that Charleston faces different challenges compared to other South Carolina municipalities in terms of properly regulating Airbnb.<sup>75</sup> In Charleston, the short-term rental issue fits into the broader debate of the pressures placed by large amounts of tourists on city residents and the level that the city should grow and change to accommodate them.

*B. Columbia—Relaxed Approach (Regulation Through Permitting and Focusing on Nuisance Violations)*

In the heart of the South Carolina Midlands region, the city of Columbia has taken a more relaxed approach to regulating short-term rentals compared to Charleston.<sup>76</sup> While lacking in beaches, Columbia continues to draw residents, tourists, and students as the state capital and largest city in South Carolina and as the home of the University of South Carolina, the state's flagship university.<sup>77</sup> Despite a mere 206 listings, Columbia has one of the largest concentrations of Airbnb listings in South Carolina outside of the Lowcountry region.<sup>78</sup>

In April 2016, Columbia City Council approved Ordinance 2015-099 in an effort to crack down on landlords renting properties that repeatedly create nuisances in communities.<sup>79</sup> The ordinance was modeled off of a similar ordinance in Clemson, South Carolina and is primarily intended to “establish a system of tracking rental properties and to strengthen the city’s ability to enforce code violations.”<sup>80</sup> Prior to their enactment, Columbia was the only city hosting a Southeastern University Conference without some version of a

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<http://www.charlestoncitypaper.com/TheBattery/archives/2015/04/03/john-tecklenburgs-wife-cited-for-short-term-rental>).

75. See *infra* Part III, Section B (discussing the city of Columbia’s relaxed approach toward regulation of short-term rentals).

76. Kim Jamieson, *South Carolina Tourism Industry Rising in the Ranks*, SOUTH CAROLINA BUS. MAG., November/December 2012, at 1.

77. S.C. DEP’T OF PARKS, RECREATION, & TOURISM, *City of Columbia, S.C. JUST RIGHT*, <http://discoversouthcarolina.com/products/10026> (last visited Jan. 17, 2017).

78. *Airbnb Data*, *supra* note 6.

79. Kelly Petty, *New Law Pressures Columbia Landlords to Crack Down on Rowdy Tenants*, COLA DAILY (Apr. 8, 2016), <http://www.coladaily.com/2016/04/08/columbia-puts-pressure-on-landlords-to-improve-nuisance-properties-with-new-law/> (citing Memorandum from William H. Holbrook, Chief of Police, to Teresa Wilson, City [of Columbia] Manager (Mar. 15, 2016), [http://www.columbiasc.net/depts/city-council/docs/2016/04\\_05\\_2016/ordinance\\_2015\\_099\\_amend\\_ch\\_5\\_article\\_viii\\_absentee\\_landlord\\_memo\\_w\\_itr.pdf](http://www.columbiasc.net/depts/city-council/docs/2016/04_05_2016/ordinance_2015_099_amend_ch_5_article_viii_absentee_landlord_memo_w_itr.pdf)).

80. Sarah Ellis, *Proposed Columbia Rental Housing Ordinance Draws Concerns from Landlords*, STATE (Columbia, S.C.) (Dec. 1, 2015), <http://www.thestate.com/news/local/article46938710.html>.

rental-housing ordinance.<sup>81</sup> Regulators believe the new ordinance will address the nuisance concerns of many residents in neighborhoods near the University of South Carolina, where many houses are rented out to students and plagued by late night parties and loud music.<sup>82</sup>

The ordinance requires all landlords renting residential property to receive a permit and to maintain a local agent within a forty-five mile radius of the property unless an owner lives on the property.<sup>83</sup> In addition, landlords are subject to a point system for violations which can result in a permit revocation.<sup>84</sup> Importantly, although the intent of the ordinance was not to specifically regulate short-term rentals, the definition of “residential rental unit” utilized in the ordinance does encompass short-term rentals, including those rented through an online platform.<sup>85</sup> Accordingly, Airbnb hosts operating in Columbia are subject to the city’s new rental housing ordinance.<sup>86</sup>

While the operation of Airbnb in Columbia is by no means *laissez-faire*, the city has commendably established a legal framework that provides for the company’s existence. Unlike Charleston, Columbia does not prohibit rentals for less than 30 days or circumscribe an area where those rentals may be offered.<sup>87</sup> Instead, Columbia has allowed for short-term rental activity by placing focus upon permitting and regulating the chronic code offender to preserve the character and integrity of its neighborhoods.<sup>88</sup>

#### IV. REGULATION OF AIRBNB AT THE STATE-LEVEL

As mentioned, South Carolina has so far only regulated Airbnb at the state level via the taxation agreement, leaving further regulation to be resolved at the municipal level.<sup>89</sup> By contrast, several other states have taken a vastly different approach in an attempt to fully “legalize” Airbnb at the state level: preemption.

81. *Id.*

82. Petty, *supra* note 79.

83. COLUMBIA, S.C., CODE OF ORDINANCES ch. 5, art. 8, § 329 (2016).

84. *Id.* § 330–31.

85. *See id.* § 325 (defining “residential rental unit” as “[t]hat portion of a dwelling for which payment or other consideration, including performance of general maintenance, payment of utilities or other fees, or similar in-kind services, is being made to an owner, agent, or manager for the use and occupancy of that portion as a living facility”).

86. Because Airbnb hosts receive payment for the use and occupancy of their living facility, they are subject to the city’s new rental housing ordinance. *See id.*

87. *See id.*

88. Ellis, *supra* note 80.

89. *See supra* Introduction.

A. *State-Wide Regulation of Airbnb in Arizona*

In recent months, the state of Arizona laid the framework for states across the nation to effectively “legalize” Airbnb through passage of landmark legislation SB 1350.<sup>90</sup> Taking effect in January 1, 2017, the law became the first of its kind in the nation by overruling any preexisting or future city or municipality ordinance prohibiting short-term rentals through websites such as Airbnb or VRBO.<sup>91</sup> Similar to Charleston, South Carolina, cities in Arizona such as Scottsdale, Jerome, and Sedona previously instituted bans on short-term rentals for less than 30 days due to public health and safety issues, resident complaints, and concerns raised by the hotel industry.<sup>92</sup>

While Arizona’s new legislation preempts local law by prohibiting bans on short-term rentals, Arizona cities and counties may regulate them in certain cases.<sup>93</sup> Hosts must provide an emergency contact and cities and counties do retain some discretion to regulate rentals regarding issues of public health and safety, nuisances, and “adult-oriented businesses.”<sup>94</sup> Although the law does provide for some local control, the long-term effect upon the character of Arizona neighborhoods is less clear.<sup>95</sup> Under the new law, there is no limit on the number of properties an investor can buy or days a home can be rented out in residential areas.<sup>96</sup>

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90. S.B. 1350, 52d Leg., 2d Reg. Sess. (Az. 2016).

91. *Bill Protecting Right to Rent Out Home Signed*, AZ. DAILY INDEP. (May 13, 2016), <https://arizonadailyindependent.com/2016/05/13/bill-protecting-right-to-rent-out-home-through-vacation-websites-signed/>.

92. *Id.*; Macaela J. Bennett, *Is Airnib Good for Arizona*, AZCENTRAL (July 27, 2016), <http://www.azcentral.com/story/news/politics/legislature/2016/07/27/airbnb-arizona-benefits/86314492/>.

93. Deanna Ting, *Arizona Bill Stopping Cities From Banning Vacation Rentals Heads to Governor*, SKIFT (May 9, 2016), <https://skift.com/2016/05/09/arizona-bill-blocking-cities-from-banning-vacation-rentals-heads-to-governor/>.

94. S.B. 1350, *supra* note 90.

95. See Howard Fischer, *Governor Signs Bill That Could Turn Neighborhoods into Vacation Rental Zones*, AZ. CAPITOL TIMES (June 1, 2016), <http://azcapitoltimes.com/news/2016/06/01/governor-signs-bill-that-could-turn-neighborhoods-into-vacation-rental-zones/> (noting the concerns of Arizona residents that the new legislation could change the character of Arizona neighborhoods if speculators buy multiple properties for weekend rentals).

96. *Id.*

### B. *State-Wide Regulation of Airbnb in Florida*

Arizona's SB 1350 is similar to legislation passed in Florida in 2011 with regard to state-wide regulation of Airbnb.<sup>97</sup> However, one significant difference is that the Florida legislation grandfathered in any pre-existing short-term rental regulations promulgated before 2011.<sup>98</sup> The new state legislation banned local governments from prohibiting vacation rentals or regulating the length and frequency of stays.<sup>99</sup> Through an ordinance passed in August 2015, the city of Ft. Lauderdale circumvented this state-wide regulation by focusing on occupancy caps and other requirements in owners' rental agreements.<sup>100</sup> There, owners are required to advise guests of important information—such as city noise ordinances, the location of the nearest hospital, days and times of trash pickup—and even provide a notice about sea turtle nesting season.<sup>101</sup>

## V. REGULATION OF AIRBNB AT THE MUNICIPAL LEVEL

As opposed to the state-wide preemption model, many municipalities like Savannah, Georgia have directly responded to Airbnb's growing presence by creating a transparent, tailored legal framework to regulate short-term rentals.<sup>102</sup> By regulating at the municipal level, Savannah has been able to accommodate this multi-billion-dollar industry and create a level playing field for those in the hotel industry—all while preserving the unique character and integrity of its neighborhoods.<sup>103</sup>

### A. *Regulation of Airbnb in Savannah, Georgia*

Only 107 miles away, Savannah, Georgia, like Charleston, is a popular southern travel destination where people visit for the beach, history, and culture.<sup>104</sup> However, with regard to regulation of short-term rentals through websites like Airbnb, Savannah is strikingly different. Savannah faced an

97. Ting, *supra* note 93.

98. *Id.*

99. *Id.*

100. *Id.*

101. Lyssa Goldberg, *Fort Lauderdale Passes Vacation Rental Ordinance In Hopes Those Rowdy Parties Will Be Kept To A Minimum*, FORT LAUDERDALE DAILY (Aug. 19, 2015), <https://www.fortlauderdale.com/upfront/noteworthy/fort-lauderdale-passes-vacation-rental-ordinance-hopes-those-rowdy-parties-will/>.

102. Moylan, *supra* note 51, at 6.

103. *Id.*

104. Moylan, *supra* note 51, at 6.

explosion of Airbnb listings, with research demonstrating that 85% of the housing inventory was non-compliant with local requirements.<sup>105</sup> In response, the City Council enacted two ordinances in 2014—zoning and regulatory—to recognize short-term rentals as a specific land use.<sup>106</sup> By providing a tailored legal framework that recognizes these rentals, Savannah has received a designation of the highest grade in the nation for regulation of short-term rentals.<sup>107</sup>

The City notes that the purpose of the ordinances is to protect the residential integrity of Savannah's neighborhoods while providing a level playing field for the lodging industry.<sup>108</sup> As opposed to an outright ban, short-term rentals—those for less than 30 days—are allowed in areas where hotels and other lodging establishments are already allowed.<sup>109</sup> The ordinance also requires Airbnb hosts and other short-term rental providers to complete an application process with the city, register for a Business Tax Certificate, follow basic safety guidelines including smoke alarms and fire extinguishers, and remit a 6% hotel and motel tax to the state each month.<sup>110</sup> Additionally, the zoning ordinance limits occupancy to two adults per bedroom plus two non-adults.<sup>111</sup>

In terms of protecting the residential integrity of Savannah's neighborhoods, this ordinance has been viewed as a success.<sup>112</sup> Through the implementation of a three-strike policy, owners of short-term rentals are held accountable for nuisance type behavior through varying levels of fines and the loss of their certificate if found guilty of multiple violations.<sup>113</sup> Within the first 90 days, the city approved 196 short-term rental applications,

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105. Thomas Wheatley, *Airbnb, Meet the Georgia General Assembly*, CREATIVE LOAFING (Aug. 27, 2015), <http://www.clatl.com/news/article/13084599/airbnb-meet-the-georgia-general-assembly>.

106. *Short-term Vacation Rentals*, SAVANNAH GOV., <http://www.savannahga.gov/index.aspx?NID=1763> (last visited Jan. 20, 2017).

107. See Moylan, *supra* note 51, at 6, 11 (designating Savannah, GA with an "A+" grade for overall regulation of short term rentals while noting "this commonsense approach eliminates confusion over the legal status of short-term rentals, provides simple avenues to abide by the rules and avoids the temptation to engage in the kinds of onerous regulation found in many other cities across the country").

108. *Short-term Vacation Rentals*, *supra* note 106.

109. SAVANNAH, GA., CODE OF GEN. ORDINANCES ch. 3, div. 2, § 8-3025(a) (2016).

110. Wheatley, *supra* note 105.

111. SAVANNAH, GA., CODE OF GEN. ORDINANCES ch. 11, div. 2, § 8-10010 (2016).

112. Wheatley, *supra* note 105.

113. CODE OF GEN. ORDINANCES ch. 11, div. 2, § 8-10010, *supra* note 111.

generating more than \$38,000 in revenue.<sup>114</sup> At that time, only four complaints regarding the approved rentals were reported.<sup>115</sup>

## VI. RECOMMENDATIONS FOR REGULATING AIRBNB IN SOUTH CAROLINA IN THE FUTURE

### A. *Recommendation Against the State-Wide Preemption Model*

Faced with strict bans on short-term rentals similar to those utilized in Charleston, states like Arizona have given Airbnb a carte blanche mandate to operate via preemption.<sup>116</sup> Many other states have pushed for similar legislation in 2016.<sup>117</sup> Seeking legitimacy and faced with growing costs, there is indication that Airbnb will pursue this state-wide legalization model in the future.<sup>118</sup>

As demonstrated by Airbnb's trending growth in South Carolina and recent tax agreement with South Carolina, regulation of short-term rentals is a timely issue that affects a large segment of South Carolina's economy.<sup>119</sup> Local regulators should note that Arizona's path of preemption may be an appealing option for both Airbnb and the South Carolina Legislature in the near future. Notably, preemption was the route taken by the South Carolina Legislature in resolving the local regulatory battles fought over sharing economy giant Uber following the company's arrival in the Lowcountry two years ago.<sup>120</sup>

Many lawmakers who advocate for preemption believe a patchwork of laws that differ from municipality to municipality create confusion and place added burdens on businesses and taxpayers.<sup>121</sup> Preemption of local laws with

114. Wheatley, *supra* note 105.

115. *Id.*

116. *See supra* Part IV.

117. Fenit Nirappil, *Airbnb Loses Virginia Legislative Battle as it Seeks Statewide Recognition Across U.S.*, WASH. POST (Mar. 11, 2016), [https://www.washingtonpost.com/local/virginia-politics/airbnb-loses-virginia-legislative-battle-as-it-seeks-statewide-recognition-across-us/2016/03/11/39a73700-e70a-11e5-b0fd-073d5930a7b7\\_story.html?utm\\_term=.a7f09942132e](https://www.washingtonpost.com/local/virginia-politics/airbnb-loses-virginia-legislative-battle-as-it-seeks-statewide-recognition-across-us/2016/03/11/39a73700-e70a-11e5-b0fd-073d5930a7b7_story.html?utm_term=.a7f09942132e).

118. *See id.* (noting the advancement of state legislation in Arizona, Wisconsin, Louisiana, and Virginia seeking to limit local restrictions on short-term rentals).

119. *See supra* Introduction.

120. Amy O' Connor, *Bill Allowing Uber to Stay in South Carolina is Officially Law*, INS. J. (July 2, 2015), <http://www.insurancejournal.com/news/southeast/2015/07/02/373593.htm>.

121. Ryan V. Velzer, *How Arizona's New Laws Punishing Divergent Cities Came About*, WASH. TIMES (May 23, 2016),

respect to short-term rentals could also broadly protect property rights and help avoid the issue of regulatory takings.<sup>122</sup> While those arguments possess merit, preemption eliminates local control necessary to respond to community-specific issues. Additionally, there is some irony to be found in lawmakers who vehemently oppose the federal government preempting state law while arguing the necessity of doing the same thing to municipalities.

Most importantly, the markedly differing tourism industries and interests regarding the preservation of neighborhoods between South Carolina's Midlands and Lowcountry demonstrate that regulation of Airbnb should occur at the municipal level rather than through state-wide preemption. The challenges posed by Airbnb in a historic, tourist-driven beach town are considerably different than those in a more residential suburb and warrant different treatment.<sup>123</sup> Similarly, because a majority of Airbnb activity is currently concentrated in South Carolina's Lowcountry, state-wide preemption would have a disproportional impact on localities in that region.<sup>124</sup> Accordingly, Charleston regulators seeking to preserve local interests can best avoid preemption by modernizing Charleston's regulatory framework to accommodate for this growing industry rather than banning it outright. Charleston should instead update its regulatory framework by looking to more transparent models of regulation utilized in Savannah, Georgia and other municipalities with similar tourism industries and interests.<sup>125</sup>

### *B. Recommendation for Regulation at the Municipal Level*

Instead of banning short-term rentals through Airbnb outright, Charleston should look to a compromise that would provide property owners quiet enjoyment and use of their properties while still exercising a reasonable level of control. The objectives of realizing the economic benefits of this multi-billion-dollar industry while preserving the unique character and integrity of the neighborhoods are not mutually exclusive. Similar

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<http://www.washingtontimes.com/news/2016/may/23/legislature-cities-clash-over-right-to-pass-local/>.

122. 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, 568 (2015) (noting "[l]ocal government regulations restricting the use of real property for short-term rentals may constitute a 'taking' under the Fifth and Fourteenth Amendments to the United States Constitution").

123. See *supra* Part III.

124. See *Airbnb Data*, *supra* note 6 (providing data demonstrating that the bulk of Airbnb listings is concentrated in the South Carolina Lowcountry region).

125. See *supra* Part V.

tourist destinations like Savannah, Georgia have demonstrated that this balance can be reached through common-sense, transparent regulation. South Carolina municipalities and local regulators in Charleston should look to the Savannah, Georgia model in determining how to best regulate Airbnb. Specifically, Charleston regulators should lift the ban on short-term rentals located outside the short-term overlay zone.<sup>126</sup> The focus should be on regulating aspects that the city can more effectively control, such as nuisance and occupancy violations rather than on restrictive zoning regulations.

### 1. *Proposed Regulations for Charleston*

#### a. *Lifting the Ban on Short-Term Rentals*

First, and perhaps most significantly, Charleston should modernize its regulatory framework by following the model of Savannah, Georgia, which has created a tailored legal framework for recognizing the legality of short-term rentals.<sup>127</sup> Clear regulation would help to eliminate inconsistent enforcement and reduce confusion among Charleston's Airbnb hosts and users. Charleston regulators should lift the ban on rentals for less than 30 days in neighborhoods located outside the Cannonborough-Elliottborough neighborhood.<sup>128</sup> While Charleston has a strong interest in protecting the residential integrity of its neighborhoods and its tourism and hospitality industries, these objectives can be achieved through less restrictive means.

Onerous regulations that ban short-term rentals are ineffective because “the relationships in the sharing economy are often horizontal—involving peers—rather than vertical—involving a relatively powerful participant and a measurably weaker one.”<sup>129</sup> Peer-to-peer relationships like those facilitated through sharing economy platforms such as Airbnb are often largely self-regulating.<sup>130</sup> Local regulators should bear in mind that outright bans may have the unintended consequence of driving the market for short-term rentals “underground.”<sup>131</sup>

126. See CHARLESTON, S.C., ZONING ORDINANCE OF CHARLESTON, S.C. art. 2, § 54-227 (2016) (denoting the areas where short-term rentals are both allowed and prohibited).

127. See *supra* Part V.

128. See § 54-227 (denoting the areas where short-term rentals are both allowed and prohibited).

129. Jefferson-Jones, *supra* note 122, at 562.

130. *Id.* at 574.

131. See *id.* (noting that although facing penalties, Airbnb hosts have often “[t]aken the calculated risk of disregarding bans or onerous regulation in order to shift a portion of their ownership burden, thus creating a ‘black market’ in housing sharing”).

In essence, the creation of an “underground” short-term rental market has been the effect of strict regulation in Charleston. The reality is that although short-term rentals are prohibited outside of Cannonborough-Elliotborough, one can find hundreds of Airbnb listings throughout the peninsula simply by typing a term into an online search bar.<sup>132</sup> Many of these illegal listings do not meet the public health and safety standards required by legally operating short-term rentals and Bed and Breakfasts in Charleston.<sup>133</sup> Lifting the ban on short-term rentals outside of this short-term overlay zone coupled with transparent regulation that ensures compliance would protect the character and integrity of Charleston’s neighborhoods and provide for economic growth.<sup>134</sup>

*b. Nuisance and Occupancy Regulations to Protect the Character and Integrity of Charleston’s Neighborhoods*

Second, contrary to many views, lifting the current ban on short-term rentals would *protect*, rather than disrupt, the character and integrity of Charleston neighborhoods. Currently, Airbnb hosts looking to evade the current short-term rental ban can simply rent their property for a time period longer than thirty days.<sup>135</sup> This practice arguably presents greater nuisance issues to property owners in terms of noise and parking. In addition, rentals for a time period longer than thirty days would lead to a greater commercial use of property.

Additionally, the sharing of the benefits of homeownership, particularly use and enjoyment, can help to prevent or at least diminish instances of neighborhood blight due to disrepair, distressed sales, and even foreclosures.<sup>136</sup> Thus, allowing for short-term rentals “can protect a community’s property values by helping to insulate individual owners from the effects of negative housing markets.”<sup>137</sup>

Moreover, the high property values in many of Charleston’s prestigious neighborhoods make many short-term rentals an economically unfeasible

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132. See *Airbnb Data*, *supra* note 6.

133. Liza Lucas, *Illegal Short-Term Rentals*, LIVE 5 NEWS (Nov. 15, 2016), <http://www.live5news.com/story/33719461/debating-illegal-short-term-rentals>.

134. See *infra* Part VI, Section b.

135. See CHARLESTON, S.C., ZONING ORDINANCE OF CHARLESTON, S.C. art. 2, § 54-227 (2016) (prohibiting rentals when offered for less than thirty days).

136. See Jefferson-Jones, *supra* note 122, at 574 (noting the benefits short-term rentals provide for both the individual homeowner and surrounding community).

137. *Id.* at 574–75.

option for many travelers booking rentals through Airbnb.<sup>138</sup> The properties in Charleston that are the most likely targets for short-term rentals through Airbnb are those in dire need of repair and restoration. Allowing for short-term rentals outside of the Cannonborough-Elliottborough neighborhood could actually protect the character of many of Charleston's neighborhoods through renovations of properties undertaken by Airbnb hosts.<sup>139</sup> Notably, renovations have been an observed effect of short-term rentals allowed in Cannonborough-Elliottborough.<sup>140</sup>

Charleston should instead focus on clear regulations that account for nuisance and occupancy violations. In terms of protecting against nuisance violations, Charleston, like Savannah, could implement a three-strike policy for violations with tiers for fines.<sup>141</sup> In addition to occupancy limits, Charleston could also require the property owner to be within a designated radius or require hosts to be at home during the duration of their guests' stay.<sup>142</sup> While the latter approach may prevent new entrants into the short-term rental market, it has been implemented in cities like Santa Monica, California and pushes hosts to follow the traditional "home-sharing" and guest interaction business model that Airbnb advocates.<sup>143</sup>

*c. Regulations to Protect Housing Stock and Housing Affordability*

Third, many short-term rental opponents claim that, because units reserved for the short-term rental market are unavailable for long-term rentals, the impact has been a decrease in available housing stock and an increase in housing prices.<sup>144</sup> However, research suggests that restrictive zoning laws, as opposed to short-term rentals, have had a greater effect on

138. Abigail Darlington, *Downtown Vacation Rentals Targeted*, POST & COURIER (Charleston, S.C.) (July 4, 2016), [http://www.postandcourier.com/business/downtown-vacation-rentals-targeted/article\\_48ba0ddc-b828-5cc1-af94-6c7df1e5aa41.html](http://www.postandcourier.com/business/downtown-vacation-rentals-targeted/article_48ba0ddc-b828-5cc1-af94-6c7df1e5aa41.html).

139. See Jefferson-Jones, *supra* note 122, at 574 (noting that sharing the benefits of homeownership can mitigate instances of urban decay).

140. Bowers, *supra* note 1.

141. SAVANNAH GA., CODE OF GEN. ORDINANCES ch. 11, div. 2, § 8-10017(e) (2016).

142. Other South Carolina municipalities impose occupancy limits. For example, in Isle of Palms, South Carolina, there is an occupancy limit of two people per bed plus an additional two people. ISLE OF PALMS, S.C., CODE OF ORDINANCES § 5-4-202 (2016).

143. Jefferson-Jones, *supra* note 122, at 565; *Santa Monica, CA*, AIRBNB HELP CENTER (May 16, 2016), <https://www.airbnb.com/help/article/908/santa-monica-ca>.

144. Dayne Lee, Note, *How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations*, 10 HARV. L. & POL'Y REV. 229, 230 (2016).

housing availability and affordability.<sup>145</sup> Like Savannah, Charleston could address this issue by allowing for short-term rentals for less than thirty days outside of Cannonborough-Elliottborough in areas that contain hotels and other lodging.<sup>146</sup> An alternative approach would be to follow the model of other cities that restrict short-term rentals to a fixed ninety-day rental term for primary residencies only.<sup>147</sup>

The latter option would arguably help struggling Charleston primary property owners meet their mortgages and would prevent individuals from buying properties as a short-term rental investment strategy.<sup>148</sup> However, a permanent residency requirement may not sufficiently address housing affordability and housing stock concerns.<sup>149</sup> Airbnb actually makes housing *more* affordable, as over half of Airbnb users have reported that hosting helps them afford to stay in their homes.<sup>150</sup> Moreover, from a policy perspective, critics of residency requirements have argued, “[w]hy should a vacation home sit idle when someone desires to use it while the owner is out of town...[w]hy should a primary residence sit empty if its owner goes out of town more than 90 days when there are willing renters?”<sup>151</sup> In this regard, permanent residency requirements damage the economy by restricting our ability to mobilize “dead capital.”<sup>152</sup> Onerous requirements leave valuable resources idle when they could be used by others and can actually make housing less affordable by limiting alternative income streams that can help property owners better afford their homes.<sup>153</sup>

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145. See Moylan, *supra* note 51, at 4 (noting that strict zoning laws often makes it impossible to build at the density level that would allow developers to meet the demand for lower-cost housing and addressing this issue would do a great deal more to alleviate housing shortages than regulation of short term rentals would).

146. SAVANNAH, GA., CODE OF GEN. ORDINANCES ch. 11, div. 2, § 8-3025(a) (2016).

147. For example, in San Francisco, only permanent residents who reside in the city at least 275 days a year are allowed to rent out their home and it must be their primary residence. Owners of rental apartments and vacation homes cannot use them for short-term rentals, and permanent residents cannot rent their vacant homes for more than 90 days. SAN FRANCISCO, CAL., RESIDENTIAL UNIT CONVERSION ORDINANCE § 41A-5(g)(1) (2012).

148. See David Chiu, *A Reasonable Airbnb Plan for the City*, EXAMINER (Oct. 7, 2014), <http://archives.sfexaminer.com/sanfrancisco/a-reasonable-airbnb-plan-for-the-city/Content?oid=2908423> (noting “[u]nchecked, short-term rentals may contribute to our housing affordability crisis, but reasonably regulated, they can help people survive it”).

149. Benjamin Powell, *Will Airbnb’s Lawsuit Help Open the Door for Renters and Homeowners?*, INDEP. INST. (Aug. 17, 2016), <http://www.independent.org/newsroom/article.asp?id=8847>.

150. See *supra* text accompanying note 42.

151. Powell, *supra* note 149.

152. *Id.*

153. *Id.*

Savannah, Georgia's ability to avoid housing stock and housing affordability issues without imposing a permanent residency requirement is a model that Charleston should follow if the city is to fully embrace the benefits of the sharing economy. However, permanent residency requirements do possess merit if the primary concern of local regulators is preventing properties from being purchased as rental investments.<sup>154</sup> Charleston regulators should keep these differing interests in mind when deciding how to properly confront the issues of housing affordability and availability.

*d. Regulation of Airbnb via Taxes*

Lastly, implementing and enforcing any new regulatory regime will cost money that will need to be raised through taxes. Despite the taxation agreement at the state level between Airbnb and South Carolina, Airbnb only collects the local taxes that are administered or collected by the state.<sup>155</sup> Because Charleston County taxes are not collected by the state, Charleston hosts currently need to coordinate those taxes separately.<sup>156</sup> Although many hosts do pay these taxes, there is indication that many hosts in Charleston are not currently remitting these local taxes when renting via Airbnb.<sup>157</sup> Additionally, many in the hotel industry argue against short-term rentals in Charleston because the city does not currently tax hosts the same way as it does hotels through an accommodations tax.<sup>158</sup> Imposition of an accommodations tax would be well received by responsible Airbnb hosts who seek legitimacy, as well as those in the hotel industry who seek a level playing field.<sup>159</sup> Ultimately, by not addressing this issue directly, Charleston could be missing out on valuable tax dollars necessary to implement any effective regulatory regime in the future.

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154. See Chiu, *supra* note 148 (noting that a lack of enforcement has led "bad actors" to abuse the practice of offering short-term rentals in San Francisco, which limits the availability of housing stock).

155. *In What Areas 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> (last visited Jan. 20, 2017).

156. *Id.*

157. Lucas, *supra* note 133.

158. *Id.*

159. See Burley, *supra* note 10 (noting that most South Carolina hosts would gladly pay taxes if charged).

## VII. CONCLUSION

Airbnb has come to the Palmetto State, and it is here to stay. While South Carolina could follow the model of other states like Arizona that now regulate Airbnb state-wide through preemption of local laws, this approach is undesirable. Instead, Airbnb should be regulated at the municipal level due to markedly differing policy interests and tourism industries among South Carolina's Midlands and Lowcountry regions.

Moving forward, local regulators seeking to preserve local interests in municipalities like Charleston can best avoid preemption by accommodating for this growing industry rather than banning it outright. South Carolina municipalities must exercise their discretion to regulate carefully, because if local regulators go too far in the direction of precluding Airbnb, they are likely to lose the power to regulate at all. In determining the best approach to regulate, municipalities must consider community interests and pay attention to the political context in which they operate.

The litigation and inconsistent enforcement actions of Charleston are not viable long-term solutions. Charleston should update its regulatory framework by looking to more transparent models of regulation utilized in Savannah, Georgia and other municipalities with similar tourism industries and interests. Such a scheme would focus on aspects the city can more effectively control, such as occupancy limits, nuisance violations, and tax collection, rather than on restrictive zoning regulations. By implementing a transparent, tailored legal framework for short-term rentals to operate, Charleston can protect the character and integrity of its neighborhoods, ensure affordable housing, and realize a significant source of revenue.

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