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Municipal Optimization of Short-Term Rental Regulations: The Reality of Airbnb in South Texas Communities

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COMMENT

MUNICIPAL OPTIMIZATION OF SHORT-TERM RENTAL REGULATIONS: THE REALITY OF AIRBNB IN SOUTH TEXAS COMMUNITIES

KENNETH M. CULBRETH III*

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I. INTRODUCTION

The idea and application of sharing one's home has been engrained into the American psyche over hundreds of years.¹ From the soldier quartering provision of the Third Amendment,² to an owner's option of renting out a portion of their property to obtain some form of beneficial income, it is easy to see the benefit of home sharing.³ However, such benefit comes with the inevitable feeling of uneasiness and concern brought by modernization. Today, a short-term rental (STR) refers "to a rental of fewer than thirty consecutive days."⁴ The agreement in an STR transaction involves a license, which can be defined as "an agreement which merely entitles a party to use the land of another for a specific purpose, subject to the management and control retained by the owner."⁵ As options for online rental bookings have risen, STR companies such as Airbnb.com (Airbnb) have become an extremely popular vessel for property owners to rent to vacationers, businessmen and women, and travelers alike.⁶ In the same way, Airbnb

1. See Cory Scanlon, Comment, *Re-zoning the Sharing Economy: Municipal Authority to Regulate Short-Term Rentals of Real Property*, 70 SMU L. Rev. 563, 566 (2017) (portraying the long-standing practice of home sharing in the United States).

2. See U.S. CONST. amend. III ("No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.").

3. See Scanlon, *supra* note 1, at 566 ("Widespread use of one's primary residence as a boarding house to supplement one's income may predate even our Republic.").

4. Cai Roman, Comment, *Making a Business of "Residential Use": The Short-Term-Rental Dilemma in Common-Interest Communities*, 68 EMORY L.J. 801, 806 (2019).

5. *Id.*

6. See Scanlon, *supra* note 1, at 567 (suggesting hosts use Airbnb to rent to a wide array of individuals); see also Rani Molla, *Airbnb is on Track to Rack up More than 100 Million Stays this Year—and That's Only the Beginning of its Threat to the Hotel Industry*, RECODE (July 19, 2017, 7:00 AM), <https://www.recode.net/2017/7/19/15949782/airbnb-100-million-stays-2017-threat-business-hotel->

provides “authentic travel experiences . . . created through genuine connections with people and places,” for its vast number of users worldwide.⁷ Online platform-based home sharing websites, like Airbnb, have undoubtedly been cast into the spotlight within the last decade.

Launched in 2007, three aspiring businessmen⁸ created Airbnb.⁹ The humble beginnings of this global company were an attempt to create a peer-to-peer marketplace, making “it easy for people to offer” and, conversely, search for affordable places to rent.¹⁰ Hailed as the “eBay for spaces,” Airbnb has become an extremely prevalent and established online marketplace for STRs.¹¹ As a result, the company now encompasses over seven million Airbnb listings, located in over 100,000 cities in 191 different countries and regions of the world.¹² Despite its obvious success, Airbnb is no stranger to a wide variety of business-related legal issues.¹³ The legal issues pertinent to this Comment include regulations on a state and municipal level, tort liability, and zoning. These legal issues have become increasingly relevant to STR owners and renters, as well as the communities where these listings are located. Furthermore, these legal issues are of even greater concern to areas of the country that rely heavily on short-term seasonal tourism like the coastal communities of South Texas. Because each state’s legislative and municipal bodies approach these issues differently,

industry [<https://perma.cc/6YPA-G5A3>] (“Airbnb’s popularity is increasing among both leisure and business travelers.”).

7. Rachel Botsman & Lauren Capelin, *Airbnb: Building a Revolutionary Travel Company*, SAÏD BUS. SCH., Apr. 2015, at 1.

8. Joe Gebbia, Brian Chesky, and Nathan Blecharczyk (friends and graduates of Rhode Island School of Design) started airbedandbreakfast.com in 2007. Soon, the friends’ humble beginnings transformed into the mega-travel travel platform we know today as Airbnb.com. Rebecca Aydin, *How 3 Guys Turned Renting Air Mattresses in Their Apartment into a \$31 Billion Company, Airbnb*, BUS. INSIDER (Sept. 20, 2019, 9:27 AM), <https://www.businessinsider.com/how-airbnb-was-founded-a-visual-history-2016-2> [<https://perma.cc/S5TM-7678>].

9. See Botsman & Capelin, *supra* note 7, at 1 (detailing the formation of Airbnb and its progression over time).

10. See *id.* (explaining Airbnb’s initial formation initial business model).

11. *Id.*

12. See *Airbnb Newsroom Fast Facts*, AIRBNB, INC., <https://news.airbnb.com/fast-facts/> [<https://perma.cc/ZC67-82EV>] (listing facts about the size and usage of Airbnb globally).

13. See Alexander W. Cloonan, Comment, *The New American Home: A Look at the Legal Issues Surrounding Airbnb and Short-Term Rentals*, 42 U. DAYTON L. REV. 27, 29 (2017) (surveying legal issues associated with Airbnb and other similar online platforms having to do with STRs).

there is an uncertainty of laws and regulations, and a need for clarity on a local level.¹⁴

Part I will discuss the sharing economy and the role that millennials play within such a space. Additionally, this section will delve into the background and history of both regulatory and municipal law. Part II will consider the context and need for educated reform in South Texas by first offering a comparative analysis of STRs on a global level, then narrowing its focus toward the United States specifically. Part III aims to highlight Texas's attempt to gain clarity on these issues by exploring approaches taken by several different Texas cities. Finally, Part IV proffers an in-depth analysis of the future of STRs and their effect on coastal communities of South Texas.

A. *The Role of Millennials and the Sharing Economy*

The significant growth and popularity of Airbnb comes as a result of its favor among millennials.¹⁵ For purposes of Airbnb and its own data, millennials are defined as individuals between the ages of 18–35, and are considered “the largest generation in history.”¹⁶ Furthermore, it is estimated that within the next decade, millennials and younger generations will make up approximately 75% of all travelers.¹⁷ As these generations reach adulthood and enter the middle class, a pattern of ownership practices has emerged. This pattern indicates a distinct decline in the number of *things* owned by rising millennials in society,¹⁸ which has caused the injection and

14. *See id.* at 33 (suggesting clarity as necessity in discussing the laws and regulations applying to STRs and Airbnb).

15. *See* AIRBNB INC., AIRBNB AND THE RISE OF MILLENNIAL TRAVEL 2 (2016), <https://www.airbnb.com/citizen/wp-content/uploads/2016/08/MillennialReport.pdf> [https://perma.cc/7MX6-BSNG] (correlating the relationship between the millennial generation and Airbnb popularity and usage).

16. *Id.* For example, “Pew Research Center decided a year ago to use 1996 as the last birth year for Millennials for our future work. Anyone born between 1981 and 1996 (ages 23 to 38 in 2019) is considered a Millennial, and anyone born from 1997 onward is part of a new generation.” Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/> [https://perma.cc/HP42-MQSS].

17. *See id.* <https://www.airbnb.com/citizen/wp-content/uploads/2016/08/MillennialReport.pdf> [https://perma.cc/7MX6-BSNG] (estimating the amount and percentage of millennial consumers and travelers of Airbnb within the next decade).

18. *See* Bernard Marr, *The Sharing Economy - What It Is, Examples, and How Big Data, Platforms and Algorithms Fuel It*, FORBES (Oct. 21, 2016, 2:16 AM), <https://www.forbes.com/sites/bernardmarr/2016/10/21/the-sharing-economy-what-it-is-examples-and-how-big-data-platforms-and-algorithms->

surge of the sharing economy into the traditional economy.¹⁹ The sharing economy, or collaborative consumption, is found when “owners rent out something they are not using, such as a car, house or bicycle to a stranger using these peer-to-peer services.”²⁰ A company operating in the sharing economy typically has some form of rating or review system.²¹ In an STR platform situation, review systems allow for the users, on both the owner and renter side, to establish a sense of trust between each other.²² Through this trust, the popularity of platforms like Airbnb has grown and explains why millennials feel they do not “need to buy when they can rent from others.”²³

B. *Background of Regulatory Law*

Since the inception of Airbnb, a call for the regulation of this service has been alive and well.²⁴ These regulations stem from different reactions to STRs, including protection of property rights, encouragement of tourism, promotion of local businesses, possibility of affordable hotel alternatives and the inevitable longing for more jobs and income for the community’s residents.²⁵ In an equally important light, others have reacted with concern for the dismantling of “‘neighbors’ from neighborhoods” by ultimately running off desirable long-term residents of the community, the unwanted attraction of rowdy crowds, and the negative repercussions accompanied

fuel/#a2ca2e27c5af [https://perma.cc/3C5V-HQHIX] (discussing the sharing economy and the resulting patterns it has created among the society).

19. See Dana Palombo, Comment, *A Tale of Two Cities: The Regulatory Battle to Incorporate Short-Term Residential Rentals into Modern Law*, 4 AM. U. BUS. L. REV. 287, 289 (2015) (showing the intersection of the sharing economy and the traditional economy).

20. See Davis Yellen, *Airbnb, Snapgoods and 12 More Pioneers of the ‘Share Economy’*, FORBES, <https://www.forbes.com/pictures/ceji45emgkh/airbnb/#15b8e6c82f52> [https://perma.cc/C998-DQQM] (explaining a typical company operating in a sharing economy).

21. See *id.* (illustrating the manner in which the sharing platform is set up for user accountability and reviews).

22. See *id.* (comparing the review system to eBay’s rating system which is intended to foster trust).

23. *Id.*

24. See James Stumpf, Comment, *Striking the Balance: How States Can Protect Both STR Advocates and Opponents*, 28 DEPAUL J. ART TECH. & INTELL. PROP. L. 194, 201 (2018) (acknowledging the large number of regulations on platforms and services like Airbnb and other similar online websites); see also *What Regulations Apply to My City?*, AIRBNB, INC., <https://www.airbnb.com/help/article/961/what-regulations-apply-to-my-city?> [https://perma.cc/LX83-3YQR] (showing Airbnb’s effort to provide information about the regulation of its company to users and hosts alike).

25. See Stumpf, *supra* note 24, at 200 (listing different purposes and goals of the regulations which have been placed on short-term rental platforms).

with such a draw.²⁶ This Comment will delve into both sides of these arguments and local government's hand in the situation.²⁷

C. *History of Municipal Law*

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”²⁸ Although there is some regulation on the federal level, there is a clear showing of control on the state and municipal level when it comes to the future of STRs.²⁹ Zoning power—a fundamental authority—is used by cities to structure their growth in a manner which they see fit.³⁰ Here, the power to zone is defined as “the power to divide up the locality’s geographic area into different categories of land use that are inconsistent with each other.”³¹ For example, residential districts are typically further divided into separate categories such as single-family and multi-family.³² Courts have recognized these distinctions in use because zoning, as an exercise of the police power, serves as a way to uphold family values, foster youth values, and maintain the assurance of “quiet seclusion and clean air to make the area a sanctuary for people.”³³ Cities around the world have taken different approaches to deal with STRs, the majority of which do not fall within the residential or commercial classifications.³⁴

II. THEORY OF PROPERTY “TRAGEDY OF THE COMMONS”— WHY DOES IT AFFECT THE ENTIRE COMMUNITY?

A discussion of property rights arises at the theoretical intersection of law and economics, especially when addressing the regulation of STRs.³⁵ Within this discussion, positive and negative externalities affect property

26. *Id.*

27. *See id.* at 195 (providing a partial framework for the comment).

28. U.S. CONST. amend. X.

29. *See Stumpf, supra* note 24, at 220–21 (identifying potential state and federal regulation of STRs).

30. *See Scanlon, supra* note 1, at 568 (stating zoning powers are reserved and used by U.S. cities).

31. *Id.*

32. *See id.* (dividing a locality’s geographic area by categories of land use for zoning purposes).

33. *Id.* at 569.

34. *See id.* (illustrating a variety of approaches to STR regulations and zoning).

35. *See* JEFFREY L. HARRISON, LAW AND ECONOMICS IN A NUTSHELL 42–43 (5th ed. 2011) (commenting on the relationship between property rights and economics).

owners, hosts, guests, and the communities where they are located.³⁶ A negative externality is present “when the activity of one person or a business imposes a cost on someone else.”³⁷ A common example of a negative externality is the “polluting factory” hypothetical.³⁸ In this hypothetical, a factory pollutes the water and air of the surrounding area, making both resources less useful to others, and does not compensate the others for the loss.³⁹ With this said, it is necessary to establish whether those affected have a “right” to clean air and water.⁴⁰ If this “right” exists, the law will recognize it and a potential remedy will be available.⁴¹ On the other hand, when this “right” does not exist, it does not affect the presence of the externality, “but the law does not recognize it as such.”⁴²

The introduction of Airbnb and similar STR platforms involves the exploration of new techniques and new ways of conducting rental businesses.⁴³ Such exploration results in the invocation of “harmful and beneficial effects to which [the] society has not been accustomed.”⁴⁴ This introduction of new property rights is suggested to be “in response to the desires of the interacting persons for adjustment to new benefit-cost possibilities.”⁴⁵ For the purposes of this Comment, it is important to understand the foundation upon which many of the proposed and passed regulations of STRs are built. An important concept which demonstrates the immense need for new property rights can be found in “the tragedy of the commons.”⁴⁶ The example used to analogize STR regulation is as follows:

The problem, as described by Garrett Hardin, involves a group of herdsmen who make use of a common area for grazing. Each makes what seems [to] be

36. *See id.* at 42 (pointing out the two different types of externalities dealing with property rights).

37. *Id.*

38. *See id.* (“The most commonly used example is that of the polluting factory.”).

39. *See id.* at 42–43 (introducing an analogy similar to the “tragedy of the commons”).

40. *See id.* at 42 (requiring property rights to exist in order for a negative externality to be recognized by the law).

41. *Id.* at 42 (showing the potential for a remedy where rights exist).

42. *Id.*

43. *See* AVERY WIENER KATZ, FOUNDATIONS OF THE ECONOMIC APPROACH TO LAW 94 (LexisNexis Matthew Bender 2006) (suggesting a correlation between the innovation of Airbnb and new property rights).

44. *Id.*

45. *Id.*

46. HARRISON, *supra* note 35, at 43.

a rational assessment of the costs and benefits of adding one animal to his herd. For each one the benefit is the profit to be earned from one additional animal. The cost, however, is a general cost of over-grazing that is spread throughout the community. In effect, the full profit is *internalized* by the herdsman but the cost is not fully internalized. Since each person engages in the same reasoning, over the long run, the “tragedy” is that the commons are destroyed.⁴⁷

Described by Garrett Hardin, the tragedy of the commons takes into account two different traits.⁴⁸ The first trait looks at the user consuming part of the commons, thus obtaining the benefits of the particular use.⁴⁹ The second trait then looks at the cost of this consumption being applied and shared across the potential users.⁵⁰ When these traits are found in resources and are not restricted, there is “the potential for a resource free-for-all.”⁵¹ In applying the tragedy of the commons concept to STRs like Airbnb, a group of neighbors residing in a common neighborhood each have a right to make use of their share of the common area for things such as enjoyment of property, individual property value, and tangible things like parking.

Assume, *arguendo*, a small group within the neighborhood sign up as hosts on Airbnb.com and consequently begin to rent their homes to guests. Each decision to become a “host” is assumed to be a rational one, made by assessing “the costs and benefits of” becoming a “host.”⁵² Push factors for such a decision include things such as an increase in monthly rental *income*.⁵³ A study conducted in Manhattan’s Lower East Side “found that full-time Airbnb listings earned, on average, two to three times the median long-term rent.”⁵⁴ As these decisions are made and the neighborhood sees an increase

47. *Id.*

48. See Brigham Daniels, *The Tragicomedy of the Commons*, 2014 BYU L. REV. 1347, 1352 (2014) (proposing different traits to be considered when understanding the tragedy of the commons).

49. *See id.* (“[W]hen a user of the commons consumes part of the commons, that user gets all of the benefit of that use . . .”).

50. *See id.* (“[T]he cost of this consumption is shared across all potential users.”).

51. *Id.*

52. HARRISON, *supra* note 35, at 43.

53. See Daniel Guttentag, *What Airbnb Really Does to a Neighbourhood*, BBC (Aug. 30, 2018), <https://www.bbc.com/news/business-45083954> [<https://perma.cc/7PWR-2V5J>] (“[P]roperty owners are switching from long-term tenancies to short-term rentals, which can be more lucrative.”).

54. *Id.*

in STRs, a general cost is asserted over the community.⁵⁵ This cost is assumed and *internalized* by STR property owners and traditional property owners alike.⁵⁶ With the expanding popularity and prevalence of Airbnb, an “overgrazing” of the neighborhood may take place and negatively affect the neighborhood as a whole.⁵⁷ It is clear “[t]he ‘tragedy of the commons’ provides a powerful argument for the assignment of property rights” and may justify regulation of such situations.⁵⁸

A. *Positive Externalities/Free-Riding*

In a neighborhood situation like the one described above, positive externalities also play an important role in understanding the interplay between STR properties and the benefit to the community as a whole.⁵⁹ A positive externality arises “when the activities of an individual or a firm result in benefits, the value of which the producer is unable to internalize or enjoy.”⁶⁰ Applying a hypothetical may be helpful in understanding how positive externalities play a role when introducing STRs to certain neighborhoods.

Imagine a small, intimate neighborhood situated on a beach along the Gulf of Mexico, with a majority of its population being local, long-term residents. This particular neighborhood works to maintain its beach access roads and has created paved pathways leading to them. Each neighbor has equal access to the beach and treats the community environment with respect. Additionally, those living in this community use both driveway parking and street parking to accommodate their households. Over the past year, about three neighbors have signed up as “hosts” on Airbnb.com, bringing many short-term renters to the neighborhood. With the introduction of renters to the neighborhood, other residents have noticed changes to their sparkling neighborhood by the sea.

55. See HARRISON, *supra* note 35, at 43 (discussing the costs associated with Airbnb on the community as a whole).

56. *Id.* (“In effect, the full profit is *internalized* by the herdsman but the cost is not fully internalized.”).

57. See *id.* (concluding the tragedy of the commons will ultimately destroy the commons themselves).

58. *Id.*

59. See *id.* at 46 (offering an example of positive externalities and how they relate to property rights in a neighborhood community).

60. See *id.* (“For example, suppose a homeowner has his or her property beautifully landscaped and the effect is to increase both the value of the recently landscaped property and of the entire neighborhood. Here, the benefit to the neighboring property owners would be a positive externality.”).

Here, and in the neighborhood described, free-riding may result from positive externalities.⁶¹ The concept of free-riding “takes place when individuals are able to take advantage of the benefits of the activities of others without paying for those benefits.”⁶² The three “hosts” and their use of Airbnb may be guilty of free-riding.⁶³ Due to the attractiveness of the neighborhood and its proximity to the coast, the popularity amongst visitors is immense. Those that are renting out homes through Airbnb may be defined as “members of a community [who] fail to contribute their fair share,” to the whole of the community.⁶⁴ The non-host residents are tasked with maintaining the resource, or in this case, the neighborhood, despite its use by those renting through Airbnb.⁶⁵ Free-riding occurs since Airbnb hosts are not actively contributing to the maintenance of the neighborhood when renters are using their residences. Instead, homeowners participating in STRs allow their renters to use the neighborhood for parking, access to the beach, and other short-term rental purposes. In some cases, “extreme freeriding,” or when free riders pay nothing at all, may occur.⁶⁶ Because short-term renters bring an “influx of [transient visitors into] . . . residential neighborhoods,” the full-time residents are left to suffer the consequences while the Airbnb hosts continue to make a profit off these transactions.⁶⁷

III. CONTEXT AND NEED FOR EDUCATED/INFORMED REFORM IN SOUTH TEXAS

“The Gulf Coast region’s share of domestic travel to and within Texas ranked [second] out of the seven Texas tourism regions in 2018.”⁶⁸ Located at the end of Highway 37, Corpus Christi is home to approximately 326,554 residents as of 2019 and has an economy that benefits largely from oil and

61. See HARRISON, *supra* note 35, at 46 (correlating positive externalities with the property concept of free-riding).

62. *Id.*

63. See *id.* (suggesting a host’s role in contributing to free riding).

64. *Free Rider Problem*, INVESTOPEDIA, https://www.investopedia.com/terms/f/free_rider_problem.asp [<https://perma.cc/P2P2-3M6C>].

65. *Id.* (suggesting contributions to the community maintenance of a community as being a major aspect of positive externalities).

66. HARRISON, *supra* note 35, at 47.

67. *The Problem with Commercialized Short Term Rentals*, KEEP NEIGHBORHOODS FIRST!, <https://www.keepneighborhoodsfirst.org/strproblem> [<https://perma.cc/X457-KQGQ>].

68. *Gulf Coast Region*, TRAVEL TEX. (Aug. 2019), https://gov.texas.gov/uploads/files/travel-texas/Region_Gulf_Coast_Aug_2019-1.pdf [<https://perma.cc/B6G8-88JU>].

tourism.⁶⁹ The City provides a wide array of tourism attractions seasonally and has many neighborhoods spanning across its diverse coastal landscape.

“Protection of the neighborhood’s integrity to me is extremely important,” Mayor Joe McComb of Corpus Christi stated at a recent city council meeting.⁷⁰ The City of Corpus Christi met to discuss Airbnb regulations and concerned citizens voiced their opinions on whether companies like Airbnb and STRs “can be a positive aspect of a community impacted by millions of tourists.”⁷¹ The Texas Gulf Coast is home to twenty-six counties and includes five notable metropolitan statistical areas such as Corpus Christi.⁷² During this meeting, a report showed that the City of Corpus Christi missed out on approximately one million dollars in hotel occupancy taxes that STRs should have paid.⁷³ Additionally, the report stated that the amount of Airbnbs has nearly doubled in the past two years in the region.⁷⁴ Since “the city’s Unified Development Code doesn’t allow for short-term rentals,” many questions loom.⁷⁵ As a result, standing up for private property rights has become a major theme in conversations within the Coastal Bend.⁷⁶ Taxation of the private property at issue here also seems to encompass much of the spotlight.⁷⁷ One concerned citizen stated that “property owners should be free to use their ‘private property’ for short-term rentals without having a tax levied by the city.”⁷⁸

69. *Corpus Christi, Texas Population 2019*, WORLD POPULATION REV. (2019), <http://worldpopulationreview.com/us-cities/corpus-christi-population/> [https://perma.cc/A59Y-89ZF] (calculating the population of Corpus Christi and tourism as a main contributor to the economy).

70. Brian Burns, *Corpus Christi City Council Looking at Future Ordinance, Regulations for Airbnb*, 3NEWS (June 25, 2019, 7:03 PM), <https://www.kiitv.com/article/news/local/corpus-christi-city-council-looking-at-future-ordinance-regulations-for-airbnb/503-ba1753e8-308f-47c9-9c08-a96ba198f332> [https://perma.cc/P2CH-PPUW].

71. *Id.*; see Tim Acosta, *Corpus Christi City Council Mulls Regulations for Short-Term Rentals*, CALLER TIMES (June 26, 2019, 4:01 PM), <https://www.caller.com/story/news/local/2019/06/26/corpus-christi-city-council-mulls-regulations-short-term-rentals/1559715001/> [https://perma.cc/5XVQ-4SGC] (recognizing the Corpus Christi’s rhetoric regarding short-term rentals).

72. See *Gulf Coast Region*, *supra* note 68.

73. See Burns, *supra* note 70 (calculating the amount of money lost by the City of Corpus Christi in hotel occupancy tax due to Airbnb’s lack of a similar state revenue generation).

74. *Id.* (estimating the amount and rate of growth of the Airbnb platform in the area surrounding Corpus Christi).

75. Acosta, *supra* note 71.

76. See Burns, *supra* note 70 (discussing the property rights issues presented to the City of Corpus Christi local government).

77. See *id.* (addressing the property rights issues on taxation presented to the City of Corpus Christi local government).

78. Acosta, *supra* note 71.

A. *STR Regulation on a Global Level*

To better understand STR regulations and the issues on a municipal level, it becomes necessary first to view the topic on a broad global level. It is no secret that tourism plays a vital role in the functioning of major European cities.⁷⁹ They showcase this reliance by over 50% of all international tourists visiting European countries, earning them the title of “number one tourist destination world-wide.”⁸⁰ Within this region, nine countries are “among the global top twenty tourist destinations” and include: “Amsterdam, Barcelona, Istanbul, London, Milan, Paris, Prague, Rome, and Vienna.”⁸¹ The regions of Catalonia and Barcelona, in particular, have reacted to the recent influx of tourism and have taken certain measures to shape a community some think more ideal than others.⁸² With this said, tourism is still an important aspect of Catalonia.⁸³ The Catalan Tourist Board stated that “tourism generates twelve percent of Catalonia’s GDP and creates jobs for 12.7 percent of residents.”⁸⁴ Additionally, the region has adopted efforts to ensure the growth of sustainable tourism.⁸⁵

Central to this commitment is creating and implementing policies that fulfill client expectations and respond to market trends. In its 2014 Report, the CTB notes, “[T]ourism, as an industry, needs to promote innovation and the ability to adapt to the needs of consumers, reinforce our current tourism offerings, improve the quality of our services and offer newer products.” In combining Catalonia’s “traditional offerings with newer products,” the CTB promotes Catalan tourism experiences via new, online platforms. By initiating sales online and expanding its presence on social networks, the CTB is dedicated to increasing tourism opportunities via “the channels that are most relevant to [its] target audience.”⁸⁶

79. See generally Brianna J. Santolli, Note, *Winning the Battle, Losing the War: European Cities Fight Airbnb*, 49 GEO. WASH. INT’L L. REV. 673 (2017) (offering a European view on Airbnb regulation in tourist areas and showing that the problems rise to a global scale).

80. *Id.* at 684.

81. *Id.*

82. See *id.* at 687 (recognizing Barcelona and the region of Catalonia as a European city and region with heavy tourism leading to issues like STR regulation).

83. See *id.* at 687–88 (alluding to the immense amount of tourism that the region of Catalonia depends on).

84. *Id.* at 687.

85. See *id.* at 687–89 (showing the efforts and regulations enacted in order to deal with STR’s on a local European level).

86. *Id.* at 688 (internal citations omitted).

Notwithstanding the efforts to create a positive and beneficial tourism system in Catalonia, any new change also brings the possibility of “overcrowding and rowdy tourist behavior in what formerly were quiet, quaint neighborhoods.”⁸⁷ Both a blessing and a curse, tourism, unfortunately, brings baggage with it wherever the masses decide to travel.⁸⁸

Barcelona’s residents have become concerned with the detrimental effects of tourism in their city and the surrounding area.⁸⁹ Specifically, Barcelona residents have become concerned with the number of international visitors and “[the] disrespectful, detrimental behaviors,” they bring with them.⁹⁰ One pattern that has spiraled out of this influx of tourists concerns public drunkenness, which residents feel substantially “interferes with their daily lives and ruins Barcelona’s reputation as a family-friendly city with a distinguished history and rich culture.”⁹¹ To curb these effects, both the city council of Barcelona and the Catalan government have attempted to remedy these detriments brought on by tourists.⁹² To curtail overcrowding and discourage inappropriate behavior, the local government placed limitations on tourist accommodations.⁹³ To legally operate in the region, it is necessary for a “touristic dwelling” to have a license, which must be displayed on the property’s exterior.⁹⁴ Despite this requirement, reports show that approximately 78% of Airbnb listings in Barcelona lack a government license, and by default, are operating illegally.⁹⁵

B. *Regulation on a U.S. Level*

Across the pond, the United States has also begun to grapple with STR platforms, and more specifically, Airbnb.⁹⁶ As STR platforms have gained

87. *Id.* at 689.

88. *See id.* (describing the patterns and attributes associated with Airbnb and STR’s, especially in Spain).

89. *See id.* at 689–90 (speaking on the concerns of the local citizenry of Barcelona).

90. *Id.*

91. *Id.* at 689.

92. *See id.* at 691 (portraying efforts taken by the local government to combat and regulate the negative effects some attribute to STRs presence in the Spanish region).

93. *See id.* (clarifying the type of behavior such regulations and limitations are designed to dissuade).

94. *See id.* at 694 (reporting on requirements needed to legally operate an STR in Barcelona legally).

95. *Id.* at 695–96.

96. *See* Nicholas Anania, *The Short-Term Rental Economy in Rural Maine Communities: An Opportunity for Economic Growth Instead of a Target for Regulation*, 71 ME. L. REV. 341, 342 (2019) (reiterating similar European concerns of STR regulation as present in the United States of America).

traction in the United States sharing economy, discussions of whether the companies' positives justifiably outweigh the negatives also associated.⁹⁷ This move towards STRs has been characterized "as a means to 'save money, space, and time; make new friends; and become active citizens once again.'"⁹⁸ With a mantra designed to have people rethink conventional travel, Airbnb has achieved that and much more.⁹⁹ Not only are travelers being molded and influenced by this company, but the fifty states have also been tasked with "rethinking" the regulatory schemes currently at work in each of their own legislatures, cities, and towns.¹⁰⁰ Rethinking these potential changes has proved quite difficult as "Airbnb's rapid growth and irregular structure" has provided a plethora of challenges and obstacles.¹⁰¹ As a response, some states have taken charge and instituted state-wide methodologies to achieve some manner of regulation pertaining to STRs.¹⁰² Just like states are joining these regulatory efforts, smaller municipalities also exercise their powers and ability to regulate.¹⁰³ This section of the Comment will first discuss the positive and negative impacts of Airbnb in the communities of the U.S. as a whole and then look to the present regulation schemes in place in specific states.¹⁰⁴

The positive aspects of Airbnb and STRs can be categorized into three main areas: (1) economic effects to local economies and the financial benefits associated with such effects; (2) influential effect on neighborhoods and local small businesses; and (3) impact on residences and those that call

97. *See id.* (commenting on discussions about the sharing economy and its positive and negative effects).

98. *Id.*

99. *See* Grant Wills, *To Be or Not to Airbnb: Regulation of Short-Term Rentals in South Carolina*, 68 S.C. L. REV. 821, 825 (2018) ("This Airbnb mantra and business model has pressed consumers to rethink conventional travel.").

100. *See id.* at 828 (explaining how the United States has begun to handle regulations across the country).

101. Anania, *supra* note 96, at 348.

102. *See id.* (providing information on the efforts to address STR regulation in the United States); *see also* Macaela J. Bennett, *Is Airbnb Good for Arizona?*, AZCENTRAL (July 28, 2016, 10:07 AM), <https://www.azcentral.com/story/news/politics/legislature/2016/07/27/airbnb-arizona-benefits/86314492> [<https://perma.cc/S3N4-8VA6>] (indicating Arizona as an example of a state which has ceased the ability of its local governments to ban online STR platforms like Airbnb).

103. *See* Anania, *supra* note 96, at 348 (noting municipality involvement in regulating of STRs along with the state legislatures).

104. *See id.* (discussing the positive and negative impact of Airbnb in certain U.S. communities); *see also* Wills, *supra* note 99, at 826–28 (giving examples of positive and negative effects of Airbnb in the U.S.).

them home.¹⁰⁵ Addressing the topics within the first category, the company of Airbnb has conducted its own study regarding the “economic impacts of home sharing in cities around the world.”¹⁰⁶ This study compiled data and information indicating a pattern whereby Airbnb users stay longer in more diverse neighborhoods throughout the cities.¹⁰⁷ Consequently, these users are spending more in these neighborhoods, thus contributing to the particular community’s local businesses and economies.¹⁰⁸ More specifically, travelers using Airbnb characteristically stay 2.1 times longer than typical visitors and spend between 1.8 and 2.1 times more than such visitors.¹⁰⁹ Many opportunities exist due to these numbers, especially for communities suffering from lack of growth due to location or larger, more attractive adjacent cities robbing prospective visitors.¹¹⁰ Airbnb offers a positive impact for communities regularly untraveled by providing “lodging options in areas where traditional options may not exist[.]”¹¹¹

“Live like a local” is a phrase and desire adopted by many travelers using Airbnb when they embark on their next adventure.¹¹² The longing for an opportunity to experience authentic culture drives many Airbnb listings to spring up in areas that do not have a historical prevalence of hotels.¹¹³ With 74% of listings existing away from main hotel areas, Airbnb is bringing a

105. See Anania, *supra* note 96, at 347 (offering specific areas that focusing on the positive aspects of Airbnb); see also Wills, *supra* note 99, at 826 (categorizing positive aspects experienced by U.S. communities where Airbnb is present).

106. *The Economic Impacts of Home Sharing in Cities Around the World*, AIRBNB, INC., <https://www.airbnb.com/economic-impact> [<https://perma.cc/5ALE-BN9G>] [hereinafter *Economic Impacts of Home Sharing*].

107. *Id.*

108. See Wills, *supra* note 99, at 827 (evaluating spending habit data of Airbnb users); see also *id.* (“Airbnb travelers stay longer and spend more in diverse neighborhoods throughout the city.”).

109. See Wills, *supra* note 99, at 827 (listing information of Airbnb users); see also *Economic Impacts of Home Sharing*, *supra* note 106 (discussing spending habits amongst Airbnb users).

110. See Anania, *supra* note 96, at 352 (showing opportunities brought to untraveled cities and towns); see also Stephen R. Miller, *First Principles for Regulating the Sharing Economy*, 53 HARV. J. ON LEGIS. 147, 157–58 (2016) (discussing potential positive impacts of Airbnb in cities and towns untraveled).

111. Anania, *supra* note 96, at 346; Miller, *supra* note 110, at 157–58; see also *Six Ways That Short-Term Vacation Rentals Are Impacting Communities*, HOST COMPLIANCE, <https://hostcompliance.com/how-do-short-term-vacation-rentals-impact-communities> [<https://perma.cc/5628-G2C9>] (“Short-term vacation rentals can bring a positive economic impact to a city or county in several ways.”).

112. Tony Shu, *Airbnb: A Good Neighbor?*, HARV. POL. REV., (Nov. 5, 2017) <https://harvardpolitics.com/covers/airbnb-a-good-neighbor/> [<https://perma.cc/FCN5-93CE>].

113. See *id.* (arguing authentic culture is a driving force for Airbnb users).

wave of “firsts” for tourists in some neighborhoods.¹¹⁴ It is no surprise that for cities and towns struggling to boost local economies, Airbnb may be the answer by bringing visitors to “[shop] in their stores, [eat] in their restaurants, and [drink] in their bars.”¹¹⁵ At the same time, another positive recognized in areas suffering from unemployment is the introduction of “new local businesses that specifically provide services to Airbnb hosts, such as property management, housekeeping, and landscaping.”¹¹⁶

The third category involves the impact Airbnb has on those renting their homes through the online platform. For those choosing to become hosts and participate in home sharing, a possibility of supplementing stagnant incomes and lessening pressures to move become apparent.¹¹⁷ Furthermore, in America’s rural communities, Airbnb hosts have aided in welcoming more visitors to the region, as well as bringing “unprecedented infusions of revenue, without having to invest in permanent infrastructure which corporate hotel chains have been disinclined to build in these areas, anyway.”¹¹⁸ “Rural” is a term defined as “[o]f, relating to, or involving the country or countryside, as opposed to a city or town; characteristic of, suited to, or living in a rustic setting.”¹¹⁹ In rural American communities, the positive effects of Airbnb become especially apparent.¹²⁰ It is in these communities, where the median incomes are relatively lower than those of urbanized areas, the average rural host is earning more than the average urban host.¹²¹

114. *See id.* (noting the location of Airbnb listings generally are in areas away from traditional hotel-type lodging).

115. Anania, *supra* note 96, at 346; Miller, *supra* note 110, at 157–58 (showing opportunities brought to untraveled cities and towns).

116. Anania, *supra* note 96, at 346.

117. *See* AIRBNB INC., BEYOND CITIES: HOW AIRBNB SUPPORTS RURAL REVITALIZATION 4 (2017), https://news.airbnb.com/wp-content/uploads/sites/4/2019/06/Beyond-Cities_Global-Report.pdf [<https://perma.cc/F2ZG-WLJK>] (introducing possibilities of positive impacts on income for Airbnb hosts).

118. *Id.*

119. *Rural*, BLACK’S LAW DICTIONARY (11th ed. 2019).

120. *See* Anania, *supra* note 96, at 347 (“These positive effects are particularly apparent in rural communities.”).

121. *See id.* (showing earning potential for hosts in rural and urban areas); *see also* Lisa Fu, *Airbnb Is Bringing Money to Rural America*, FORTUNE (June 29, 2017), <https://finance.yahoo.com/news/airbnb-bringing-money-rural-america-203451208.html> [<https://perma.cc/MK52-QE9M>] (“In rural areas where median incomes tend to be lower, Airbnb provides an additional source of income for the hosts.”).

Moreover, following the 2008 recession, many rural American communities have struggled with “rebounding” their smaller economies.¹²² Here, “Airbnb can be used as an economic development tool,” aiding the rural populations and allowing them to earn extra income not otherwise previously available.¹²³ In a similarly situated situation, the U.S. aging population makes up for a substantial amount of the rural communities’ residents, with hosts in these areas exceeding fifty years of age.¹²⁴ Hosting on Airbnb may prove to be extremely beneficial to the roughly three out of ten elderly people that do not have any amount of savings put away.¹²⁵ As previously mentioned, millennials have significantly contributed to the growth and popularity of Airbnb by traveling and booking through its online platform.¹²⁶ There seems to be a *symbiotic-type* relationship between young users and older hosts.

IV. TEXAS’S ATTEMPT TO GAIN CLARITY ON THESE ISSUES

Over the past decade, the State of Texas and its law makers have “tried and failed to pass uniform rules for short-term rentals on sites like Airbnb and HomeAway.”¹²⁷ In 2017, a bill was introduced in the state legislature dealing with the regulation of STRs.¹²⁸ Senate Bill 451 (S.B. 451) would effectively forbid municipalities from banning STRs.¹²⁹ Additionally, under this bill, “municipalities would be forbidden from adopting or enforcing a law that regulates the operation of a short-term rental marketplace or imposes a tax or fee on a person operating a STR that is not otherwise

122. See Anania, *supra* note 96, at 347 (“[R]ural economies have rebounded at a much slower pace”); see also Fu, *supra* note 121 (showing the struggles of rural economies).

123. Fu, *supra* note 121.

124. See *id.* (identifying age bracket of Airbnb hosts in rural American communities); see also Greg Greeley, *Ageless Travel: The Growing Popularity of Airbnb for the Over 60s*, AIRBNB INC. (Oct. 1, 2018), <https://news.airbnb.com/ageless-travel-the-growing-popularity-of-airbnb-for-the-over-60s/> [<https://perma.cc/RV5U-J4AW>] (giving data of older users and hosts with Airbnb). See generally Elyssa Kirkham, *1 in 3 Americans Has Saved \$0 for Retirement*, MONEY (Mar. 14, 2016), <http://money.com/money/4258451/retirement-savings-survey/> [<https://perma.cc/7RSQ-LKXK>] (discussing information of aging populations and the retirement funds associated with these groups).

125. See Kirkham, *supra* note 124 (analyzing data concerning elderly Americans’ savings and retirement accounts nationally).

126. See AIRBNB, *supra* note 15, at 2 (providing information of millennial STR users).

127. Andrew Weber, *Texas Lawmakers Tried to Take the Reins from Cities This Session. The Results Were Mixed.*, KUT.ORG (May 30, 2019), <https://www.kut.org/post/texas-lawmakers-tried-take-reins-session-results-were-mixed> [<https://perma.cc/447C-XXV3>].

128. Tex. S.B. 451, 85th Leg., R.S. (2017).

129. See Stumpf, *supra* note 24, at 213 (identifying the goal and aim of the Senate Bill in Texas).

authorized by the current laws of the state.”¹³⁰ With this said, S.B. 451 would allow these municipalities to place a tax on STRs, similar to a hotel tax, so long as applicable local law already authorizes a hotel occupancy tax.¹³¹ The bill also proposed that municipalities apply local regulations including “(1) zoning in accordance with the laws of [the State of Texas]; (2) residential use; (3) occupancy limitations; (4) noise; (5) property maintenance; and (6) nuisance.”¹³² Despite this bill not passing, more recently law makers attempted to once again clarify and organize STR regulation in Texas.

House Bill 3778 (H.B. 3778) was introduced and filed in 2019 “relating to regulation of short-term rental units; authorizing a civil penalty; [and] limiting the amount of a fee.”¹³³ In effect, this bill, along with its companion bill, Senate Bill 1888 (S.B. 1888), “would restrict cities from prohibiting or limiting short-term rentals.”¹³⁴ Additionally, fees would be collected by placing regulations on noise and parking and would be enforced as a way to allow for STRs in the area.¹³⁵ Lastly, it is important to realize that “[t]he bills would not prevent condos, co-ops or homeowners’ associations from restricting short-term rentals.”¹³⁶ Texans for Property and Rental Rights openly supported both S.B. 1888 and H.B. 3778, stating “Texans Deserve a Policy That Protects Property Rights and Secures Local Control.”¹³⁷ This group’s stance suggests the need for balance between local control and the preservation of the citizenry’s private property rights.¹³⁸

Here, this balance is necessary to create an efficient and effective model for the establishment of STRs in the communities of Texas. By passing the

130. *Id.*

131. *See id.* (explaining the scheme designed by the Bill that deals with placement of tax by local municipalities).

132. Tex. S.B. 451, 85th Leg., R.S. (2017).

133. Tex. H.B. 3778, 86th Leg., R.S. (2019).

134. *Bills Propose to Shut Down Regulations on Short-Term Rental Companies Such as Airbnb*, REFORM AUSTIN (Apr. 18, 2019) <https://www.reformaustin.org/2019/04/18/bills-propose-to-shut-down-regulations-on-short-term-rental-companies-such-as-airbnb/> [<https://perma.cc/L8A2-K59J>] [hereinafter *Bills Propose to Shut Down Regulations*].

135. *See id.* (reporting the purpose behind the proposed Texas House and Senate bills).

136. *Id.*

137. *Texans Deserve a Policy that Protects Property Rights and Secures Local Control*, TEXANS FOR PROP. + RENTAL RTS., <https://texansforpropertyandrentalrights.com/open-letter/> [<https://perma.cc/M55P-MSWJ>] [hereinafter *Texans Deserve a Policy*].

138. *See id.* (“We can and must balance local control while preserving the private property rights of our citizens.”).

bills referenced above, the state's economy will undoubtedly encounter a positive reaction through contributions in areas such as tax revenue, the job market, local business spending, and alternative lodging options.¹³⁹ These areas are all heavily connected to both the state and local levels and achievable through both S.B. 1888 and H.B. 3778. However, during the 86th Legislative Session, both bills which were introduced on March 7, 2019 only reached 25% of progression and ultimately died in committee.¹⁴⁰ Although the legislature did not come to an agreement and pass either bill, the fact that these bills were introduced shows where the next legislative session may direct the issue.

In 2018, the Texas Supreme Court decided a case which may inform the direction of where Texas is heading regarding STRs and the lack of current legislation on the matter.¹⁴¹ In *Tarr v. Timberwood Park Owners Association*,¹⁴² the issue to be decided was “whether short-term vacation rentals violate certain restrictive covenants that limit tracts to residential purposes and single-family residences.”¹⁴³ The lower court held that “a homeowner violated the restrictions by operating a *business* on a residential tract and engaging in multi-family, short-term rentals.”¹⁴⁴ However, the Texas Supreme Court held “the ‘single family’ restriction applied only to the structure, rather than the actual use or occupancy of the home.”¹⁴⁵ In sum, the court reasoned that “so long as the home was being used as a residence, the fact that short-term renters occupies the residence for brief periods of time was irrelevant.”¹⁴⁶

As a result of this ruling by the Texas Supreme Court, those living in communities throughout the state may have a better chance of justly using their properties as STR operations even with such properties being zoned

139. *See id.* (addressing the positive repercussions that would occur by passing the bills).

140. *Texas Senate Bill 1888 (Adjourned Sine Die)*, LEGISCAN, <https://legiscan.com/TX/bill/SB1888/2019> [<https://perma.cc/KX75-67DP>] (“Relating to regulation of short-term rental units by municipalities; authorizing a civil penalty.”); *see Texas House Bill 3773 (Adjourned Sine Die)*, LEGISCAN, <https://legiscan.com/TX/bill/HB3773/2019> [<https://perma.cc/EW2V-JZ58>] (concerning the same bill but filed in the House).

141. *See* Brandon Morris, *Short-Term Rentals in Texas—Can Cities Regulate Airbnb?*, RANDLE L. OFF. (Oct. 11, 2019), <http://www.jgradyrandlepc.com/local-governmental-entities/short-term-rentals-regulate/> [<https://perma.cc/DKP7-P7BF>] (foreshadowing Texas regulations on short-term rentals).

142. *Tarr v. Timberwood Park Owners Ass’n, Inc.*, 556 S.W.3d 274 (Tex. 2018).

143. *Tarr v. Timberwood Park Owners Ass’n, Inc.*, 556 S.W.3d 274, 276 (Tex. 2018).

144. *Id.* (emphasis added).

145. Morris, *supra* note 141.

146. *Id.*

as “residential.”¹⁴⁷ However, this case does not automatically place all property owners using their properties as an STR into the category of “residential” for purposes of satisfying the Home Owner’s Association (HOA) deed restrictions and community covenants.¹⁴⁸ Some communities may effectively bar this type of designation by the use “of well-defined statutes, or HOA deed restrictions.”¹⁴⁹

A. *Capital City of Texas Regulations on STRs*

With “one of the oldest and most obstructive short-term rental laws in the state,” Austin, Texas has dealt with the problem of STR regulations recently.¹⁵⁰ In 2015, Austin City Council met and approved “a temporary moratorium on issuing new licenses for Type 2, non-owner-occupied short-term rentals.”¹⁵¹ The Council then met again and made permanent the moratorium on Type 2 licenses in residential areas with a 9–2 vote.¹⁵² Similar to the concerns of Barcelonans, some Austinites were concerned about irresponsible property ownership and management leading to vacation-type “party homes.” However, according to data collected by the City of Austin, “less than [ten] percent of all complaints were actually related to noise or occupancy issues,” for licensed STRs operating within the city limits.¹⁵³ The Austin regulation effectively phased out all full-time STRs and allowed only those listings to operate “where the owner lives onsite and rents only partially or occasionally,” and has the goal of completely phasing them out by 2022.¹⁵⁴ Furthermore, this city ordinance imposes the following: new requirements for advertisements, occupancy limits, new requirements on those seeking to request a STR license, and a process for

147. *See id.* (explaining the results and consequences of the court’s ruling).

148. *Id.*

149. *Id.*

150. *Bills Propose to Shut Down Regulations*, *supra* note 134.

151. Robert Henneke, *Austin’s Unconstitutional Short-Term Rental Ordinance*, TEX. PUB. POLY FOUND. (Sept. 24, 2018), <https://www.texaspolicy.com/austins-unconstitutional-short-term-rental-ordinance-2/> [<https://perma.cc/2UKP-NX47>].

152. *See id.* (reporting approval of STR license moratorium in Austin, Texas by City Council).

153. *Id.*

154. Elizabeth Findell, *Study Finds 75% of Austin Short-Term Rentals are Illegal*, STATESMAN (July 23, 2019, 8:29 PM), <https://www.statesman.com/news/20190723/study-finds-75-of-austin-short-term-rentals-are-illegal> [<https://perma.cc/AW4U-9N86>]; *see* Weber, *supra* note 127 (expressing the goal of Austin, Texas’s 2015 STR regulation).

denying, suspending, or revoking a license, as well as an appeals process.¹⁵⁵ Intending to prohibit all Type-2 STRs in residential areas, the justification given by the City Council stems from the goals to “better manage vacation rentals and to better respond to inappropriate behaviors at short-term rental properties.”¹⁵⁶ As part of the city’s commitment to this ordinance, the Austin Code Department has implemented a reporting system via its mobile app and through its call system.¹⁵⁷ Thus, Austin residents are encouraged to use the Austin 3-1-1 mobile app to report STR problems and concerns.¹⁵⁸ As a result of this reporting system, those wishing to list their property on Airbnb without obtaining and owning an operating license should exercise caution, as serious penalties exist for those caught.¹⁵⁹ With this regulatory ordinance in place and the operation of the 3-1-1 reporting system, a recent study conducted in 2019 found that about “[t]hree-quarters of Austin’s short-term rentals appear to be operating illegally.”¹⁶⁰ According to the study, approximately 2,500 properties in Austin, which are advertised as STRs, operate with a proper license from the City of Austin.¹⁶¹ However, this number is small compared to the over 7,500 listings operating without these licenses which are, by default, breaking the law.¹⁶²

Recently, “[a] state appeals court has declared some elements of Austin’s rules governing short-term rentals unconstitutional.”¹⁶³ The court held

155. See *Short Term Rental News Release and FAQ*, AUSTINTEXAS.GOV: AUSTIN CODE DEPT (Mar. 17, 2016), <http://austintexas.gov/article/short-term-rental-news-release-and-faq> [<https://perma.cc/8MLQ-MYWA>] (setting forth the impositions made by the city ordinance).

156. *Id.*

157. See *id.* (explaining efforts taken by the city government to make reporting STR problems easier for residents of Austin, Texas); see also *Airbnb Legal Issues and Statistics: Austin*, HOSTY, <https://www.hostyapp.com/airbnb-statistics-laws/austin/> [<https://perma.cc/2GXQ-6A8Z>] (commenting on the residents’ ability to anonymously report to the city any violations of the ordinance).

158. See *Short Term Rental News Release and FAQ*, *supra* note 154 (citing Austin’s technological reporting system); see also *Airbnb Legal Issues and Statistics: Austin*, *supra* note 156 (noting Austin residents’ opportunity to report those who violate the ordinance).

159. See *Short Term Rental News Release and FAQ*, *supra* note 154 (urging caution for those who violate the ordinance); see also *Airbnb Legal Issues and Statistics: Austin*, *supra* note 156 (outlining the city’s expectations for operating STRs).

160. Findell, *supra* note 153.

161. See *id.* (evaluating amount of STR properties operating legally and illegally in Austin, Texas).

162. See *id.* (noting illegality of operating without a license).

163. Matt Largey & Andrew Weber, *State Appeals Court Strikes Down Austin Rules on Short-Term Rentals*, KUT.ORG (Nov. 27, 2019), <https://www.kut.org/post/state-appeals-court-strikes-down-austin-rules-short-term-rentals> [<https://perma.cc/5JY6-LQZD>].

that “a ban on type 2 STRs would not prevent any of the concerns the city cited,” as many of those concerns were already illegal.¹⁶⁴ Additionally the court opined that “the rules on occupancy and party times ‘infringe on Texans’ fundamental right to assemble because it limits peaceable assembly on private property.’”¹⁶⁵ Overall, this recent court decision expounds on the immense need for clarity on the municipal regulations of STRs in Texas.

B. *Using San Antonio as a Guide: A Larger South Texas City's Approach*

Located in South Texas region, San Antonio makes up one of the largest and fastest growing populations in the State.¹⁶⁶ The City of San Antonio is situated approximately 145 miles from the U.S.–Mexico border, and approximately 145 miles from the South Texas coastal city of Corpus Christi.¹⁶⁷ “A city rich in history and booming with modern attractions, San Antonio invites visitors” from across the border and around the nation to explore all that it has to offer.¹⁶⁸ Consequently, the metropolitan area of San Antonio received over 37 million visitors in 2017, an impressive increase of 7.3 million visitors since 2015.¹⁶⁹ Within these numbers and pertinent to this Comment, “[a] total of 23 million were overnight visitors.”¹⁷⁰

164. *Id.*

165. *Id.*

166. *See Texas Cities by Population*, TEX. DEMOGRAPHICS, https://www.texas-demographics.com/cities_by_population [<https://perma.cc/UCK7-RUVB>] (listing populations of cities in Texas).

167. *San Antonio, Texas to Corpus Christi, TX*, Google Maps, <https://www.google.com/maps/> (click on link and type “directions from San Antonio to Corpus Christi” in the search bar) [<https://perma.cc/NVN4-93YA>]; *San Antonio, Texas to Piedras Negras, Coahuila, Mexico*, GOOGLE MAPS, <https://www.google.com/maps/> (click on link and type “directions from San Antonio to Piedras Negras, Coahuila, Mexico” in the search bar) [<https://perma.cc/JNV4-YGNQ>].

168. *Things to Do in San Antonio*, VISIT SAN ANTONIO, <https://www.visitsanantonio.com/things-to-do/> [<https://perma.cc/3HUD-MWVD>].

169. *See* W. Scott Bailey, *Economic Impact from Texas Tourism Hits \$164B*, SAN ANTONIO BUS. J. (May 1, 2019, 2:34 PM), <https://www.bizjournals.com/sanantonio/news/2019/05/01/economic-impact-from-texas-tourism-hits-164b.html> [<https://perma.cc/KCF2-6DQH>] (reporting numbers of tourists visiting the metropolitan area of San Antonio, Texas); Shari Biediger, *Tourism Industry Delivered \$15B Impact to San Antonio in 2017*, RIVARD REP. (Nov. 30, 2018), <https://therivardreport.com/tourism-industry-delivered-15b-impact-to-san-antonio-in-2017/#:~:targetText=Of%20the%2037%20million%20annual,23%20million%20were%20overnight%20visitors> [<https://perma.cc/E7NZ-4EWE>] (describing the tourism industry in San Antonio, Texas).

170. Biediger, *supra* note 169.

The City of San Antonio City Council approved an ordinance affecting short-term rentals within the city limits.¹⁷¹ Under this ordinance, San Antonio requires all short-term rental properties to be permitted.¹⁷² Here, the ordinance defines a STR as the following, “a residential dwelling unit, apartment, condominium or accessory dwelling where sleeping areas are rented to overnight guests for a period of less than 30 consecutive days (but not less than 12 hours).”¹⁷³ Additionally, San Antonio recognizes two different types of STR’s.¹⁷⁴ A Type 1 STR, for purposes of the San Antonio ordinance, is a property where “the owner or operator resides on the property and it is their primary residence.”¹⁷⁵ A Type 2 STR, on the other hand, is a property where “the property is not occupied by either the owner or operator” as their primary residence.¹⁷⁶

Density limitations are uniquely used in this San Antonio ordinance to regulate the amount of STRs in certain areas.¹⁷⁷ A density limitation creates a way for the city to control the number of STRs in certain neighborhoods and more specifically, on particular streets. Type 2 STRs are the only properties that require a limitation on density.¹⁷⁸ These properties are “allowed by right, up to 12.5% of the units on a block face.”¹⁷⁹ A “block face” is defined as “[t]he properties abutting one (1) side of a street and lying between the two (2) nearest intersecting or intercepting streets, or nearest intersecting or intercepting street and/or railroad right-of-way, unsubdivided land, water course or city boundary.”¹⁸⁰ In its application to a multi-family building, the ordinance requires that “no more than 12.5% of the total number of units [may] be a Type 2 STR by right.”¹⁸¹ For example, “San Antonio rules allow non-owner-occupied properties, but placed a

171. *See Short Term Rentals Ordinance Fact Sheet*, CITY OF SAN ANTONIO (2018), <https://docs.online.sanantonio.gov/DSDUuploads/STRFactSheet.pdf> [<https://perma.cc/52SZ-VUTZ>] (offering information about the approval and passage of STR regulations in San Antonio).

172. *Id.*; *San Antonio, TX*, AIRBNB, <https://www.airbnb.com/help/article/2517/san-antonio-tx> [<https://perma.cc/UC7F-VFLD>] (requiring those using properties to as STRs to hold permits).

173. *Short Term Rentals Ordinance Fact Sheet*, *supra* note 171.

174. *Id.*

175. *Id.*

176. *Id.*

177. *See id.* (explaining density limitations on some STR properties); *San Antonio, TX*, *supra* note 172 (construing important information regarding Airbnb in San Antonio, Texas).

178. *Short Term Rentals Ordinance Fact Sheet*, *supra* note 171; *San Antonio, TX*, *supra* note 172.

179. *See* sources cited *supra* note 178.

180. SAN ANTONIO, TEX., UNIFIED DEVELOPMENT CODE ch. 35, § 35-A101 (2018).

181. *See* sources cited *supra* note 178.

proportional cap on how many can operate in areas zoned as residential—no more than one on a 10-home city block.”¹⁸²

Though there is regulation of STRs, San Antonio seems to have implemented a pathway to potentially acquire an exception to the block-face restriction as well as an appeals process for those who are denied a STR permit.¹⁸³ It may be useful to think of these measures as a certain type of “pressure relief valve” giving citizens and prospective STR permit holders some options.¹⁸⁴ In its application, a special exception may exist in situations where “the 12.5% density limitation is met or exceeded.”¹⁸⁵ For those property owners wishing to “establish and operate a short term rental (Type 2) which exceeds the density limitations,” previously described, they must obtain approval from the Board of Adjustment.¹⁸⁶ Another “relief valve” implemented by the City includes an appeals process for those denied a STR by the Director. The Director “is authorized to suspend or revoke a short-term rental permit.”¹⁸⁷ In an instance where the Director denies the issuance or renewal of a STR permit, “the action is final unless the permit holder files a written appeal within ten (10) business days to the Director, or his/her designee.”¹⁸⁸

If after these steps an owner without a permit chooses to operate their property as an STR, consequences will inevitably follow. Here, each day a violation of the City’s ordinance occurs may be considered a separate offense.¹⁸⁹ Such violations may arise when “a unit is occupied in violation of this [ordinance] . . . and, upon conviction, shall be subject to a minimum fine of . . . \$200.00 to a maximum fine of . . . \$500.00 per violation, per

182. Weber, *supra* note 127.

183. See SAN ANTONIO, TEX., UNIFIED DEVELOPMENT CODE ch. 35, art. III, § 35-374.01 (2018) (explaining a type of appeals process for San Antonio STR permits); see also SAN ANTONIO, TEX., LICENSES AND BUSINESS REGULATIONS ch. 16, art. XXII, div. I, § 16-1112 (2018) (defining the appeals process).

184. Interview with Thomas Filopoulos, Assistant City Att’y, Regul. Div. of the San Antonio City Att’y’s Off., in San Antonio, Tex. (Sep. 12, 2019).

185. *Short Term Rentals Ordinance Fact Sheet*, *supra* note 169; *San Antonio, TX*, *supra* note 172.

186. SAN ANTONIO, TEX., UNIFIED DEVELOPMENT CODE ch. 35, art. III, § 35-374.01 (2018).

187. SAN ANTONIO, TEX., LICENSES AND BUSINESS REGULATIONS ch. 16, art. XXII, div. I, § 16-1111 (2018).

188. *Id.* § 16-1112.

189. See *Short Term Rentals Ordinance Fact Sheet*, *supra* note 171 (listing consequences incurred by those who violate this ordinance); SAN ANTONIO, TEX., LICENSES AND BUSINESS REGULATIONS ch. 16, art. XXII, div. I, § 16-1110 (2018) (outlining what happens to those who violate the ordinance).

day.”¹⁹⁰ Additionally, the City of San Antonio has included an *inspection* provision in order to ensure and maintain compliance with the STR ordinance.¹⁹¹ These inspections are triggered and carried out through the city’s ability to “perform inspections when a violation is reported or suspected in accordance with established code enforcement procedures.”¹⁹² As part of this provision, every STR permit holder and operator is required to provide the city with an emergency contact number available for calls twenty-four hours a day.¹⁹³ If law enforcement is called to the property, the officer will notify the designated agent by calling the phone number provided by the STR permit holder.¹⁹⁴

Stemming from the City’s effort to ensure compliance with its STR ordinance are safety requirements implemented to ensure the safety of guests.¹⁹⁵ Among these requirements, the City has mandated “[a] maximum of two adult occupants per sleeping area,” and that “[e]very sleeping area must have primary and secondary entrances and exits (for example, a door and a working window).”¹⁹⁶ The City also requires that a functioning fire extinguisher “be mounted within 75 feet of every portion of the short-term rental,” and “[w]orking smoke and carbon monoxide detectors.”¹⁹⁷ These safety measures may seem simple, yet they do well to create a uniform standard of safety for the STRs within the city limits.

As defined by the City of San Antonio, “[a] ‘hotel’ is any building in which members of the public obtain sleeping accommodations for consideration.”¹⁹⁸ It follows that “the term includes, but is not limited to a: hotel, motel, short term rental, and bed and breakfast.”¹⁹⁹ Those who own or operate an STR property are required to pay a Hotel Occupancy Tax (HOT), because the City considers them to be a hotel and thereby subject

190. SAN ANTONIO, TEX., LICENSES AND BUSINESS REGULATIONS ch. 16, art. XXII, div. I, § 16-1110(g) (2018).

191. *See id.* § 16-1109(a) (distinguishing an inspection provision of the ordinance).

192. *Id.*

193. *See id.* § 16-1110(b) (requiring STR permit holders to provide an emergency contact number to be kept on file with the City and used by law enforcement when needed).

194. *See id.* (stressing the implementation of a law enforcement notification).

195. *See San Antonio, TX, supra* note 172 (expressing safety as one of the efforts taken by the city in drafting this ordinance).

196. *Id.*

197. *Id.*

198. *Hotel Occupancy Tax*, CITY OF SAN ANTONIO, <https://www.sanantonio.gov/Finance/tax/licensesfees/hoteltax#264841231-short-term-rentals—hotel-occupancy-tax> [https://perma.cc/C5BX-KWDF].

199. *Id.* (capitalization altered).

to the applicable occupancy tax.²⁰⁰ As part of Airbnb's policy, the company "collects the state occupancy tax on behalf of its short-term rental hosts, but not county or city taxes."²⁰¹ Under Airbnb's policy, STR property owners are responsible for collecting and paying their HOT to the City, a practice consistent among other STR online platforms such as HomeAway and VRBO.²⁰² To aid in efficiency, San Antonio has created an online portal, allowing STR owners to "[s]et up an account with the City's Finance Department [in order] to pay the Hotel Occupancy Tax."²⁰³

In conclusion, it appears the City of San Antonio has created a well thought-out ordinance for the regulation of STRs within its limits. However, such an ordinance may also prove to be unconstitutional due to San Antonio dividing and defining STRs into "types," in a similar manner to Austin, Texas.²⁰⁴

C. *Corpus Christi, Currently*

"Experience sun, surf, sand and more in Corpus Christi, Texas!"²⁰⁵ Corpus Christi is one of Texas's major cities situated along the Coastal Bend region of the state.²⁰⁶ With an estimated population of 316,381, Corpus Christi earned the spot of eighth largest city in Texas, "cover[ing] 452.2 square miles, of which 124.3 are land and 327.9 are water."²⁰⁷ With approximately 8 million people visiting the Corpus Christi region annually, "[t]ourism generates an annual economic impact of \$1 billion."²⁰⁸

Discussions concerning the presence of short-term rentals in Corpus Christi have recently become an important topic for the City Council and

200. *Id.* (emphasizing STRs are required to pay taxes to the City).

201. Jennifer Sokolowsky, *San Antonio Passes New Short-Term Rental Law*, AVALARA (Nov. 6, 2018), <https://www.avalara.com/mylodgetax/en/blog/2018/11/san-antonio-passes-new-short-term-rental-law.html> [<https://perma.cc/PGK5-J54U>].

202. *See id.* (showing the responsibilities of STR property owners to collect taxes).

203. *Short Term Rentals Ordinance Fact Sheet*, *supra* note 171.

204. *See* Paul Flahive, *New Group Enters Short-Term Rental Debate; San Antonio Law May Be Overwritten*, KERA NEWS (Mar. 19, 2019, 10:29 AM), <https://www.keranews.org/post/new-group-enters-short-term-rental-debate-san-antonio-law-may-be-overwritten> [<https://perma.cc/4QGU-GRNP>] (suggesting that San Antonio's STR regulations may be overwritten in the future).

205. *Explore Corpus Christi*, VISIT CORPUS CHRISTI, <https://www.visitcorpuschristitx.org/explore/> [<https://perma.cc/CX27-DGSK>].

206. *See id.* (detailing Corpus Christi's coastal amenities).

207. *Fun Facts*, VISIT CORPUS CHRISTI, <https://www.visitcorpuschristitx.org/about/fun-facts/> [<https://perma.cc/79WY-E8HR>].

208. *Id.*

its concerned citizens.²⁰⁹ This concern is appropriate, given “[n]early 84,000 guests stayed in Airbnb rentals in the Coastal Bend last year with Nueces County pulling in the most at 72,000 people.”²¹⁰

The City of Corpus Christi is now one of several cities in the State of Texas to enter into an agreement concerning the collection of occupancy taxes with Airbnb.²¹¹ Online STR platforms are currently approaching Texas cities to curb any regulations which might limit the presence of their companies’ rentals as well as the number of properties which are allowed to operate as STRs.²¹² As part of this agreement, cities agree not to regulate STRs, regardless of which online platform approaches the city, and in turn, the platform, such as Airbnb, will collect and remit money to the city.²¹³ These agreements have begun to take place as a result of the State’s agreement with Airbnb to allow the company to collect and pay the “[S]tate’s portion of hotel taxes.”²¹⁴ Consequently, “In its first year of the agreement, Airbnb delivered \$15.3 million in tax revenue to the state, almost double the \$8 million originally projected.”²¹⁵ Justifiably, cities would prefer to participate in the collection of these taxes in some form or fashion.²¹⁶ Realizing this, companies like Airbnb seek “to collaborate with cities on potential Airbnb taxing and occupancy regulations,” all made possible due to the Texas Legislature’s silence on the issues.²¹⁷

As previously mentioned, the City of Corpus Christi is now the third municipality in Texas to enter into an agreement with Airbnb, following the

209. See Julie Garcia, *Corpus Christi Area Airbnb Hosts Made \$11.5 Million in Supplemental Income Last Year*, CALLER TIMES (Jan. 10, 2019, 2:02 PM), <https://www.caller.com/story/money/business/2019/01/10/corpus-christi-area-airbnb-hosts-made-11-5-million-income-2018/2535499002/> [<https://perma.cc/Y5AL-D2FZ>] (recounting a recent Corpus Christi City Council decision to deny a home rezoning request related to Airbnb).

210. *Id.*

211. See *Occupancy Tax Collection and Remittance by Airbnb in Texas*, AIRBNB, INC., <https://www.airbnb.com/help/article/2331/occupancy-tax-collection-and-remittance-by-airbnb-in-texas> [<https://perma.cc/5LUM-7RUG>] (showing cities in Texas that have entered into remittance agreements with Airbnb).

212. Sherelle Black, *Regulations for Airbnbs and Other Short-Term Rentals May Change Pending Legislation*, CMTY. IMPACT (May 7, 2019, 12:50 PM), <https://communityimpact.com/dallas-fort-worth/lewisville-flower-mound-highland-village/city-county/2019/05/07/regulations-for-airbnbs-and-other-short-term-rentals-may-change-pending-legislation/> [<https://perma.cc/7DYM-PDGZ>] (discussing Airbnb’s attempt to collaborate with Texas cities).

213. See *id.* (reviewing agreements between Airbnb and Texas cities).

214. *Id.*

215. *Id.*

216. See *id.* (presuming cities’ preference to participate in the collection of taxes).

217. *Id.*

same line of action as both Houston, Texas and Plano, Texas.²¹⁸ All three cities' agreements include the same goal of collecting "occupancy taxes from guests who book a place to stay through the home-sharing platform," which will then be remitted by the platform, such as Airbnb, to the city.²¹⁹

Specifically and pertinent to this Comment, the particular agreement between the City of Corpus Christi and Airbnb, Inc. was entered into on October 25th, 2019.²²⁰ The agreement is titled, *Voluntary Collection Agreement for City of Corpus Christi, Texas Hotel Occupancy Tax*, and states "City and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of applicable transient occupancy taxes and applicable sales taxes . . . imposed under applicable City of Corpus Christi law."²²¹ Further, effective on November 1, 2019, "Airbnb agrees to commence collecting and remitting [t]axes on behalf of certain Hosts pursuant to the terms of this Agreement."²²² It is important to note while the City of Corpus Christi voluntarily entered into this agreement with Airbnb, the City still reserves the power and the right to begin regulating short-term rentals within its jurisdiction.²²³ If the City ultimately decides to regulate short-term rentals in a manner contrary to this agreement, the HOT tax agreement with Airbnb, Inc., no longer stands.²²⁴

As part of this agreement, the City is estimated to receive an additional "\$720,000 annually in HOT taxes from short-term rentals, according to city documents."²²⁵ However, despite the recent agreement, the City realizes

218. See Charles Scudder, *Plano, Airbnb Reach Agreement that Takes a Hassle from Hosts and a Hotel Tax Directly from Guests*, DALLAS NEWS (Apr. 19, 2019, 6:00 AM), <https://www.dallasnews.com/news/2019/04/19/plano-airbnb-reach-agreement-that-takes-a-hassle-from-hosts-and-a-hotel-tax-directly-from-guests/> [<https://perma.cc/D932-K2F5>] (showing an agreement entered into by Plano, Texas and Airbnb.com); see also Nancy Sarnoff, *Airbnb to Collect City Hotel Taxes from Rental Guests*, HOUSTON CHRON. (July 2, 2019, 4:00 AM), <https://www.houstonchronicle.com/business/real-estate/article/Airbnb-to-collect-city-hotel-taxes-from-rental-14064418.php> [<https://perma.cc/B4WA-6X7G>] (addressing an agreement entered into by Houston, Texas and Airbnb.com); Garcia, *supra* note 208 (explaining an agreement entered into by Corpus Christi, Texas and Airbnb).

219. Sarnoff, *supra* note 218.

220. See Corpus Christi, Tex., *Voluntary Collection Agreement for City of Corpus Christi, Texas Hotel Occupancy Tax* (Oct. 25, 2019) (describing the Agreement).

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.* (summarizing the consequence of Corpus Christi beginning to regulate STRs).

225. Kathryn Cargo, *City of Corpus Christi to Start Collecting Hotel Occupancy Taxes from Airbnb, HomeAway.com*, CALLER TIMES (Oct. 15, 2019, 2:04 PM), <https://www.caller.com/story/news/local/2019/10/15/city-corpus-christi-now-collect-taxes-airbnb-rentals/3985806002/> [<https://perma.cc/2FMV-79P4>].

and estimates “it would have collected about \$1.6 million in HOT taxes from July 2017 to July 2019” had there been such an agreement in place at that time.²²⁶ Regardless, Corpus Christi has become one of the few frontrunners among Texas’s municipalities for deciding to enter into such an agreement, for making a decision not to regulate, and to collect money through remittance of HOT taxes.²²⁷

D. *Zoning in Corpus Christi*

Presently, short-term rentals are neither mentioned nor listed as a permitted use in properties zoned for residential occupancy within Corpus Christi city limits.²²⁸ However, the City does offer a pathway for short-term rentals to be approved by the city and to operate accordingly without any violation or breach of the Agreement previously discussed.²²⁹ This possibility is obtainable through the City’s allowance of a “planned unit development” (PUD) which can be defined as

[a]n area of land controlled by a landowner, or landowners acting in concert, to be developed as a single unit, in one continuous, ascertainable phase or in a programmed series of phases, the plan for which does not correspond directly to the regulations in any one zoning district established by this UDC.²³⁰

Those wishing to create a PUD within the city limits must submit a development plan which the city reviews for approval.²³¹

Here, the City seems to be able to effectively regulate a portion of short-term rentals, such as Airbnb, in the small and specific areas of their zoning

226. *Id.*

227. *See* Scudder, *supra* note 218 (showing Plano, Texas also entered into an agreement with Airbnb); *see also* Sarnoff, *supra* note 218 (referring to the agreement between Houston, Texas and Airbnb); Garcia, *supra* note 209 (discussing the agreement between Corpus Christi, Texas and Airbnb).

228. *See* Corpus Christi, Tex., Unified Dev. Code § 4.3 (2017), <http://online.encodeplus.com/regs/corpuschristi-tx/doc-viewer.aspx#secid-589> [<https://perma.cc/5UK3-ALW5>] (showing lack of terminology in the Unified Development Code).

229. *See id.* at § 6.2, <http://online.encodeplus.com/regs/corpuschristi-tx/doc-viewer.aspx#secid-802> [<https://perma.cc/3EWV-9JF8>] (including an acceptable pathway for the City to regulate STRs).

230. *Id.* at § 1.11.3, <http://online.encodeplus.com/regs/corpuschristi-tx/doc-viewer.aspx#secid-214> [<https://perma.cc/KY8K-BZZD>].

231. *See id.* at § 6.2 (2017), <http://online.encodeplus.com/regs/corpuschristi-tx/doc-viewer.aspx#secid-807> [<https://perma.cc/7UV4-5W8P>] (establishing an approval requirement for PUDs).

laws involving PUDs.²³² Importantly, these niche areas of STR regulation within PUDs, coupled with the City's reservation of power to regulate in the Agreement with Airbnb, does well to create a thoughtful yet strategic stance on regulations. The City of Corpus Christi, though leading the State of Texas in entering in such an agreement in the first place, has assumed a certain "holding position" that will push them through the next months and into the next legislative session.

Both citizens of the heavily tourist traversed city of Barcelona, Spain and citizens of the slower paced yet consistent tourist city of Corpus Christi, Texas have justifiable concerns regarding short-term rentals.

As previously discussed, the Spanish citizens of Barcelona have seen an influx of public drunkenness, which "residents feel . . . [substantially] interferes with their daily lives and ruins Barcelona's reputation as a family-friendly city with a distinguished history and rich culture."²³³ This concern has been voiced and dealt with within the Coastal Bend, and can be seen in a local beach town's ordinance.²³⁴ The City of Port Aransas, a nearby beach town, deals with yearly floods of "spring breakers" looking to spend their holiday on its beaches.²³⁵ In response to this and to address concerns similar to those of Barcelona, Port Aransas enacted temporary ordinances which effectively ban individuals from consuming alcohol between certain times.²³⁶ The concerns of STRs coupled with high tourism rates have created uncertainty among many municipalities and local governments. Consequently, municipalities must be certain to weigh the positive and negative externalities associated with STRs and the presence they have in the jurisdiction. Because of the lack of clarity involving the Texas Legislature's stance on the regulation of STRs, many municipalities are left with the following two options: (1) regulate STRs' use of cities' own time and resources or (2) decide to enter into the agreement previously discussed.

232. *See id.* at § 6.2.5 (2017), <http://online.encodeplus.com/regs/corpuschristi-tx/doc-viewer.aspx#secid-807> [<https://perma.cc/7UV4-5W8P>] (establishing an approval requirement for PUDs) (discussing Corpus Christi's zoning laws related to planned unit development).

233. Santolli, *supra* note 79, at 689.

234. Natalia E. Contreras & Meagan Falcon, *What You Should Know About the Port Aransas Beach Drinking Curfew for Spring Break*, CALLER TIMES (Mar. 7, 2019, 4:50 PM), <https://www.caller.com/story/news/local/2019/03/07/port-aransas-drinking-curfew-spring-break-2019/3097312002/> [<https://perma.cc/2BXH-Y35C>] (showcasing regulatory power as a result of tourism).

235. *Id.* (describing an influx of tourists to the area because of spring break).

236. *See id.* (providing an ordinance which effectively banned drinking and limited excessive intoxication).

E. *Moving Forward, and What is to Come*

As communities large and small begin to restructure, rethink, and enter into agreements with STR online platforms, it is necessary to plan for the present while looking forward to the future. In Texas, “the Texas Legislature convenes for a 140-day regular legislative session,” every two years.²³⁷ As previously mentioned, during the 86th Legislative Session, both bills which were introduced on March 7, 2019 only reached “25% [of] progression [and ultimately] died in committee.”²³⁸ Despite not passing, this comes as little surprise because “[f]or the better part of a decade, Texas lawmakers have tried and failed to pass uniform rules for short-term rentals on sites like Airbnb and HomeAway.”²³⁹ Because of this pattern, it is likely, if not guaranteed, that other bills aimed at prohibiting “cities from banning any type of property from renting” through STR-type companies and regimes will appear in the next Texas legislative session.²⁴⁰ Even more likely, with cities throughout the state entering into agreements to not regulate online platform’s STR presence within their jurisdictions, the future bills might have a better chance of passing. Additionally, with more groups such as coalitions and industry groups backing these bills, the likelihood of future approval is heightened.²⁴¹

F. *Now, More Than Ever Short-Term Rentals are Necessary in Texas’s Coastal Communities*

Texas’s coastal region has begun to change in both an infrastructure and economics.²⁴² Corpus Christi and the surrounding Coastal Bend area have

237. *Texas Legislative Sessions*, TCDD, <https://tcdd.texas.gov/public-policy/texas-legislature/> [<https://perma.cc/6R6U-T2QG>].

238. *Texas Senate Bill 1888 (Adjourned Sine Die)*, LEGISCAN, <https://legiscan.com/TX/bill/SB1888/2019> [<https://perma.cc/KX75-67DP>]; *Texas House Bill 3773 (Adjourned Sine Die)*, LEGISCAN, <https://legiscan.com/TX/bill/HB3773/2019> [<https://perma.cc/EW2V-JZ58>].

239. Weber, *supra* note 127.

240. *Id.* (emphasis omitted).

241. *See id.* (addressing the prevalence of bills effecting STR’s introduced in past Texas legislative sessions); *Texans Deserve a Policy*, *supra* note 137 (discussing the type of bills that have a likelihood of passing in the future).

242. *See* Joe Pappalardo, *America’s New Energy Coast*, POPULAR MECHS. (Mar. 19, 2019), <https://www.popularmechanics.com/science/energy/a26815024/texas-energy-coast-Ing-natural-gas/> [<https://perma.cc/8N5G-FK7J>] (referring to infrastructure projects happening in the coastal region of South Texas).

seen a dramatic shift towards being a main player among the global energy market.²⁴³

These massive infrastructure undertakings are just two among dozens of colossal infrastructure projects along Texas' coastal bend. This crescent of sleepy beach towns and oyster-shell-crusting beaches is fast becoming a focal point for the world's energy market. Tens of billions of dollars' worth of public and private energy investments are transforming the area around Corpus Christi at a blinding pace.²⁴⁴

The mass amount of money entering the region brings with it immense employment opportunities and potential.²⁴⁵ This potentiality can be seen through an analysis conducted by Texas A&M University–Corpus Christi.²⁴⁶ The analysis found that the new surge in oil and gas exports from the region is “responsible for roughly 800 new positions so far with another 1,600 expected in the next four years, plus several thousand temporary jobs constructing all those facilities.”²⁴⁷ With the Port of Corpus Christi on track to be the “deepest port channel in the entire U.S. gulf,” it is clear that the once sleepy-local towns surrounding this region have recently obtained their very own spot on the map.²⁴⁸

243. *See id.* (“In the coastal bend of South Texas, the future of the global energy market is being constructed one epic infrastructure project at a time.”).

244. *Id.*

245. *See* Jamie Smith Hopkins & Kiah Collier, *Surge of Oil and Gas Flowing to Texas Coastline Triggers Building Boom, Tensions*, TEX. TRIB. (Nov. 29, 2018, 4:00 AM), <https://www.texastribune.org/2018/11/29/oil-and-gas-surge-texas-coastline-triggers-building-boom-tensions/> [https://perma.cc/T5QX-N7ED] (addressing the immense potential being created in South Texas).

246. *See id.* (analyzing the jobs coming to the area of the Coastal Bend).

247. *Id.*

248. David Blackmon, *Port of Corpus Christi to Permian Oil Producers: “We’ll Be Ready.”*, FORBES (Aug. 13, 2019, 9:20 AM), <https://www.forbes.com/sites/davidblackmon/2019/08/13/port-of-corpus-christi-to-permian-oil-producers-well-be-ready/#20505fbb29cb> [https://perma.cc/VW9W-LFGC].

V. CONCLUSION

As the world continues to globalize, the “sharing economy” will continue to gain traction amongst nation and municipalities alike.²⁴⁹ Millennials will maintain their course, consuming and stimulating “most of the growth in the sharing economy, which consists of peer-to-peer platforms,” like Airbnb.²⁵⁰ Despite this overwhelming growth, valid and justified concerns are held by individuals living in areas where the sharing economy has become a norm, especially through the presence of short-term rentals. It is necessary for both STR companies and the millennials who use them, to shed the many misconceptions, particularly those held by older populations, revolving around the platforms.²⁵¹ In the State of Texas specifically, efforts, some more successful than others, are being made across the state to establish a precedent for dealing with STR regulations. As these efforts triumph, like the agreement entered between three Texas cities and Airbnb, Inc., and fail, like the many attempts to gain clarity from the Texas Legislature, one thing remains certain—the existence of short-term rentals is here to stay. Through informed local governments, active citizens, cooperative STR platforms, and a willingness to learn from states and nations around the world, meaningful and effective decisions regarding STR regulations will be instituted. Now more than ever such an institution is needed among the smaller communities of the United States, particularly those situated along Texas’s Coastal Bend.

249. See Robert Williams, *Forrester: Millennials Boost Growth of Sharing Economy*, MOBILE MARKETER (Jan. 30, 2018), <https://www.mobilemarketer.com/news/forrester-millennials-boost-growth-of-sharing-economy/515851/> [<https://perma.cc/W9VL-TSQL>] (reviewing the growth of the sharing economy).

250. *Id.*

251. See *id.* (indicating groups of the population that may need guidance regarding STR misconceptions); see also *Open Homes Disaster Relief*, AIRBNB, INC., <https://www.airbnb.com/openhomes/disaster-relief> [<https://perma.cc/XEX9-M76L>] (echoing the positive presence and work Airbnb gives back to communities in need).