

communities to emulate in formulating a solution to the perceived problems with residential rental properties.

10.6 Propose Best Practice Rental Regulations as Alternatives

This section presents several types of “best practice” provisions that have been implemented in jurisdictions that have residential rental restrictions and which Realtors[®] may find acceptable, depending upon local market conditions. Each section begins with a brief description of the type of best practices. This description is followed by one or more examples of the best practice technique as adopted by local jurisdictions.

(a) Adopt Narrowly-Tailored Regulations

An effective rental ordinance should be narrowly tailored to address the specific needs of the local community. The potential for over-regulation is a legitimate concern, particularly when a proposed ordinance is driven by the vocal complaints of one or more permanent residents about their negative experiences with nearby renters. Residents often complain, for example, that short-term rentals are inherently incompatible with residential neighborhoods and demand an outright prohibition against the use. In those circumstances, the concern is that elected officials, in an effort to please their constituency, may acquiesce to those demands without carefully considering: (a) whether there truly exists a need for short-term rental restrictions; and (b) if a need exists, what regulatory approach is best-suited to addressing the particular needs of the community.

Residential rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which a rental regulation is justified. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

The rapid growth of Airbnb and similar online rental platforms has raised the concern that an increasing number of owners are converting long-term rental properties into short-term rentals, resulting in a decline in the available supply of long-term rental housing. A related concern is that “commercial users” of Airbnb are purchasing rental properties for the purpose of converting them to short-term rentals. An October 2014 report by the New York State Attorney General found that “commercial users” of Airbnb (i.e., hosts that offered three or more rental units) represented just six percent of Airbnb hosts in New York City, but generated 36% of the total reservations and 37% of the total Airbnb revenue in the city.²⁶ To the extent that the loss of available long-term rental housing to short-term rentals is a concern, communities can address

²⁶ *Airbnb in the City* (Oct. 2014, New York State office of the Attorney General) (available online at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>).

the problem by requiring that the owner or “host” reside in the dwelling unit for a minimum number of days each calendar year. In the alternative, communities may choose to draw a line between short-term rentals, in which an entire dwelling unit is rented out, and “home sharing,” in which a host rents out a spare room but resides on-site throughout the visitor’s stay.

Best Practice Example: Clatsop County, Oregon. In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into about forty zoning district designations, including more than a dozen residential districts.²⁷ The county’s short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.²⁸

Comment: The Clatsop County ordinance is a best practice example of narrowly tailoring because it applies only to a specific residential district rather than city-wide.

Best Practice Example: San Francisco, California. San Francisco’s short-term residential rental ordinance requires that a “permanent resident” occupy a short-term rental unit for at least 275 days per calendar year and that the permanent resident maintain records demonstrating compliance with the requirement for a period of two years.²⁹ **Comment:** The San Francisco ordinance is a best practice example of narrowly tailoring because it addresses the problem of converting long-term rental properties into short-term rentals by requiring that a “permanent resident” occupy a short-term rental unit rather than banning short-term rentals outright.

Best Practice Example: Santa Monica, California. In May 2015 the Santa Monica City Council adopted a “Home-Sharing Ordinance” that authorizes “home-sharing, which is defined as an activity whereby a resident hosts visitors in their home, for periods of 30 consecutive days or less, while at least one of the primary residents lives on-site throughout the visitor’s stay.”³⁰

Comment: The Santa Monica ordinance is a best practice example of narrowly tailoring because it addresses the problem of converting long-term rental properties into short-term rentals by permitting “home-sharing” rather than banning all types of short-term rentals outright.

(b) “Grandfathering” Provisions

Short-term rentals that lawfully existed prior to the enactment of a short-term rental ordinance, but are not allowed under the newly adopted ordinance—either because the use is prohibited outright or because the applicant is unable to satisfy the criteria for obtaining a permit—should be allowed to continue (i.e., “grandfathered”) if the property owner is able to demonstrate that the short-term rental use pre-dated the ordinance. Zoning ordinances typically contain a general nonconformity provision that establishes the requirements for a use or structure to secure a legal nonconforming status. However, short-term rental ordinances may also contain specific

²⁷ See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010 (available online at http://www.co.clatsop.or.us/sites/default/files/fileattachments/land_use_planning/page/612/zoning_Ordinance_80-14_codified_08-25-14.pdf).

²⁸ See Clatsop County, OR Land and Water Development and Use Ord. § 4.109 (Arch Cape Short Term (Vacation) Rentals).

²⁹ See San Francisco Code § 41A.5(g)(1) (available online at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0218-14.pdf>).

³⁰ See City of Santa Monica, CA – Overview of Home-Sharing Ordinance (available online at <http://www.smgov.net/Departments/PCD/Permits/Short-Term-Rental-Home-Share-Ordinance/#1. Why>).

grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

Best Practice Example: Kauai County, Hawaii. Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and 8-17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a “Nonconforming Use Certificate.” To obtain a Nonconforming Use Certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that the “dwelling unit was being used as a vacation rental on an ongoing basis prior to March 7, 2008.”³¹

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on records of occupancy and tax documents, including relevant State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment.³² **Comment:** The Kauai County ordinance is a best practice example of grandfathering because it allows single-family vacation rentals that were lawfully established prior to the effective date of the ordinance to continue.

Best Practice Example: Monterey County, California. Monterey County’s short-term rental ordinance grandfathers short-term rental units that were in operation before the ordinance was adopted. Section 21.64.280 of the Zoning Ordinance provides:

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and the administrative permit application is filed within ninety (90) days of the effective date of this Section.... The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is not the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.³³

Comment: The Monterey County ordinance is a best practice example of grandfathering because it allows single-family vacation rentals that existed prior to the effective date of the ordinance to continue.

(c) Quantitative Restrictions

From a property owner’s perspective, the use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of

³¹ Kauai County Code § 8-17.10(c) (available online at <http://qcode.us/codes/kauaicounty/>).

³² Kauai County Code § 8-17.10(e).

³³ Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b) (available online at https://www.municode.com/library/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT21ZO_CH21.64SP_RE_21.64.280ADPETRUSREPRRE).

mitigating the impacts of short-term rentals can be viewed in two ways. On one hand, such limitations on the number of short-term rentals allowed in a community are preferable to an outright prohibition on the use. On the other hand, for property owners desiring to enter the short-term rental market after the effective date of a short-term rental ordinance, a quantitative restriction may act as a barrier to entry. Quantitative restrictions therefore may constitute a reasonable compromise position in circumstances where community support is divided on a proposed short-term rental ban.

Jurisdictions considering a quantitative restriction should carefully consider which technique is best suited to further the needs and goals of the community. For example, if a community finds that the negative impacts of short-term rentals are manifested only when they exist in clusters or in close proximity to one another in a residential neighborhood, then a *proximity restriction* would be a more effective technique than a fixed cap or ratio. On the other hand for a community seeking to maintain a balance between its long-term housing needs and visitor-oriented accommodations, a maximum *ratio* of long term residential dwelling units to short-term rental permits would be more effective than a fixed cap or proximity restriction.

Best Practice Example: Mendocino County, California. Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.”³⁴ To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved subsequent to the effective date of this section, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”³⁵ While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.³⁶ **Comment:** The Mendocino County ordinance is a best practice example of a quantitative restriction because it allows vacation rentals, subject to the maximum ration of one vacation rental per thirteen long term residential dwellings, rather than prohibiting vacation rentals outright.

Best Practice Example: San Luis Obispo County, California. The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”³⁷ More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full-time residents.”³⁸ Accordingly, rather than prohibiting

³⁴ Mendocino County, CA Code § 20.748.005 (available online at https://www.municode.com/library/ca/mendocino_county/codes/code_of_ordinances?nodeId=MECOCO_TIT20ZO_OR_DIVIIIMETOZOCO_CH20.748SIUNREVAHORE).

³⁵ Mendocino County, CA Code § 20.748.020(A).

³⁶ See Mendocino County, CA Code § 20.748.020(B).

³⁷ San Luis Obispo County, CA Code § 23.08.165(1) (available online at <http://www.slocounty.ca.gov/Assets/PL/Ordinances/vacationrentals.pdf>).

³⁸ *Id.*

vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.³⁹

Comment: The San Luis Obispo County ordinance is a best practice example of a quantitative restriction because it addresses the problem of overconcentration of vacation rentals by implementing a proximity restriction rather than prohibiting vacation rentals outright.

(d) Operational Restrictions

Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 10.3 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

(e) Licensing/Registration Requirements

Virtually all short-term rental ordinances require owners who intend to offer their property for use as a short-term rental to obtain a license or permit prior to commencing the use. In general, licensing and registration requirements enable local governments to create and maintain a database of dwelling units being operated as short-term rentals for code enforcement and transient occupancy tax collection in jurisdictions authorized to collect such taxes. The procedures and criteria for obtaining a short-term rental license or permit should be clearly set out in the local ordinance. Short-term rental licensing and registration applications should be processed administratively and without need for a public hearing. Such licensing/registration requirements should not require a conditional use permit or a similar-type zoning permit.

For communities seeking to enhance the collection of transient occupancy taxes, a short-term rental ordinance should place the burden of collecting and remitting such taxes on the hosting platform (e.g., Airbnb) rather than on individual hosts.

Best Practice Example: City of Palm Springs, California. In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to

³⁹ San Luis Obispo County, CA Code § 23.08.165(c).

submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (1) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city’s Business Tax Ordinance for such activity.⁴⁰ Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee “shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration].”⁴¹ *Comment:* The Palm Springs ordinance is a best practice example of a registration requirement because it is not overly burdensome and limits the registration fee amount to the costs incurred by the city in administering the registration.

Best Practice Example: San Francisco, California. In San Francisco, online hosting platforms are responsible for “collecting and remitting all required Transient Occupancy Taxes.”⁴²

Comment: The San Francisco ordinance is a best practice example because it makes online hosing platforms, rather than hosts, responsible for collecting and remitting the required Transient Occupancy Tax.

Best Practice Example: City of Encinitas, California. In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted “unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law.”⁴³ *Comment:* The Encinitas ordinance is a best practice example of a registration requirement because it limits the registration fee amount to the costs incurred by the city in administering the registration.

(f) Inspection Requirements

As noted in Section 3.3(f), many communities require rental properties to pass certain inspections prior to the issuance or renewal of a rental permit. However, mandatory inspection requirements arguably do not advance a community’s interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

Best Practice Examples: Douglas County, Nevada and Sonoma County, California. The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of

⁴⁰ City of Palm Springs, CA Municipal Code § 5.25.060 (available online at <http://www.qcode.us/codes/palmsprings/>).

⁴¹ City of Palm Springs, CA Municipal Code § 5.25.060(b).

⁴² See San Francisco Code § 41A.5(g)(4)(B).

⁴³ See City of Encinitas, CA Municipal Code § 9.38.040(A)(3) (available online at <http://www.qcode.us/codes/encinitas/>).

these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.⁴⁴ **Comment:** The Douglas County and Sonoma County ordinances are best practice examples because they do not contain a mandatory inspection requirement.

Mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”⁴⁵ It stands to reason that a provision requiring inspection of transient private rental homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

However, even if a mandatory inspection requirement can be justified, the scope of the inspection program should be limited to the initial permit issuance and thereafter only on a reasonable periodic basis. Provisions requiring short-term rental units to be inspected annually (typically as a condition precedent to the issuance of a permit renewal), such as Section 17.03.310(D)(2) of the Big Bear Lake ordinance, are unnecessarily burdensome on owners and the local government alike.

Best Practice Example: City of Cannon Beach, Oregon. Under Section 17.77.040 of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.⁴⁶

Comment: The Cannon Beach ordinance is a best practice example because it establishes a more reasonable periodic inspection requirement than the annual requirement that communities often impose on short-term rentals.

Best Practice Example: Tillamook County, Oregon. The Tillamook County Short Term Rental Ordinance requires that all short-term rentals be inspected in connection with the initial permit application, but thereafter requires an inspection only if (1) there has been a fire, flood or other event that caused substantial damage to the structure; (2) the permit was revoked; (3) there

⁴⁴ See generally Douglas County, CA County Code § 5.40 (Vacation Rentals in the Tahoe Township) (available online at <http://dcnvda.org/userpages/CountyCodes.aspx>); Sonoma County, CA County Code § 26-88-120 (available online at https://www.municode.com/library/ca/sonoma_county/codes/code_of_ordinances?searchRequest=%7B%22searchText%22:%22inspection%22,%22pageNum%22:7,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentTypes%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=16331).

⁴⁵ City of Bear Lake, CA Municipal Code § 17.03.310(A) (available online at https://www.municode.com/library/ca/big_bear_lake/codes/code_of_ordinances?searchRequest=%7B%22searchText%22:%22rental%22,%22pageNum%22:1,%22resultsPerPage%22:25,%22booleanSearch%22:false,%22stemming%22:true,%22fuzzy%22:false,%22synonym%22:false,%22contentTypes%22:%5B%22CODES%22%5D,%22productIds%22:%5B%5D%7D&nodeId=MUNICIPAL_CODE_TIT17LAUS_CH17.03GEPR_17.03.310TRPRHORE).

⁴⁶ See City of Cannon Beach, OR Zoning Code § 17.77.040(A)(2)(a) (available online at <http://www.qcode.us/codes/cannonbeach/>).

has been an addition or substantial modification to the structure; or (4) the permit has lapsed for more than 180 days.⁴⁷ **Comment:** The Tillamook County ordinance is a best practice example because it requires that a short-term rental be inspected after the permit is issued only under specific limited circumstances.

(g) Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.⁴⁸

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.⁴⁹ By contrast, under Section 1.06.040 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

Enforcement provisions should not penalize short-term rental property owners (or their agents) for violations beyond their control. For example, if a short-term rental *tenant* violates a noise level restriction, the property owner should not be held responsible for the violation.

Best Practice Example: Douglas County, Nevada. Chapter 5.40 of the Douglas County Code regulates vacation home rentals in the Tahoe Township. Although the vacation home rental ordinance imposes certain operational restrictions on permitted rental units (e.g., parking and occupancy limitations and trash/refuse container rules), Section 5.40.110 states that a permit may be suspended or revoked only for a violation committed by the owner.

5.40.110 Violation and administrative penalties.

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:

⁴⁷ See Tillamook County, OR Short Term Rental Ordinance § 7(d), (e) (available online at <http://www.co.tillamook.or.us/gov/comdev/documents/STVR/Amendment%201-Ordinance%2069%20Filed.pdf>).

⁴⁸ See generally Clatsop County Land and Water Development and Use Ordinance § 4.115; see also Monterey County, CA Code of Ordinances § 21.64.280.D.3.

⁴⁹ See City of Palm Springs, CA Municipal Code § 5.25.090(a).

1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
3. The owner has violated the provisions of this chapter; or
4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code; or
5. Any false or misleading information supplied in the application process; or
6. The permit number was not included in all forms of advertisement; or
7. The occupancy was not included in all forms of advertisement, or the occupancy was not advertised correctly.

Comment: The Douglas County ordinance is a best practice example because it limits the suspension and revocation remedies to violations that are committed by the owner. A vacation rental permit cannot be suspended or revoked due to a violation committed by a vacation rental tenant.

Prior to the imposition of fines or other penalties, a short-term rental ordinance should conform to the due process requirements established under state law and/or the local jurisdictions charter or code of ordinances. At a minimum, before fines or other penalties are imposed, property owners should be given notice of, and an opportunity to cure, any alleged violation, except where exigent public safety concerns exist. As demonstrated in the best practice examples below, property owners should be given the opportunity to request a public hearing and have the right to appeal a local government's decision to suspend or revoke a short-term rental permit.

Best Practice Example: City of Encinitas, California. Under Section 9.38.060 of the City of Encinitas short-term rental ordinance, penalties may be imposed and permits may be suspended only in accordance with the following provisions:

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the City Clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection A of this section, the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more than 45 days of receipt of request for a hearing. The City Manager or his/her designee shall preside over the hearing. The City Manager or his/her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and

that the penalty, or penalty and suspension are consistent with this chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.⁵⁰

Comment: The Encinitas ordinance is a best practice example of an enforcement provision because it establishes a process for the investigation of complaints and the imposition of penalties for violation of the short-term rental ordinance.

Best Practice Example: City of Cannon Beach, Oregon. Section 17.77.050(B) of the Cannon Beach Zoning Code provides another example of the notice and public hearing process afforded to short-term rental property owners prior to the imposition of fines or the revocation of a permit.

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.⁵¹

Comment: The Cannon Beach ordinance is a best practice example of an enforcement provision because it establishes a process, including written notice to the property owner and a public hearing, before a permit may be suspended or revoked.

⁵⁰ City of Encinitas, CA Municipal Code § 9.38.060.

⁵¹ City of Cannon Beach, OR Zoning Code § 17.77.050(B)