

Upper Hurstville

Residents Association and Security District

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City of New Orleans
City Planning Commission
1300 Perdido Street, 7th Floor
New Orleans, LA 70112

CC: Mayor Mitchell J. Landrieu, CM Jason Rogers Williams, CM Stacy Head,
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CM Jared C. Brossett, CM James Austin Gray II

RE: Short Term Rental Study / City Council Motion M-15-391 as it relates to the
Upper Hurstville Neighborhood

To the Commission:

Our neighborhood is bounded by the streets of Magazine, Exposition (Audubon Park),
Prytania and Nashville consisting of 30 squares of predominantly one and two family
residential homes.

Over the last year or two our organization has received several complaints regarding
illegal short term rentals in our neighborhood. On 17 September 2014 we sent a letter
to all of the addresses within our neighborhood boundaries outlining that they were
illegal but as of today's letter have yet to see a single enforcement action by the city
take place and most of these rentals continue to operate illegally.

With the development of the Short Term Rental Study on 14th October 2015 our
neighborhood organization sent out an online survey to 344 mailing list members and
over the next week received 123 responses to determine what the feeling of the
neighborhood was with regard to short term rentals.

Upper Hurstville Residents Association and Security District

Attached to this letter are a summary of the questions asked and the votes cast with anonymized individual comments included. The majority of respondents opposed the short term rental of parts of a residence (Against: 61.2%, Indifferent: 17.2%, For: 21.6%) and opposed the short term rental of whole houses (Against: 58.4%, Indifferent: 23.0%, For: 18.6%) with 81.4% of respondents not wanting a short term rental next to them and 81.1% of respondents in support of neighbors having a voice in allowing a short term rental to exist such as the conditional use process.

93.7% of respondents supported a private right of action if any city rules were violated.

Given the above survey results we write to you to today to express our concerns about allowing short term rentals by right in our neighborhood:

1. Our primary concern is lack of current enforcement of current law, whether it is short term rentals, or other building and zoning related issues – enforcement is lacking and we are concerned that any newly envisioned city code changes involving short term rentals will remain un-enforced to the detriment of our neighbors and neighborhood. Further that any proposed legislation will continue to go unenforced and illegal activity will continue unabated with neighbors or neighborhood organizations having no private right of action to step in when the city is unwilling or unable to enforce its own laws. It appears that in other cities where short term rentals have been legalized non-compliance with the regulatory scheme is still a major problem with 90% of short term rentals operating illegally outside of the regulatory system. Given the City of New Orleans track record on enforcement it would still not be able to deal with high non-compliance of a new regulatory scheme unless penalties are easily administered with low burdens of proof and financially severe and collectable.
2. Our secondary concern is the contemplated introduction of short term rentals, clearly a commercial use, into our neighborhood without neighbors or neighborhood organizations having any say as to whether or not a particular short term rental location and owner should be allowed to operate in a particular property. Currently accessory bed and breakfast is a conditional use in our HU-RD2 zoning district requiring a process that allows neighbor and neighborhood involvement for approval and larger principal bed and breakfasts are not permitted. We feel that allowing short term rentals to operate by right without limits which currently exist for bed and breakfast establishments in our neighborhood is detrimental to the successful established residential quality of our neighborhood.

Upper Hurstville Residents Association and Security District

3. Our tertiary concern is the act of renting ones property as a short term rental becoming a right in a neighborhood that is predominantly 1 and 2 family homes with long term residents. Any process which creates a system to allow short term rental of ones property in the HU-RD2 zoning district should treat it as a privilege that is earned by going through an appropriate vetting process and can easily be rescinded if the act of renting short term negatively impacts the neighbors or neighborhood though nuisance such as noise, garbage, or generally bad behavior of guests.

Please consider the rights of residential neighbors and neighborhoods along with long established zoning which limits bed and breakfasts and short term rentals in our HU-RD2 zoning district and treat any rights granted to property owners to rent short term as a privilege that must be earned and can easily be lost for operators who do not actively monitor and maintain their paying guests behavior.

Any proposed legislation should primarily protect the current established and successful neighborhood and its long term residents while only allowing short term rentals in their most innocuous form with limiting factors such as but not all inclusive:

- an approval process that involves neighbor and neighborhood input and considers length of ownership as a factor
- owner occupancy requiring owner be present during the rental
- density limitations providing a minimum distance between applicants of 300 feet
- limit the number of individual simultaneous short term rental contracts per unit in concert with the number of units allowed by zoning on a given parcel
- limit the number of short term rental guest occupants per unit
- a complaint process that allows for audio, photographic and video evidence submitted by complainant to be considered as evidence during a complaint hearing
- a three strikes rule that rescinds a properties right to rent short term if its owners are found guilty of three violations with no right to re-apply for five years. Associate this rule with the property not the applicant.

Best Regards,

Jay Seastrunk
Treasurer, Upper Hurstville Security District

UHRA/SD QUESTION ONE:

Do you support or oppose allowing the rental of parts of a residence year round on a short-term basis in our neighborhood?

| | | |
|-------------------|----|--------|
| Strongly Support: | 6 | 5.17% |
| Support: | 19 | 16.38% |
| Indifferent: | 20 | 17.25% |
| Oppose: | 36 | 31.03% |
| Strongly Oppose | 35 | 30.17% |

| | | |
|--------------|----|--------|
| Support: | 25 | 21.55% |
| Indifferent: | 20 | 17.25% |
| Oppose : | 71 | 61.20% |

116 responses

Individual Comments Question One:

- provided that regulations require rental to provide off street parking for guests and prohibit "party" groups
- don't think we should have rentals of less than 30 days in the neighborhood
- Opening a Pandora's Box. The FQ has been ruined by unenforced ST rental. Which neighborhood is next? A real threat to the Hotel Industry, one of the city's few legitimate economic generators.
- i oppose it as a business. if done from time to time, if there is an opportunity to lease out your residence when you are already going to be out of town do not believe it should be illegal.
- Tenants that are respectful of where they live are ok by me regardless of how long they will be there. Taken to an extreme in terms of density could create a problem.
- This would be a further drain on the patrol as it would bring more traffic into our area, and force the patrol to deal with other issues (complaints from neighbors) instead of the what they should be dealing with.
- i have no problem with short term rentals in our neighborhood
- I am DISGUSTED by the short term rental next door to my house. They have had shady, rude, loud people who i do not want living next to me. Also the owners of the house providing the short term rental have loud parties with
- live music late at night. I work in a hospital and have to be awake;well rested in order to perform my job. I cannot live worrying about who is going to be next to me from week to week. It is time to stop the short term rental!!!
- Part of the reason I like our neighborhood is because of the sense of community and the neighbors. Short term rentals destroys that community

UHRA/SD QUESTION TWO:

Do you support or oppose allowing the rental of an entire residence year round on a short-term basis in our neighborhood?

| | | |
|-------------------|----|--------|
| Strongly Support: | 7 | 6.19% |
| Support: | 14 | 12.39% |
| Indifferent: | 26 | 23.01% |
| Oppose: | 37 | 32.74% |
| Strongly Oppose: | 29 | 25.66% |

| | | |
|--------------|----|--------|
| Support: | 21 | 18.58% |
| Indifferent: | 26 | 23.01% |
| Oppose: | 66 | 58.40% |

113 responses

Individual Comments on Question Two:

- same as previous question-- regulations must require adequate off street parking and prohibit party groups
- no rentals of less than 30 days
- As long as people respect the neighborhood it should not be a problem. Within that framework, people should be able to do what they wish with their property.
- I do not want these strange people living next to me. I do not feel comfortable with these people coming/going They are bringing down the value of my property.

UHRA/SD QUESTION THREE:

Would you want to have a short-term rental operating next door to you?

| | | |
|-----|----|--------|
| Yes | 20 | 18.52% |
| No | 88 | 81.42% |

108 responses

Individual Comments on Question Three:

- Only if the residence is owner-occupied.
- don't mind
- We are indifferent. Support makes it sound as if we actively want it. We don't care.
- Might be better than what I have but no.
- Depends on how short.
- depends on enforcement of regulations
- Absolutely not. Why should my rights as a resident be subservient to that of the transient or quick buck artist? I have an enormous investment in my home and neighborhood and can not accept such an intrusion that could devalue my property and infringe on my right for quiet enjoyment.
- It would depend on the clientele.
- Sometimes I think I have one
- Absolutely not. this is a safety issue. you would have no idea who is living next to you and what types of people they have staying there as well.
- If owners are held accountable to the actions of their guests and current noise and nuisance laws are enforced, I have no issues. Most guest as most people are law abiding citizens who are welcome to our great city.
- I'm tired of this. It is wrong!!! I am disgusted-take these short term rental out of my neighborhood!! I am tired of the shady people next to me.
- What an absurdly baited NIMBY question.
- But only if the owner is permitted to do so
- Are you kidding?
- Doesn't bother me.
- I doubt my street would attract any other visitors then the ones we want I nola
- Depends on the circumstance and clientele

UHRA/SD QUESTION FOUR:

Should neighbors have a voice in whether or not a particular property can be used as a short-term rental in our neighborhood?

| | | |
|-----|----|--------|
| Yes | 90 | 81.08% |
| No | 21 | 18.92% |

111 responses

Individual Comments on Question Four:

- The city should have a clear STR policy.
- Not sure; it is personal property and I worry about the infringement of an individual's rights.
- Poorly worded question. What does this mean?
- Collectively as a group
- But only to the extent that it is about whether the tenants are respecting the neighborhood
- I am constantly tired of wondering who these "new neighbors" are next to me. This need to stop. I did not become a homeowner for this bullshit!!!!!! I could have rented my home if i wanted to deal with this.
- With the exception of repeat offenders in reference to noise... or how they market their property.
- Not as long as the laws are followed
- If we are going to regulate then we should follow the regulations for all. Determination should not be made on an individual basis.
- I would not be opposed to a movie rental or something infrequent
- Just as with voting in elections, if the majority of people/neighbors vote that they don't want the rentals, then I'm fine with going along with that, even though they don't bother me personally.
- It should be regulated by the council, with a 'yes' or 'no' vote for the entire district

UHRA/SD QUESTION FIVE:

If short term rentals were permitted uses in our neighborhood requiring no special zoning permission to operate and they became a problem due to nuisance or violation of other city rules would you want to have independent legal recourse to enforce the cities rules if the city was unresponsive to your complaint (also known as private right of action)?

| | | |
|-----|-----|--------|
| Yes | 103 | 93.64% |
| No | 7 | 6.36% |

110 responses

Individual Comments on Question Five:

- Maybe, as long as the STR rules are clear.
- It's a problem! We have had many problems with these people-I don't feel comfortable calling the police on the noise they cause in our neighborhood since the police are short staffed and have more important issues to deal with. I did call neighborhood security once when these "short term rental" people were so loud I couldn't sleep-they told me to call the police. The solution-don't let these short term rentals exist. They are bringing hotel, cab, and locals down.
- who decides?
- If the City doesn't hold up their end of the deal, then yes, citizens should be able to.

Additional General Individual Comments on Short Term Rentals:

- If done properly and renters screened adequately, should not be a huge problem.
- None
- The basic concept of STRs does not bother me. However, they should be limited to owner-occupied properties. E.g., doubles, mother-in-law apts., spare bedrooms, etc.
- The primary issue is parking, which is getting to be more of a problem in our area. Secondarily is noise.
- Short-term rentals are a security risk waiting to explode.
- I have a friend who has a townhouse that she rents short term. Not in our neighborhood. I have expressed my thoughts about her actions. Her neighbors don't care and I fact encourage it- she says. My answer not in my neighborhood.
- None
- I am not unopposed to short term rentals, as our family has benefited from such in other cities, where the rental situation meshes with the life of the neighborhood. However, I feel very strongly that regulations appropriate to the neighborhood and enforcement thereof are integral. Otherwise, I would oppose such rentals.
- An enormously bad idea, which if allowed, will ultimately kill the remaining indigenous character found in the historic neighborhoods of

N.O. and have a negative impact on the lodging industry that the city supposedly supports.

- tourist are not the problem with crime in our city
- If it were possible to limit rentals to fewer than 30 days per year that might be ok but I don't think it would be enforced so complete ban is the better option
- Strongly feel this is a safety issue as well as quality of life. As well as a parking issue in an already crowded area.
- We do not need them in our neighborhood.
- What constitutes short term?
- contact the Garden District Association they seem to be in the forefront of this issues.
- Once again, I'm disgusted. I do not feel safe with these strangers next to me, hotels are losing money, and I am tired of these "so called neighbors" looking at me wondering what I'm doing in "their" neighborhood. This need to stop. I will not allow these short term rentals in my neighborhood anymore. I AM FED UP. I PAY A ALOT OF MONEY TO OWN IN THIS NEIGHBORHOOD. I WANT THEM OUT OF MY NEIGHBORHOOD!!!!
- I've stayed in STR when traveling, it's fine.
- 100% Against Short Term Rentals
- there appears to be one in my block, which has mostly onstreet parking, and creates problems due to overcrowding during rentals.
- I think they can destroy neighborhoods.
- Must have a permit in order to do short term rental, and must comply will all ordinances, rules and regulations. Should have some sort of 3rd strike rule...if receive 3rd complaint incidence, may loose permit. If operating illegally, with no permit, results could be difficult, hefty fine as in \$5000 and closed down.
- I believe that owner occupied short term rentals is a good compromise
- the one on my block is owned by people who do not live in New Orleans, but say that their daughter lives in the house. She does not
- I moved to a residential neighborhood with long term resident owners and renters - I would like to keep it that way
- I think they are good for the city and the city shouldn't tell people what they can do or not sure with something they own and pay property tax on

Emile J. Brinkmann, PhD
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June 3, 2016

Robert D. Rivers
Executive Director
New Orleans City Planning Commission
City Hall
1300 Perdido St, 7th Floor
New Orleans, LA 70112

RE: Short-Term Rentals (STRs): Response to Council Motion M-16-166

Dear Mr. Rivers,

I am submitting these comments in connection with the City Planning Commission's reconsideration of the issue of Short-Term Rentals (STRs) in Orleans Parish, and the City Council's directive that a proposed zoning ordinance be drafted. I am aware that the staff is requesting that comments only cover new ground. Therefore, I will attempt not to repeat points raised in my comment letter dated September 29, 2015.

As a point of background, I am the retired Chief Economist of the Mortgage Bankers Association in Washington and spent years running a research group dedicated to housing and housing finance issues. I have appeared on all of the major network and cable news shows, and have been quoted in newspapers through the US and other countries. Even though I retired and moved back to New Orleans two years ago, I am still the US representative on the executive committee of the International Union of Housing Finance, a 100-year old organization dedicated to housing issues around the world.

Based on my background, I cannot think of an action that would be more destructive to the fabric of our neighborhoods and the well-being of our homeowners than the legalization of STRs for the benefit of a few, thereby rewarding those who take advantage of a lack of enforcement to violate existing laws with impunity. In Part One of my comments, I will make three basic points about the negative economic effects on homeowners. In Part Two I will address comments that have been made to the effect that AirBNB, VRBO, and similar operations are like Uber and are merely part of the growth of the so-called sharing economy.

Part One

- 1) STRs fundamentally upset residential valuations by introducing unsustainable commercial valuations into residential neighborhoods.

We have already seen home prices in historically significant neighborhoods increase at rates far in excess of the local incomes needed to support those prices. A significant portion of those home price increases are due to ability of some of the properties to earn upwards of 20 percent to 25 percent return on investment through illegal renting. This is great news if you already own a home in one of these areas and will be selling soon. Because the Assessor's Office has no way to separate out house sales for STR usage, this is great news if you are the city collecting residential property taxes based on values inflated by STR commercial use. It is bad news if you are trying to buy or rent in Mid-City, Treme, the Bywater, or other impacted neighborhoods in order to live in the city. It is terrible news if you are a long-term resident with no intention of moving, but are now faced with an annual property bill driven up by the valuation effects of illegal renting.

The valuation and property tax problem will likely be exacerbated by the idea that the city can mitigate the negative impact of STRs by limiting the number allowed per block face. The owner of the first one on the block makes a killing, and the value of that property goes up. However, the other owners on the block not only have to deal with the disruptions caused by the STRs and the higher property taxes, they are precluded from selling at the higher STR-driven prices because no other STRs will be allowed on their block (assuming for the sake of argument that the city would actively enforce density limitations). Therefore, the idea that the negative impacts of STRs can somehow be ameliorated by reducing the permitted densities can actually make more people worse off from a valuation perspective. Given the instability of this structure and the lack of equitable treatment in terms of valuation and who is allowed an STR and who is not, I do not believe density limits would survive legal or political challenges, and are therefore not a viable option to prohibition.

The result is that if you are a New Orleans resident with no intention of selling and moving, you would not only face the prospect of having weekly fraternity parties next door, you get to pay higher property taxes for the privilege. The result is that if you are looking to buy, you risk over-paying and being underwater on your mortgage if something were to happen suddenly to impact negatively the STR business, as will be covered in the next point.

- 2) Short-term Rentals directly inject the business risk of tourism into residential neighborhoods.

Hotel owners and operators are accustomed to the business risks associated with the travel and hospitality industry. These risks are reflected in their operational plans, capital investments, and equity and debt financing costs. They understand that in a recession, travel is disproportionately impacted as businesses cut back on discretionary

travel as a first response. They learned in the aftermath of the 9/11 attacks that terrorism can interrupt air travel, and that even when flights are restored, companies will impose travel restrictions on key personnel. In New Orleans and other hurricane-impacted areas, they have learned that even the threat of a storm, with or without a mandatory evacuation, can cause their rooms to empty and disrupt operations for some time. (As a side note, would operators of STRs be required to maintain enforceable hurricane evacuation policies for their guests, or would responsibility for these visitors fall on the city?)

In contrast, the health of the hospitality industry has a more muted impact on the traditional residential housing market in New Orleans. Tourism is only one of the legs of the New Orleans economy, and there are other legs to support the New Orleans jobs market and home prices. STRs, however, directly inject the risk of the tourism market into every neighborhood of the city where they exist. Demand for houses and high prices exist when owners can earn high returns, but what happens in a downturn? What happens when tourism suddenly slows for one of any number of predictable and unpredictable reasons? What happens is what we have seen in other housing markets dominated by investors and speculators. At the first sign of a reversal, they sell with a vengeance, driving down prices and leaving the long-term residents suffering the consequences of rapidly falling prices and "For Sale" signs everywhere. If the properties are leveraged, they can sit for months and years as they work their way through the mortgage foreclosure (and probably bankruptcy) process, further depressing values.

Real estate speculation is a fact of life. Some people win and some people lose. When a strip mall goes bankrupt on Airline Highway, the negative consequences (other than to the property's owners and lenders) are limited to having one more eyesore around town. When that speculation, however, is driven by STRs and is occurring in some of the city's most important and historic residential neighborhoods, the negative consequences of a drop in tourism will go right to the hearts of these neighborhoods, and will be much more severe and widespread than any normal downturn.

- 3) Weekly bachelor parties are more than a nuisance. They represent a real loss of value for the neighbors.

Many of the comments presented to the CPC and the City Council on this issue have dealt with the horror stories of late night parties and the problems that occur when out-of-towners believe that they can freely extend the revels of Bourbon Street to the residential neighborhood where they have rented a house for the weekend. The problems go far beyond loss of sleep, frustration with the inability of an under-staffed NOPD to deal with noise issues, and the absence of a private right of action to move against the owners of the offending properties. They represent a real loss of value to anyone attempting to sell an impacted home to anyone other than an STR operator. (I do not know whether the failure to disclose a nearby nuisance STR in a real estate declaration has been tested in a Louisiana court, but I am fairly certain it would be actionable in other jurisdictions.)

The logical outcome is that once an STR opens on a block, the only informed sales that would not be negatively impacted by the existence of the STR would be those to another STR operator. As already noted, however, such a sale would be prohibited if density limitations were put in place as part of an attempt to make STRs politically palatable.

This points again to the utter fallacy of putting any faith in density limitations. The idea that the CPC and the City Council would not be inundated with requests for exceptions, and that many of those requests would be granted, simply ignores political reality. That assumes, of course that the many illegal operators of STRs would even apply for exemptions to the density limits. The reality is that the city has failed for years to deal with illegal STRs. Based on this history, it is reasonable to expect that any density limits would be ignored or gutted in a few years

In conclusion, the adoption of a legal STR framework for residential neighborhoods, particularly for non-owner occupied structures, would have tremendous and largely irreversible negative impacts on the fundamental character of the city for years to come. Ignoring the quality of life issues, the economics alone will lead to a further hollowing out of the city's full-time residents. Homeowners will see that the rational action is to sell. They would avoid both the higher property taxes and the risk of a speculative bubble bursting with downturn in the tourism industry.

Part Two

AirBNB is not like Uber

It has often been argued that AirBNB and similar operations are nothing more than Uber for houses, that they are simply one part of an irreversible movement toward a shared economy where technology brings together the buyers and sellers of various services. At their best, such arguments are facile and do not stand up to even a modest amount of economic scrutiny. At their worst, they are a bald-faced attempt to direct attention away from what is illegal activity by saying that it is no different from what everyone else is doing in other areas of the economy. In reality, the only similarity between Uber and AirBNB is that both rely heavily on computers and smart phones.

Uber is an example of what the Austrian-American economist Joseph Schumpeter described as "creative destruction". The idea is that in a capitalist system, economic growth occurs when innovators put their money behind new ideas for goods and services. While the creative process is the key for creating new markets and new opportunities, it comes at the cost of destroying old products and services, and the capital invested in delivering those old goods and services.

A prime example is Blockbuster versus Netflix. Blockbuster invested huge sums in brick and mortar stores and an inventory of video tapes, and later DVDs, to fill the shelves in those stores. It had a large complement of employees to man the cash registers and stock those shelves. Along came Netflix with the idea that people could go to their computers, select what titles they wanted to see, and have the DVDs delivered a few days

later by the postal carrier. Immediately successful, the service Netflix created began the destruction of the hundreds of millions of dollars Blockbuster had invested in its system. Later, when Netflix switched to streaming content, it effectively destroyed the capital Netflix itself had invested in DVDs and its mail order business.

In Uber's case, it challenged the existing way of summoning a taxi, as well as introducing a model that matched supply and pricing to peak periods of demand. Uber was challenging the economic model of the taxi business, but, more importantly, it challenged the local regulatory framework for taxis that existed in each of the cities where it sought to operate. Its success has come in exposing and differentiating between those regulations that were necessary for the public's protection and those regulations that merely existed to protect the status quo. After all, until Uber, the method of summoning a cab outside a hotel had not really changed since the 1800s. This is Schumpeter's creative destruction process at work.

The key difference between Uber and AirBNB (and similar companies) is that there is nothing fundamentally illegal about the service Uber provides. Paying someone to take you in his or her car from Point A to Point B is not inherently illegal, provided appropriate licensing requirements are met. The only ones harmed by the Uber innovation are those invested in the old ways of doing business.

In contrast, AirBNB and similar services are providing technology platforms that offer services that are fundamentally illegal. The regulations of which AirBNB facilitates the violation are not there to protect capital invested in the hotel industry. Rather AirBNB is facilitating, for a profit, the violation of zoning laws that were enacted to protect individual homeowners from this type of commercial activity. If the only harm was to the established hotels and legal bed and breakfast establishments, it could be argued that AirBNB is just another example of Schumpeter's creative destruction. However, the true harm and destruction is to the residents of the neighborhoods disrupted by the illegal short-term rentals. The residents of these neighborhoods do not have capital at risk in the hospitality industry like Marriott or Hilton. Rather the capital they have at risk is in homes that they trusted would be protected by zoning laws and the enforcement powers of the city government. It appears that trust was misplaced.

Therefore, AirBNB has nothing to do with Uber or Schumpeter's growth through creative destruction, but is simply a case of making a fast buck at the expense of someone else by facilitating an illegal activity. The closest parallel to AirBNB is not Uber, but hiring prostitutes with Craig's list.

Sincerely,



Emile J. Brinkmann

Emile J. Brinkmann, PhD
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September 29, 2015

I am submitting these comments regarding the City Planning Commission's hearing on the subject of the short-term rental of properties located in areas zoned for non-commercial use. These comments represent my own opinions and are not connected with any other organization. My comments are summarized below with the detailed discussion following:

1. Zoning laws exist to give homeowners some assurance that their long-term investments are protected from those who could create a nuisance that would negatively impact their ability to enjoy their property. Zoning helps protect the property's potential resale value, thus encouraging investments in improvements and maintenance.
2. The "economic" evidence cited by the Alliance for Neighborhood Prosperity in support of legalizing short-term rentals in residential neighborhoods is so riddled with logic errors that it is laughable and should not be taken seriously by anyone with even a modest background in economics. It is much closer to the type of half-truths that are thrown around in a political campaign rather than a serious analysis of the subject.
3. The continued loss of hotel and motel tax revenue primarily impacts the Superdome and the convention center, both state-owned facilities. The failure of the city to address the problem of the short-term rentals and the millions of lost hotel and motel tax revenue risks having the state legislature becoming involved in a solution.
4. The distortion of home prices that impacts potential homebuyers and long-term renters is due to the fact that short-term rental properties are valued based on their expected cash flows, not their relative merits as owner-occupied or long-term renter-occupied properties. The assessor's office needs to recognize this in determining appraised values and, in addition, prohibit the use of homestead exemptions by any operator of a short-term rental.
5. Removing a home from the long-term rental market and placing it into short-term rental usage effectively circumvents Fair Housing laws and permits disparate treatment of potential occupants based on race or other characteristics.

6. While it is perhaps beyond the scope of the City Planning Commission's review, it should nevertheless be recognized that special problems arise if short-term rental properties are financed with a traditional home mortgage. If the owner of the property financed the purchase of the property with a mortgage, and unless that owner explicitly stated that he or she was going to operate a short-term rental in the property, that person committed mortgage fraud and is subject to considerable legal sanctions.

1) Zoning laws exist to protect long-term investments.

Purchasing a home is a long-term investment, and very often that home is the largest single asset of the homeowner. There are no guarantees in life and the potential risks to a long-term real estate investment are many. While the homeowner has personal risks (loss of job, long-term illness or disability, divorce or death of a spouse), the homeowner also faces community-level risks, such as a drop in the economy, increase in crime, or a general failure to provide city services. Zoning laws exist, however, to provide the homeowner with some assurance that a nuisance establishment will not be licensed at some future date that would deprive the homeowner of the right to enjoy his or her property or that would negatively impact its value. Absent strong and enforced zoning laws, the homeowner has no such long-term assurances.

One needs only go to Houston to see the *ad hoc* arrangements such as deed restrictions in some areas that are far more restrictive than zoning ordinances that have developed to compensate for the lack of citywide zoning. While the emergence in New Orleans of the neo- and crypto-libertarians who say "It is my house and I can do whatever I want with it," illustrates an ignorance of the law as it exists in most of the country, I invite them to depart for Houston and exercise their political beliefs there.

The short-term rental proposal seeks to ratify the currently illegal establishment of commercial ventures in residentially-zoned neighborhoods. It is a product of lack of enforcement rather than any underlying economic need, other than that of the owners of the properties. If short-term rentals in residential districts are allowed, it would represent a fundamental betrayal of the trust that homeowners place in the zoning process. It is the type of abrogation of property protections for no valid reason that one might expect in some banana republic, not in our city. Quite frankly, if short-term rentals receive official sanction, I will probably start selling beer off my front porch because I do not see the logical difference between that commercial venture on my private property and what is being proposed here.

2) The “economic” evidence cited by the Alliance for Neighborhood Prosperity is so riddled with logic errors that it is laughable.

According to the presentations on their website, the organization advocating short-term rentals claims that short-term rentals generate:

- 100,000 visitors annually
- \$174.8 million in direct and indirect spending
- 2,200 jobs
- \$10.8 million in local and state tax revenue

The source of much of the data is a survey performed by the Hospitality Research Center of the University of New Orleans. The problem is not as much with the UNO survey data but in the way it is interpreted. The interpretation makes two fundamental mistakes that completely invalidate any assumptions drawn from it. First, it ignores the difference between static and dynamic analysis, that is, it assumes that the people staying in short-term rentals would not otherwise visit if those rentals were not available. Second, it engages in selection bias in estimating spending levels. Both errors are discussed below.

The easiest way to understand a static versus dynamic analysis error is to think about going into a restaurant and ordering a soft-shell crab dinner. Under the static analysis approach used by the proponents of short-term rentals, if waiter told you that the restaurant was out of soft-shell crabs, you would leave the restaurant, go home, not eat anything, and overall spending in restaurants would fall by the amount of the cost of that dinner. Decisions in life, however, are dynamic, not static. People react to changed circumstances. If told that the restaurant was out of soft-shell crabs, your response would almost certainly be to order something else. Similarly, if short-term rentals were not available, we would not see a 100,000 drop in visitors. Those visitors would simply make the dynamic choice to stay in a legally licensed facility.

The actual net economic impact of short-term rentals is either zero or negative. While some visitors might not come if they could not stay in a short-term rental, absent any actual evidence to the contrary it can be assumed that the number is *de minimis*. As a result, spending would not drop and tax revenues would increase through the collection of the hotel and motel tax on these visitors.

The second basic economic mistake in their analysis is the claim that visitors who stay in short-term rentals spend more while they are here. Absent a more detailed analysis that accounts for potential economic and demographic differences, there is a clear selection bias behind those numbers. It would be the same as saying that visitors who stay in the Ritz-Carlton or Windsor Court spend more while they are here, and reaching some conclusion about the Ritz versus the

Residence Inn. It has more to do with how much money visitors have in their pockets when they get here rather than where they ask the cab driver to drop them off.

In short, the economic “evidence” presented by the proponents of short-term rentals makes for useful public relations, but it is as substantive as cotton candy in supporting real life policy decisions.

3) The continued loss of hotel and motel tax revenue primarily impacts the Superdome and the convention center, both state-owned facilities.

Based on data available from InsideAirBNB.com, it is possible to estimate the tax revenue lost to the state and city from just the AirBNB arrangements. The 2,614 properties listed on the site have an average nightly rent of \$201, and an average minimum stay of two nights. Applying the nightly rent rate times the minimum stay requirement on a per property basis, and making the very conservative assumption of only two stays per month per property at the minimum stay, gives an estimated revenue to the operators of short-term rentals of almost \$27 million. At a 13 percent tax rate, this works out to about \$3.5 million per year in lost hotel and motel tax revenue. Expanding those assumptions slightly to three stays per month, or expanding the actual nights stayed to slightly more than the minimum required, results in a revenue loss of \$5.2 million. It is important to remember that these revenue loss estimates are based solely on those properties listed with AirBNB. Adding in the properties listed solely on other sites could easily increase this number by 50 percent.

The current loss of perhaps \$7.5 million in hotel and motel taxes falls principally on the Louisiana Sports and Exposition District and the New Orleans Convention Center, both state-owned facilities. One argument made on behalf of short-term rentals is that visitors who spend less on their hotel rooms have more to spend on eating out and other tourist activities. If true, the city comes out ahead because the small share of the hotel and motel tax it loses is more than offset by higher sales tax collections. While some might see this shifting of revenue from state-owned facilities to the city as an argument in favor of rentals on which the hotel and motel tax is not collected, this view is very short-sighted. If it became widely known that this revenue shifting would be the result of any move in favor of short-term rentals, it is very likely that the state legislature would seek to intervene to protect its interests, particularly given the amounts the state has expended to maintain patrols in the French Quarter.

4) The distortion of home prices that impacts potential homebuyers and long-term renters is due to the fact that short-term rental

properties are valued based on their expected cash flows, not their relative merits as owner-occupied or long-term renter-occupied properties.

A short-term rental is a commercial use of a property, not a residential use. While homes are generally valued based on occupancy by the owner or long-term renter, commercial properties are valued based on the rental income they produce. While residential property values are estimated based on the recent sale prices of comparable properties, commercial properties are valued based on the income they can produce. Perhaps the most common approach is the use of capitalization rates (commonly called cap rates) and net operating income to compare and set valuations. The simplest explanation of the cap rate is that it is the ratio of net operating income (earnings before interest, taxes, depreciation, and amortization) to price. For example, if a property has an annual net operating income of \$100,000 and sells for \$1,000,000, its cap rate is .10. The cap rate for a class of properties (such as hotels, office buildings, shopping centers, etc.) is used to come up with the value for a property when all you have is the net operating income.

The point is that comparing residential home values to commercial income-producing property values is like comparing apples to watermelons. Here is a quick example. Imagine that a short-term rental in Mid-City brings in \$30,000 per year after expenses (a reasonable estimate based on available data). The cap rate for equivalent hotel and other hospitality properties of similar quality is in range of 7.0 percent, including a small growth assumption. That would put the value of that property at \$429,000 ($\$30,000 \div .07$). The appraised value of that property based on comparable residential sales would likely be a little more than half that. Imagine again that the owner of the property paid \$300,000 for it, based on its owner-occupied value. The pre-tax return is in the range of 10 percent per year, not bad in today's market. The issue is that as short-term rental use of residential properties increases, home prices will continue to go up until competition among the short-term rental proprietors drives that 10 percent return down to market levels. In the meantime, home prices will continue to escalate without regard to area incomes or affordability.

If you own a house and are getting ready to sell it, this is good news. If you want to remain in your home, however, it is bad news because your property taxes will go up as more properties change hands based on their ability to produce revenue rather than their value as owner-occupied, or long-term renter-occupied structures. Unless the appraised values for property tax purposes are adjusted upward to reflect commercial use rather than residential use of the short-term rental property, all of the property taxes on owner-occupied homes in the affected areas will go up as these short-term rental houses sell based on their ability to produce income.

The fact that these short-term rental properties are not classified differently for property tax purposes means that the owners of owner-occupied and long-term renter-occupied homes are subsidizing their operations. Based on the above example, while the true value of the short-term rental property might be \$429,000 based on the net income it produces, its appraised value will be considerably less because there is no way to easily distinguish it from owner-occupied properties in the Assessor's records. Simply put, short-term proprietors are not paying their fair share of property taxes, and owner occupants are paying too much.

Even without changing the current law on short-term rentals, the following immediate changes in property taxes would help balance the now uneven playing field between owner-occupied properties and short-term rentals:

- Cancel retroactively the property tax homestead exemption of anyone who uses his or her home for a short-term rental. Just because something is illegal does not mean that it cannot be taxed. Ask Al Capone.
- Estimate the annual income of identified short-term rentals, and establish commercial property tax valuations using that estimated income and applicable cap rates. This is actually much easier than it sounds. Individuals who protest the valuations would have to provide business records to demonstrate the actual levels of revenue.
- Exclude from tax appraisal comparables any properties used for short-term rentals. In other words, identify those properties that were sold for the purpose of running a short-term rental scheme and exclude those sales in establishing neighborhood owner-occupied valuations.

5) Removing a home from the long-term rental market and placing it into short-term rental usage effectively circumvents Fair Housing laws and permits disparate treatment of potential occupants based on race or other characteristics.

New Orleans has struggled for decades with the application of Fair Housing laws. Even landlords with no intent to discriminate whatsoever must struggle with balancing the need for credit and reference checks of potential tenants against the possibility of discriminatory behavior and the sanctions that go with it. With a conversion to short-term rentals all of that goes away. Landlords are free to pick and choose to whom they will rent without fear of sanction for discrimination.

Imagine the uproar if a major downtown hotel announced that it was closing its doors during the Bayou Classic, the Essence Festival, or the Southern Decadence Festival. The hotel would suffer immediate legal and reputation consequences. The proprietor of a short-term rental business, however, would suffer no such

consequences if their property were simply not available on certain dates. If the city cannot enforce the current prohibitions against short-term rentals, how can it be expected that any sort of patterns of discrimination would be detected, much less prosecuted?

6) Unless the owner of the property explicitly stated that he or she was going to operate a short-term rental in the property and financed the purchase with a mortgage, that person committed mortgage fraud.

At some point the city will suffer a black eye over the nonenforcement of the rules against short-term rentals. It might be when a group of drunk bachelor party celebrants accidentally burn down the structure, and the one next to it. Even if everyone survived, crusading journalists and plaintiff attorneys would ask why, if the city knew that it had almost 3,000 unlicensed short-term rental units within the city limits, it did nothing to curtail the activity.

In a similar vein, properties that are used for commercial purposes, such as short-term rentals, are not eligible for financing by Fannie Mae, Freddie Mac, or FHA. Most banks that lend for their own portfolios follow the same guidelines. While commercial loans are available for such purposes, conventional and government-guaranteed mortgages are not. To the extent that any of the almost 3,000 properties in New Orleans being used as short-term rentals have traditional mortgages, those borrowers are in jeopardy, as are the lenders who made the loans. Even long-term rental properties have a higher risk of default than owner-occupied properties and, as a result, mortgages on those properties carry a higher interest rate. Imagine the situation, however, if a sudden downturn in the national economy reduced tourist traffic for a period of time and the owners of the short-term rentals defaulted on their mortgages due to a lack of rental income. The major mortgage agencies would see a pattern of mortgage deception here and in other cities where short-term rentals are common. Absent evidence that the city is willing and able to enforce the zoning and other laws against short-term rentals that the agencies had relied to protect their collateral and in setting their credit pricing, they could react by pricing that additional risk into their interest rates.

Conclusion and Recommendations

While the proponents of short-term rentals are quite vocal in demanding that they be allowed to continue their current operations, their desire is entirely understandable given the amounts of money flowing into their pockets by circumventing zoning laws. This money, however, is ill-gotten gains. It comes at the expense of undercutting licensed hotels and motels that are required to pay

the hotel and motel tax. It comes at the expense of bed and breakfasts that follow the rules and seek the proper licenses and safety permits. It comes at the expense of homeowners who see their property taxes go up as short-term operators bid up house prices. It comes at the expense of residential neighborhoods that lose their residential characteristics as the short-term operators destroy those characteristics at the same time they use them to market their properties.

The best approach would be for the city to recognize that a short-term rental is nothing more than a commercial venture operating illegally in a neighborhood zoned for residential use. At a minimum, no property that the owner does not occupy full-time should be allowed to do any short-term rentals. Otherwise the city should simply tear up all of its other zoning requirements if it cannot enforce one as straightforward as this one.

If the city decides that some sort of allowance should be made for short-term rentals in owner occupied structures, those should be allowed only subject to the following conditions:

1. A limit of 30 nights per year, with more than that being the difference between incidental and full-time commercial use of a residential property.
2. Forfeiture of 100 percent of the homestead exemption.
3. Payment of a tax equal to the hotel and motel tax.
4. Licensing with the city and appropriate safety inspections and permits.

Thank you for your consideration of these opinions and please contact me if you have any further questions.

Dr. Brinkmann is the recently retired Chief Economist of the Mortgage Bankers Association and was a recognized as national expert on residential and commercial real estate and real estate financing issues.