

Commission To Increase Housing Opportunities in Maine by Studying Land Use Regulations and Short-term Rentals

September 13, 2022

History of the Growth Management Program

Judy East, Bureau Director

Resource Information and Land Use Planning

Department of Agriculture, Conservation and Forestry



Short Term Rentals: a case study of Growth Management

Parallels in the “Push-Pull” of land use and economic regulation

- ▶ Regulatory response to significant development pressures
- ▶ Private property vs. community needs/rights
- ▶ Affordable housing - need, means to achieve
- ▶ Home rule and state oversight

The context for both GM Law and STRs

- ▶ Complex and controversial
- ▶ Land use is local; most everything else is regional+
- ▶ Powerful market forces
- ▶ Spectrum of responses with increasing regulatory burden
 - ▶ Registration, licensing, use regulation



GM Law legislative history - significant dates

- 1989
 - ▶ Enacted
- 1991
 - ▶ Repealed/reinstated
- 1999-2001
 - ▶ Growth-related capital investments ++
- 2003
 - ▶ Growth caps
- 2007
 - ▶ Informed Growth Act “big box retail”
- 2011
 - ▶ 12-year consistency “shelf life”
- 2019
 - ▶ ADUs, Aging in place, downtown parking, Sea Level Rise
- 2022
 - ▶ Climate, fair housing, Service Centers, goals “clean-up”



“Growth Management”

Title 30-A Chapter 187 Planning and Land Use Regulation § 4301-4349-A

- ▶ Definitions § 4301-4302
- ▶ **Growth Management Program**
 - ▶ Statement of Purpose/State Goals § 4312
 - ▶ Local authority for growth management § 4323 (express limitation on home rule)
 - ▶ Responsibility § 4324-4325 (public input, regional coordination)
 - ▶ GM Program elements § 4326
- ▶ Evaluation §4331 (reporting to legislature)
- ▶ Technical and Financial Assistance § 4345-4346
- ▶ Review of Comp Plans §4347
- ▶ Growth-related Capital Investments § 4349-A



“Growth Management”

Title 30-A Chapter 187 Planning and Land Use Regulation Implementation mechanisms § 4351-4357

- ▶ Land Use Regulation § 4351-4363
- ▶ Informed Growth Act § 4365-4372
- ▶ Subdivision § 4401 - 4408
- ▶ Enforcement § 4451 - 4453
- ▶ Municipal Regulation of Water Levels and Minimum Flows § 4454 - 4457



Growth Management Law / Short Term Rentals - parallels

Push-Pulls:

Regulatory response to significant development pressure

Home rule and state oversight

GM Law

- ▶ Originally enacted 1989 after the “consumption decade”
- ▶ Very high development pressures (Increasing SDs, BPs)

STR Regulations (new ordinances all over the state)

- ▶ AirBnB, VRBO, etc. explosion
- ▶ in-migration, teleworking (COVID, climate migration)
- ▶ Several LDs last year (failed)
- ▶ 2022 - express inclusion in LD2003 to allow municipal regulation of STRs
- ▶ this Commission

GM Law / STRs - parallels

Push-Pulls:

Regulatory response to significant development pressures

Private property vs. community needs/rights

Home rule and state oversight

GM Law (1989) Title 30-A Chapter 187 Planning and Land Use Regulation

- ▶ §4351. Home rule limitations. This subchapter provides express limitations on municipal home rule authority

STRs - local regulations (at least 11 eggs in ME)

- ▶ limitations/restrictions on unhosted rentals, total # non-occupied rentals, # a property owner can register in one year, # of unhosted days in one year, gatherings; licensing requirements (local emergency contact, fire codes, parking, etc.); registries

Short Term Rental Regulation - existing

Authorized by:

▶ Title 30-A Chapter 141 - § 3001 Ordinance Power

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

▶ Title 30-A Chapter 183 - Economic Regulation

▶ SubChapter 3: Innkeepers, victualers & lodging houses

▶ 3801 - Definitions 1. Innkeeper. "Innkeeper" means a person who keeps an inn, hotel or motel to provide lodging to travelers and others for compensation and who maintains the sleeping accommodations. An innkeeper is not a landlord pursuant to the landlord and tenant laws as provided in [Title 14](#).

▶ 3811 - License Required 1. Lodging houses; licenses. The municipal officers may enact ordinances requiring lodging houses to be licensed. These licenses may be issued by the licensing board under [section 3812](#) and are subject to the same expiration dates provided in that section.

Short Term Rental Regulation - NEW (LD 2003)

Title 30-A Chapter 187 - §4364-C - Municipal role in statewide housing production goals

2. Municipalities may regulate short-term rentals. A municipality may establish and enforce regulations regarding short-term rental units in order to achieve the statewide or regional housing production goal. For the purposes of this subsection, "short-term rental unit" means living quarters offered for rental through a transient rental platform as defined by Title 36, section 1752, subsection 20-C.

20-C. Transient rental platform. "Transient rental platform" means an electronic or other system, including an Internet-based system, that allows the owner or occupant of living quarters in this State to offer the living quarters for rental and that provides a mechanism by which a person may arrange for the rental of the living quarters in exchange for payment to either the owner or occupant, to the operator of the system or to another person on behalf of the owner, occupant or operator.

GM Law / STRs - parallels

Push-Pulls:

Affordable housing - need, means to achieve

Private property vs. community needs/rights

Home rule and state oversight

Affordable housing in the 1960s - 1980s was:

- ▶ mobile/modular homes
- ▶ Subsidized construction/rental
 - ▶ New complexes (elderly, multi-family, duplexing)
 - ▶ conversion of old schools; institutions
- ▶ Stigmatized then as now
 - ▶ changed nomenclature: “workforce housing” or housing for teachers, nurses, police and firefighters
- ▶ Significant decline in federal financial assistance for housing starting in 1980s
- ▶ Increasingly insufficient to meet the need

GM Law / STRs - parallels

Push-Pulls:

Affordable housing - need, means to achieve

Private property vs. community needs/rights

Powerful market forces

Affordable housing 40 years later is

- ▶ All that it was in the past, AND
- ▶ For property owners - a new market (STRs) that offers:
 - ▶ Income to age in place
 - ▶ Income for retirement, mortgage, other debt, health care
 - ▶ Conversion/use of outdated housing stock
 - ▶ feasible investment (long-term rental down / STR up)



GM Law / STRs - parallels

Push-Pulls:

Affordable housing - need, means to achieve

Private property vs. community needs/rights

Powerful market forces

Affordable housing 40 years later is also

- ▶ Vastly insufficient to meet the need
- ▶ A new market (STRs) that reduces the availability further:
 - ▶ STR income often exceeds long-term rentals income
 - ▶ Driving prices for long-term rentals even higher (supply & demand)
- ▶ Financialization of global housing market

GM Law / STRs - parallels

Push-Pulls:

Affordable housing - need, means to achieve

Private property vs. community needs/rights

STRs offer private property owners:

- ▶ Significant advantages in income, flexibility, investment, affordability, aging in place

STRs can have negative community impacts:

- ▶ insufficient parking, excessive trash generation, noise (partying), traffic, occupancy that exceeds septic design, change in neighborhood character, loss of long-term rental units, increase in residential density

GM Law / STRs - parallels

Push-Pulls:

Home rule and state oversight

Complex and controversial

GM Law (1989)

- ▶ REQUIRED municipalities to prepare Comp Plans; address 10 State Goals; designate Growth /Rural areas

GM Law (1991)

- ▶ Repealed entirely; reinstated given the constitutional need to base zoning on public policy as expressed in a Comprehensive Plan



GM Law / STRs - parallels

Push-Pulls:

Home rule and state oversight

Land use is local; most everything else is regional

Powerful market forces

GM Law (1999-2001): Several measures to give local Comp Plans more “teeth” and address costs of development sprawl

- ▶ Growth-related capital investments targeted to growth areas § 4349-A
- ▶ Req'd inclusion of Capital investment plan
- ▶ Req'd Timetables for implementation



GM Law / STRs - parallels

Push-Pulls:

Home rule and state oversight

Regulatory response to significant development pressures

Powerful market forces

GM Law (2003): Rate of Growth Ordinances § 4360 “Growth caps”

- ▶ Sets limits on # of permits in growth and rural areas
- ▶ Affordable housing provision
- ▶ Must recalculate every 3 years

STR ordinances limits

- ▶ Total, # in one year, owner-occupied or # of owner-occupied



GM Law / STRs - parallels

Push-Pulls:

Land use is local; most everything else is regional

Powerful market forces

GM Law (2007): Informed Growth Act § 4365-4372 “big box retail”

- ▶ Municipalities can require a “comprehensive economic impact area” study when large retail is proposed

STR regulation?

- ▶ Moratoria/limits unless justified by market analysis



GM Law / STRs - parallels

Push-Pulls:

Land use is local; most everything else is regional

Political pendulum shift

GM Law (2011): substantial rulemaking intended to streamline CP review process

- ▶ Focus on future land use plan
- ▶ Checklist for review of Comp Plans
- ▶ 12-year “shelf life” for consistency
- ▶ Significant loss of state staff and state/regional/municipal resources
- ▶ Erosion of state agency implementation of growth-related capital investments

STRs

- ▶ No resources to provide market research or model ordinances



GM Law / STRs - parallels

Push-Pulls:

Land use is local; most everything else is regional

Affordable housing - need, means to achieve

GM Law (2019): downtowns, aging in place, sea level rise

- ▶ Accessory dwelling units
- ▶ Downtown parking; upper floor re-use
- ▶ Housing to age in place; create age-friendly communities
- ▶ Plan for the effects of sea level rise on infrastructure

STR - spectrum of regulatory options - increasing regulatory burden/additive with each approach

- ▶ Registration - definitions, fees, limits/caps, penalties, data
- ▶ Licensing/Permitting - standards, application review, inspections
- ▶ Use regulation - location/zone, spacing, clustering, intensity



GM Law / STRs - parallels

Push-Pulls:

Land use is local; most everything else is regional

Affordable housing - need, means to achieve

GM Law (2022): various

- ▶ Fair housing provision linked to economic equity in goals
- ▶ Implement *Maine Wont' Wait* - 4 Year Plan for Climate Action
- ▶ Service Center Analysis - every 5 vs. every 10 years
- ▶ Goals and guidance "clean-up"

STR: present

- ▶ Models needed; community engagement essential; definitions critical

Questions? Additional research?

Judy East, Bureau Director
Resource Information and Land Use Planning
Department of Agriculture, Conservation and Forestry
Judith.c.east@maine.gov