

LAND USE ISSUES IN THE “SHARING ECONOMY”

**21st Annual Land Use Conference
The University of Texas at Austin
Austin, Texas
April 6, 2017**

**Terrence S. Welch
Brown & Hofmeister, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 (Fax)
www.bhlaw.net
twelch@bhlaw.net**

Terrence S. Welch

In 1981, Terry began his legal career in the Dallas City Attorney's Office and he currently is one of the founding partners of Brown & Hofmeister, L.L.P. Since 1981, Terry has represented numerous growing communities in North Texas. He routinely represents and advises local governments on a variety of issues, including employment, land use, civil rights, police, election, natural gas drilling and other regulatory matters.

Terry received his Bachelor of Arts degree at the University of Illinois at Urbana-Champaign in 1976, his law degree in 1979 from the University of Houston College of Law and a Master of Public Affairs in 1981 at the Lyndon Baines Johnson School of Public Affairs at The University of Texas at Austin. Terry has authored and presented over 200 papers to various groups, including the American Bar Association, the Texas City Attorneys Association, the Texas Municipal League, the American Planning Association, the North Central Texas Council of Governments, CLE International, the National Business Institute and The University of Texas at Austin Continuing Legal Education Program. Terry's most recent publication was a chapter on municipal regulation of natural gas drilling in *Beyond the Fracking Wars*, published by the American Bar Association in late 2013. He has had four law review articles published in *The Review of Litigation*, *Southern Illinois University Law Journal*, *Baylor Law Review* and *The Vermont Journal of Environmental Law*. Terry also recently had published an article on urban sprawl in Texas in the *Zoning and Planning Law Report*. He was the 2004-05 Chair of the State and Local Government Law Section of the American Bar Association and Immediate Past Section Chair of the State and Local Government Relations Section of the Federal Bar Association. He also serves as the Chair of the Board of Trustees of Dallas Academy, an exceptional school for children with learning differences, located in the White Rock Lake area of East Dallas. In May 2014, Terry was appointed an adjunct member of the City of Dallas Civil Service Board and subsequently was appointed to the Civil Service Board in August 2015.

In his free time, while accepting the fact that knee replacement surgery is inevitable, Terry enjoys long distance running, having competed in 69 half-marathons as well as many other long distance races. He completed his 43rd marathon in Austin in February 2017. He has competed in the Chicago, New York, San Diego, White Rock/Dallas, Cowtown, Illinois, Marine Corps, Canadian International (Toronto), St. Louis, Austin and Berlin Marathons, all of which he ran very slowly!

I.

What is the “Sharing Economy”?

“Sharing economy” is an umbrella term with a wide range of meanings, often used to describe economic and social activity involving online transactions.¹ As the Federal Government writes, a variety of new business models have emerged in the past few years and are dramatically reshaping how services and products are provided in an expanding number of sectors. Fundamentally, sharing economy platforms use internet, smartphone and software technologies to create marketplaces that facilitate transactions between numerous peers—decentralized buyers and sellers who are frequently individuals or small entities.² Sharing economy platforms enable “the emergence of marketplaces, . . . meeting point[s] for supply and demand, making it easier for almost anyone to become a supplier of goods and services in exchange for money.”³ They provide transactional services in order to facilitate commercial activity between these participating buyers and sellers, in contrast with internet retailers who themselves sell goods and services directly to buyers.⁴

The pervasive nature of the “sharing economy” has been as described in greater detail by the U.S. Federal Trade Commission:

PricewaterhouseCoopers estimates that sharing economy marketplaces in five sectors – peer-to-peer finance, online staffing, peer-to-peer accommodation, car sharing, and music/video streaming – generated \$15 billion in revenues worldwide in 2013, and projects that these revenues will rise more than twentyfold to \$335 billion by 2025. The magnitude of the sharing economy’s impact has registered in the financial world as well. Some of the largest companies in this space have gone

¹ *Sharing Economy*, Wikipedia, https://en.wikipedia.org/wiki/Sharing_economy (last updated Feb. 11, 2017).

² Federal Trade Commission, *The “Sharing” Economy* (November 2016) at 10 (hereinafter “FTC Report”). In June 2015 the FTC brought together legal, economic and business experts as well as stakeholders to examine competition, consumer protection and economic issues arising from sharing economy activity. The FTC also issued a request for comments and received over 2,000 public comments in response. The FTC Report describes and summarizes the ideas and issues discussed at the workshop and in comments received from the public. See FTC Report at 2.

³ FTC Report at 10, quoting CATALAN COMPETITION AUTH., PEER-TO-PEER (P2P) TRANSACTIONS AND COMPETITION 2 (2014), *attached to* Catalan Competition Authority Comment.

⁴ FTC Report at 10.

through multiple rounds of funding, in some cases reflecting valuations in the tens of billions of dollars. Based on a round of funding in December 2015, Uber was valued at \$62.5 billion, while a November 2015 financing placed Airbnb's valuation at \$25.5 billion. . . . Incumbent businesses are also providing financing to sharing economy marketplaces – partnering with, investing in, or acquiring sharing economy platforms. Since the beginning of 2015, General Motors made a \$500 million investment in Lyft, valuing Lyft's equity interest at \$5.5 billion, and Apple invested \$1 billion in Didi Chuxing, China's biggest for-hire transportation platform. Hotelier Hyatt has purchased a stake in British accommodations platform OneFineStay, while Expedia paid \$3.9 billion to acquire the lodging site HomeAway.

Two sectors of the travel industry have been at the epicenter of the explosion of sharing economy activity: short-term lodging (specifically, rental stays like those provided by hotels and bed-and-breakfasts) and for-hire transportation service (specifically, services akin to those provided by traditional taxis and limousines). Airbnb has become a leading platform for facilitating short-term rental transactions. Started in 2008 by roommates who rented out space in their apartment during a local convention, Airbnb reported over two million listings in over 34,000 cities, and a cumulative total of 60 million guests by the end of 2015. Platforms facilitating the provision of for-hire transportation service are often referred to as transportation network companies (or "TNCs"). The leading TNC, Uber, began operations in 2009 in San Francisco, and as of 2014 reported providing 140 million rides (including one million rides per day by year-end) and a driver base of over 162,000. Pew Research Center found that by 2015, 11 percent of American adults had used an "on-line home-sharing service" and 15 percent had used "ride-hailing apps."⁵

The term "sharing economy" itself generates criticism. Some commentators have argued that the word "sharing" is a "misnomer" employed to mask the essentially commercial nature of the activity on these platforms. They have argued that the term misleadingly "frames technology-enabled transactions as if they were altruistic or community endeavors"⁶ and "create[s] a halo of positive branding to avoid the discussion of what regulatory structures need to be modernized to deal with these platforms."⁷ As the United States Department of Commerce notes, "terms such as

⁵ FTC Report at 12-13 (citations omitted).

⁶ *Id.*, quoting Natasha Singer, *Twisting Words to Make 'Sharing' Apps Seem Selfless*, N.Y. TIMES (Aug. 8, 2015).

⁷ FTC Report at 10-11, quoting Adam Chandler, *What Should the 'Sharing Economy' Really Be Called?*, THE ATLANTIC (May 26, 2016).

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First appeared as part of the conference materials for the
21st Annual Land Use Conference session

"Sharing Economy"