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Short-Term Rentals- Regulatory Options to Protect Neighborhoods

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SHORT-TERM RENTALS

Short-term rentals (“STR’s”) present an increasingly complicated regulatory challenge for municipalities. That challenge is exacerbated by the increasing popularity of STR’s from both an owner/operator and consumer perspective. STR’s constitute an increasingly popular trend in today’s “sharing economy”. The sharing economy is an economic model often defined as a peer-to-peer based activity of acquiring, providing or sharing access to goods and services that are facilitated by a community based on-line platform. Sharing economies allow individuals and groups to make money from underused assets. For owners and operators, STR’s provide a lucrative money-making alternative to traditional long-term residential rentals. For consumers, STR’s can offer a more economical, flexible, and comfortable option to hotels. As these economic forces have caused the number of STR’s nationwide to proliferate, cities have struggled to keep up with the trend from a regulatory and enforcement standpoint. Those cities face the competing interests of STR’s owners and operators who seek to protect their revenue stream and the desire of owner-occupied residences to enjoy the peace and tranquility of a traditional residential neighborhood. A significant part of the regulatory struggle is based on the similarities between traditional residential uses and STR’s. Additionally, the litigious nature of STR advocates has created confusing precedent that has been misused and misrepresented by STR advocates. At the end of the day, when STR’s are examined more closely, STR’s clearly represent a unique and distinct land use that can and should be treated differently from more traditional residential uses.

I.

What are STR’s and How Do They Threaten Neighborhoods?

In order to fully understand the regulatory options to address STR’s, the threshold issue is to fully grasp and comprehend what an STR is. The most commonly utilized definition of an STR is a type of lodging where a home, or part of a home, is rented for a fee for fewer than thirty (30) consecutive nights. From a regulatory standpoint, the question arises as to how to classify STR’s under the Zoning Ordinance. To properly assess that classification, the above-referenced definition is not sufficient. STR advocates urge the proposition that STR’s are no different from other residential uses, and as such, STR’s should be allowed by right in any residentially zoned neighborhood. However, that proposition and the above definition do not take into account the detrimental and harmful impacts of STR’s on traditional residential neighborhoods that will be addressed below. STR’s are commercial, money-making ventures. From a land use and regulatory perspective, the starting place is a review of the existing Zoning Ordinance.

A. STR’s Are Becoming Increasingly Prevalent

Over the past several years, the number of STR’s nation and world-wide has grown exponentially. During one two-year period STR rentals on Airbnb in Nashville increased 365 percent, Airbnb rentals in New Orleans went up 340 percent, and Airbnb stays in Portland Maine shot up 328%. A Los Angeles study revealed that 90 percent of Airbnb revenues are generated by hosts who rent out their entire unit and by leasing companies

which rent out two or more entire rental units. Similar studies for the cities of San Francisco, New Orleans, Nashville, and New York have yielded similar results. In 2016, there were more than 2,700 U.S. cities and counties with more than 50 STR's.

B. STR's Are Harmful to Neighborhoods

STR's represent a fundamentally different character of use when compared to traditional residential occupancies by owners or long-term renters. STR's typically turn over the entire occupancy of the residence multiple times per month and sometimes during the same week. With each such turnover, the new guests move in their luggage, groceries, ancillary items, and vehicles while the outgoing guests remove same. All responsible operators provide a cleaning service between each occupancy. STR's regularly attempt to utilize the residence for a much greater density of use than traditional residential. Some examples of this "super-density" are as follows: a 2,100 square foot house advertised to sleep 14 adults, (\$375 avg. night); a 2,500 square foot home that can host up to 18 adults (\$425 avg. night); 1,800 square foot home for up to 16 guests (\$275 night average); and a 1,500 square foot home with ten beds which is listed for up to 12 adult guests. STR's like these infringe on neighborhoods in multiple ways: (1) Noise: higher in volume due to the number of guests, more robust than traditional houses due to the hospitality nature of STR's, and longer hours for the noise; (2) Security: STR's typically attract large groups of unknown strangers who are not subject to background checks or other screening which means that the guests can include criminals and sex offenders; and (3) Parking and traffic issues: most residential neighborhoods have limited parking, particularly for the large groups which utilize STR's, resulting in overcrowded parking and associated traffic issues. Calls for police service to STR's include noise violations, fighting, parking violations, theft, drug sales and use, intoxication, and more. STR occupants are less cognizant of neighbor concerns because they are not neighbors. Instead, STR guests are paying to utilize a residence as a commercial occupancy which tends to result in an overall increased level of intensity in use. This adversely affects neighborhood cohesion thanks to the revolving door of guests who have no connection with or investment in the community in which they only temporarily reside.

C. How Are STR's treated under Zoning?

1. Traditional Zoning Applies to STR's

Chapter 211 of the Texas Local Government Code is the State's zoning enabling law. The division of a city or area into districts and the prescription and application of different regulations in each district generally is referred to as zoning. A comprehensive zoning ordinance necessarily divides a city into certain districts and prescribes regulations for each one having to do with the architectural design of structures, the area to be occupied by them, and the use to which the property may be devoted. The use of a building may be restricted to that of trade, industry or residence. 10 Tex. Jur. 3d, Building Regulations § 6. Zoning laws are enacted in the exercise of the police power, and are distinguishable from the law of nuisance because comprehensive zoning ordinances have a much wider scope than the mere suppression of the offensive use of property. They act, not only negatively,

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