

Austin's Unconstitutional Short-Term Rental Ordinance

BACKGROUND

The city of Austin requires residents to procure a license to lease their homes out on a short-term basis (i.e., for less than 30 days). Austin distinguishes between three types of short-term rentals (STR), each with its own license category:

- Type 1 and 1A: Owner-occupied residential rentals;
- Type 2: Residential rentals the owner does not claim as his homestead; and
- Type 3: Rentals that are part of a multifamily complex.

SHORT-TERM RENTAL ORDINANCE

In February 2016, the city of Austin passed [Ordinance 20160223-A.1](#) which made permanent a moratorium on Type 2 rentals in residential areas, citing a need to crack down on short-term “party homes.” However:

- Since the initiation of short-term rental licensing regulations in October 2012, no citations for noise, occupancy, trash or other violations of the Austin Municipal Code have been issued that are documented to have stemmed from licensed short-term rental properties or tenants.
- Less than 10 percent of the complaints filed against short-term rentals mention overcrowding or noise issues; and
- The city employs only two permanent enforcement officers to handle implementation of the STR Ordinance for the entire city of Austin.

The STR Ordinance imposes severe restrictions on the rights of homeowners and tenants alike, including:

- Prohibiting “assembling”—i.e., engaging in any activity other than sleeping—of any kind at any location on the premises between 10:00 p.m. and 7:00 a.m.;
- Prohibiting “assembling”—i.e., engaging in any activity other than sleeping—outside with a group of more than six adults between 7:00 a.m. and 10:00 p.m.;
- Prohibiting more than ten related adults from using a short-term rental at any one time—regardless of the square footage or capacity of the home;
- Prohibiting more than two adults per bedroom plus two additional adults being *present* in a short-term rental between 10:00 p.m. and 7:00 a.m.;
- Requiring short-term rental licensees and tenants to permit officers to enter into their homes, to examine, and to survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises, without a warrant, exigent circumstances, probable cause, or an opportunity for pre-compliance review; and
- Eliminating Type 2 residential rentals in residential areas, prohibiting the issuance of new Type 2 licenses, and requiring existing Type 2 owners to discontinue short-term rental use by 2022.

“Self-ownership, the right to put your mind and body to productive enterprise, is not a mere luxury to be enjoyed at the sufferance of governmental grace, but is indispensable to human dignity and prosperity. . . . Texans are thus presumptively free, and government must justify its deprivations.”

— Justice Don Willett, Texas Supreme Court

CONSTITUTIONALITY CONCERNS

- **Freedom of Movement** (*Tex. Const.*): The city cannot broadly or unduly restrict citizens’ ability to leave their homes and move about at will, as they have done by limiting the number of individuals allowed outdoors at short-term rentals, and by prohibiting group activities other than sleeping after 10:00 p.m.
- **Freedom of Assembly** (*Tex. Const.*): The city cannot unduly curtail or “chill” the right to assemble together by enacting a broad prohibition on group activities at short-term rentals after 10:00 p.m., and a cap on the number of people allowed to engage in outdoor daytime group activities at short-term rentals.

- **Right to Privacy** (*Tex. Const.*): The STR Ordinance attempts to regulate behavior in the bedroom by prohibiting citizens from engaging in “group activities” with their spouse or any other individual after 10:00 p.m. This violates citizens’ right to privacy under the Texas Constitution.
- **Economic Liberty** (*Tex. Const.*): The city’s prohibition on type 2 rentals is unduly burdensome so as to be oppressive on homeowners, in violation of their substantive rights under the Texas Constitution. Similarly, the city’s “presence” restrictions mandate underutilization of short-term rentals, and are oppressive in light of the state’s interest.
- **Equal Protection** (*Tex. Const.*): The city treats short-term tenants differently than long-term tenants, short-term lessors differently from long-term lessors, and owner-occupied residences differently than non-owner-occupied homes. This is not rationally or statistically supported by the city’s interest in noise and overcrowding issues.
- **Search & Seizure** (*Tex. Const.*): Without warrant, justification, or even a chance to protest, Ordinance 20160223-A.1 authorizes code officers to intrude upon and search citizens’ bedrooms, pantries, nurseries, and everywhere in between. This violates citizens’ constitutional protection from unreasonable search and seizure.
- **Ultra Vires Act**: Municipal zoning authority does not allow Austin to regulate annoying behavior with land use ordinances, nor does it allow the city to prohibit residential uses in residential districts. Thus, Mayor Adler acted outside his authority by signing the STR Ordinance into law.

**For more information about TPPF’s lawsuit against the city,
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