

Short-Term Rentals – Legal Challenges and Opportunities

GPA Spring Conference

Decatur, Georgia

March 27, 2019



American Planning Association
Georgia Chapter

Making Great Communities Happen

Panelists

- DAVID KIRK, FAICP – Troutman Sanders
- JENNA LEE – Troutman Sanders
- KEYETTA M. HOLMES, AICP – City of Atlanta
- MELANIE WILSON – Savannah-Chatham County

The opinions expressed in this presentation are those of the presenter and do not necessarily reflect the views of Troutman Sanders LLP, its clients, or any of its or their affiliates. This presentation is provided for general educational and informational purposes only and is not intended to be and should not be taken as legal advice.

The Sharing Economy

- Uber & Lyft Ride Share
- Lime and Bird Scooters
- Airbnb, VRBO, HomeAway



Short-Term Rentals In the News



AMERICAS

Man who placed hidden camera in Airbnb rental charged with voyeurism



HOME NEWS

Airbnb accused of having 'dangerous loopholes' after corpse found



NEWS & ADVICE

How to spot a hidden camera in your Airbnb



NEWS & ADVICE

Strict new rules imposed on Airbnb rentals in Paris



UK

London Airbnb landlord makes £12m a year from 881 rental properties

Purpose of Session

- Provide overview of legal issues surrounding short-term rentals
 - State and local policy approaches
 - Relevant case law
- Atlanta case study
- Savannah & Augusta case studies
- Try to Answer Your Questions in an *Educational* Setting
- Provide 1.5 Hours of AICP CM Legal Credit!

What are Short-Term Rentals & Why are They Significant

- Rental of a single-family home, apartment, condo, or room by the night (definitions vary)
- Rise of apps and services like Airbnb, VRBO, HomeAway
- Airbnb has 6M+ listings worldwide – greater than largest hotel chain
- On average, 2M people are staying in an Airbnb per night
- According to Airbnb, Atlanta area hosts earned \$690 on average during the 2019 Super Bowl

Potential Legal Issues

- Local ordinances and policies
 - Zoning restrictions on short-term rentals
 - Definition of residential use, hotel, etc
 - Classification of use (ie commercial use in a residential district?)
 - Building code requirements and occupancy limits
 - Licensing requirements
- State statutory requirements
- Homeowners Association restrictions
- Local and state taxes and fees

State Regulation

- In 2018, 15 states debated bills to regulate the short-term rentals
- Indiana
 - Prohibits cities from banning rentals of a primary residences, but allows cities to impose fees or taxes
- New Jersey
 - State-wide 11.6 % “Airbnb tax” applies to rentals fewer than 90 days
- New York
 - Prohibits rental of most apartments (buildings occupied by 3+ families) for fewer than 30 days unless a permanent resident remains on the premises

Georgia's Proposed Legislation (HB 523)

- *“No county, municipality, or consolidated government shall prohibit vacation rentals or short-term rentals”*
- Local governments may regulate short-term rentals only in the following contexts:
 - Life safety (fire and building codes)
 - Residential use and zoning ordinance, including noise and nuisance protection
 - Half-way houses and similar uses
- Provides for state registration and state and local taxation of operators and “lodging operators” (rental platforms like Airbnb)
- House Second Readers as of 3/1/2019

Local Regulation of Short-Term Rentals

- Short-term Rental License
- Taxes and Fees
- Regulation by Zoning District
- Caps and Maximums by District
- Distance Regulations
 - Short-term rentals must be X feet from another licensed short-term rental
- Duration Limitations
 - Up to X days per year
 - Rentals no more than X consecutive days
- Occupancy and Bed Maximums
 - No more than 2 guests per bed
- Permanent Residence Requirement
- Code Compliance and Insurance Requirements

City of New Orleans

- Rentals restricted by zoning district
- Registration, license, and taxes required
- Three rental categories:
 - Accessory Short-term Rental
 - Limited to 3 bedrooms and 6 guests
 - Owner must be on site
 - Temporary Short-Term Rental
 - In-town property manager
 - Maximum of 90 rental nights per year
 - Maximum of 2 guests per bedroom and 10 guests
 - Commercial Short-Term Rental
 - Entire dwelling may be rented
 - Maximum of 5 bedrooms and 10 guests
 - No annual limitation on rental nights
 - Not permitted in residential zoning districts

San Luis Obispo County, California

- Residential vacation rentals are generally permitted
- Business license and taxes required
- County operates a “Short Term Vacation Rental Hotline” for reporting unlicensed vacation rentals and making complaints

New York City

- Prohibition on 'entire apartment or home' rentals for less than 30 days
- Maximum of 2 guests if resident remains on site
- Landlords are responsible for any violations by tenants
- City operates an online complaint database for renters, neighbors, and community members

Miami Beach

- No short term rentals in residential zoning districts (minimum rental is 6 months)
- Code enforcement sting operations
 - Significant fines for violations (\$40,000 in one instance)
 - Renters kicked out of rentals
- <https://www.nytimes.com/2019/03/09/travel/airbnb-miami-beach-war.html>

Recent Georgia Case Law Morgan County v. May

- Facts
 - Morgan County's ordinance contained no specific language as to acceptable rental durations for residential uses
 - In 2010, Morgan County amended its ordinance to prohibit rentals for fewer than 30 consecutive days
 - Defendant May began renting her vacation home prior to 2010 for one-week stays and received a criminal citation in 2011
 - Defendant May challenged the citation and argued the County's old ordinance was unconstitutionally vague and her short-term rental use is a "grandfathered" use and may continue

Morgan County v. May (Decided 2/18/2019)

- On appeal, the Georgia Supreme Court overturned the Court of Appeals decision and held:
 - Morgan County's old ordinance was unconstitutionally vague and unenforceable
 - Morgan County's old ordinance, which was silent on the short-term rental of residential properties, failed to put a person of common intelligence on notice of the law concerning temporary residences
 - Her short-term rental use is grandfathered and may continue

Key Lessons from Morgan County v. May

- An ordinance silent on short-term rentals, but including a provision that uses not specifically listed as permitted are prohibited, may be unconstitutionally vague if applied to short-term rentals
- More specificity, the better
- Short-term rentals initiated (and not abandoned?) prior to a local government's adoption of a constitutional short-term rental ordinance may be grandfathered as legal nonconforming uses

City of Savannah v. Belzer (7/3/2018)

- Facts

- City of Savannah's zoning ordinance defines *Short Term Vacation Rental* as accommodation not to exceed 30 days and prohibits *Short Term Vacation Rentals* in certain zoning districts
- City of Savannah requires business license for *Short Term Vacation Rentals* and requires state and local taxes, including hotel/motel tax
- The zoning ordinance also defines *Bed and Breakfast Homestay* as a rental of no more than one bedroom to two adults within an owner-occupied dwelling
- Belzers lived in the R6 zoning district, which does not expressly permit *Short-Term Vacation Rentals* or *Bed and Breakfast Homestays*
- The Belzers rented a room in their home to guests off and on for 15 years
- City brought enforcement against the Belzers in Recorder's court
- The Belzers admitted to violating the zoning ordinance

City of Savannah v. Belzer (7/3/2018)

- More Facts
 - Arnold Belzer also happens to be a Rabbi and argued the zoning ordinance infringes upon their ministry of hospitality and firm held religious beliefs in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

City of Savannah v. Belzer (7/3/2018)

- The Chatham County Superior Court found the City's ordinance did not violate RLUIPA because there was no "substantial burden" on the Belzers religious exercise
- The Court held the Belzers have alternatives, including moving to another zoning district in which the short-term rental use is permitted, removing the listing from Airbnb, ceasing to charge for rentals

HomeAway.com v. City of Santa Monica (3/13/2019)

- City of Santa Monica's short-term rental ordinance prohibits all short-term rentals (defined as rentals 30 days or less), but allows "home-sharing" (residents remain on-site with guests)
- Homeshare operators must obtain a city license and collect taxes

HomeAway.com v. City of Santa Monica (3/13/2019)

- City of Santa Monica's short-term rental ordinance also places obligations on hosting platforms:
 - Platforms must collect and remit relevant taxes to City
 - Platforms must disclose listings and booking information to the City
 - Platforms must refrain from completing transactions for properties not properly licensed by the City
 - Importantly, those property owners may still list the properties, but the platform may not complete the transaction to book an illegal listing
 - A platform *may choose* to remove those bookings – but is not required to do so
 - Platforms must refrain from collecting ancillary service fees

HomeAway.com v. City of Santa Monica (3/13/2019)

- HomeAway and Airbnb challenged City of Santa Monica's ordinance
- 9th Circuit Court of Appeals upheld the City's ordinance
 - Ordinance does not violate 1st Amendment by imposing a content-based financial burden on commercial speech
 - Ordinance does not violate the Communications Decency Act

Airbnb, Inc. v. City of New York (1/3/2019)

- New York's short-term rental ordinance prohibits short-term rentals of certain multi-family apartment units
- The ordinance required rental platforms to provide the City with a report of all transactions on a monthly basis, including physical addresses of rentals, legal names and addresses of hosts, listing URL, and description of the rental (entire apartment, a room, etc), duration of rental, fees, and amount of rent paid

Airbnb, Inc. v. City of New York (1/3/2019)

- Southern District Court of New York granted a preliminary injunction (permanent relief to be determined), finding:
 - The provisions of the ordinance requiring rental platforms provide reports of all transactions implicate the U.S. Constitution's Fourth Amendment and places a search and seizure regime on hospitality booking services, which is likely an unreasonable search and seizure

ATLANTA CASE STUDY

- Requires an annually renewable short term rental license & business license
 - No more than 10 guests
 - Owner is responsible for guests except criminal activity
 - Owner required to post City's noise ordinance requirements within 15 feet of entrance
- Residents may only rent primary residence (proof of homestead exemption)
- Prohibits rental of units that are income restricted, accessory dwellings units, and those that have been subject to a violation
- On-site parking allowed on lot with dwelling unit - ONLY

ATLANTA CASE STUDY

- Appeals of denied or revoked license to License Review Board
- Owner shall maintain rental records and keep for a period of two years
- Hosting platforms required to provide an electronic report, of listings of short-term rental units maintained, and advertised in the City
- Hotel or Motel Occupancy Tax is required

SAVANNAH CASE STUDY



AUGUSTA CASE STUDY