



Legislative UPDATE

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Appeals Court Strikes Down Portions of Austin’s Short Term Rental Ordinance

Last week, the Third District Court of Appeals in Austin held that certain portions of the City of Austin’s short-term rental (STR) ordinance are unconstitutional. The [court’s opinion](#), should it stand, has potentially far-reaching ramifications for Texas cities that have adopted, or are considering adopting, STR ordinances.

Austin adopted its current STR ordinance in 2016 after multiple studies and hours of public testimony on the impact of STRs on individual neighborhoods and the community in general. Among other things, the city’s ordinance imposes licensing requirements, advertising requirements, limits on distance between STRs, and includes provisions related to inspections and noise. More controversially, the ordinance provided for the eventual elimination of certain STRs in residential neighborhoods and prohibited certain types of gatherings. It was those last provisions that are subject to the legal challenge.

The Court specifically struck down the following parts of Austin’s ordinance:

- A provision terminating all “type-2” rentals in residential areas by 2022. (Under the Austin ordinance, a “type-2” rental is a single family residence that is not owner-occupied and is not associated with an owner-occupied principal residential unit.)

- Provisions limiting certain conduct and assembly at STR properties, including prohibiting any assemblies between the hours of 10:00 p.m. and 7:00 a.m., prohibiting outdoor assemblies of more than six adults between 7:00 a.m. and 10:00 p.m., and prohibiting more than six unrelated adults or ten related adults from being present on the property at any time.

In striking down the city’s type-2 STR ban, the court held that the ban is unconstitutionally retroactive because it would significantly impact property owners’ well-settled right to lease their property and the city’s ban on type-2 STRs did not serve a compelling public interest. Further, the court relied on a [2018 Texas Supreme Court opinion](#) relating to homeowner association limits on STRs to hold that short-term rentals are residential, rather than commercial, in nature.

The most troubling part of the opinion is an analysis relating to the number of people that can use or gather at an STR. In a sweeping and somewhat unprecedented analysis, the court held that the right to assemble under the Texas Constitution is a fundamental right. That means the city’s ordinance must survive “strict scrutiny” and be narrowly tailored to serve a compelling governmental interest. The city did not provide sufficient evidence of a serious burden on neighboring properties sufficient to justify the assembly-related restrictions in the ordinance.

What does this opinion mean for Texas cities? It certainly calls into question a city regulation that either: (1) bans STRs to any degree; or (2) limits the ability of people to assemble at STR properties. The opinion may be appealed to the Texas Supreme Court, and the grounds for appealing the decision are fully presented in the [dissenting opinion](#).

An opinion from the Texas Supreme Court would likely provide the final word on the limitations of city STR regulation, unless the Texas legislature passes legislation addressing the scope of city regulation. In the meantime, cities with STR ordinances are encouraged to consult with legal counsel about what changes, if any, should be made to their ordinances in light of this opinion.

Payday Lending Clearinghouse Updates

The League’s “Payday Lending Clearinghouse” webpage, available [here](#), includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Two items of interest are included in this week’s update: (1) the Texas Office of Consumer Credit Commissioner will conduct a stakeholder meeting on December 9, 2019, to discuss a recent attorney general opinion relating to loan products; and (2) a recent City of Austin trial court win relating to its ordinance.

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