



Time to Act on Short-term Rentals

By City Attorney Mara W. Elliott

Short-term rentals in San Diego should be regulated in a clear and objective manner that respects the rights of all property owners, protects our quality of life, and preserves our housing stock.

Instead of adopting a regulatory framework, however, San Diego has opted to rely on existing laws that address noise, trash, parking, and other problems created by visitors who rent properties through online services like Airbnb. This is frustrating to those of us who believe that short-term rental property owners and neighborhood residents both deserve clear rules that they can live with.

While the politics of short-term rentals (STRs) are complicated, the law is clear. The Municipal Code, which houses our City's laws, does not specifically regulate or prohibit STRs in single-family residential zones. Under what is known as a "permissive" zoning ordinance, the City of San Diego has created zones that define how land within the City may be used. If the use is not listed, it is not permitted, which is the case with STRs. At a minimum, our policy makers must define STRs so that citizens understand how the land can be used, and so that law enforcement can enforce the law.

In March 2017, I issued the first of several memoranda summarizing the law and suggesting potential solutions, including the enactment of an ordinance that reflects "the reasonable compromise our communities seek," a compromise that allows for participation in the innovation economy as well as the quiet enjoyment of our homes.

Following the memo's release, the Mayor's Office said that it would not change enforcement practices until the City Council took action to regulate short-term rental properties.

In August 2018, after hours of public testimony, the City Council enacted on a 6-2 vote an ordinance to regulate STRs. The Ordinance had been introduced by the Planning Department and amended by the City Council. Attorneys in my office advised on the law and drafted Municipal Code amendments to meet the policy makers' goals.

The STR industry did not like the ordinance. Although they openly threatened to sue, they instead chose to bankroll a petition drive to suspend the ordinance and force a public vote on it. In such cases, the Council has a choice: it can repeal its ordinance outright or place it on the ballot. By an 8-1 vote, the Council repealed its ordinance, even though it had been years in the making.

Under the law, the Mayor and City Council had two alternatives. When the City Council repeals an ordinance suspended by a referendum, as was the case here, the Council could introduce a substantially similar ordinance one year after the date of repeal. The one-year anniversary of the repeal is November 13, 2018. The Council could also immediately introduce a new STR

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ordinance that does not substantially mirror the repealed ordinance. Unfortunately, no action has occurred since the repeal, and STRs continue to flourish.

The Mayor and City Council have a golden opportunity to bring this long conversation to a meaningful and productive end by finally putting in place rules that are objective and clear, and again they will have the full support of my office in doing so. In the meantime, my office stands ready to prosecute any STR-related nuisance cases brought to us by mayoral departments.

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