

Update, Status, and Strategies on Short-Term Rental Ordinances

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JANET SPUGNARDI, J.D.
DEPUTY CITY ATTORNEY
IRVING CITY ATTORNEY'S OFFICE



Short-Term Rentals (STRs)

The proliferation and popularity of STRs through sites like AirBnB, VRBO, and HomeAway, have brought with them new challenges and concerns for municipalities

Generally, the biggest issue associated with STRs is the impact on quality of life for the neighborhoods because of the secondary effects that STRs have on issues such as parking, noise, disorderly conduct, etc.

Cities, in response to the STR trend, have sought to find ways to address the problems associated with STRs in their communities, with different approaches being taken

Challenges with STRs

Whose Property Rights?

- Person who owns the short-term rental
- Person who lives in the neighborhood

How to balance the rights of both is a challenge

Evolving notions of what is a Single-Family Residence

Aging Neighborhoods: Reinvestment v. Status Quo

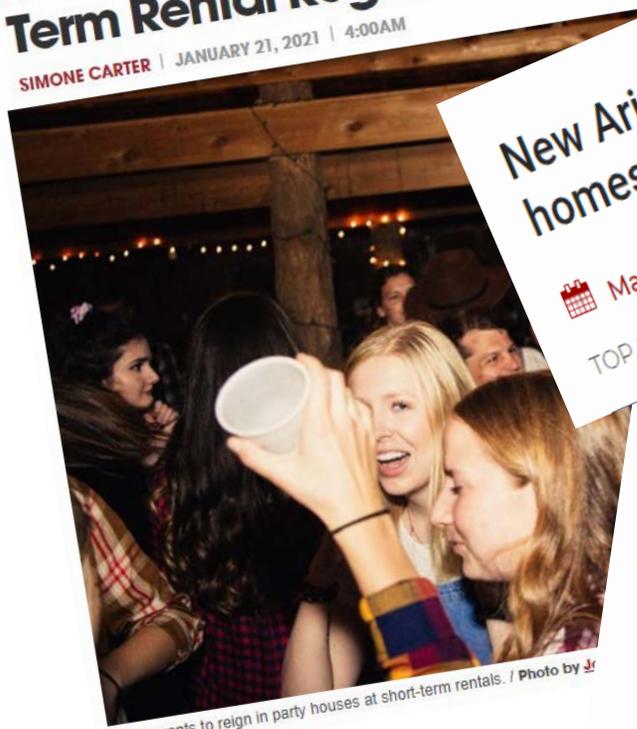
Other challenges:

- Patchwork of local regulations v. maintaining local control/home-rule authority
- State Legislature
- Enforcement/Accountability

NEWS |

Dallas Leadership Homing in on Short-Term Rental Regulations

SIMONE CARTER | JANUARY 21, 2021 | 4:00AM



Dallas wants to reign in party houses at short-term rentals. / Photo by [unreadable]

New Arizona bill seeks to regulate short-term rental homes after 'party house' issues

March 8, 2021 5:15 am 12 News

TOP STORIES

Airbnb is officially banning "party houses" on its platform after five people were fatally shot at a rental in Orinda, California.



TRAVEL+LEISURE

Airbnb Cracks Down on Los Angeles Listings Suspected to be 'Party Houses'

Vermont vs. vacation rentals: New bills aim to regulate Airbnbs, end party houses

Dan D'Ambrosio Burlington Free Press
Published 7:16 a.m. ET Mar. 2, 2021 | Updated 12:28 p.m. ET Mar. 2, 2021

Facebook Twitter Email



USA TODAY

These tips can help maximize your stay at a vacation rental
From contacting the rental property owner to what to look for, you might be missing important details that could dramatically improve your stay. USA TODAY

national victoria > crime

Nine people stabbed at short-term rental party in Melbourne CBD

The number of youths in Melbourne's CBD has risen as police fear reprisal attacks after a mass stabbing at an out-of-control party in Melbourne's CBD has risen as

New Arizona bill seeks to regulate short-term rental homes after 'party house' issues

Rental homes in the Valley have been used by some as party houses during the pandemic. Now, lawmakers are aiming to end that trend with a new bill.



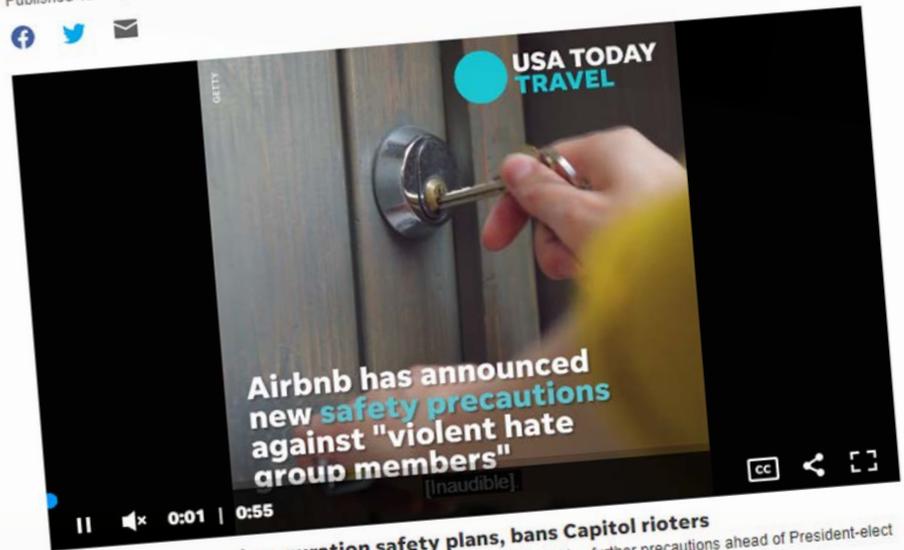
Airbnb suspends Palm Springs rentals as part of 'party house' crackdown



MONEY

Atlanta considers ban on short-term rentals

Associated Press
Published 12:58 p.m. ET Jan. 25, 2021



Airbnb announces inauguration safety plans, bans Capitol rioters
After violent riots at the U.S. Capitol, Airbnb has announced they will be taking further precautions ahead of President-elect Biden's inauguration. USA TODAY

Council to vote on San Diego short-term vacation rental ordinance

The San Diego City Council is scheduled to vote on a contentious ordinance that would regulate short-term vacation rentals.



Brigantine Clamps Down On Short Term Rentals and Party Houses
April 18, 2019 / By BrigantineNOW

New rules for short term, Brigantine rental properties. Crack-down on nuisance properties.

Most homeowners were not aware of this m...
most homeowners are away.

these types of decisions are being made when

South Bay city to crack down on short-term party houses

Cities see red over short-term rental party houses

Kim Hart, author of [Cities](#)

f t in e



Illustration: Aida Amer/Axios



Mayor Simpson Crack Down On Short Term Rentals

MICHIGAN

New Buffalo official: Online home rentals became 'Animal House' situations

Frank Witsil Detroit Free Press
Published 8:00 a.m. ET May 29, 2019 | Updated 9:26 a.m. ET May 29, 2019

View Comments



A short-term rental is when an owner rents a house, apartment or other dwelling out for less than 30 days, most often to tourists.

0:03 | 0:39

What are short-term rentals?
Michigan lawmakers may stop local officials from banning short-term rentals Megan Banta, Lansing State Journal

CATHEDRAL CITY

Cathedral City council supports March 2 ballot initiative to phase out short-term rentals

Melissa Daniels Palm Springs Desert Sun
Published 8:38 p.m. PT Jan. 13, 2021 | Updated 5:36 p.m. PT Jan. 14, 2021



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Las Vegas puts more restrictions on short-term rentals



MIKAYLA WHITMORE

THE CASE TO WATCH: DRAPER ET AL. V. CITY OF ARLINGTON ET AL.

Arlington Case

Draper et al. v. City of Arlington et al.

- Spanning the course of several years, the City of Arlington conducted an exhaustive deliberative process on STRs
 - Hired consultant
 - Mapped distribution of STRs using census tract data
 - Gathered citizen input through 4 town hall meetings, surveys, an open house, 14 committee meetings, and 18 city council meetings
- On April 23, 2019, Arlington passed 2 complementary STR ordinances, effective August 1, 2019

Draper et al. v. City of Arlington et al.

Zoning Ordinance created an STR Zone within 1 mile of the Entertainment District

- City conducted extensive mapping of census tract data that showed Entertainment District area contained highest ratio of STRs to single-family homes in the City
- 13.5% of the single-family homes in the STR zone were being used as STRs

Zoning Ordinance amended the Unified Development Code to allow residential structures and accessory dwelling units to be used as STRs in:

- The STR Zone;
- A residential medium-density zoning district;
- A residential high-density zoning district;
- A residential multifamily zoning district;
- A non-residential/commercial district; or
- A mixed-use zoning district

This results in thousands of parcels with single-family dwelling units that can be used as STRs

- STR Ordinance regulations:
 - Annual permit, \$500 fee, and inspection
 - Proof of HOT payment required
 - Proof of \$1M per occurrence liability insurance required
 - Max. Occupancy limits: 2 per bedroom plus 2, limited to 12
 - Noise restrictions: no amplified sound between 10 pm and 9 am
 - Prohibits outside congregation between 10 pm and 9 am
 - Trash placement on curb after 7 pm evening prior to scheduled pick-up
 - Prohibits advertising of an STR for a special event such as a “banquet, wedding, reception, reunion, bachelor or bachelorette party, concert, or any similar activity that would assemble large numbers of invitees”
 - Imposes parking restrictions and limits the number of vehicles allowed at an STR
 - Prohibits the physical conversion of premises to add additional bedrooms for STR use

Draper et al. v. City of Arlington et al.

Pending
litigation against
Texas cities on
STRs: Arlington
case

Draper et al. v. City of Arlington et al.

- Homeowners sued for declaratory and injunctive relief alleging the 2 STR ordinances are unconstitutional on the grounds that they:
 - Deprive homeowners of property interest without due course of law;
 - Violate equal protection clause;
 - Infringe upon freedom of assembly; and
 - Constitute an *ultra vires* act by the Mayor
- City prevailed on temporary injunction application of homeowners

Homeowners filed interlocutory appeal to Ft. Worth Court of Appeals on November 6, 2019

Texas Attorney General filed Amicus Curiae Brief on behalf of State of Texas in support of the homeowners

Oral argument held March 3, 2020

On July 15, 2021, the Ft. Worth Court of Appeals issued ruling

Draper et al. v. City of Arlington et al.



Draper et al. v. City of Arlington et al.

- Due Course of Law Claim:
 - Homeowners only assert on appeal that the Zoning Ordinance violates their substantive due-course-of-law rights under the Texas Constitution, do not make a claim on appeal about STR ordinance
 - Homeowners did not argue that Zoning ordinance is unduly burdensome, so homeowners must prove that the ordinance could not arguably be rationally related to a legitimate government interest
 - Court points out different standard (“compelling public interest”) for retroactivity claim, which homeowners haven’t pleaded
 - Court looks at the evidence presented, and the City’s purported interest in regulating STRs

*Draper et al. v.
City of Arlington
et al.*

- Due Course of Law Claim:
 - City's goal in developing ordinance was to find a reasonable balance between STR operators and homeowners
 - Data showed higher percentage of STRs compared to single-family residences around the City's entertainment district
 - City staff testimony that the City's entertainment and sports venues induce much of the STR traffic and the presence of tourists and guests on a frequent basis is compatible with the entertainment and sports venue activities
 - City has legitimate government interest in zoning
 - Court said city's decision to allow STRs in the STR Zone and in high- and medium density residential areas, but not in low-density areas, is rationally related to objectives within the City's police powers
 - Homeowners failed to present evidence to prove that the Zoning ordinance violates substantive due-course-of-law rights at the temporary injunction hearing

Draper et al. v. City of Arlington et al.

- Freedom of Assembly Claim:
 - Homeowners only claimed that the STR ordinance unconstitutionally restricts their tenants' freedom of assembly and movement
 - Court says homeowners don't have standing to bring claims on their tenants' behalf
 - Court contrasts this to the *Zaatari* case where one of the property owners was also a STR tenant who had standing to pursue the assembly-clause challenge to the Austin STR ordinance
 - As claims are currently pleaded, Court says the homeowners have failed to show on the record that they are likely to prevail on assembly-clause claims because they lack standing

◦ Equal Protection Claim:

- Unless discriminate against a suspect class, as-applied equal protection claim requires that the government treat the claimant differently from other similarly situated landowners without a reasonable basis
- Zoning decisions have traditionally been afforded rational relation scrutiny – as long as rationally related to a legitimate state interest, will be upheld
- Court says rational basis to distinguish between STRs and long-term rentals based on 30-day rental period is state law imposition of hotel occupancy taxes
- Court says that STRs being restricted to the STR Zone and other zoning districts and regulating the operation of STRs are rationally related to objectives within the City's police powers
- Court says homeowners failed to offer evidence proving the Zoning and STR ordinance violate their equal protection rights

Draper et al. v. City of Arlington et al.

*Draper et al. v.
City of
Arlington et al.*

- Ft. Worth Court of Appeals held that the trial court DID NOT ABUSE ITS DISCRETION in denying the temporary injunction
- Important things to remember:
 - Arlington has not won case yet
 - Temporary injunction is an “extraordinary remedy that does not issue as a matter of right”
 - Movant bears the burden of proof; must show no adequate remedy at law
 - Trial court has discretion and only abuses its discretion if it rules in an arbitrary manner or without reference to guiding rules and principles; not when decision based on conflicting evidence
 - Court of Appeals did not review the underlying merits of the case and evidence at a preliminary injunction hearing is not the same evidence developed at a full trial on the merits

Draper et al. v. City of Arlington et al.

Texas Supreme Court denied petition for review in January

Case still pending for ultimate decision on merits

Homeowners have amended their petition to add claims that the STR Zoning ordinance is unconstitutionally retroactive

REGULATORY FRAMEWORK OF OTHER SHORT-TERM RENTAL
ORDINANCES

STR Registration with Inspection

Frisco

- Passed STR ordinance in August 2021
- Annual Registration with \$300 fee
- Inspection at issuance of permit (initial and renewals)
- Annual independent inspection of required fire extinguishers
- Guest safety notification requirements

Coppell

- Adopted new STR ordinance in April 2022
- Annual Registration with fee
- Inspection at issuance of permit (initial and renewals)
- Annual independent inspection of required fire extinguishers or fire suppression systems
- Vehicular and Bedroom occupancy limits

Farmers Branch

- Annual License with \$120 fee
- Inspection at issuance of license (initial and renewals)

STR Registration Only

Grand Prairie

- Registration
- No fee
- Valid until change in ownership/operator

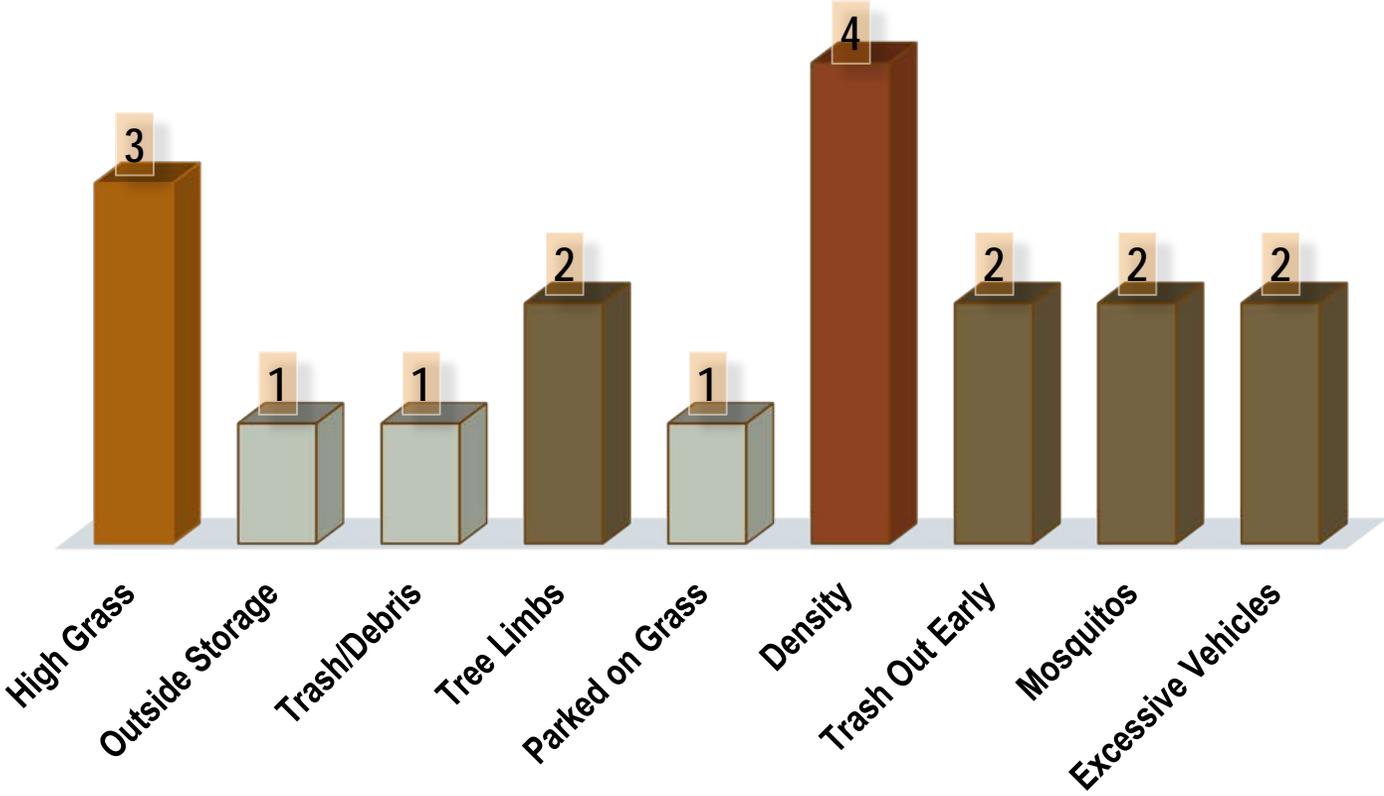
Galveston

- Registration
- \$50 fee
- Valid until change in ownership/operator
- Guest notification and emergency contact requirements

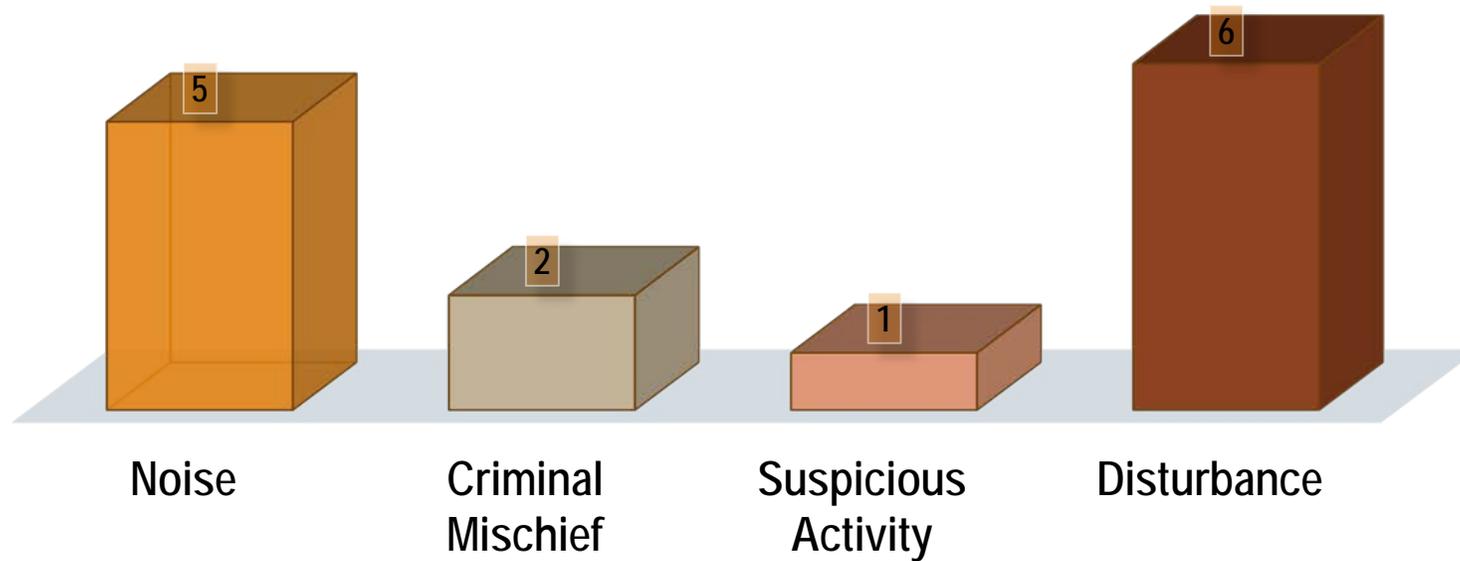
Irving Short Term Rentals

- 139 STRs identified, of which 117 are single-family.
- 1 year of data:
 - **Code Enforcement** - 12 Complaints Lodged / 18 violations
 - **Police** - 14 Calls for Service / 9 Addresses

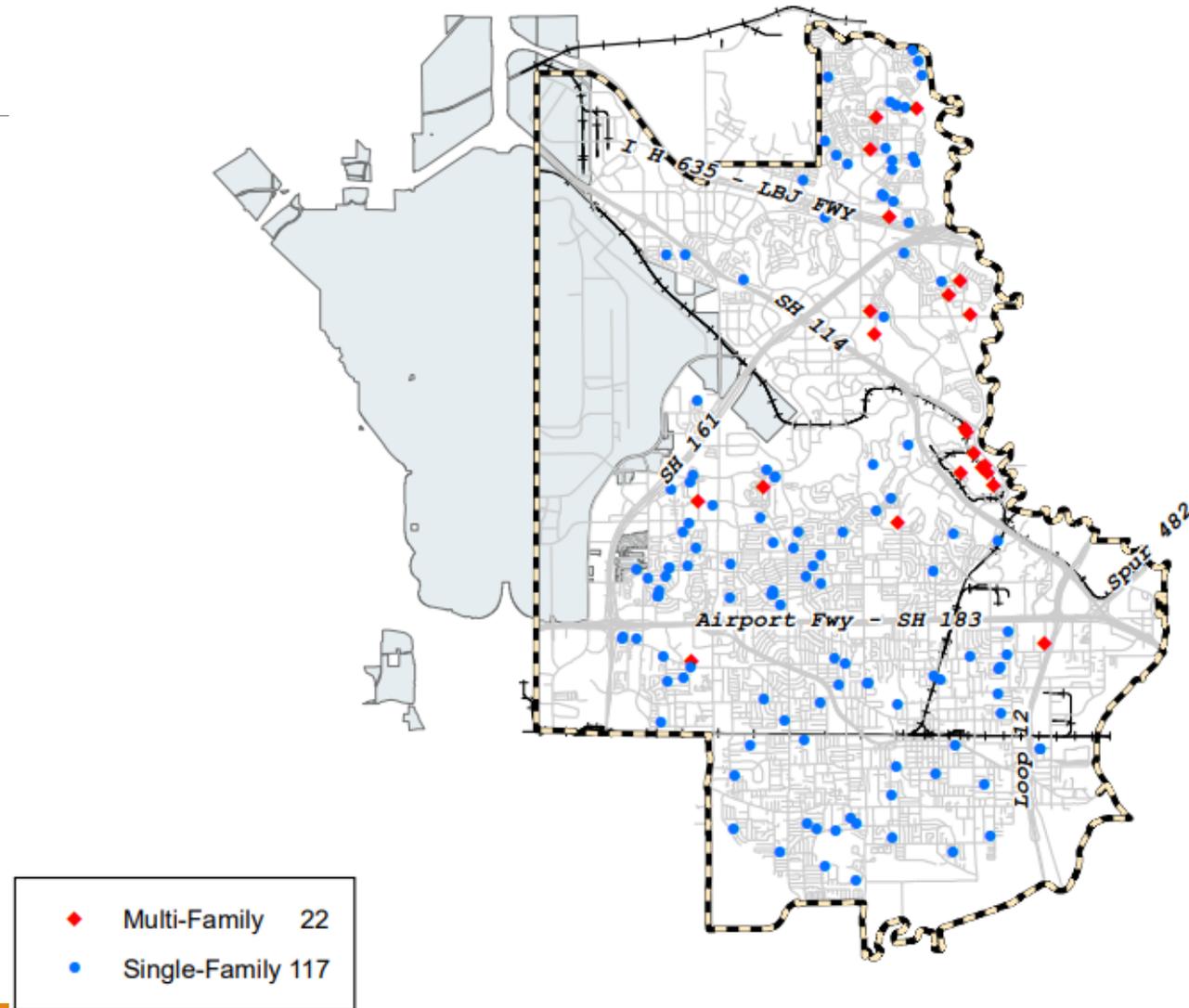
Code Enforcement Complaint Summary of STRs in Irving



Police Calls for Service (CFS) Summary of STRs in Irving



Irving Short Term Rentals



Data Source: LodgingRevs; GIS

STR Registration Only

Irving

- Adopted STR ordinance in February 2022
- Takes effect October 1st
- Annual Registration with \$200 fee
- Emergency Contact and Guest Notification Requirements
- May not exceed maximum occupancy limits in city housing code
- Unlawful to advertise greater occupancy than allowed by code
- Agreement with MuniRevs to administer the registration process
- Working on agreement with HomeAway to ensure HOT taxes are collected, looking at other STR platforms for similar agreements

Other cities considering STR Regulations

Ft. Worth

- Prohibited in SF districts, but considering revisions.

Dallas

- Currently considering several options to regulate.

Corpus Christi

- Considering several options with registration and fee component.

Mesquite

Cities with STR Zoning Ordinances

Fredericksburg

- Multiple definitions for different types of STRs.
- Annual permit required for all STRs with fee.
- Based on zoning, STRs allowed by right, require a conditional use permit, or prohibited.
- Different parking requirements for different types of STRs.
- New and remodeled STRs must submit proof to City that they have submitted plans to TDLR for compliance with ADA/Texas Accessibility Standards.

Waco

- Multiple definitions for different types of STRs.
- License required for all STRs.
- Based on zoning, STRs allowed by right, require a special use permit, or prohibited.
- SUP required for some STRs, that require approval of P&Z and Council, with 200-foot public notification.
- 500-foot distance/separation requirements for certain types of STRs in residential zoning districts.
- Parking and density restrictions.

What Options are Left?

- Smart STR ordinances:
 - Identify problem in your city
 - Build a good legislative record
 - Avoid outright bans
 - If making distinctions between owner-occupied and non-occupied, make sure you have compelling reasons for the distinction
 - If looking at creating STR zones, make sure you have at least a rational basis to support the zoning decisions
 - Each city must do data gathering before adopting an ordinance – look at the numbers, GPS mapping, police calls for service, code complaints, etc.
 - Create prospective ordinances, not retroactive ordinances if any impairment of right to lease/rent

What Options are Left?

- Review/update existing parking, noise, trash collection and maximum occupancy ordinances
- Pursue zoning violations when STRs go too far
 - Party house example
 - AirBnB rental - 5600 Sq. Ft. single family residence on a large gated lot, party with estimated 400 to 500 people, advertised on EventBrite, charging cover for entry (between \$30-\$1000)
- Engage with the online platforms
 - In 2019, Airbnb announced a global ban on party houses and removed or suspended more than 80 Texas listings that violated the company's party and event policies.

Questions

Janet M. Spugnardi
Deputy City Attorney
City of Irving
jspugnardi@cityofirving.org
972.721.3656

THANK YOU!

