

Fort Worth Should Strengthen,
Not Weaken, Its Protections
Against STRs Invading
Residential Neighborhoods

Submitted by Texas Neighborhood Coalition (TNC)

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Your Current STR Zoning Ordinance Is The Envy of Many Communities

- TNC works with communities across the state to help them deal with the destructive effects of mini-hotels in residential neighborhoods.
- Citizens in Dallas, Plano, San Antonio, Fredericksburg, and Kerrville, for example, are urging city leaders to take resolute action to get STRs out of their residential neighborhoods -- after the cities failed to stop the invasion of STRs into what had been vibrant neighborhoods.
- The current Fort Worth ordinance unambiguously bans STRs in residential areas -- but needs to be strengthened to include effective and efficient enforcement mechanisms, such as those adopted by other cities.

The STR Business Model Is Destructive of Residential Neighborhoods

- Short-term rentals inevitably create serious problems when they take over housing in residential neighborhoods.
 - Raucous party houses late at night keeping up entire streets with repeated calls to police resulting in no relief. Streets choked with parked cars, and trash left out on the curb or in the yard for the neighbors to deal with.
 - The party house problem is not an isolated or infrequent occurrence but rather inherent in the business model of these unsupervised hotels.

The STR Business Model Is Destructive of Residential Neighborhoods

- Respected national media have catalogued the misery STR party houses create in neighborhoods across the country. See *Airbnb's IPO Warning: Unhappy Neighbors Are Fighting Back*, December 9, 2020, <https://www.wsj.com/articles/airbnbs-ipo-warning-unhappy-neighbors-are-fighting-back-11607533225>, and *Shootings, Sex Crimes, and Theft: Airbnb Takes Halting Steps to Protect Its Users*, December 26, 2019, <https://www.wsj.com/articles/shooting-sex-crime-and-theft-airbnb-takes-halting-steps-to-police-its-platform-11577374845>

The Party House Problem Is Inherent in the STR Model Operating Unsupervised Hotels

- Closer to home, on July 12, 2022, Fox 4 covered the horrors residents of a neighborhood experienced from a drug laced party with hordes of revelers at an STR there. <https://www.fox4news.com/news/northwest-dallas-neighborhood-frustrated-with-short-term-rentals>
- Violence has resulted from out-of-control parties, including in Fort Worth this past January where a young man was shot and killed. https://www.star-telegram.com/news/local/crime/article259415799.html?fbclid=IwAR0jpF4VyM0VA4rHpjpN-lXquui6r5BMDyU_MMNgleARQyolxx2qgHOOVng
 - See slide 11 for further data and discussion about crime at STRs.
- Council has heard first-hand from Fort Worth residents on several occasions the miseries STR party houses have caused them.

Airbnb Admits It Cannot Control STR Users And Does Not Even Verify their Identity

- STR advocates have claimed that Airbnb meticulously vets the ID of STR users, and that is a safeguard against bad behavior.
- That assertion is entirely untrue, and AirBnb conceded that fact in its IPO filing with the SEC on November 16, 2020, where it said at page 45:
 - We have no control over or ability to predict the actions of our users and other third parties, such as neighbors or invitees, either during the guest's stay, experience, or otherwise, and therefore, we cannot guarantee the safety of our hosts, guests, and third parties. The actions of hosts, guests, and other third parties have resulted and can further result in fatalities, injuries, other bodily harm, fraud, invasion of privacy, property damage, discrimination, brand and reputational damage, which have created and could continue to create potential legal or other substantial liabilities for us. We do not verify the identity of all of our hosts and guests nor do we verify or screen third parties who may be present during a reservation made through our platform. (Emphasis added.)

But the STR Party House Problem Is Just the Tip of The STR Iceberg

- Another intractable problem with STRs in residential neighborhoods is that they soak up the supply of available housing and drive up housing cost for ordinary citizens.
- STRs are one of the reasons that housing has become unaffordable for so many people in so many cities.
- Harvard Business Review found in a 2019 study that STRs increased the cost of rent. <https://hbr.org/2019/04/research-when-airbnb-listings-in-a-city-increase-so-do-rent-prices>.
- In 2020, Forbes Magazine documented this same phenomenon. <https://www.forbes.com/sites/garybarker/2020/02/21/the-airbnb-effect-on-housing-and-rent/?sh=76cff0822226>

STRs' Inflationary Effect on Housing Is Especially Harmful for Some Communities

- A Spring 2018 study by DePaul University, entitled, “Renting Diversity: Airbnb as the Modern Form of Housing Discrimination,” found that Airbnb was pushing minorities out of their traditional neighborhoods in the Chicago area by pricing the original residents out of the market.

<https://core.ac.uk/download/pdf/232978487.pdf>

STRs Are Already Displacing Residents in Fort Worth Communities

- Turning to Fort Worth, in 2021, 53% of all homes purchased in Tarrant County were purchased by investors.
- A recent story by the Fort Worth Report documented that long-term renters in the Fairmont neighborhood were being forced out by investors who bought the homes to turn them into short-term rentals.

<https://fortworthreport.org/2022/07/28/rise-in-airbnbs-in-fairmount-pushes-out-traditional-renters/>

As Transients Staying at STRs Undermine Neighborhood Cohesion, Crime Increases

- A recent study by Northeastern University concluded that increases in violent crime were linked to STRs because of the increased transiency and loss of community cohesion.
<https://news.northeastern.edu/2021/07/16/when-airbnbs-increase-in-a-neighborhood-so-does-crime-heres-why/>
- Similarly, studies of STR regulations in San Francisco, Denver, and New York found that municipal ordinances that reduce the number of STR listings and prevent commercial operators from multiple properties have been shown to reduce the overall crime rate.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3520919,
published on January 26, 2020.

STRs Undercut the Efficacy of Crimewatch Programs

- The conclusion that crime increases as long-term residents are supplanted by a revolving door of transients is exactly what one would expect.
- Police departments encourage Crimewatch programs to control crime levels.
- Crimewatch works on the premise that residents can get to know their neighbors, the cars they drive, and their daily activity patterns.
- Obviously, the ability to do that breaks down when residents are confronted with a different parade of total strangers in their neighborhood every weekend or more often.
- Since May of 2019, Mothers Against Short-Term Rentals (MASTRS) have found 250+ new reports about shootings documented as occurring at short-term rentals. Most were parties that ended in violence, including this one in Fort Worth this past January where a young man was shot and killed. https://www.star-telegram.com/news/local/crime/article259415799.html?fbclid=IwAR0jpF4VyM0VA4rHpjpN-IXquui6r5BMDyU_MMNgleARQyolxx2qgHOOVng

Most Fundamental STR Problem: Destruction of The Fabric of the Neighborhood

- Most fundamentally, as short-term rentals proliferate, they destroy the fabric of neighborhoods.
- Long-term residents whom neighbors knew and trusted are supplanted by a parade of transients, leading to the loss of social cohesion. See the Northeastern University Study cited above.
- Many residents in residential neighborhoods, for example, rely on neighbors they know to keep an eye on their homes when traveling or otherwise help one another.
- As trusted neighbors are replaced by total strangers, the sense of safety, community and belonging that was the reason residents moved into these neighborhoods is lost.

The Asserted Economic Benefits of STRs Are No Reason to Give STRs A Pass on Zoning Laws

- STR advocates assert that STRs bring economic benefits to cities.
- But the Economic Policy Institute (EPI), an independent, non-profit think tank, after a rigorous analysis published on January 30, 2019, found that:
 - “The economic costs Airbnb imposes likely outweigh the benefits.”
 - Its research found that only 2% to 4% of STR users surveyed said they would not have traveled to their destination city if they could not have stayed at an STR. (page 2)
 - “The shift from traditional hotels to Airbnb lodging leads to less-reliable tax payments to cities.” (page 3)
- EPI’s headline conclusion was that there was, “No reason for local policymakers to let Airbnb bypass tax or regulatory obligations.”

<https://static1.squarespace.com/static/5bc37b7c755be2603ca0b7b3/t/5c682a3ee5e5f097700657f8/1550330431243/EPI+Study+-+Costs+and+Benefits+of+Airbnb+-+Jan+2019.pdf>

Don't Repeat the Mistakes of Other Cities

- Texas cities that failed to promptly act to protect the integrity of residential neighborhoods are now confronted with the difficult task of having to clean up a serious mess, one that has resulted frankly in voter outrage.
- Because Dallas failed to act years ago to stop the flood of STRs into neighborhoods, that city now finds itself in a position of having over 6000 of these mini-hotels across the town, with over 5200 on Airbnb alone.

<http://insideairbnb.com/reports/inside-airbnb-dallas-april-2022>

- The number of STRs in Dallas has increased by 568% since 2016.
- The fight by Dallas citizens to reclaim their neighborhoods has now raged for nearly three years, with a multitude of task forces and hearings before city council and now before Dallas's planning and zoning body.

Don't Repeat the Mistakes of Other Cities

- The City of Fredericksburg made the mistake a few years ago of viewing short-term rentals as a potential revenue source and allowed them to flood the town.
- Short-term rentals now account for over 20% of all the housing stock. Those who want to be long-term residents are often priced out of the market, and for those already owning homes, the tax burden is worsened as commercial bidders have driven up property values.
- Streets where children once played are now visited only by tourists.
- In May of this year, citizen frustration reached the boiling point, and they voted out of office the mayor and two City Council people who were seen as pro- STR, replacing them with neighborhood-friendly candidates. The margin of victory for the neighborhood-friendly candidates was over two to one, with an unusually large voter turnout.

Don't Repeat the Mistakes of Other Cities

- Austin is now an absolute mess with short-term rentals.
- In 2012, they licensed commercial operators (called STRs Type 2) to have short-term rentals and permitted “owner-occupied” short-term rentals (called Type 1) without limitations.
- Realizing its mistake after an outpouring of protests by concerned residents, the city council tried in 2016 to terminate type 2 short-term rental licenses with a transition period of six years.
- But court decisions have blocked the termination of type 2 short-term rentals that were already operating in the city in 2016, finding in essence they had grandfather rights.
- Today Austin residents find themselves with over 17,000 short-term rentals peppering residential neighborhoods across the city. See <http://insideairbnb.com/austin/>

Don't Repeat the Mistakes of Other Cities

- The city of Grapevine in September 2018 adopted an STR ordinance they believed clarified a preexisting ban on short-term rentals in residential neighborhoods.
- But the trial court and then the Fort Worth Court of Appeals disagreed that the city had previously banned STRs.
- While the Grapevine ordinance has been allowed by the courts to ban STRs not in operation in September 2018, Grapevine has been required by the courts to allow STRs previously in operation to remain in business, also effectively grandfathering them.
 - Note: The City of Grapevine has appealed to the Texas Supreme Court. So, stay tuned.

Don't Repeat the Mistakes of Other Cities

- As the cases in Austin and to a lesser extent in Grapevine have shown, once you allow short-term rentals to operate in residential neighborhoods, they are very difficult to dislodge -- because courts may treat them as having grandfather rights – even if a city never licensed them.
- In other words, letting STRs into residential neighborhoods by way of non-enforcement might be a mistake from which a city might not recover.
- Galveston is a good example of that happening. See “Hurricanes Couldn’t Destroy Galveston’s Spirit. The Vacation Rental Boom Just Might. – Texas Monthly, September 30, 2021, <https://www.texasmonthly.com/news-politics/galveston-short-term-rental-housing/>

Don't Repeat the Mistakes of Other Cities

- Current Fort Worth ordinance is a good one and one whose prohibition on STRs in residential neighborhoods is unambiguous.
- Bottom Line: Take firm action quickly to stop illegal STR operations, including those now uncovered by the Deckard report.

How to Effectively Deal with STR Problems: Lessons from Other Cities

- In April 2019, the city of Arlington adopted two companion ordinances that banned all short-term rentals, including any purporting to be owner-occupied, in all single-family residential neighborhoods -- except for those in a geographically defined entertainment district.
 - The entertainment district was a transitional area in need of updating where the residents told the city council they wanted STRs.
 - Fort Worth's geography is of course different from Arlington. The Arlington entertainment district is generally isolated from other residential neighborhoods.
 - It does not appear any Fort Worth neighborhoods are clamoring to have STRs.

How to Effectively Deal with STR Problems: Lessons from Other Cities

- Arlington ordinance was upheld by the trial court in Fort Worth in October of 2019 (Judge Cosby). In July 2021, the Fort Worth Court of Appeals rejected an appeal by the short-term rental owners. More recently, the Texas Supreme Court on January 28, 2022, dismissed the appeal by the short-term rental owners of the Court of Appeals decision in favor of the Arlington ordinances.
- Like Fort Worth, Arlington had long banned STRs. The 2019 ordinances reaffirmed and strengthened that ban by adding enforcement mechanisms and procedures.

Cities Have the Legal Authority to Deal with the Problems STRs Spawn

- STR advocates sometimes claim that decisions by the Texas Supreme Court strip cities of the authority to use zoning to address STR issues.
- If that were true, the Texas Supreme Court would not have issued its ruling on January 28, 2022, which allowed Arlington ordinances banning STRs in most single-family residential neighborhoods to remain in force.

Cities Have the Legal Authority to Deal with the Problems STRs Spawn

- STR advocates sometimes assert that the Texas Supreme Court has ruled that STRs are a “residential use,” implying cities cannot use their zoning powers to restrict the minimum length of a lease.
- Those assertions entirely misread the case of *Tarr v. Timberwood Park Owners Assn., Inc.* (May 25, 2018), decided well before the Texas Supreme Court ruling in Arlington’s case.
- In *Tarr*, the HOA restrictive covenants did not define the term “residential use,” so the Court looked to the dictionary definition.
- Importantly, the Court in *Tarr* was NOT saying “residential use” could not be defined to exclude short-term rentals, only that in this case the HOA had not done so.
- **Even more importantly, the Court said “ And throughout the dispute, neither the association nor Tarr attempted to amend the deed restrictions to specify a minimum duration for leasing— an option available to both of them under the deed's amendment provisions.**
- In short, *Tarr* supports the right of an HOA or a city “to specify a minimum for leasing.”
- Another Texas Appellate Court decision issued after the *Tarr* ruling that enforced HOA covenants barring short-term rentals is *JBrice v. Wilcrest Walk Townhomes Association, Inc.*, handed down on August 18, 2020. (Houston Court of Appeals.)

How to Effectively Deal with STR Problems: Lessons from Other Cities

- Arlington, Grapevine, Southlake, Hurst, New Braunfels and West University Place (near Houston) disallow short-term rentals in single-family residential neighborhoods to protect the sanctity of those neighborhoods.
- None of these cities has created an exception for STRs claimed to be “owner occupied.”

An Owner-Occupied Exception Is Unworkable

- Any exception for owner occupied is rife with enforcement problems. In fact, owner occupied is very difficult to even define in a workable way.
- If it means the owner must be present when the guests are, how do you police that? Who's going to knock on the door to demand to speak to the owner? Are the neighbors supposed to do that? How could/would Code Enforcement administer such a requirement?
- If the condition is that the owner must be physically on-site a minimum number of days each year, again how could that be effectively policed?
- Requiring that the owner show a homestead exemption is no assurance at all that this is even the owner's primary residence, since the owner qualifies under Texas law if he/she is using it as a primary residence only on January 1 of the year for which the exemption is claimed.
 - There is no statewide system for catching those claiming multiple homesteads.

An Owner-Occupied Exception Is Unworkable

- Austin has had problems with STR operators using fraudulent homestead exemptions in order to obtain new owner-occupied STR permits (again, Austin calls this a STR Type 1) for properties that are really operating as full-time, absentee investor-owned STRs (Austin calls this a STR Type 2) that do not qualify for a license.
- The Travis Central Appraisal District has unsurprisingly said “... these are hard to police.”
https://www.kvue.com/article/news/investigations/defenders/uncovering-costly-discrepancies-with-homestead-exemptions/269-e064beb5-2498-4ef7-91de-e4fc9d4a3486?fbclid=IwAR3p7Fhi_xEAvqLTj9IPvQZaPrPegH3LJC8F3wMkiS7jdETI7avtalt2_Eg

An Owner-Occupied Exception Is Unworkable

- A few years ago a CNBC news reporter from Miami followed a code enforcement officer and documented that the guests of the short-term renter owners had been given scripts to read to code enforcement saying that the owner lived there but was gone temporarily.
<https://www.cnbc.com/video/2018/05/24/miami-beach-battles-illegal-airbnb-rentals.html>
- In the Spring of 2019 members of TNC testified before the House Urban Affairs committee to block an STR preemption bill. An Austin police officer explained that this same tactic of supplying scripts to guests was being used in that city. See testimony of Daniel Armstrong, the Austin Code Compliance officer who testified against HB 3778 in 2019 at minute mark 1:30.
https://tlchouse.granicus.com/MediaPlayer.php?view_id=44&clip_id=16934
- Denver has an exception for owner occupied and in the last month a story in the Denver media reported that claiming “marital issues” had become the standard defense for those found not to be living on the premises. See
<https://www.westword.com/news/denver-airbnb-operator-could-use-marital-issues-defense-against-felony-charge-11640319>
- In short, any owner-occupied exception is subject to fundamental and insurmountable definitional and enforcement problems and widespread cheating.
- It has proven to be a grand experiment with unpredictable and unintended consequences.

Rules Banning Bad Behavior Do Not Work

- From TNC's experience across the State and the nation, TNC can say without hesitation that rules banning bad behavior do not solve the serious problems STRS create in residential neighborhoods.
- Focusing on only the party house problem, code officers typically do not work nights and weekends when most nuisance issues involving STRs occur.
- When issues at short-term rentals involve large crowds or guests that are under the influence of drugs or alcohol, it is not safe to send an unarmed code officer into the home.
- This creates an additional burden on the police force, especially if it is understaffed, and often leaves neighbors waiting for hours for police to come -- since police must triage their calls, especially at night and weekends, and noise/nuisance complaints are not given high priority.
- The recorded City Council meetings in Arlington in 2018 and 19, and more recently in Fort Worth and Dallas, demonstrate the dreadful plight of homeowners having to put up with rowdy and sometimes violent behavior weekend after weekend.
- **Importantly, these nuisance type rules do not even purport to address the reduction in affordable housing stock caused by short-term rentals or the deterioration of neighborhoods as people no longer know who is spending the night right next door.**

Platform Accountability – An Efficient and Effective Solution for Enforcing STR Rules

- TNC has reviewed the four options that the city has said it is exploring. In our view, only option one provides residential neighborhoods the safeguards they need to be healthy and vibrant.
- There are proven solutions to effectively enforcing the city’s longstanding ban on short-term rentals in residential neighborhoods.
- Unlike other suggested solutions, a ban is a bright-line test that can be successfully enforced with citizen participation.
- It is far easier, for example, for residents to notice frequent changes in the cars parked in a particular house, than to determine whether the owner is actually at home when guests are.
- In Arlington, there is a robust citizens group that receives complaints from residents, and then having vetted them, passes on to code enforcement only those that it believes have merit.
- No city wants to adopt a solution that imposes excess and unnecessary cost on city staff and citizens. The best practice that has emerged across the country is something called “platform accountability.”

How Platform Accountability Works

- Short-term rental platforms, such as Airbnb and VRBO, that wish to profit from short-term rentals in a city are required to obtain a license from the city.
- Next, those platforms are forbidden from displaying on their sites any short-term rental that does not itself have a license. That license number must be shown on the short-term rental platform.
- Third party services then scan the STR platforms to ensure that all STRs advertised for stays in the city have a license.
 - If and when a STR platform is notified that a license is fraudulent or has been revoked, the STR platform has a reasonable period, typically 10 days, in which to takedown the listing or face a fine.
- Finally, rather than the city chasing each of the STR owners/operators for HOT taxes, the STR platform can be required to collect and remit them to the city.

Please Protect Residential Neighborhoods

- TNC has many years of experience helping residents across the state deal with the severe disruptions STRS inevitably create when they take over homes in residential neighborhoods.
- We appreciate the Fort Worth City Council's time and attention and stand ready to assist Council members on this critical issue.
- **Our bottom line: Please protect residential neighborhoods by maintaining and strengthening the rules banning STRs in those neighborhoods.**

THE END