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Are Airbnbs hotels? In Houston, one neighborhood is pushing to upend short-term rentals

 **R.A. Schuetz, Staff writer**
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A notice of public hearing is posted on an empty lot at 2308 Dunlavy on Wednesday, April 12, 2023 in Houston. A battle over whether AirbnBs that are never used as residences should be considered hotels is brewing over former NFL player Darryl Sharpton's plan to build a collection of AirbnBs in Montrose. If such AirbnBs were considered hotels, that would subject them to a slew of ordinances.

Karen Warren/Staff photographer

The former Texans player Darryl Sharpton Jr. made a splashy announcement in December: He was moving into the hospitality business. Specifically, he was planning to build six Airbnbs in the trendy neighborhood of Montrose.

But neighbors living on the same block as the proposed short-term rental homes have been far from enthusiastic. After stories came out about the rental units, which would be branded as The Sharpton, neighbors gathered, imagining the potential parties, blocked driveways and litter that could come with visitors – as well as the changes to their community fabric as neighbors were displaced by a rotating cast of tourists.

It seems like there ought to be a law against it, thought one of the neighbors, a real estate attorney named Jason Ginsburg. He combed through the city rules and found an ordinance banning small hotels from residential areas. The Montrose neighbors united behind Ginsburg's legal strategy.

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The brewing battle over whether Airbnbs that are not used as residences should be considered hotels could potentially upend Houston's short-term rental industry. While short-term rental platforms require landlords to follow Texas hotel laws, automatically charging the state's hotel occupancy tax, they have not been required to abide by the restrictions of Houston hotel laws. If Houston treated such short-term rentals as hotels, they would be subjected to a slew of ordinances, including limits on where they could be located, special permits and penalties of up to \$500 a day if they failed to comply with regulations. According to the short-term rental data company AirDNA, Houston has more than 10,300 entire homes that can be rented by the day.

In order to carry out his plan for the Airbnbs, Sharpton first needed what is known as a replat – permission from the city to split a property into smaller pieces of land, each of which could then be used for separate developments. At the public hearing in late March, Ginsburg and his neighbors put forth their argument that since the properties would only have transient occupants, they were small hotels and should be treated as such. The planning commission decided to put off voting on the replat until the issue could be examined by the city's legal department.

The planning commission will consider the replat again Thursday, when it will likely be approved; Hector Rodriguez of the city's planning and development department said, "It's no different than a single-family home... He could always rent it out as a regular house."

Sharpton said that he was planning to have coffee with the concerned Montrose neighbors to hear them out. "Everything that they're hesitant about, I'm hesitant about as well – I'd be more upset than they would be if someone threw a party at one of these."

But neighbors say even if the replat is approved, they plan to continue pushing for the ordinance to be applied to short-term rentals by broadening their fight to embrace others concerned about the issue throughout the city. They have spoken with City Council Member Abbie Kamin and city attorneys about their concerns and launched a Facebook group called [Houstonians Against Airbnb](#) seeking like-minded people in other neighborhoods to join their cause.

"The twelve of us and one council member, we alone don't have enough leverage to get this done," Ginsburg said. "But as the tip of a spear, maybe we can make a difference."

THE SHARPTON: [Ex-Texans linebacker sells furniture companies for \\$150 million, turns attention to hospitality industry](#)

A finding by the city's law department in favor of making Airbnbs hotels would have to be grounded in the existing ordinances.

Houston defines a hotel as "any building or buildings in which the public may obtain transient sleeping accommodations," including houses. It does not include buildings with rooms for non-transient occupancy, and it is different than a bed and breakfast, which has an owner or manager living on premises.

Hotels have long been limited to nonresidential streets. Rodriguez, from the city's planning department, explained that 120 units "is considered a high-end hotel." Hotels with less than 120 units have additional restrictions, limiting their proximity to schools, libraries, churches, licensed day care centers, health facilities and public parks. And hotels with less than 75 units can not be situated in residential areas unless the hotel is on a highway's access road.

The reasoning for greater restrictions on smaller hotels, Rodriguez said, dates back to the 1990s, when small motels began popping up across Houston. "People noticed that undesirable people were frequenting those locations, so they said, 'Let's regulate these small hotels.'"

Hotels have to show they meet all of those regulations during permitting, he said. If the planning department finds the hotel is too close to, say, a school, or in a residential area, the property owner will be required to get a variance granting the project an exception to the rules before it can proceed. This process involves a public hearing and a planning commission vote.

If a building is being used as a hotel without the proper permits, Rodriguez explained, the city can be flagged through 311. Public works would notify the property owner multiple times before beginning to issue citations.

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Short-term rental platforms such as Airbnb and VRBO now allow visitors to stay in properties with even fewer units than the motels that proliferated in the '90s. Short-term rental platforms were originally marketed as ways for people to make the most out of their residences, allowing people to rent a spare room or make some money while they were out of town. Now, most listings are not residences, but instead investment properties that are rented out full-time. A slew of property management companies offer to take care of renting out and cleaning the rentals for a cut of the revenue, allowing investors to purchase homes to use as short-term rentals hundreds of miles away from where they live. Many cities have struggled over how to regulate the industry, with places including [San Antonio moving to register and limit short-term rentals](#) in residential areas.

Sharpton remains enthusiastic that his properties will move forward. He plans to make his short-term rentals high end, with "aesthetically pleasing exteriors and interiors." He fell in love with Montrose, he said, for its walkability, its shops and its restaurants. "I wouldn't want anyone to do anything that would be disruptive to a neighborhood that I love," he said.

He said that he had thought about every detail about the rentals, to make sure that they were cozy, comfortable and unique. "I think once everybody sees what exactly is coming up, they'll see this is an asset – it will increase property values (and) the curb appeal."

But the former linebacker's words did little to soothe the fears of Miguel Kremenliev, who lives between two plots of land where Sharpton has planned Airbnbs. Instead, Kremenliev worried about the city waiting too long to regulate such development.

Once short-term rentals become an entrenched part of the landscape, he said, it would be hard to undo.

"The people who built them would have invested so much capital in them, that they'll fight tooth and nail to keep them," he said. "You'll have let the genie out of the bottle."

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