

**Issues, Concerns & Comments for Consideration - STR General Meeting – 11.14.2017****References:**

Council Consideration Request (CCR), Feb. 17, 2017, former Councilman Gallagher and proceedings of general meetings (open to the public) pertaining to formulation of Draft Ordinance on operation of short term rentals (STRs) within a legal framework.

Councilman Gallagher proposed the researching and reviewing of the “best practices” in how have other [major] U.S. cities with high tourist populations “updated their codes and passed [regulatory] ordinances and allowed the [STR] industry to operate.” Essentially, cities with comparable operational and so with similar economic impact concerns with regard to STRs; five operational elements related to operations and impact of STRs were recommended for **reviewing<sup>i</sup>**.

**How have other cities updated their codes and ordinances?**

The CCR cited Philadelphia, New Orleans, and Chicago CCR as prime viable examples for review of cities that have successfully updated their codes and ordinances.

In fact a good number of other major U.S. cities with high tourist population have similarly successfully updated their codes and ordinances; some had a well-publicized and extensive public process in formulating and implementing the guidance and controls, doing this very comprehensively, this includes: Los Angeles, San Francisco, Denver, Seattle, and Portland, and **Austin<sup>ii</sup>** which up to this point in time appears to be the only major city in Texas with a high tourist population that has formulated and implemented comprehensive codes and ordinances for short term rental to operations.

It may be worthwhile to note that the other U.S. cities have also taken a similar approach in firstly reviewing the “best practices” of other cities<sup>iii</sup> during the planning stages of the STR guidance formulation process.

The “best practices” included taking a balanced, objective, and thorough approach in: **consideration of the interests of the STR operators in allowing the STRs to operate” while taking into account the key concerns of residents regarding protecting “neighborhood integrity”, safety, and quality of life; and the safety and interests of the customers, and the interests of the hotel and STR industries were also considered.** Some of the cities have in fact established laudable levels of transparency in the related **proceedings<sup>iv</sup>**.

These cities have clearly **defined, set, and instituted specific parameters and controls** in allowing the STRs to operate within a balanced, safe, and legal framework, in these operational areas:

- (1). Categorization of STR operations by occupancy and activity levels for determining necessary controls;**
- (2). Observance of existing zoning criteria<sup>v</sup> ;**
- (3). Density and frequency of operations;**
- (4). Health and safety measures;**
- (5). Occupancy levels;**

- (6). Parking limits;
- (7). Remitting of taxes;
- (8). Licensing procedures; **licenses are usually issued for 1 year periods and no more than 2 years;**
- (9). Establishing STR operators' and marketers' ("home sharing platforms" [?]) responsibilities in advertising to ensure that only licensed operators use the platforms;
- (10). Informing STR customers of all controls
- (11). Making neighborhood aware of STR operations and required contacts of STRs owners;
- (12). Defining the range of and parameters of potentially disruptive activities;**
- (13). Enforcement procedures; including penalty fees and loss of licenses
- (14). Prohibiting STR operations in specified areas (New Orleans) and allowing neighborhoods to limit or prohibit STR operations (Chicago);
- (15). Set very specific restrictions regarding noise levels and time and attendance limits on outdoor activities; maximum allowable number of visitors; limited hours allowed for visits;**

The well-defined comprehensive codes and ordinances have in effect pro-actively created an operational stage for alleviating the potentially detrimental impacts of the STR operations on neighborhoods in terms of controlling activity, safety, noise, and possible disturbance levels; and in this also minimized the potentially adverse impact on neighborhood integrity, character, and quality of life factors, and property values, while allowing the industry to operate and the cities to collect taxes. (Note: This basically addresses most of the concerns in Councilman Gallagher's CCR).

The cities that have established a record of wide-scale public engagement have done this diligently at every stage: via obtaining high levels of attendance during well publicized STR related meetings and conferences, preparing agendas and minutes for the meetings, and archiving the "credible and important" public comments submitted in the meetings and thru email. These cities posted the agendas and minutes of the meetings/conferences and the public comments on their websites. Some had organized public hearings prior to the formulation of the STR guidance, and interim and final reviews of the product prior to the legislative voting by the City government.

It appears to be relatively evident that the STR Task Forces in the cities, or similar entities, entrusted with the formulation of the STR regulatory guidance and controls have been in all cases truly representative of the of the make-up of the cities with regard to government districts (City Councils), concerned residents (home owners and renters) living next-door to STRs, neighborhoods and residential areas (and business and special interest, and solely neighborhood associations), and in a very limited extent by STR operators and it appears that rarely if ever by STR platforms' marketers – calling itself "home sharing" platforms. (Note: This is contrary to what is occurring in San Antonio).

**Commercial operations:** Without exception these cities have given special attention to addressing the operations of **Type 2 STRs, rentals not occupied by owner, generally categorized and referred to as "vacation homes"** in other major U.S. cities. This STR category is generally regarded as a **commercial operation** and not a *bona fide*<sup>vi</sup> "home sharing" operation. It's accorded special attention because of its having potentially (and historically documented, even in San Antonio<sup>vii</sup>) very detrimental, disruptive, impact on neighborhood integrity, safety, and quality of life factors by its generally high levels of activity and consequent proclivity to disturbances, excessive noise, and criminal activities; regarded as a sort of unsupervised motel in a neighborhood.

As a result commercial operation, “vacation homes”, are categorized illegal in New York and not allowed to operate in residential areas, or operate only on limited basis in other cities including Los Angeles, San Francisco, New Orleans, Denver, Austin, and Orlando. **Austin has in fact restricted all STR operations to 3% of the available housing stocks in each** district and is not currently licensing new Type 2 STRs, and decreed phasing out of all currently operating Type 2 STRs by the year 2022. It also requires that any functional Type 2 STRs must be within at least 1000 feet of each other. However, unrestricted operation is allowed on commercial and mixed use areas, and in some cases may be desirable in blighted areas (Note: Austin’s restrictions are intended to in fact quite effectively protect the integrity of neighborhoods, **why then has San Antoni not used this example?**) . .

**Impact on Housing Stock:** Many of the cities also expressed serious concerns regarding the impact of STR operations on the availability of affordable housing stocks in the local market by taking STR operators taking available homes and apartments off the market as STR operations are offering greater returns, so attract more investors including major investors from outside the city.

In this undertaking - planning and implementation of codes and ordinances on STR operations - it also needs to be noted that major U.S. cities (at this time 59) are being rated on their **STR market favorability status**, by what appears to be a n STR industry spawned marketing agency, in terms of opportunity for investors, with cities not having any regulatory controls and guidelines, or very lax controls, receiving the higher ratings, and those with the most comprehensive controls and guidelines receiving the lower ratings and regarded as less attractive for investors - <https://www.mashvisor.com/blog/cities-least-airbnb-legal-issues/> **San Antonio is currently rated “A-” and is considered one of the top ten nationwide , along Little Rock, Arkansas , Detroit, and Cleveland.**

### **How has DSD proceeded in implementing the proposed STR Draft Ordinance?**

It appears that up to this point in time DSD and the STR Task Force have not addressed in a definitive manner all of the operational elements recommended for review in former Councilman Gallagher’s CCR, nor indicated as **having reviewed or noted all of the “best practices” adopted in other U.S. cities** with high tourist populations with regard to how the cities have “updated their codes and passed [regulatory] ordinances and allowed the [STR] industry to operate.” And if the operational elements recommended for review have been definitively addressed, and all of the “best practices” noted. **There appears to be no viewable public record to that affect.**

A “Side- by-Side” comparison of what has been done in other cities and in San Antonio with regard to STR regulatory guidance and controls is provided at **TABLE 2 - How have other U.S. cities updated STR Codes & Ordinances - How is DSD proceeding with preparation of the proposed Draft STR Ordinance for San Antonio?** (Note: Table 2 is only partially completed at this time [11.14.2017] and not forwarded to DSD with this document).

### **Issues and Concerns:**

(1). **Lack of Transparency:** It appears that up to this point in time, the formulation of the DSD proposed Draft STR Ordinance has no record, nor written reference of any preliminary planning processes, prior to the actual preparation of the Draft Ordinance, with regard to which cities with high tourist populations

have been reviewed, and which “best practices adopted by these cities have been noted and considered for adoption in San Antonio’s STR codes and ordinances.

(2). **Modeling on Other Cities:** Since there is no prepared list of the reviewed cities there is also no summary of how these cities implemented their STR guidance and controls. Although, this was actually accomplished<sup>viii</sup> by many of the other cities including Los Angeles, New Orleans, Denver, Chicago and likely used as one of the steps for establishing a basis of credibility for the eventually formulated STR regulatory guidance. Many of these cities have also had widely publicized schedules of the STR meetings, agendas, minutes and records of submitted public comments. In this seeking and encouraging public engagement.

(3). **DSD STR General Meetings’ Proceedings.** The discussions during the General Meetings have usually been centered on reviewing the latest versions of the proposed STR Draft Ordinance, prepared up to the time frame of the meeting. Also, the schedules have not received wide scale publicity and no agendas, minutes and records of public comments voice during the meetings or comments forwarded thru email (except for what appears to be one **exception<sup>ix</sup>**). Therefore, no apparent evidence of seeking and encouraging significant public engagement or input for inclusion in the formulation of the STR Draft Ordinance; the actual consideration of the genuine concerns and recommendations of home owners and renters, **residing next-door to STRs**, regarding the impact of STR operations on “neighborhood integrity”, safety, and quality of life.

(4). **Makeup of STR Task Force Membership:** Although a list of the Task Force membership was eventually posted on the DSD STR website, there is no explanation as to how the members were **selected, or appointed; on what basis and qualifications?** According to the list out of 23 total members, 9 are STR Operators; 6 represent various organizations (including Airbnb, RESCSA, SAA, SAHLA<sup>x</sup>, primarily special interests); 5 represent central city areas Neighborhood Associations); 2 represent City Council Staffs ( District 8 and D10) and it appears that the individual allegedly representing **District 8** is no longer on the current D8 staff; and 1 is listed as a D8 resident (possibly homeowner) but there is also no indication as to her basis of appointment or any input in the preparation of the STR Draft Ordinance. **Additionally, there is no evidence that any of the other cities have had representatives of the STR industry platforms on their guidance formulation STR Task Forces, and highly questionable whether this would be advisable? However this is the case in San Antonio.**

(5). What needs to be strongly re-emphasized<sup>xi</sup> is that there is no City wide representation on the STR Task Force, nor representation of concerned home owners and residents - representation from all of the Council Districts and of those who are directly affected by the operation of the STR, **particularly those residing next –door or down the street from currently operating STRs.**

(6). Therefore, there is a strong basis for the appearance that the proposed STR Draft Ordinance is actually being formulated by individuals benefiting directly from lax, permissive, STR guidance and controls.

(7). **Impact of STRs on Property Values:** With regard to questioning on former Councilman Gallagher’s proposal to, **“Research if STRs impact property values and neighborhood safety statistics?”** The DSD facilitator had commented, during one of the earlier General Meetings, something to the affect that, **“This is unlikely get done as any research of this type would be very costly and time consuming”.**

However, it was pointed during the ensuing discussion in submitted comments<sup>xii</sup> that it can be reasonably assumed that operating unrestricted Type 2 STRs in well maintained residential neighborhoods, particularly in low density single family zones, can be expected to impact harmfully on the property values of the adjoining homes. Anyone, doubting this should ask herself/himself the question; "Would I buy a home next to one used as an STR?"

(8). **Impact on Neighborhood Safety Statistics:** This type of data would similarly be very difficult to obtain as it appears that up to this point in time COSA lacks the necessary data base to obtain this type of information as to where all of the various STR operate.

(9). **Significance of Perception Factor:** One of the attendees at an earlier STR General Meetings, a home owner from the King William neighborhood, pointed out that the key concerns and impact of STRs operations may not necessarily be verifiable, or factual, but a matter of perceptions, and that in either case the results and ensuing impact are similar. This may be relatable to the impact of STR operations on property values and fear of crime. In this analogy people generally prefer not to live next-door to homes hosting a different group of strangers, overnight, year around, or purchase homes in areas where this occurs or has a likelihood of occurring.

(10). **Special Concern:** The current edition of the DSD proposed Draft STR Ordinance appears to **palace absolutely no restrictions in terms of frequency and density activity of any STR operations including the generally widely prohibited and restricted Type 2, commercial operation, vacation home, category.** This contrary to the examples presented by all of the other major U.S. cities. This concern has been previously voiced during previous General Meetings and dismissed by the explanations that the draft procedures have been agreed thru sometimes exhaustive discursive and eventual collective consensus of all the Task Force members of the questioned proposed procedures.

## Other Comments and Concerns

### "Drivers" behind the accelerating growth of STRs<sup>xiii</sup>:

This is not just a cause for homeowners being given the opportunity to make extra money and for tourists having all of the available options for selecting their most desirable firm of lodging.

The explosive growth of STRs is associated with accelerating new technologies and related new marketing techniques on a scale literally not ever seen. Online technologies allow for instantaneous low cost mass marketing worldwide; generating appeal to the segment of home owners in need of, or desiring, additional income, and those not overly concerned with the conditions in their neighborhoods; lucrative returns to investors and especially to the big online marketers are realized; in the case of the big marketers a permanent huge cash flow (in billions of dollars annually) and a relatively low overhead.

It appears that the huge and growing influence of the very large online STR marketers, calling themselves "home sharing platforms" (LA example<sup>xiv</sup> ...), also buy and obtain wide scale favorable publicity for STRs operations and marketing. And likely also stymies negative publicity regarding opposition to STRs (a local example of this **allegation**<sup>xv</sup>). Concurrently, it appears that the serious concerns of neighborhoods, homeowners, and renters generally receive little, if any, publicity. On the

contrary there appear to be efforts by the STR industry to minimize, dismiss, or even ridicule these concerns.

Perhaps it needs to be asked, how far does the influence of the STR marketing platforms extend? And how far in terms of the political influence, at all levels of government, including local? The platforms are actively opposed to what seem as any implementation of reasonably effective controls of STR operations anywhere, including in well-established neighborhoods, that took, literally, years to improve and preserve. Examples of this are the STR industry platforms' relatively recent lawsuits in San Francisco and Austin filed in opposition to the city regulators.

Prepared by:  
J. Kowat

**ENDNOTES:**

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- <sup>i</sup> ---Research if STRs impact property values and neighborhood safety statistics [conditions]?  
---Review how cities have updated municipal codes or ordinances to allow this industry to operate.  
---Review options for registering hosts with City and if a permit should be required.  
---Research if STRs should be required to remit hotel occupancy taxes.  
---Determine policies and procedures to enhance public safety in the STR industry.
  - <sup>ii</sup> Respective City Governments' URLs providing examples of transparency in the formulation and implementation of the STR regulatory processes: Los Angeles - [Los Angeles](#) ; San Francisco - [San Francisco](#) ; Denver - [Denver](#) ; Seattle - [Seattle](#) ; Portland - [Portland](#) ; Austin - [Austin](#)
  - <sup>iii</sup> Los Angeles, Denver and New Orleans prepared summaries in their planning reports regarding the key findings from other cities.
  - <sup>iv</sup> The enumerated cities created extensive on line public records, some included remarkable exhaustive public input and comments; establishing a form of transparency and accountability and in this encouraging public engagement.
  - <sup>v</sup> Allowing STR not occupied by owner to operate in residential areas on limited basis, usually no more than 90 days a year (e.g. San Francisco) and specified distances apart (e.g. Austin, .no less than 1000 feet apart); operating on year around, and on limited basis in mixed use zoning areas (most cities); operating year around in commercial (New Orleans, LA and most U.S. cities).
  - <sup>vi</sup> Where owner is either present on the premises during occupancy or maintains residence for at least 180 days per year and rents out the STR only for a limited number of days per year, usually no more than 90 days.
  - <sup>vii</sup> Recent shooting at AirBnB STR having a 100 person party in Leon Springs – <http://www.mysanantonio.com/news/local/crime/article/BCSO-Teen-shot-as-unwanted-visitors-escorted-11719877.php?cmpid=nextdoor>
  - <sup>viii</sup> Confirmable by any reasonably thorough review of the STR implementation processes in the other cities.
  - <sup>ix</sup> Up to this point in time frame(11.14.2017), this participant's forwarded comments

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<sup>x</sup> These acronyms are not explained anywhere on the DSD website which should be a standard procedure.

<sup>xi</sup> Previously commented on in submission to and subsequent discussion , General Meeting, August , 8, 2017

<sup>xii</sup> Comments submitted by this participant to STR General Meeting, 07.08.2017

<sup>xiii</sup> Extract from previously forwarded comments submitted to DSD General Meeting, 7.11. 2017

<sup>xiv</sup> LA Ordinance Update – 7.10.2017 - [http://www.keepneighborhoodsfirst.org/june\\_updates](http://www.keepneighborhoodsfirst.org/june_updates) ;  
referring to opposition to STR control being coached by AirBnB and in another reference to the STR  
Industry platforms being awash in cash

<sup>xv</sup> San Antonio STR Court Case

[https://media.click2houston.com/document\\_dev/2017/01/09/Kenneth%20Tarr%20Documents\\_877452\\_0\\_ver1.0.pdf](https://media.click2houston.com/document_dev/2017/01/09/Kenneth%20Tarr%20Documents_877452_0_ver1.0.pdf)

Date Filed 09/22/2014 Case Status PENDING Litigant Type PLAINTIFF Court 003 Docket Type OTHER  
Business Name Style KENNETH H TARR Style (2) vs TIMBERWOOD PARK OWNERS ASSOCIATION INC  
"The trial court found ... short-term rentals were in fact in violation of the residential-use provision,"  
Lorick said. The San Antonio homeowner had to pay the homeowners association's legal fees, which  
were about \$80,000.

Case #2014CV02779 History 71 Name KENNETH H TARR; Status Pending as 11.07.2017  
2014CV02779TARR, KENNETH H00309/22/2014PENDINGOTHERPLAINTIFF