



# STRs

*Narrowly tailoring to solve the problem*

# **DISCLAIMER**

**IN THE SPIRIT OF TRANSPARENCY:**

**AFTER MAKING THE FOLLOWING PRESENTATION,  
I WAS INFORMED BY OUR LEGAL COUNSEL THAT  
SOME OF THE STATEMENTS/ INTREPRETATIONS  
COULD BE CONSTRUED AS A LEGAL OPINION.**

**THE FOLLOWING SHOULD NOT BE UNDERSTOOD  
TO BE A LEGAL OPINION OR ANALYSIS.**

# **DISCLAIMER**

**FEEL FREE TO REQUEST AN EXECUTIVE SESSION  
IF YOU'D LIKE TO HAVE OUR CITY ATTORNEY  
GIVE THEIR OPINION ON THIS TOPIC.**

# SUMMARY

- A. What we cannot regulate, enforce, and restrict regarding STRs
- B. “Narrowly tailored” law
- C. Leon Valley specific concerns and issues regarding STRs
- D. PROPOSAL: Group A, Group B, Group C STRs
- E. PROPOSAL: Enforcement Level 1, Level 2, Level 3 regarding STRs

# What restrictions are unlawful?

- Outright ban on STRs in area where STRs have historically been able to operate, including sunset provisions for current STRs (“unconstitutionally retroactive”, takings claim) *Zaatari v. City of Austin AND Muns et al. v. City of Grapevine*
- Requiring property owner have a homestead exemption in order to operate STR *Zaatari v. City of Austin*
- Requirement that property owner live in Leon Valley if they have an STR in Leon Valley *Hignell-Stark v. City of New Orleans, 46 F.4th 317 (5th Cir. 2022) [Commerce Clause, US Constitution]*
  - Lawsuits filed in Austin after this ruling - Austin still denies non-occupying owners the ability to operate STR
- Prevention of the number of people that can assemble/ gather outside of a residence or the time they may assemble *Zaatari v. City of Austin AND Muns et al. v. City of Grapevine*
- Any type of occupancy limitation – either inside of residence or outside residence
- City-wide ban on STRs \*

# Austin

- Previously prohibited more than 6 people from gathering outside between 7:00 AM and 10:00 PM
- Previously prevented any gathering outside between 10:00 PM and 7:00 AM
- Previously only allowed maximum occupancy as 2 guests per bedroom + 2 extra guests per property
- Previously restricted occupancy to no more than six (6) unrelated adults or ten (10) related adults

# Austin

“Will Austin Code continue to enforce STR occupancy limits?

As a result of this ruling, Austin Code can no longer enforce STR occupancy limits (neither internal nor external of a structure).”

<https://www.austintexas.gov/article/rentals>

**Will Austin Code continue to enforce STR occupancy limits?**  
As a result of this ruling, Austin Code can no longer enforce STR occupancy limits (neither internal nor external of a structure). However, upon receiving an over-occupancy complaint, A.C.C. will continue to enforce Property Code minimum square footage requirements related to occupancy.



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# Why?

- The defendant (municipalities) in the lawsuits failed to show the regulations were NARROWLY TAILORED to ADVANCE A PUBLIC PURPOSE
- Narrowly tailored?
  - Law must be written to specifically accomplish a legitimate, specific, compelling state interest
  - The means chosen to accomplish the government's purpose must be specifically and narrowly framed to accomplish that purpose
    - If not, likely violates 5<sup>th</sup> and 14<sup>th</sup> amendment to US Constitution, as well as Article 1, Section 17 of Texas Constitution



# Why?

- Regulations violated Texas laws and protections regarding:
  - Equal protection
  - Due course of law
  - Freedom of movement
  - Right to privacy
  - Freedom of assembly
  - Freedom from unreasonable search and seizure

The background features a stylized landscape with wavy, layered hills. The top portion consists of light blue and white layers, while the bottom portion consists of various shades of green layers, creating a sense of depth and movement.

**What simple, sensible, enforceable,  
narrowly tailored laws can we implement  
to deal with the specific problems and  
concerns?**

# Specific problems, concerns

- Health and safety of guests, especially when larger number of guests are staying at property
- Welfare related – quality of life for residents that live adjacent to or near the STR property
  - Parking concerns
  - Noise concerns
  - Party concerns

# PROPOSAL – Group A

- Voluntary free registration permit for all STRs that advertise or only allow up to 8 guests on their property
  - Voluntary affidavit regarding smoke detectors, carbon monoxide detectors, attestation that there two ways to exit from every sleeping area
  - Voluntarily provide 24-hour contact information to be provided to city in event of emergency
  - Voluntary statement if they live on the premises, off the premises, or a combination thereof

# PROPOSAL – Group B

- Implement mandatory registration permit for all STRs that advertise or allow greater than 8 guests on their property
  - Require affidavit regarding smoke detectors, carbon monoxide detectors, statement that there are two ways to exit from every sleeping area
  - Require statement that they have read and will comply with LV ordinances, including those regarding STRs
  - Require property owner identify if they live on the premises, off the premises, or a combination thereof
  - Require 24-hour contact information to be provided to city in event of emergency

# PROPOSAL – Group C

- Implement mandatory registration permit and Certificate of Occupancy for all STRs that advertise or allow greater than 12 guests on their property or those that reach “Level 2” of enforcement (discussed later)
  - Fee: Whatever our cost is for building, fire, safety inspections
  - Cert. of Occupancy to verify compliance with building codes, safety codes, fire safety in addition to a plan of action if required (if property owner has reached “Level 2” of enforcement)
  - Require statement that they have read and will comply with LV ordinances, including those regarding STRs
  - Require property owner identify if they live on the premises, off the premises, or a combination thereof
  - Require 24-hour contact information to be provided to city in event of emergency

# **What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?**

- PARTIES, NOISE – Property owner or guest may not use or allow the use of sound equipment, play any instrument, or make any noise that is audible outside of the property line between 9:00 PM and 9:00 AM
- PARTIES – Property owner or guest may not allow consumption of alcohol or any other mind-altering drugs or substances in public view or by minors

# **What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?**

- TRASH – Property owner or guest may not litter or allow littering of any trash, bottles, or belongings in the front yard of the STR property, in any right-of-ways near the property, in street, or on any adjacent properties
- PARKING- Property owner or guest may not park in a manner than limits or blocks ingress or egress to another property, and are limited to parking vehicles on side of street abutting property line in the area directly in front of property



# **What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?**

- ANY OTHERS?

# Enforcement – Level 1 of 3

- Warning mailed via certified mail to registered property owner and any other known parties that manage or control property
- Informs of laws, specific nature of violations and recommendations for preventing them in the future, also contains requirements for registration for certain types of properties

# Enforcement – Level 2 of 3

- Warning mailed via certified mail must have already been provided to property owner or agent
- Citation either provided to owner or agent, or mailed via certified mail outlining the specific violation
- \$500 fine
- Requirement to register as Type C STR as well as submission of a plan of action that is approved by staff (development?) to obtain certificate of occupancy

# Enforcement – Level 3 of 3

- Warning must have been provided and property owner/ agent must have already been cited under “Level 2 Enforcement”
- Citation and cease and desist provided to owner or agent via certified mail and given in-person, if possible - outlining the specific violation
- \$500 fine
- Revocation of Certificate of Occupancy, may be eligible to re-apply as Type C STR no sooner than in 365 days
- Requirement to submit and have approved (development director?) a detailed plan of action prior to issuance of Type C STR certificate of occupancy outlining the past violations and how they will be mitigated in the future

# We don't want to be New Braunfels...

- FEDERAL case
- December 13, 2022 - Texas Public Policy Foundation has taken over the lawsuit, enjoining Plaintiffs that have filed suit against New Braunfels as they appeal
- December 16, 2022 - The Pacific Legal Foundation, Manhattan Institute, and Reason Foundation filed an amicus brief arguing in favor of the homeowners suing the city of New Braunfels
- December 20, 2022 - CATO Institute files amicus brief arguing in favor of the homeowners suing the City of New Braunfels
- December 20, 2022 Institute for Justice (IJ) filed an amicus brief arguing in favor of the homeowners in New Braunfels who have sued the City of New Braunfels regarding the STR ordinance

# We don't want to be New Braunfels...

No. 22-50008

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, L.L.C.; ENRICO  
MARFIL, NAOMI MARFIL, KOREY A. RHOLACK, DANIEL OLVEDA,  
DOUGLAS WAYNE MATHES,

*Plaintiffs-Appellants,*

v.

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant-Appellee*

On Appeal from the United States District Court  
for the Western District of Texas, Waco Division

APPELLANTS' BRIEF

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CASE NO. 22-50908

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, L.L.C.; ENRICO  
NAOMI MARFIL; KOREY A. RHOLACK, DANIEL OLVEDA,  
DOUGLAS WAYNE MATHES,

*Plaintiffs-Appellants,*

v.

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Western District of Texas, Waco Division

BRIEF OF THE CATO INSTITUTE AS  
AMICUS CURIAE IN SUPPORT OF APPELLANTS

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No. 22-50008

In the United States Court of Appeals  
for the Fifth Circuit

RAFAEL MARFIL, VERGE PRODUCTIONS,  
ENRICO MARFIL, NAOMI MARFIL, KOREY A. R.  
DANIEL OLVEDA, AND DOUGLAS WAYNE MATHES

*Plaintiffs-*

v.

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant-*

On Appeal from the United States District Court  
for the Western District of Texas, Waco Division  
No. 6:20-cv-002484-ADA-JCM  
Alan D. Albright, Judge Presiding

BRIEF OF AMICUS CURIAE  
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No. 22-50008

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, LLC, ENRICO MARFIL,  
NAOMI MARFIL, KOREY A. RHOLACK, DANIEL OLVEDA, and  
DOUGLAS WAYNE MATHES

*Plaintiffs - Appellants,*

v.

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant - Appellant.*

Appeal from the United States District Court  
for the Western District of Texas, Waco Division  
No. 6:20-CV-248 (Hon. Alan D. Albright)

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