

LEGAL ISSUES AND SELECTED CASE LAW SUPPORTING CITY ORDINANCES

STVR Owners’ due process rights are not denied. In the seminal case Ewing v. City of Carmel by the Sea, 234 Cal. App. 3d 1579 6th Dist. 1991, cited in most STVR opinions as well as in many preambles to municipal STVR ordinances, a STVR owner sued the city over its ordinance prohibiting STVRs. The California Sixth District Court of Appeal first held that the owner’s due process rights were not violated, stating: “We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting **transient commercial use of residential property for remuneration** in the R-1 District addresses that goal.” [Emphasis added]

In upholding the lower court’s decision upholding the city’s ordinance, the Court in Ewing stated the following: “It stands to reason that the ‘residential character’ of a neighborhood is threatened when a significant number of homes...are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, even 29 days. Whether or not transient rentals have the other ‘unmitigatable, adverse impacts’ cited by the Council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. **Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.**” [Emphasis added].

South Lake Tahoe Property Owners Group v. South Lake Tahoe (El Dorado County, SC-20180243, Law and Motion Calendar Dept. 9, decided 6/12/2020), involved a challenge to the enactment of a citizen’s initiative Measure T to eliminate STVRs in residential zones by the city by majority vote of the electorate at the 11/6/2018 election. Several features of Measure T are similar to Proposal 2 (cancels existing permits in 2021; limits number of occupants; limits operation of STVRs to permanent residents.) The court ruled in favor of the city in substantial part, and found that Measure T did not violate the rights of current STVR owners. In its decision, the court said: “Use of a reasonable amortization scheme provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements.” (P. 88)

Municipalities’ authority to regulate STVRs is within their zoning power. It is settled law in California that zoning regulations that restrict or prohibit short term rentals in residential areas are within the lawful scope of a city’s zoning power where the restrictions are found to be substantially related to land use impacts in the area. (Ewing v. City of Carmel by the Sea, 234 Cal. App. 3d 1579 6th Dist. 1991; Rathkops’s The Law of Zoning and Planning Sec. 81:11 4th Ed 2011.)

Ordinances restricting STVRs do not amount to an unconstitutional “taking”. In a case in Oregon in which a municipal ordinance prohibited short term rentals, the court decided that the ordinance did not deny the owners economically viable use of their properties: “We next consider whether Ordinance 92-1, by prohibiting transient occupancy, denies property owners economically viable use of their properties. We conclude it does not. On its face, Ordinance 92-1 permits rentals of dwellings for periods of 14 days or more. The ordinance also permits the owners themselves to reside in the dwellings. Although those uses may not be as profitable as are shorter-term rentals of the properties they are economically viable uses.” (Cope v. City of Cannon Beach 855 P.2d. 1083 (Or. 1993), 1086-87.)