

# A VISION FOR CATHEDRAL CITY



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California Court of Appeal decision in *Ewing vs. City of Carmel By The Sea*

Prepared By

**PROTECT OUR CATHEDRAL CITY RESIDENTIAL NEIGHBORHOODS**

**A Group of Concerned Residents of Cathedral City**

# **PROPOSAL #2 IS THE RIGHT CHOICE FOR CATHEDRAL CITY**

## **BACKGROUND**

At the March 11, 2020 Study Session, the Short Term Vacation Rental (STVR) Task Force Density Subcommittee presented two Proposals: Proposal 1 - Rely on Stronger Regulations and Enforcement; and Proposal 2 - Phase Out STVRs in residential areas while allowing them to continue operating in HOAs with CC&Rs that allow them and in “home share” situations. City Council directed the Task Force to focus its work on Proposal 2 and draft recommendations to support that Proposal, including stronger regulations and enforcement. We applaud the City Council’s direction and are grateful it is putting the interests of Cathedral City residents first and foremost.

The existence of STVRs in Cathedral City has been a contentious issue. We understand that STVRs are a way for residents to supplement their income by renting rooms in their homes to visitors. We also understand the need for cities to bolster revenue during these difficult times. However, when STVRs started taking over neighborhoods and changing the character of those neighborhoods, removing houses from the housing stock (both for long-term rental or purchase), and ruining residents’ quality of life, residents started voicing their anger. Cities everywhere started revisiting their ordinances. That is what has happened here in Cathedral City.

While there is no one approach that cities are taking to address the issue, there is an undeniable trend that cities worldwide are choosing to put the needs of their residents first to protect residential neighborhoods, because once a neighborhood is lost, it’s lost forever.

Major issues raised and repeated during council meetings, public hearings, and written submittals include:

- Quality of life in residential neighborhoods with STVRs (e.g. neighbors being woken up during the middle of the night, trash being left behind by uncaring visitors, already tight parking spaces being taken up by out of town transients)
- Dependence of some homeowners on supplemental income from rentals
- Loss of revenue sources to property owners and property managers
- Loss of a portion of TOT to the City
- Inadequate code enforcement provisions and resources

The proposal to phase out most STVRs in residential neighborhoods is a reasonable proposal for the City Council of Cathedral City to adopt. It is a compromise, accommodating both residents living in areas planned for residential use and residents who want to earn extra income by renting out a room in their homes. It does not ban STVRs in Cathedral City; it simply allows them to operate in areas more suited for these commercial enterprises such as in HOAs that approve them and eliminates them in areas that are planned for residential use.

## **PROPOSED ORDINANCE (Summarized)**

- Prohibit new STVRs in all residential zones, except in home sharing situations (i.e. renting out a room in a home) where the owner is on-site during the rental period or if the unit is in an HOA or other community association with CC&Rs that allow them.
- The owner of a home sharing STVR must be a permanent resident of Cathedral City and must be present during the rental stay.
- Existing permitted STVRs in the prohibited residential zones will be phased out during a transition period sunsetting on a date determined by City Council. After that date, all STVRs in those zones are prohibited (except for home sharing and in HOAs/CC&Rs which allow them).
- All existing permitted STVRs during the transition period will be subject to new rules adopted by City Council regarding stricter regulations and enforcement penalties. Stricter fines similar to Palm Desert should be adopted (\$1,000, \$3,000) and revocation on the third violation. Stricter fines for advertising an unpermitted STVR (\$5,000). No warnings are to be given. Palm Desert found that stricter penalties yield positive results.
- During the transition, existing permitted STVRs in the prohibited residential zones may continue operating unless title to the property has changed or the existing permit has been revoked.
- Operational requirements should be improved, including: no music outside; a quiet time; in-person check-in; limits in occupancy; reduced time for the local contact to respond; limit on parking; requirement that renters sign a formal acknowledgment that he/she is legally responsible for compliance of all occupants with the rules.
- New insurance requirements and hold harmless agreements are recommended to protect guests and the City.

## **REASONS WHY THIS PROPOSAL SHOULD BE ADOPTED IN CATHEDRAL CITY**

- By their very nature, STVRs are noisy and invite problems affecting residents' quality of life. Transient strangers come here to vacation and have fun; residents are not on vacation - they are here to live and work. No amount of regulation or enforcement can change the inherent nature and constant turnover of strangers here to have fun in STVRs.
- Relying solely on improved regulations and enforcement is a red herring. No matter what improvements are made to enforcement, the onus always is on the resident to be the first responder. By the time the resident contacts the Hotline, his or her quality of life already has been disrupted.
- STVRs are a commercial business. They are an incompatible use in areas planned for residential use.
- As a reminder, Cathedral City Municipal Code Sec. 9.14.010 states, in part: Purpose and intent. (R-1 Single Family Residential District): "To provide a living area within the city where development is limited to low density concentrations of one-family dwellings and to promote and encourage a suitable environment for family life..."
- STVRs remove housing units from the city stock and make housing less available or affordable for people who want to live here. Cathedral City is a young city. When young people move out on their own, they prefer to stay close to family. The lack of affordable housing for our native sons and daughters drives them away from family and friends.

## **REASONS WHY THIS PROPOSAL CAN WORK IN CATHEDRAL CITY**

- The proposed ordinance offers something for everyone.
- On-site homeowners who rent out a room or two in their homes will be able to operate STVRs on their property as they do today; on-site owners dependent on supplemental income from rentals keep that income source.
- Fully one-third of STVRs will continue operating in HOAs as they do today, with administrative changes only; stiffer penalties will not affect them as long as they and their renters comply with “good neighbor” requirements. These properties will continue to pay permit fees, inspection fees and TOT.
- R-1 and R-2 neighborhoods retain their desirable characteristics and quality of life.
- Homeowners currently struggling to sell homes near STVRs can assure potential buyers that the disclosed STVRs will be gone by the sunset date.
- The transition period allows time for investors, off-site owners, property managers and Realtors to respond to the change. Reintroduction of the properties into the local real estate market is spread over time, not all at once.
- When the phase out in the residential areas is completed, the City’s administrative and enforcement costs will decrease along with the decrease in TOT. Home sharing owners and HOAs/CC&Rs which allow STVRs will be the first line of enforcement and reduce the City’s involvement.

## **ARGUMENTS BY STVR OWNERS/MANAGERS AND RESPONSES**

- STVRs are not a business because they operate in a residence, so they do not require a business license and do not violate residential zoning laws. *Most cities like Cathedral City require STVRs to have a business license because they are a business. It is a commercial activity intended to generate a profit. Owners can deduct business expenses on their income taxes. The California legislature in the Housing Crisis Act of 2019 equated short term occupancy of a residence as “the commercial use of land”. The argument by owners and managers that STVRs are not a business is meritless.*
- STVRs improve run-down empty homes and clean up properties. *This is a specious argument. Code Enforcement should be addressing these issues with all properties in the City.*
- Long-term rentals are the problem, not short-term rentals. *Same response as above.*
- If banned, they will just go underground. *This is like saying, since drivers violate speeding laws we should do away with speeding laws. Offenders will always try to circumvent the rules. The solution requires perseverance and a real desire and effort made by Code Enforcement to enforce the rules with help by reporting neighbors.*
- STVR owners have invested money in the City. STVR guests bring “millions” to the City. *What about homeowners who have lived in the City and have invested money here for years? STVR guests are not spending the millions claimed; they bring their own party supplies and visit neighboring cities like Palm Springs. And since 75% of the owners do not live in Cathedral City, we know they are not spending their STVR profits here in our City but in their own cities of residence or are paying their mortgages on their STVR units.*
- STVR owners will sell off their properties and flood the real estate market making housing prices decline. *The Palm Desert experience shows the opposite. In the most*

*recent June 2020 Desert Housing Report, Palm Desert detached homes showed a 13.7% year over year gain, the highest in the desert. Home loan interest rates, stock market, job market and overall economy will dictate housing value. The other side of the argument is that high housing prices are not necessarily desirable when they make it difficult for working and middle class families to purchase a home in our City.*

- Property rights - people have a right to do what they want with their properties. *Property owners' rights are subject to laws implemented for the public good and for the entire community. A property owner does not have an unfettered right to do whatever he/she wishes - that is the purpose of zoning and other municipal regulations. For a more detailed response, see the legal discussion below and Appendix B.*

**THIS PROPOSAL IS NOT NEW. IT'S BEEN IMPLEMENTED BY MANY CITIES ALL OVER THE U. S. AND COURTS HAVE UPHELD THE RESTRICTIONS**

- This approach is not new. Many cities worldwide have chosen to ban STVRs altogether; others have adopted a similar approach to the one proposed. Attached as Appendix A is a list of just a few examples of California and other U. S. cities either totally banning STVRs or restricting them to some type of home sharing.
- The challenges to city ordinances restricting STVRs have been based on various purported legal grounds. But most California courts have upheld such city ordinances against these challenges. Appendix B provides a more detailed explanation of the case law and the reasoning of the courts in deciding the cases against challenges.
- Online platforms like Airbnb and STVR businesses and owners have tried to thwart cities' attempts to restrict the growth of STVRs and restore neighborhoods to the residents by suing the cities. Many California courts have decided in favor of the cities. Please see Appendix C for a short list of cases in which courts have supported the cities.

**CONCLUSION**

We respectfully request that the City Council adopt Proposal #2 - phasing out STVRs in residential neighborhoods except for home sharing and HOAs that allow them - along with those recommendations to improve regulations and strengthen enforcement made by the resident members on the STVR Task Force who do not own or manage STVRs. It is a compromise that best serves all the residents of Cathedral City and will enhance neighborhood quality of life.

**PLEASE PUT RESIDENTS FIRST**

**Here are just a few of the responses returned in the October 2019 survey which was sent to houses adjacent to existing Short Term Vacation Rentals (STVRs):**

- Please make this nightmare end. (Survey #172)
- No one moves in a neighborhood to live next to people that just want to party loud. They have no respect for people who are working and need to sleep or kids who have to go to school. I hate it! Makes me want to move. (Survey #010)
- STVRs do not build communities. I cannot know my neighbors because they are never the same. (Survey #032)
- Noise excessive noise and loud music past 10 p.m. well into 3 a.m. As a registered nurse, sleep is vital (Survey #026)
- A for profit business should not be allowed in R-1 & R-2 zones. This is where we LIVE, and we do not want strangers, disruptions and cars coming through your neighborhood. We need neighbors for our quality of life. (Survey #027)
- Loud music playing until 2 a.m. Renters jumping over into my backyard. Having live bands and DJs playing extremely loud music. Have around 80 people per rental. (Survey #066)
- Lots of noise-loud radios. Still up and shouting at 3 a.m. (Survey #149)
- Neighborhoods are for neighbors not vacationers. That is why we have hotels. (Survey #159)
- STVRs create noise, congestion and put the burden on neighbors to monitor & report problems while STVR owners and managers remain oblivious. (Survey #174)
- Inappropriate use of residential neighborhoods violates our zoning plan. Noise and disruption. Absentee owners. Reduce housing supply, competes with resorts. (Survey #182)
- Trespass by renters onto my property. Police response on multiple occasions. Drone at my front window, porch, front yard. Trespass by photographer on my front driveway. Intoxicated male renter on my porch late PM threatened me. (Survey #190)
- It is a business for profit in residential areas. Ruins fabric of community. (Survey #191)
- There is a party every weekend. I do not want to live next to a hotel. I have a family, small kids and want a family neighborhood. (Survey #352)
- Loss of sleep. Many times have woken up at 3-4 a.m. to noise and music coming from vacation rental. (Survey #407)

## APPENDIX A

<b>List Of Bans / Restrictions In Coachella Valley Cities</b>		
Palm Desert	Indian Wells (allowed during tennis tournament)	
<b>Sample List Of Bans / Restrictions In California Cities</b>		
Buena Park	Danville (total ban)	Glendale
Healdsburg (total ban in residential)	Irvine (total ban in residential)	La Mirada (total ban)
Manhattan Beach (total ban in residential)	Napa County (total ban)	Newport Beach (banned in some areas)
Pacific Grove	San Leandro	San Luis Obispo
Santa Monica	Sausalito (total ban)	Seal Beach (banned, with a limited exception)
South Lake Tahoe	Temecula (total ban)	Tiburon (total ban)
<b>Sample List Of Bans / Restrictions In Other States</b>		
LA - New Orleans	NH - Portsmouth (total ban)	NY - Jersey City
NV - Las Vegas (bans new permits that are not owner occupied)	NY - New York (banned in apts unless owner present)	Washington DC.

## APPENDIX B

### LEGAL ISSUES AND SELECTED CASE LAW SUPPORTING THE PROPOSAL

**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 6<sup>th</sup> 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 6<sup>th</sup> Dist. 1991; Rathkops’s The Law of Zoning and Planning Sec. 81:11 4<sup>th</sup> 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.)



## APPENDIX C

### SELECTED EXAMPLES OF CASES UPHOLDING MUNICIPAL ORDINANCES RESTRICTING STVRs

**Homeaway.com, Inc. v. City of Santa Monica** 918 F.3d 676 (9th Cir. 2019) – *Upheld Santa Monica’s ordinance restricting STVRs to home sharing.* Ninth Circuit Court of Appeals affirmed the City of Santa Monica’s home sharing ordinance. The Court agreed with the district court that the City’s ordinance is a lawful housing and rental regulation with the “central and significant goal” of preserving the City’s “housing stock and preserving the quality and nature of residential neighborhoods”.

**Rosenblatt v. Santa Monica** 940 F.3d 439 (9th Cir. 2019) – *Upheld Santa Monica’s ordinance prohibiting STVRs except for hosted short term home shares during which the primary resident host lives in the unit with the guest.* Affirmed by the Ninth Circuit Court of Appeals; U. S. Supreme Court declined to review the judgement (5/18/2020).

**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) – *Upheld in substantial part a citizen’s measure eliminating STVRs in residential zones (with a 3 year phaseout).* This was a summary judgment proceeding; decision rendered by the El Dorado county judge.

**2 Pacific Grove Lawsuits** – brought against Pacific Grove over a voter passed Measure phasing out STVRs in certain areas outside the Coastal zone using a lottery system but still allowing home sharing. The first case (STRONGpg v. City of Pacific Grove) was dismissed, and it was described as a fishing expedition to extract concessions from the City such as grandfathering in existing STVRs. The second case (Hobbs v. City of Pacific Grove) was funded by the Goldwater Institute and Airbnb. The trial date was set for 12/16/2019, but was dismissed by the plaintiffs themselves, who then filed an appeal, but the appeal is pending because plaintiffs failed to pay the filing fee.

**Wallace v. Town of Grand Island** 194 CA 19-00925(6/12/2020) – *The NY Supreme Court Appellate Div. 4<sup>th</sup> upheld the City’s zoning regulations prohibiting STVRs except for owner-occupied (i.e. home sharing) with a one year amortization period which could be extended up to 3 times.*

The Wallace case is important because it is based on a U. S. Supreme Court case, Penn Central Transportation Co. v New York City 438 US 104 (1978), where the Court found that the plaintiff failed to provide financial evidence that “the subject premises was not capable of producing a reasonable return on his investment or that it was not adaptable to other suitable private use.” At best, the plaintiff established a “mere diminution” in property value, which is not sufficient to establish a regulatory taking. The Court observed that the plaintiff was not precluded from selling the property at a profit, or from renting it on a long-term basis. Finally, the Court noted that, even if the plaintiff successfully established a regulatory taking, the proper relief for his claim would have been a hearing on just compensation, not invalidation of the law.

The following residents have indicated their support of this

***Vision For Cathedral City***

Only your first and last name will appear here...