

A question of property rights

From Supreme Court on down, legal system has long backed zoning laws

You may own property, but that doesn't give you the right to do anything you want with it. San Diego, like virtually every other city in America, has zoning laws. They are detailed in the Municipal Code. Enforcement of these laws prevents property owners from opening a barber shop, a restaurant, or even a meat processing plant in the middle of a residential zone. Your property rights as an owner begin ONLY when they do not conflict with zoning laws.



unfairly diminished the value of its property. The U.S. Supreme Court rejected that challenge, saying that non-residential uses may have an increasingly deleterious impact on a residential district “until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed.”

That is precisely the property rights argument that opponents of short-term vacation rental hotels have been making for years in San

These zoning laws actually are designed to protect property rights. Would you, for example, want to have a meat processing plant open next to your home? Of course not. That would clearly violate your property rights and not be a pleasant environment in which to raise a family. How about having a hotel open next to you home?

Well in 1926, an Ohio realty company challenged the concept of zoning on just that basis. It wanted to lease land in a residential zone to hotels and other businesses. Zoning laws, it argued,

Diego. Whole-home vacation rentals - where owners, often out-of-town investors, are not present - are a commercial use not permitted by San Diego's zoning laws, they have argued. Neighbors say their property rights are being violated because the City of San Diego refuses to enforce its zoning laws, even after a memorandum in March saying STVRs are not permitted in residential zones from City Attorney Mara Elliott, San Diego's chief legal officer. The neighbors add that they bought homes in residential areas because San Diego's zoning laws offered protection from the intrusion of commercial operations, like STVR hotels.

- [Read more in a San Diego Union-Tribune op-ed: Short-term rentals: Code enforcement long past due](#)
- [Read the entire 1926 U.S. Supreme Court decision in Euclid, Ohio vs. Ambler Realty Co.](#)
- [Read the key paragraph in the 1926 U.S. Supreme Court decision regarding preserving the character and desirability of residential area in the section labeled “Page 272 U. S. 394”](#)

Illegal, but not enforced

City's refusal to enforce law doesn't make STVRs any less illegal



On March 15, 2017, San Diego City Attorney Mara Elliott issued a memorandum of law advising the City Council and Mayor that short-term vacation rentals (STVR) are illegal in the city's residential zones.

"The City has a "permissive zoning ordinance." This means that any use that is not listed in the City's zoning ordinance is prohibited. Short-term vacation rentals are not specifically defined, expressly permitted, or listed in any of the zone use categories, including residential or commercial," Elliott said.

The memo is a game-changer in a struggle begun by citizens in 2007 to regulate STVR. Save San Diego Neighborhoods and others have long argued that the San Diego Municipal Code prohibits owner-unoccupied vacation rentals in residential zones. The memo confirms that view is, and has been, correct.

In the wake of Elliott's memo, City Councilmember Barbara Bry said: "I was pleased to read the memo issued by City Attorney Mara Elliott confirming that short-term vacation rentals do not fall under any permissible use in the Municipal Code and are therefore prohibited in the City of San Diego. I look forward to working with my colleagues on the Council to determine the best way to allow property owners to participate in home sharing, while also enforcing existing City Code to protect residential communities from the proliferation of mini-hotels."

- [See City Attorney's March 15 memo](#)



City's help sought for 10-plus years

- **May 23, 2007** - District 2 Council member Kevin Faulconer is asked by the Pacific Beach Planning Group to help regulate STVRs. [See 2007 letter](#).
- **Sept. 12, 2007** - Then City Attorney Mike Aguirre issues a widely criticized memo saying STVR are not addressed in Municipal Code. [See legal analysis](#). [See 2007 memo](#).
- **March 15, 2017** - Ten years of efforts to have the 2007 memo corrected result in City Attorney memo saying STVRs are illegal in residential zones.
- **March 2017** - Mayor Faulconer says that despite the City Attorney memo, he will not enforce STVR prohibition pending City Council action.
- **July 2017** - Poll finds 86% say mayor is not putting neighborhoods first in relation to STVRs. Some 85% say they want Municipal Code enforced.