AirBnB and VRBOs and Short-Term Lease Agreements: What You MUST Know

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I AirBnB, VRBO and Short-term Lease Laws

What is AirBnB and VRBO?

AirBnB is an 11-year old company which started as a way of finding rooms for people attending conventions in San Francisco. The original purpose was to house people for whom there were no hotel rooms, or who could not afford hotel rooms. The company ran out of a one-bedroom apartment in San Francisco for several years. The company links people who have bedrooms they are willing to rent to guests with guests looking for a place to stay. Because the rooms are located

in residential neighborhoods, the experience is often more like living in a destination than visiting as a tourist. It also can be significantly cheaper for a number of reasons.

The company has evolved through several phases and acquisitions. In August 2016, AirBnB raised additional private capital (it is a private company) on a securities filing that valued it at $30 billion. By contrast, the combined valuation of the four largest hotel stocks at that time was about $58.5 billion. Its valuation is 30 percent greater than that of Hilton, its nearest competitor.

Its astonishing growth is a functional of its existence as an internet platform. Internet companies can expand throughout the world without acquiring real estate. As will be seen, its expansion has allowed it to rapidly address issues that arose as it morphed into a huge lodging platform.

Nothing spawns imitation like success, and room sharing is no different. A competing site, Vacation Rental By Owner, opened, one of a dozen related sites featuring a selection of different target properties, such as Toprural, which features properties in rural Spain. The proliferation of rental sites makes it difficult to imagine regulations stopping the practice.

The idea of renting an extra bedroom instead of a hotel room is nothing new. The writer recalls reading a story about the practice in the New York Times in 1985. But the concept never could grow very large with the technology available before the internet. Information had to be distributed in physical form, making it awkward to provide current listings. Booking had to be done by telephone or fax, comparatively labor-intensive methods. The internet facilitated many businesses premised on instantaneous offers and acceptances. AirBnB is probably most like eBay in that it systematizes what had been sporadic and informal sales.

The systemization of room sharing for money created an entirely new product -- a commercial residence. That oxymoron reflected the conflict between two vastly different concepts of land use, and, in turn, created ongoing controversy which is far from settled.

It is beyond denial that AirBnB and related sites constitute at least some level of commercial use. AirBnB makes no attempt to deny it. Its website states:

> Whether an apartment for a night, a castle for a week, or a villa for a month, Airbnb connects people to unique travel experiences, at any price point, in more than

> 34,000 cities and 191 countries. And with world-class customer service and a growing community of users, Airbnb is the easiest way for people to monetize their extra space and showcase it to an audience of millions.
> https://www.airbnb.com/about/about-us [Accessed January 12 2017]

The statements are hardly surprising, since the purpose of AirBnB has been, from the beginning, to help owners generate income from residential properties. That alone, however, does not create a violation of law. Almost every zoning ordinance allows incidental commercial use of residential properties – home occupations being a classic example.

It's rare to hear someone say that they do not oppose a particular use, but are filing a zoning complaint because it is a technical violation of the ordinance. When challenges have been made to AirBnB rentals, the motivating factor has been concerns for the impact the activity may have on the property and the neighborhood. The questions involved, therefore, can be resolved only by reference to the applicable laws and ordinances.

What Is An Vacation Stay? Rules and Regulations You Need to Know

We popularly refer to the lodging provided by AirBnB and VRBO et al, as "rentals." Are they? Is a lodging a "lease?"

> Leases. A lease is an agreement under which the owner of the property conveys a present possessory interest in the property to a holder, who is called the tenant. The tenant has exclusive enjoyment of the property against the entire world, except the landlord. The tenant has possession, but it is considered the landlord's possession. And the landlord's rights are limited to those in the creating document, known as a lease. At the end of the lease term, the tenant is required to deliver possession of the property to the landlord in the condition the property was taken, less wear and tear. Leases are conveyances, but have come to be seen more as contracts in modern law. They have aspects of both. Further complicating the picture, statutory regulations modify common-law rules. For example, Wisconsin law requires that tenants of agricultural lands be given 90 days notice of termination, Wis. Stats. sec. 704.19 (3).

Because a tenant has an interest in the real estate, their tenure may be terminated only by court action through the remedy of eviction. Eviction procedures vary from state to state, but they are not simple, short or cheap.

No one housing people through AirBnB believes they will have to evict their guests if they misbehave or stop paying. Nor do they believe that the guests have sole possession of the premises.

So – what is a lodging? Look to the common law status of access property by means of a **license.**

Licenses. A license is a right to enter property for specific purposes which does not convey any rights in the property. Every time we stay in a hotel, enter a gas station, walk into an office building to see the tenants, or otherwise come on to real estate other than as tenants, we are licensees. Our presence is at sufferance and we can be removed at pleasure, without notice or process.

But, as is so often the case, by answering one question, we raise others. If the owner or tenancy holder of a property grants licenses to others permitting them to occupy the property for short-term purposes, that may trigger other issues:

1. It may make the operator a hotel, motel, bed and breakfast, lodging house, rooming house, club or group home, depending on how those terms are defined by applicable state laws.

In Tennessee, e.g., 68-14-301 (8) of the Tennessee Code defines a "hotel" as "any building or establishment kept, used, or maintained as, or advertised as, or offered to the public to be, a place where sleeping accommodations are furnished for pay to transients or travelers, whether or not meals are served to transients or travelers;"

And

68-14-306. Permits -- Application, issuance, renewals. (a) (1) Any person planning to operate a hotel, food service establishment or public swimming pool shall make written application for a permit on forms provided by the commissioner. Such applications shall be completed and returned to the commissioner with the proper permit fee.

And

68-14-322. Penalties. Any person operating a hotel, food service establishment, or public swimming pool who fails or refuses to comply with any of this part or rules and regulations, or obstructs or hinders the regulatory authority in the discharge of the regulatory authority's duties or otherwise operates a hotel, food service establishment or swimming pool in violation of this part or rules and regulations commits a Class C misdemeanor. Each day after sufficient notice has been given constitutes a separate offense

2. It may subject the premises to health, safety and sanitary codes.

The National Fire Protection Association Code – the base code for almost all state and local fire codes – provides:

> **6.1.8.1.3* Definition — Hotel.** A building or groups of buildings under the same management in which there are sleeping accommodations for more than 16 persons and primarily used by transients for lodging with or without meals.

3. It may make the operator a "seller" for the purpose of sales and use taxes, room taxes and other revenue requirements.

See, e.g. Idaho's Travel and 67-4711 (7), defining a taxable "sale" as "the renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days. 'Sale' shall not include the renting of a place to sleep to an individual by the Idaho Ronald McDonald House."

4 Perhaps most troublesome, it may constitute commercial use of the property involved, depending on the definitions contained in the local zoning code.

Key Concepts For Local Regulations

A key concept affecting regulation of housing shares is the term "**hosted**." The original concept of a bed-and-breakfast was a home in which the residents hosted occasional visitors and remained on the premises. The presence of the owners served to limit the commercial character of having paid guests. Hosts act as chaperones, enforce expectations and are available to neighbors and communities. A hosted residence remains a residence in character as well.

By contrast, "**unhosted**" house shares involve situations where there is no resident owner or even owner's representative. The absence of an owner allows every possible room to be

converted to rental. If no owner is present, the owner's personal possessions will not be present, and the lodging will tend toward a more hotel-like appearance.

For these reasons, regulations often distinguish between hosted house shares, which are more liberally regulated.

A review of ordinances adopted throughout the United States reveals several common themes.

Non—hosted rentals are primarily targeted.

For reasons noted earlier, the non-hosted rental is much more like a hotel than it is a bed-and-breakfast. The potential for bad behavior and changes in the character of the neighborhood is much larger. Hosted rentals carry with them the built-in compliance mechanism of the owner being forced to live with problems. For this reason, regulations targeted at absentee rentals are much more likely to be necessary and accepted.

30 days seems to be the magic number.

Whether right or wrong, the overwhelming trend among the regulatory ordinances seems to be regulating rentals of 30 days or less. Rentals of 30 days or more are viewed as conventional landlord-tenant relationships which need no more intervention that is already the case.

Whole – house rental regulations often differ.

Rental of an entire house is frequently treated separately in ordinances and regulations. There are good reasons for this; a house is much more private than an apartment. It is usually larger, and has the potential for much more extensive activity. It is also much more like regular apartment rental than a timeshare within a house. For that reason, regulations treat the whole house rentals as a more substantial change in the character of a neighborhood, and put it under greater scrutiny.

Limitations on the extent of short-term rentals.

Some communities seem concerned about the secondary impact of short-term rentals on housing prices, vacancies and neighborhoods. Las Vegas and Seattle are leading communities which have adopted density restrictions, forbidding short-term rentals closer than 660 or 600 feet from other short-term rentals. Other communities have simply imposed restrictions limiting short-term rentals to 90 days in any year. Both have the effect of minimizing the amount of income that can be generated in an area from short-term rentals.

Regulation aimed primarily at registration and voluntary compliance.

The biggest problem with imposing any kind of regulations on short-term rentals is the ease with which the activity can occur out of sight. Getting short-term rental providers to register provides government with at least a starting point for keeping track of what's going on.

Enforcing Short-Term Rental Laws and Violations: Top Issues and Challenges

Short-term rentals are akin to the challenges posed by student rentals in residential neighborhoods adjacent to college campuses. Colleges and cities hosting them have long been aware that students eager to escape the minimal supervision afforded by dormitories are willing to bid up the price of housing by renting single-family homes. Each bedroom becomes a revenue source.

The history of public responses to these economic reality is a history of difficult enforcement efforts. In the city of Madison, efforts to keep students from moving further into residential neighborhoods have, at times, resulted in neighborhood associations going door-to-door checking up on who is living in what house.

The advent of vacation rental websites have made enforcement almost impossible. If a host is willing to avoid making any obvious changes to a house, it becomes very difficult for the government to prove that a paying guest is not a friend of the family. Of course, the website has a listing of the properties involved, but in many communities there may be dozens, hundreds or even thousands of properties. The code enforcement offices of most communities are far too thinly staffed to respond, leading to ineffective enforcement. In turn, enforcement that does occur runs the risk of being characterized as selective, sporadic or arbitrary. In practice, the only realistic strategy is finding a vehicle for self-regulation, as New Orleans has.

Challenging Local Short-Term Rental Laws: Key Lessons From the Front Lines

The most significant challenges to propose short-term rental laws have not been in court. They have been in Council Chambers. AirBnB and other vacation rental operators have ramped up their political efforts. Their websites [https://www.airbnbcitizen.com/] and other resource centers provide information, ready-made arguments, and data to back up their contentions that short-term rentals do not damage communities. And these providers are becoming active not only at the local,

but also the state and federal. Airbnb, for example, spent $355,000 on lobbying in Washington last year. That figure will almost certainly increase.

In line with classic lobbying practice, AirBnB hired retired politicians to act as advisors, retaining Michael Nutter (Philadelphia), Annise Parker (Houston), Francesco Rutelli (Rome, Italy), and Stephen Yarwood (Adelaide, Australia) to serve as a "Mayoral advisory board." Surely these people will land enormous prestige and insight into the regulatory process for their clients. [http://www.forbes.com/sites/briansolomon/2016/07/22/airbnb-hires-former-mayors-to-advise-lobby-on-cities/#65cb80384c65]

The short-term rental industry has not hesitated to use litigation. See, Airbnb, Inc. v. City & Cty. of S.F., No. 3:16-cv-03615-JD, 2016 U.S. Dist. LEXIS 160451, at *2 (N.D. Cal. Nov. 18, 2016). In that case, the provider won an injunction enjoining enforcement of existing regulations until the city provided a more feasible fair and efficient way of enforcing and complying with it. The federal government is also looking into the issue. Several congressional committees have investigated the issue at least one mini report is available on the subject, *The Disrupter Series: How the Sharing Economy Creates Jobs, Benefits Consumers, and Raises Policy Questions*, Sept. 29, 2015, Hearing ID: HRG-2015-HEC-0058 (House Subcommittee on Commerce, Manufacturing, and Trade, of the Committee on Energy and Commerce)

ADA and FHA Compliance Concerns for Hosts

Because short-term rentals involve offering housing to the public, in most jurisdictions, the practice is subject to public accommodations laws. The Americans with Disabilities Act regulates public accommodations. 42 USC sec. 12181 (7)(A). That term includes hotels, motels, inns, and other places of lodging, but excludes a building that contains five or fewer rooms for rent or hire, or which is occupied by the proprietor.

State public accommodations laws contain differing definitions. Wisconsin, for example, regulates smaller lodging as either "bed and breakfast" or "tourism rooming house" businesses, if the definitions are satisfied.

Early on in the history of this still infant industry, problems arose when people complained that short-term rental hosts were denying rentals on the basis of illegal discrimination. AirBnB and VRBO immediately reacted to complaints of discrimination by adopting policies which strictly

forbid discrimination based on race, color, ethnicity, national origin, religion, sexual orientation, gender identity, or marital status.

Here is AirBnB's Non-Discrimination policy:

Specific Guidance for Hosts in the United States and European Union

As a general matter, we will familiarize ourselves with all applicable federal, state, and local laws that apply to housing and places of public accommodation. Hosts should contact Airbnb customer service if they have any questions about their obligations to comply with this Airbnb Nondiscrimination Policy. Airbnb will release further discrimination policy guidance for jurisdictions outside the United States in the near future. Guided by these principles, our U.S. and EU host community will follow these rules when considering potential guests and hosting guests:

Race, Color, Ethnicity, National Origin, Religion, Sexual Orientation, Gender Identity, or Marital Status

- Airbnb hosts **may not**
  - Decline a guest based on race, color, ethnicity, national origin, religion, sexual orientation, gender identity, or marital status.
  - Impose any different terms or conditions based on race, color, ethnicity, national origin, religion, sexual orientation, gender identity, or marital status.
  - Post any listing or make any statement that discourages or indicates a preference for or against any guest on account of race, color, ethnicity, national origin, religion, sexual orientation, gender identity, or marital status.

Gender Identity

Airbnb does not assign a gender identity to our users. We consider the gender of an individual to be what they identify and/or designate on their user profile.

- Airbnb hosts **may not**
  - Decline to rent to a guest based on gender unless the host shares living spaces (for example, bathroom, kitchen, or common areas) with the guest.
  - Impose any different terms or conditions based on gender unless the host shares living spaces with the guest.
  - Post any listing or make any statement that discourages or indicates a preference for or against any guest on account of gender, unless the host shares living spaces with the guest.

- Airbnb hosts **may**
  - Make a unit available to guests of the host's gender and not the other, where the host shares living spaces with the guest.

Age and Familial Status

- Airbnb hosts **may not**:
  - Impose any different terms or conditions or decline a reservation based on the guest's age or familial status, where prohibited by law.
- Airbnb hosts **may**:
  - Provide factually accurate information about their listing's features (or lack of them) that could make the listing unsafe or unsuitable for guests of a certain age or families with children or infants.
  - Note in their listing applicable community restrictions (e.g. senior housing) that prohibit guests under a particular age or families with children or infants.

Disability discrimination issues have proven to be somewhat more complicated. The Americans with disabilities act forbids discrimination based on disability. Essentially, in the context of short-term rentals, that means that hosts may not tell potential guests whether they can or cannot use a particular accommodation. Provisions in the ADA which protect small businesses from having to make every property physically accessible do apply. The AirBnB policy:

Disability

- Airbnb hosts **may not**:
  - Decline a guest based on any actual or perceived disability.
  - Impose any different terms or conditions based on the fact that the guest has a disability.
  - Substitute their own judgment about whether a unit meets the needs of a guest with a disability for that of the prospective guest.
  - Inquire about the existence or severity of a guest's disability, or the means used to accommodate any disability. If, however, a potential guest raises his or her disability, a host may, and should, discuss with the potential guest whether the listing meets the potential guest's needs.
  - Prohibit or limit the use of mobility devices.
  - Charge more in rent or other fees for guests with disabilities, including pet fees when the guest has an assistance animal (such as a service or emotional support animal) because of the disability.
  - Post any listing or make any statement that discourages or indicates a preference for or against any guest on account of the fact that the guest has a disability.
  - Refuse to communicate with guests through accessible means that are available, including relay operators (for people with hearing impairments) and e-mail (for people with vision impairments using screen readers).
  - Refuse to provide reasonable accommodations, including flexibility when guests with disabilities request modest changes in your house rules, such as bringing an assistance animal that is necessary because of the disability, or using an available parking space near the unit. When a guest requests such an accommodation, the

host and the guest should engage in a dialogue to explore mutually agreeable ways to ensure the unit meets the guest's needs.

- Airbnb hosts **may**:
  - Provide factually accurate information about the unit's accessibility features (or lack of them), allowing for guests with disabilities to assess for themselves whether the unit is appropriate to their individual needs.

Appendix: AirBnB policy on Good Neighbors

Good neighbors.

Airbnb has democratized travel by bringing travelers and their spending to neighborhoods and small businesses that previously have not benefitted from tourism. Today, roughly three-quarters of all Airbnb listings are located outside of traditional hotel districts. Enabling all local communities to benefit from home sharing requires adopting fair and progressive policies, including:

Supporting home sharing in all neighborhoods

Today, zoning and other local land use policies may unfairly restrict the rights of people to share their permanent homes on a short-term basis. Often designed to prevent the operation of full-time businesses in residential areas, many of these regulations were enacted before the internet was created and did not anticipate the concept of local residents occasionally sharing their living space with travelers, much less the fast-growing popularity of home sharing.

Not only does responsible home sharing not demonstrably alter the character of a residential neighborhood, it can generate significant benefits for small businesses and residents who gain new sources of income. Accordingly, communities have begun to revise these restrictive policies to allow for occasional home sharing. For example, Jersey City has made home sharing legal as an “accessory use” in all zoning districts where residential use is permitted. Hosts are not required to register or obtain a business license, except for those who offer more than five dwelling units. This type of zoning reform can ensure that home sharing is allowed to thrive in all neighborhoods.

Using home sharing to open more communities to travelers

Travelers often struggle to visit communities that lack affordable accommodations. Increasingly, public officials are recognizing the potential for home sharing to democratize travel and ensure that working families can visit destinations that might otherwise be out of reach. For example, the California Coastal Commission (CCC) went on record in support of sensible short-term vacation rental policies, convinced that home sharing provides a more affordable way for many travelers, including groups and families, to visit expensive beach communities. The CCC has found that prohibiting such rentals in some cases would limit lodging opportunities for coastal visitors and ultimately discourage public access to beaches. For this reason, the CCC has worked with local governments to craft reasonable, balanced rules that address affordable housing issues while still leaving room for regulation in residential and other zoning districts.

Supporting landlords and property owners

We understand the importance of involving landlords in home sharing activity taking place on their properties. Airbnb's Friendly Buildings Program brings building owners and landlords to the table with their tenants, and with us, to enable home sharing on their properties under rules they help create. The program is an option for long-term tenants only and is designed to support only people who share the home in which they live, and within those properties, only for housing units that rent at market rates.

Under this program, the rules landlords and owners establish can address which units in a building can be shared, for how long, and other booking details. In return, owners receive a mutually agreed upon portion of the revenue. Since the program's debut, owners typically have received between 5 percent and 15 percent of their tenant-hosts' earnings through the program. Some buildings choose to use this revenue to lower maintenance or other costs that benefit all tenants.

Once all parties agree to the rules, eligible tenants can sign up for their respective buildings' programs through the Airbnb platform. We provide the landlords with regular reports and handle the distribution of revenue to the landlords in the same way we do for hosts. We also collect and remit taxes where local laws permit.

In the interest of engaging transparently with our landlord partners, our regular reports to participating landlords contain select information on Airbnb activity in their buildings, including activity taking part outside the Friendly Buildings Program. However, in keeping with our commitment to protect our community's privacy and security, we do not provide personally identifiable information about our hosts.

The Airbnb Friendly Buildings Program is just getting started. We are especially mindful at this early stage of the need for fair, easy-to-understand guidelines for participation. In 2016, we debuted the program with pilots in the US cities of Nashville, Philadelphia, and San Jose.

We look forward to expanding this program and to working with local government officials and landlords to design legal frameworks that support home sharing in their communities.

Being a good neighbor

The overwhelming majority of hosts and guests are good neighbors who respect the communities where they live and visit, but we want to be responsive in case something goes wrong. Developed in consultation with hosts, guests and neighbors, our Neighbors Tool makes it easy for people living near Airbnb listings to reach us so we can help hosts with small issues before they become big problems. When a neighbor reports an issue at a listing, such as a noise complaint, we reach out to the host to give them an opportunity to address the problem.

The small number of bad actors who repeatedly fail to address complaints or live up to our standards and expectations may be permanently banned from the Airbnb community. The number of complaints is just one factor we consider. In some cases, one complaint is one too many, while other situations could be different. Airbnb reviews every inquiry and if we find a violation of our policies, we notify the hosts and take appropriate action.

Preventing party houses and unwelcome hostels, and preserving quality of life

Some listings on Airbnb are traditional hostels. Others are ideal venues for large events. These types of listings are often appropriate for our community, and their hosts and guests are often good neighbors. However, if a listing is unsafe, disturbs the community, or violates Airbnb's Standards and Expectations, we will remove it from our platform. We have taken proactive action in cities around the world against listings that had the potential to cause quality-of-life issues, or that did not fit with the expectations of our community. In San Francisco, for example, we proactively removed 300 shared-space listings that were determined to present the exact type of nuisance outlined above, and in Korea, we will have removed 1,500 listings not in line with our community standards by the end of 2016. We can work with communities to help identify and address these types of listings as appropriate.

Significant Cases:

VIOLATION OF LOCAL ORDINANCES:

In considering this appeal, we are mindful of the fact that defendant's age and health status naturally evoke sympathy. We also acknowledge that the forfeiture of a rent-stabilized leasehold is no small loss, especially after a tenancy that has lasted for more than 40 years. On this record, however, it is simply undeniable that—as defendant herself essentially admits—she exploited the governmentally-conferred privilege of her rent-stabilized tenancy to take financial profits unavailable to her landlord, well in excess of the permissible 10% premium for a furnished apartment. Moreover, defendant's exploitation of her rent-stabilized leasehold disregarded, not only the rights of her landlord, but also the rights of all of her fellow permanent residents of the building, whether shareholders or lessees. The other residents did not bargain to share the building where they made their homes with a continuous stream of transient strangers (to defendant no less than to themselves) of unknown character and reputation, drawn to the building from all over the world by Internet advertising (see Steele, 53 Misc.3d 150[A], 2016 N.Y. Slip Op. 51689[U], *2, 2016 WL 6990049 [“tenant's illegal, de facto hotel operation (through Airbnb) showed complete disregard for the legitimate security concerns of landlord and other tenants, as she ... brought dozens of strangers into a residential building”]). Seen in this light, defendant's systematic

commercial exploitation of her rent-stabilized leasehold fully warrants the termination of her lease. Accordingly, we modify to grant plaintiff summary judgment.

Goldstein v. Lipetz, 150 A.D.3d 562, 572, 53 N.Y.S.3d 296, 304 (N.Y. App. Div.), appeal dismissed sub nom. Pearce v. Lipetz, 30 N.Y.3d 1009, 88 N.E.3d 391 (2017)

This Court passes no judgment on any individual's lifestyle. Some people would require a log to be able to truthfully answer a question as to how many nights they sleep in their homes. Married households engage in all types of arrangements that work for them. Some people are inattentive to details like the pattern on comforters they may own. However, if the particularities of Respondent's personal situation otherwise happen to be consistent with a pattern of profiteering, it would behoove Respondent to offer evidence addressing such a consistency in a civil trial where parties must prove their cases by a preponderance of the evidence. Yet, Respondent chose not to put on a case.8 A trier of fact may draw the strongest inference that the opposing evidence permits against a witness who fails to testify in a civil proceeding, Nassau County Dept. of Social Servs. ex rel. Dante M. v. Denise J., 87 N.Y.2d 73, 79 (1995), Matter of Tamara A. v. Anthony Wayne S., 110 AD3d 560, 561 (1st Dept.2013), particularly when that witness is an actual party to the action, knowing the truth of a matter in controversy and having the evidence in his or her possession. Crowder v. Wells & Wells Equip., Inc., 11 AD3d 360, 361 (1st Dept.2004).

Accordingly, the Court finds that Respondent engaged in profiteering, either by renting out the subject premises himself on Airbnb or by causing his employees to rent out the subject premises on Airbnb, that Respondent's relentlessly evasive answers on his direct testimony on Petitioner's case constituted an attempt to withhold this information, and that Respondent did not present a case because there was no case for Respondent to present.

*6 Using a residential apartment as a hotel room and profiteering off of it is ground for eviction and is incurable, as it undermines a purpose of the Rent Stabilization Code. West 148 LLC v. Yonke, 11 Misc.3d 40, 41 (App. Term 1st Dept.2006), Brookford, LLC v. Penraat, 2014 N.Y. Misc. LEXIS 5476 (S.Ct. N.Y. Co.2014). See Also Cambridge Dev., LLC v. Staysna, 68 AD3d 614, 615 (1st Dept.2009), 151–155 Atl. Ave., Inc. v. Pendry, 308 A.D.2d 543, 543–544 (2nd Dept.2003), 51 W. 86th St. Assoc. LLC v. Fontana, 28 Misc.3d 140A (App. Term 1st Dept.2010), 643 Realty LLC v. Thadal, 15 Misc.3d 131A (App. Term 2nd Dept.2007), Central Park W. Realty v. Stocker, 1 Misc.3d 137A (App. Term 1st Dept.2004), 145 Ave. C LLC v. Kelly, 2006 N.Y. Misc. LEXIS 3980 (Civ.Ct. N.Y. Co.2006), Husda Realty Corp. v. Padien, 136 Misc.2d 92, 94 (Civ.Ct. N.Y. Co.1987) (Tom, J.) (profiteering on a sublet undermines rent regulation and is therefore incurable). As Respondent's infraction is incurable, Petitioner was not required to serve Respondent a notice to cure. West 148 LLC v. Yonke, 11 Misc.3d 40, 41 (App. Term 1st Dept.2006), 326–330 E. 35th St. Assoc. v. Sofizade, 191 Misc.2d 329, 331 (App. Term 1st Dept.2002).

Accordingly, the Court awards Petitioner a final judgment of possession against Respondent. Issuance of the warrant of eviction if permitted forthwith, execution thereof stayed through February 28, 2015 for Respondent to vacate the subject premises. On default in vacatur, the warrant may execute on service of a marshal's notice.

42nd & 10th Assocs. LLC v. Ikezi, 46 Misc. 3d 1219(A), 9 N.Y.S.3d 593 (N.Y. Civ. Ct.), aff'd, 50 Misc. 3d 130(A), 29 N.Y.S.3d 847 (N.Y. App. Term. 2015)

As to whether plaintiff suffered from irreparable injury, the record demonstrates that the temporary injunction, caselaw has already set forth that placing tourists in accommodations *746 that are not designed or equipped with sufficient fire and safety protections, in and of itself, constitutes irreparable injury, and the equities lie in favor of enjoining such conduct, "rather than allowing said business to continue to operate (to defendants' presumed financial advantage)" (The City of New York v. Smart Apartments LLC, et al., supra).

Brookford, LLC v. Penraat, 47 Misc. 3d 723, 745–46, 8 N.Y.S.3d 859, 874 (N.Y. Sup. Ct. 2014)

AIRBNB RENTALS AS A NUISANCE:

Plaintiffs next contend they sufficiently alleged causation, pointing to allegations that (1) Airbnb facilitated short-term rentals at their building, and (2) the short-term rentals caused "parties, smoking, and additional noise," as well as "decreased safety, giving unique keys to individuals to the front door to the building without any credit or background check, failing to have guests adhere to the tenant policies, increased traffic and pollution, not being able to obtain assistance from the landlord in a timely fashion, increased smoking outside and inside the building, the front door to the building being left open, more guests than allowed in each room, break ins, threats, property damage, fires, and physical violence."

These allegations are insufficient to support causation. First, the direct cause of the harm is either the short-term renters themselves (the harms of smoking, noise, etc.) or the Plaintiffs' landlord (the harms of failure to ensure guests adhere to the tenant policies and the inability to obtain timely assistance from the landlord). Second, Plaintiffs do not allege that all short-term renters—or any of the short-term renters who caused the nuisance activity—secured their rentals through Airbnb. Third, even assuming some of the offending renters used Airbnb, Plaintiffs make no allegations that Airbnb operated its online platform in a manner that encouraged the nuisance activity in any way.2 Airbnb's facilitation of some number of short-term rentals in Plaintiffs' building, which may or may not have involved renters who smoked more or made more noise than long-term tenants, does not render Airbnb a proximate cause of the alleged harms.3

Gamache v. Airbnb, Inc., No. A146179, 2017 WL 3431651, at *2 (Cal. Ct. App. Aug. 10, 2017)

AIRBNB AS ZONING VIOLATION

Plaintiff met her initial burden of proof with respect to existence of an unlawful purpose when she provided evidence establishing the following facts: that the premises were located within an "R1" zone within the City of Los Angeles; that defendant was operating a bed-and-breakfast facility8 and/or a transient occupancy residential structure,9 and that defendant's use of the premises in this manner was illegal and in violation of LAMC sections 12.0810 and 12.21.11 With respect to the location of the premises within an R–1 zone, plaintiff's evidence consisted, inter alia, of her own declaration, a copy of a parcel report from the City of Los Angeles Zone Information and Map Access System, and a copy of the parcel profile report from the City of Los Angeles Department of Building and Safety which indicated on page 2 that the premises were within an "R1–1" zone. With respect to the operation of a bed-and-breakfast or transient occupancy in the premises, plaintiff submitted evidence, inter alia, in the form of testimony from defendant's deposition wherein she stated as follows: "[Question:] And so would it be correct to say—accurate to say that from the time—at least from the time of January 22nd, 2014 through today [May 7, 2014], you were running Airbnb business from your apartment? [¶] [Defendant:] I would say I'm listing—I have listings on Airbnb that—yes, running today. [¶] [Question:] So the answer is you're running—it's an Airbnb business, isn't it? [¶] [Defendant:] Yes. [¶] [Question:] And you continue to do it through today. [¶] [Defendant:] Yes." In addition to the above, plaintiff also submitted a City of Los Angeles tax registration certificate issued January 6, 2014, indicating payment of a transient occupancy tax with respect to the premises. Accordingly, plaintiff met her initial burden on the motion. The burden therefore shifted to defendant to establish that a triable issue of fact existed as to the cause of action or a defense thereto.

In her opposition, defendant presented evidence in the form of the 2009 Addendum wherein plaintiff's predecessor in interest expressly agreed, in writing, to **460 allow defendant to engage in the Airbnb activities at issue here. (See fn. 4, ante.) However, any purported consent by the prior landlord is not dispositive. The Addendum constituted an illegal contract in violation of existing regulations, and was therefore void and unenforceable. (See Civ.Code § 1598 [generally, if object of contract is unlawful, then entire contract is void]; Shephard v. Lerner (1960) 182 Cal.App.2d 746, 749–751, 6 Cal.Rptr. 433 [addendum to lease which authorized prior and continued use of premises as a hotel and apartment business by tenant despite code violations in violation of state and local law constituted "a contract for an illegal purpose" and was not enforceable].) Accordingly, defendant failed to satisfy her burden and the court properly granted plaintiff's MSJ.12

Chen v. Kraft, 243 Cal. App. 4th Supp. 13, 21–22, 197 Cal. Rptr. 3d 453, 459–60 (Cal. App. Dep't Super. Ct. 2016)

AIRBNB AND DEED COVENANTS

As the text of the Chiwawa covenants demonstrates, the drafters included detailed provisions outlining what residents cannot do. From this it is evident that had the drafters wanted to prohibit rentals of a particular duration, they would have done so. The 1988/1992 covenants specify the rights and duties of Chiwawa residents in painstaking detail, spelling out, inter alia, the animals residents may keep, the minimum distance houses must be set back from the front lot line, the size of name signs residents may display, and their authority to bring enforcement actions. See CP at 81–82, 85–86. Most apparently, the drafters specifically anticipated and permitted rentals when they restricted the size of rental signs residents could hang. CP at 82, 86. Indeed, the limit on rental signage proves not just that the Pope & Talbot and 1988/1992 covenants allow some rentals but that the drafters anticipated rentals and consciously decided not to limit their duration, restricting just the appearance of rental signs.

Wilkinson v. Chiwawa Communities Ass'n, 180 Wash. 2d 241, 251, 327 P.3d 614, 619 (2014)

The specific issue in this appeal—whether short-term vacation rentals violate restrictive covenants requiring property to be used only for residential purposes and prohibiting its use for business purposes—appears to be a matter of first impression in Florida. See generally William P. Sklar & Jerry C. Edwards, Florida Community Associations Versus Airbnb and VRBO in Florida, Fla. Bar. J., Feb. 2017, at 16. However, courts in a number of other states have considered the issue and those courts have almost uniformly held that short-term vacation rentals do not violate restrictive covenants nearly identical to those at issue in this case. See Gadd v. Hensley, ––S.W.3d ——, 2017 WL 1102982 (Ky. Ct. App. Mar. 24, 2017) (unpublished opinion); Houston v. Wilson Mesa Ranch Homeowners Ass'n, 360 P.3d 255 (Col. App. 2015); Wilkinson v. Chiwawa Communities Ass'n, 180 Wash.2d 241, 327 P.3d 614 (2014) (en banc); Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez, 300 P.3d 736 (N.M. Ct. App. 2013); Russell v. Donaldson, 222 N.C.App. 702, 731 S.E.2d 535 (2012); Slaby v. Mountain River Estates Residential Ass'n, 100 So.3d 569 (Ala. Civ. App. 2012); Applegate v. Colucci, 908 N.E.2d 1214 (Ind. Ct. App. 2009); Mason Family Trust v. DeVaney, 146 N.M. 199, 207 P.3d 1176 (N.M. Ct. App. 2009); Ross v. Bennett, 148 Wash.App. 40, 203 P.3d 383 (2008); Scott v. Walker, 274 Va. 209, 645 S.E.2d 278 (2007); Lowden v. Bosley, 395 Md. 58, 909 A.2d 261 (2006); Mullin v. Silvercreek Condo. Owner's Ass'n, 195 S.W.3d 484 (Mo. Ct. App. 2006); Pinehaven Planning Bd. v. Brooks, 138 Idaho 826, 70 P.3d 664 (2003); Yogman v. Parrott, 325 Or. 358, 937 P.2d 1019 (1997) (en banc); Catawba Orchard Beach Ass'n v. Basinger, 115 Ohio App.3d 402, 685 N.E.2d 584 (1996); but see Shields Mountain Property Owners Ass'n v. Teffeteller, 2006 WL 408050 (Tenn. Ct. App. Feb. 22, 2006) (unpublished opinion); Benard v. Humble, 990 S.W.2d 929 (Tex. App.– Beaumont 1999).

12These decisions explain that in determining whether short-term vacation rentals are residential uses of the property, the critical issue is whether the renters are using the property for ordinary living purposes such as sleeping and eating, not the duration of the rental. See, e.g., Wilkinson, 327 P.3d at 620 (“If a vacation renter uses a home ‘for the purposes of eating, sleeping, and other residential purposes,’ this use is residential, not commercial, no matter how short the rental duration.” (quoting Ross, 203 P.3d at 388)); *115 Slaby, 100 So.3d at 579 (explaining that the

cabin at issue is "used for 'residential purposes' anytime it is used as a place of abode, even if the persons occupying the cabin are residing there temporarily during a vacation"). The decisions further explain that the nature of the property's use is not transformed from residential to business simply because the owner earns income from the rentals. See, e.g., Lowden, 909 A.2d at 267 ("The owners' receipt of rental income in no way detracts from the use of the properties as residences by the tenants.") (emphasis in original); Slaby, 100 So.3d at 580 ("[N]either [the] financial benefit nor the advertisement of the property or the remittance of a lodging tax transforms the nature of the use of the property from residential to commercial."); Mason Family Trust, 207 P.3d at 1178 ("While [the owner's] renting of the property as a dwelling on a short-term basis may have constituted an economic endeavor on [his] part, to construe that activity as one forbidden by the language of the deed restrictions [prohibiting use for business or commercial purposes] is unreasonable and strained. Strictly and reasonably construed, the deed restrictions do not forbid short-term rentals for dwelling purposes."). We agree with the analysis in these decisions.

Santa Monica Beach Prop. Owners Ass'n, Inc. v. Acord, 219 So. 3d 111, 114–15 (Fla. Dist. Ct. App. 2017), reh'g denied (May 12, 2017)

AIRBNB AS A ZONING VIOLATION

This case is factually distinguishable from Marchenko, Shvekh and Slice of Life. In those three cases, the property owners rented out the entirety of their home, either during periods when they were not present at the house or exclusively as in Slice of Life, while here the Reihners continually reside in their home during Airbnb guest stays. Furthermore, unlike Marchenko, Shvekh and Slice of Life, only the present matter before this Court presents the issue of whether the property owners have engaged in a "Bed and Breakfast Use." Nevertheless, the controlling law in this trio of cases also applies here. Like the present case, each of Marchenko, Shvekh and Slice of Life concerns an attempt by a zoning hearing board to apply the zoning ordinance to a new form of economic activity occurring in single-family homes that was facilitated and expanded by internet services like Airbnb. However, in each of those cases, this Court ruled that the zoning board overstepped its authority under its ordinance, "advance[ing] a new and strained interpretation of its zoning ordinance in order to effect what it would like the ordinance to say," "shoe-horning" the use in question into an unsuitable existing category of uses in the ordinance. Shvekh, 154 A.3d at 414–15.

Our review of the present case accordingly requires that we determine whether the Ordinance unambiguously prohibits the type of rental activity occurring on the Property that would allow the City to constrain the Reihners' use of their Property. We conclude that it does not. Pursuant to the definition of a "Bed and Breakfast Use" in the Ordinance it is clear that the Property is a

single-family dwelling in which the Reihners rent out rooms, with bathroom access, to no more than 10 overnight guests at a time. Therefore, the sole question is whether the Reihners' use of the Property satisfies the remaining requirement of the "Bed and Breakfast Use" that the Property "does not provide any cooking facilities or provision of meals for guests other than breakfast." (Ordinance § 202, R.R. 201a.) The Reihners assert that this statement means that the establishment must provide either breakfast or access to cooking facilities at which the guest can prepare her own breakfast. The Board argues that the interpretation of this definition by the Court of Common Pleas is correct that a "Bed and Breakfast *403 Use" does not require service of breakfast or access to cooking facilities to prepare breakfast, but instead only prohibits the purveyor of a B & B from serving any other meal besides breakfast. We conclude that the Reihners' interpretation of the Ordinance is more reasonable than that of the Board. Quite simply, the Court of Common Pleas reads the term "breakfast" out of the Ordinance. Moreover, we disagree with the argument by the Board that the Reihners' use of a website called "Airbnb" supports the case that they were operating a B & B. As this Court explained in Shvekh, Airbnb and similar "sharing economy" websites have expanded the possible uses of a single-family dwelling and have created new types of economic activity that bear similarities to but do not entirely fit within traditional categories of lodging uses set forth in zoning ordinances. Furthermore, Mrs. Reihner testified at the Board hearing that Airbnb is different than a normal hotel or lodging reservation website that does not permit anonymous listings but instead requires that each user is verified by Airbnb with driver's license, passports, credit cards or other identifying documents. (H.T. at 41–42, 67–68, R.R. 49a–50a, 75a–76a; Appellants Ex. 1, R.R. 142a.) In addition, Mrs. Reihner explained that Airbnb users have created a welcoming community focused on "building relationships" and "exchange," established on a "system of trust" and reinforced by the reviews that guests and hosts leave for each other on the website. (H.T. at 39, 41–42, 84, R.R. 47a, 49a–50a, 92a.)

5Because the Reihners have proven that ambiguity exists in the language in the Ordinance, we are required to interpret the language of the Ordinance in favor of the landowner's "widest use of the land" and against any implied extension of the Ordinance's restrictions on the use of property based on the policy preferences of the Board. Fidler v. Zoning Board of Adjustment of Upper Macungie Township, 408 Pa. 260, 182 A.2d 692, 695 (1962); see also Slice of Life, 164 A.3d at 640. The record is devoid of any indication that the Reihners served breakfast to any of their guests or did not provide cooking facilities for them to prepare their own breakfast and therefore we must conclude that the NOV alleging that the Reihners operated an illegal B & B was issued in error. Despite our ruling here, we note that the City may, through its legislative authority, fill in the gap in the Ordinance to address the complained of activity occurring on the Reihners' property. As the Court cautioned in Slice of Life, "there is nothing to constrain the [City] from enacting amendments to the Ordinance which would protect property owners' constitutional rights while providing the specific definitional guidelines where they are now lacking." 164 A.3d at 646.

Reihner v. City of Scranton Zoning Hearing Bd., 176 A.3d 396, 402–03 (Pa. Commw. Ct. 2017), reargument denied (Feb. 1, 2018)

AIRBNB AND COMMUNITY RESTRICTIONS:

The express terms of paragraph six require a residence with a guest suite to be rented in its entirety when the guest suite is rented out. However, paragraphs five and six do not, by their express terms or by plain and unmistakable implication, require a residence with a guest suite to be rented in its entirety in every circumstance. See Hardy, 369 S.C. at 166, 631 S.E.2d at 542 ("[A] restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." (emphasis added) (quoting Hamilton, 274 S.C. at 157, 263 S.E.2d at 380)). Therefore, this court may not interpret paragraphs five and six to include such a requirement even if it could be reasonably implied. In other words, it is not enough for the implication to be reasonable—it must be unmistakable. See Taylor, 332 S.C. at 4, 498 S.E.2d at 864 (" 'The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms['] even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." (emphases added) (quoting Forest Land Co., 216 S.C. at 262, 57 S.E.2d at 424)).

1011At best, paragraphs five and six are capable of two reasonable interpretations: (1) a residence with a guest suite must be rented in its entirety in every circumstance or (2) the owners of a single family dwelling with a guest suite may stay in the guest suite themselves while renting out the remaining space. See McClellanville, 345 S.C. at 623, 550 S.E.2d at 302 ("A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation."). Because the latter interpretation "least restricts the use of the property," we must adopt this interpretation. See Taylor, 332 S.C. at 4, 498 S.E.2d at 864 ("[When] the language of the *585 restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.").

Cmty. Servs. Assocs., Inc. v. Wall, 421 S.C. 575, 584–85, 808 S.E.2d 831, 836 (Ct. App. 2017)

LEGALITY OF CAPS ON SHORT-TERM RENTALS:

When Metro passed the STRP ordinances under discussion herein, it professed that the needs of long-term residents should be balanced with the allowance of short-term rentals.9 As is evident from the parties' briefs, the articulated concern with respect to Metro's long-term residents is the protection of residential character in neighborhoods. Although the parties dispute whether this concern is a valid object of legislative action, the trial court concluded that it was. In the alternative to its conclusion that the 3% cap did not represent a monopoly, the trial court held as follows:

The Court further concludes that, even if the three percent cap constitutes a monopoly, the monopoly created would be a permissible monopoly. The Anti–Monopoly Clause of the Tennessee constitution does not prohibit the granting of a monopoly if such monopoly "has a reasonable tendency to aid in the promotion of the health, safety, morals and well-being of the people." Checker Cab Co. v. City of Johnson City, 187 Tenn. 622, 216 S.W.2d 335, 337 (1948). Assuming the three percent cap creates a monopoly, the monopoly is not an impermissible one because it has a reasonable tendency to further those goals. The alleged monopoly specifically furthers the well-being of Metro citizens because it balances the interest between the citizens who want to achieve benefits from renting their property on a short-term basis against the interest of citizens who want to protect the residential character of their neighborhoods.

While the Andersons argue that the protection of residential character is not a valid exercise of the police power, we disagree. We consider the protection of residential character to implicate a matter of the public's well-being, and we hold this opinion even to the extent that such protection might be considered to partially involve the promotion of an aesthetic consideration. As noted by our Supreme Court, there is a strong judicial trend toward sustaining exercise of the police power even when aesthetic considerations constitute the sole or primary reason for the legislation. State v. Smith, 618 S.W.2d 474, 477 (Tenn. 1981) ("[I]n modern society aesthetic considerations may well constitute a legitimate basis for the exercise of police power, depending upon the facts and circumstances.").

The 3% cap before us limits the number of single-family and two-family residential units that may be permitted as non-owner-occupied short-term rentals. The cap thus limits the ability of owners who do not permanently reside in their homes to transform their properties into havens for transient occupancy. When moving for summary judgment, Metro proffered a number of declarations from local residents in an attempt to illustrate why limiting non-owner-occupied short-term rentals was desirable. As one resident stated, "The reason we want limits on the non-owner-occupied houses on our street is the same reason you don't want to live in a hotel. There is an increased number [of] transient strangers, and there is [a] decreased sense of community." In expounding on this sense of community and the effect that the proliferation of non-owner-occupied short-term rentals had already had, the same resident stated:

The residents of our street are fairly close-knit, and we form a community; this is one of the advantages and joys of living in Nashville. We chase each other[']s dogs when they get loose, drag each other[']s trash cans out to the curb when someone's out of town, take UPS packages out of the rain, and more. We watch over elderly neighbors and celebrate kids['] birthdays. We decorate our yards for holidays. (Christmas on Rudolph Avenue involves a lot of Rudolph-themed decorations!) But 20%10 of the properties on our street are not part of this community. We have 20% fewer neighbors and 20% fewer decorated yards.

In describing his experience with non-owner-occupied short-term rentals, another resident stated as follows: "[M]y children's friends have been replaced by bachelorette parties."

As Metro observed at summary judgment, even Mrs. Anderson expressed concern about living in a neighborhood "that's all short-term rentals." When discussing this in her deposition, she stated as follows:

Well, most of the Airbnb guests are a lot more wonderful than some of the people that live in the neighborhood, but I just like the idea of knowing your neighbors. You know, if you need a loaf of bread or some milk, that you can go across the street. I mean, we don't have much—all our houses are relatively small, so we spend a lot of time outside in the summer. We all talk and things like that.

For the most part, I've really enjoyed getting to know all the Airbnb guests that I've gotten to know, but you wouldn't be able to develop those, like, long-time friendships if the whole neighborhood were that way.

There is clearly a concern within the community that the development of residential character is impacted negatively the more that single-family and two-family residential units are inhabited by transient occupants as opposed to permanent residents. As stated before, we are of the opinion that this concern is a valid object of municipal action. Attempting to preserve a sense of community and residential character is a matter of the public's well-being, and having examined the cap in question, we conclude that it has a reasonable tendency to promote this purpose.

*10 Indeed, by limiting the number of one- and two-family residential units that may be used as non-owner-occupied short-term rentals, the cap clearly bears a legitimate relation to a valid end. By virtue of the cap, only a small percentage of these residential units may be used for non-owner-occupied short-term rentals. This ensures the overwhelming majority of single-family and two-family residential units are not occupied by transient occupants. As Metro argued in a paper filed in support of its motion for summary judgment, "If the Metro Council's aim was to prevent short-term rental properties with no long-term residents from overtaking residential neighborhoods, what could be more rational than capping these types of STRPs?" Because the cap has a reasonable tendency to aid in the protection of residential character and community, which we conclude is a matter of public well-being, there is no basis to declare it unlawful. Again, "[i]f in the exercise of ... [the] police power an incidental monopoly happens to be created, it is not one which offends the anti-monopoly clause of our Constitution." Landman, 255 S.W.2d at 7 (citation omitted). The trial court's judgment is affirmed as it relates to this issue.

Anderson v. Metro. Gov't of Nashville & Davidson Cty., No. M201700190COAR3CV, 2018 WL 527104, at *8–10 (Tenn. Ct. App. Jan. 23, 2018), appeal denied, not for citation (June 12, 2018)

AIRBNB AS A COMMERCIAL USE IN RESIDENTIAL DISTRICT

This court limits its determination, as did the Board, to this particular property, without considering the still-heavily disputed allegations as to the custom and practice throughout Hull raised as an issue in this and the related case. The issues remaining in this case are indicative of the tensions in Hull and other municipalities between property owners utilizing shared hotel and

accommodation applications, such as Airbnb, HomeAway, or, in this particular case, Vacation Rental By Owner (VRBO), and their neighbors, town, zoning boards, and others concerned with short-term rentals in residential zoning districts. Here, the Board determined that Plaintiff is essentially operating a commercial enterprise in a single-family residential zone and further determined Plaintiff's weekly rental use is inconsistent with the purpose of a single-family residence district, even if the use of Locus is grandfathered as a lawful, pre-existing two-family dwelling.

While this court does not adopt all of the Board's analysis, this court must uphold the Board's decision if it determines, which this court does, that the Board's ultimate conclusion is supported by the facts presented on this summary judgment record. This court finds the Board's Decision was not arbitrary, capricious, whimsical or unreasonable and should be affirmed.

*6 Accordingly, Plaintiff's Motion for Summary Judgment is DENIED, and Summary Judgment is GRANTED to Defendants. The Decision to uphold the Commissioner's issuance of a Violation Notice is AFFIRMED. The Board's request for injunctive relief is GRANTED to the extent Plaintiff may not rent the second dwelling unit at Locus for weekly periods. The court declines to set any minimum rental period, as that question is beyond the scope of this summary judgment motion, and the court did not agree with the Board's analysis that the Bylaw inferentially mandates a minimum rental period of thirty days by incorporating the definition of the word “transient” from the Building Code.

Lytle v. Swiec, No. 13 MISC 480974 (KFS), 2017 WL 2257702, at *5–6 (Mass. Land Ct. May 23, 2017)

AIRBNB AND ZONING ORDINANCE INTERPRETATION

AirBnB has expanded the possible uses of a single-family dwelling, and the Township can address these new uses in the Zoning Ordinance. However, amendments cannot be effected by shoe-horning a use that involves renting an entire single-family home to vacationers into the definition of “tourist home.” The Property meets the definition of single-family residence because it has been “designed for or occupied exclusively for one family.” Zoning Ordinance, Article II, § 2.266(a)(emphasis added); R.R. 224a. The vacation rental of the entire home bears no relation to the bedroom-by-bedroom rental that is the hallmark of a tourist home, as the Zoning Officer herself acknowledged. We agree with Shvekh that the Zoning Board sought to expand the definition of “tourist home” to include any short term rental, without any support in the language of the Zoning Ordinance.

In her second issue, Shvekh argues that the Zoning Ordinance is unconstitutionally vague because the definitions of “family” and “group (family type) dwelling occupancy” conflict. As noted above, a “family” is defined as:

Any individual, or two (2) or more persons related by blood, marriage, legal adoption, foster placement, or a group of not more than three (3) persons who need not be related by blood or marriage, living together in a dwelling unit. A "family" shall not be deemed to include the occupants of a boarding house, rooming or lodging house, club, fraternity/sorority or hotel.

Zoning Ordinance, Article II, § 2.276; R.R. 225a. The Ordinance defines "group (family type) dwelling occupancy" as:

[A] type of dwelling occupancy that could be located in any type of residential structure. This occupancy involves a group that lives together as a family with the group sharing costs and responsibilities for the dwelling wherein the group is not involved in some other land use activity such as rooming house or a club, or a fraternal organization, nor group care facility, nor group home, nor house of correction, nor halfway houses.

Shvekh Brief at 18.7

Shvekh argues that the definition of "family" restricts a group of unrelated individuals to no more than three, whereas the definition of "group (family type) dwelling occupancy" contains no such restriction on the number of unrelated individuals. We need not decide whether there is a conflict in the above definitions because the Board did not rely on the definition of "group (family type) dwelling occupancy" in reaching its decision. Further, the definition of "group (family type) dwelling occupancy" does not apply to Shvekh's use of the Property because the Board did not find that tenants share costs and responsibilities for the dwelling.

For all of the foregoing reasons, we reverse the trial court's decision.

Shvekh v. Zoning Hearing Bd. of Stroud Twp., 154 A.3d 408, 415 (Pa. Commw. Ct. 2017)