



SOUTHEASTERN LEGAL FOUNDATION
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July 29, 2020

VIA EMAIL

Chairman Michael Browning
Glynn County Board of Commissioners
mbrowning@glynncounty-ga.gov
commissioners@glynncounty-ga.gov

Re: Proposed Short-Term Rental Ordinance of Glynn County

Dear Chairman Browning and Commissioners:

Southeastern Legal Foundation¹ (SLF) monitors proposed short-term rental ordinances throughout the country. Specifically, we review the legality and constitutionality of these proposed ordinances – on both a federal and state level. In the hope of assisting you with your upcoming discussions and final vote on the Short-Term Rental Ordinance of Glynn County (Proposed STR Ordinance), which includes the requirement of a rental registry, we would like to offer our initial legal analysis on areas of concern.

Introduction.

In 2018, Commissioner Peter Murphy invited Host Compliance to speak to the full Glynn County Board of Commissioners (the Commission) about restricting short-term residential rentals. Host Compliance is a West Coast consulting firm hired by local governments throughout the country to draft, implement, and enforce short-term rental restrictions. Over the next several months, the Commission and Host Compliance met numerous times.

¹ Southeastern Legal Foundation, founded in 1976, is an Atlanta-based national public interest law firm advocating for individual freedom and property rights, limited government, and the free enterprise system. Our clients include individuals, companies, trade associations, and elected representatives. We have represented clients in dozens of property rights cases in both federal courts (including several wins at the U.S. Supreme Court) and state courts.

At its June 6, 2019 meeting, the Commission included a motion on the consent agenda to approve a service agreement between Glynn County and Host Compliance. Under the terms of the service agreement, the County would pay Host Compliance an annual subscription price for the first year of \$91,795, plus a \$5,000 consulting fee for the following services: drafting an ordinance to regulate short-term rentals in Glynn County; identifying short-term rental properties in Glynn County and preparing a regularly updated report listing those properties; managing the short-term rental licensing scheme, a rental registry, and tax collection related to short-term rentals; and monitoring and enforcing all restrictions on short-term rentals. At the request of the public, the Commission removed the motion from the consent agenda and discussed it openly. Following that discussion, the Commission amended the motion to only include the \$5,000 consulting fee related to drafting a short-term rental ordinance. The motion passed 6-1, with Commissioner Bob Coleman opposed. At that meeting, the Commission also promised that the local real estate community would be involved in drafting any ordinance.

On June 14, 2019, several members of the Commission met with members of the Governmental Affairs Committee of the Golden Isles Association of Realtors (GIAR, and other Realtors to discuss a possible short-term rental ordinance. At that meeting, the commissioners asked the GIAR to form a Short Term Rental Advisory Committee (STR Advisory Committee) made up of Realtors, property owners, rental management professionals, and other stakeholders. On June 27, 2019, the STR Advisory Committee met for the first of six meetings, held over a period of three months, to discuss recommendations regarding the regulation of short-term rentals in Glynn County. The STR Advisory Committee summarized its recommendations in a progress report dated October 29, 2019, and submitted the report to Glynn County's attorney. Notably, in its report, the STR Advisory Committee advised: "Georgia 36-74-30 prohibits local governments from requiring the registration of residential rental property. If possible, the County should seek opinion from the State Attorney General in regards to this issue or reach a clear decision on this issue that is provided to the public."

On July 19, 2020, the Commission made public its proposed Short-Term Rentals Ordinance of Glynn County (Proposed STR Ordinance). The stated purpose of the Proposed STR Ordinance is "to regulate the use of property in Glynn County that is leased, rented or otherwise traded for money for a short-term rental" and it defines short-term rentals as "any use of real property by lease, renting, trading, or otherwise bartering for funds or services, for 30 days or less at one time" to non-family members. The Proposed STR Ordinance requires property owners to obtain a one-year renewable short-term rental license for every property being rented, to meet a long list of administrative requirements as a precondition to renting their property, to provide detailed information regarding each rental property, restricts a property

owner's ability to advertise his rental property, and provides for monetary penalties for failing to meet even the most minute detail of these requirements.

With respect to information collection, the Proposed STR Ordinance requires a property owner provide the County with following information as a condition to lawfully renting their residential property for less than 30 days:

- The name, address, and contact information of the applicant;
- Evidence of an applicant's ownership interest in the property being applied for;
- The name, address, and contact information for a local point of contact that is responsible for contact with both the renter and Glynn County or other governing bodies;
- The number and habitability of all bedrooms to be rented on the property;
- The parking rules of the rental and the manner in which the rental shall comply with those rules;
- Affirmance that the license holder shall collect and timely remit all taxes owed to local and state authorities for accommodation excise taxes (i.e. hotel/motel taxes) and any other applicable taxes;
- Affirmance that the property regulated under the Proposed STR Ordinance is not in violation of any other land usage restrictions including covenants, deed restrictions, homeowner association rules and regulations, or other such restrictions;
- Acknowledgment that the County strongly recommends that the applicant carry property and liability insurance that specifically covers short-term rental use;
- Affirmance that the property has the following services on site: working smoke detectors and carbon monoxide detectors in certain locations and solid waste collection; and
- Affirmance that the property has no outstanding taxes or violations.

Additionally, the Proposed STR Ordinance requires short-term rental property owners to maintain records for three years of all short-term rental activity including number of guests, booking dates, rental income, and taxes remitted, and to provide those records to the County upon request. It also allows the County to demand copies of those records for any reason at any time and without any justification or probable cause, let alone a valid warrant.

The proposed short-term rental registry is preempted by state law.

The State of Georgia has long protected rental properties. In 2003, the Georgia General Assembly passed a state law prohibiting local governments from requiring

the registration of any residential rental property. *See* O.C.G.A. § 36-74-30(b) (“in no event may a local government require the registration of residential rental property”). A local government requires the registration of residential rental property when it requires property owners to obtain rental licenses, provide individual details about the rental property to the government, and/or allow inspections of the property. *See e.g., Plantation Oaks Partners, LLC v. City of Marietta*, Civil Action File No. 04-1-4482-48 (Cobb Cty. Sup. Ct. Oct. 21, 2005) (finding the City of Marietta’s rental ordinance which required a separate rental license for each property and required individual details on each property such as the street address, contact information, and number of units in each dwelling, as a pre-condition to lawfully renting the property and thus, was preempted by state law).

There is no question that the Proposed STR Ordinance requires property owners to obtain a short-term rental license for each and every property that they seek to rent for less than 30 days. There is no question that as a condition to lawfully renting their property for less than 30 days property owners must provide the County with detailed information regarding the property, taxes, parking, occupancy, individual contact information, and ownership details. And there is no question that the Proposed STR Ordinance gives the County and its representatives unfettered access to inspect records related to each short-term rental property. Given that the Proposed STR Ordinance requires property owners to provide far more information than the City of Marietta’s rental registration ordinance did, there is simply no way around the fact that it requires the registration of short-term rental and thus, constitutes a residential rental registry.

Although the Commission *may* have a legitimate interest in requiring the registration of short-term rentals, it simply does not have the legislative authority to pass an ordinance requiring the registration of rental property. The Georgia General Assembly eliminated that authority in 2003 when it passed O.C.G.A. § 36-74-30(b). As such, the Proposed STR Ordinance is preempted by state law and if passed, will be invalid and unenforceable.

Requiring property owners to turn over rental records without a warrant violates both state law and the right to freedom from unreasonable searches.

The Proposed STR Ordinance requires short-term rental property owners to maintain records of all short-term rental activity including number of guests, booking dates, rental income, and taxes remitted, for three years. It also requires them to surrender those records as well as financial records to the County or its representatives upon request, giving the County and its representatives the unfettered “right” to then audit, examine, and make copies of those records. These provisions of the Proposed STR Ordinance violate state law and are unconstitutional.

The Proposed STR Ordinance's requirement that persons housing guests keep records and surrender them to the government is, absent judicial supervision or opportunity for preclearance of any kind, an unreasonable search and thus, is unconstitutional. *See City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2447 (2015) (holding the requirement to surrender records on their guests and make them available to the government without any opportunity for pre-compliance review violated the Fourth Amendment). Short-term residential rentals deserve the most stringent of protections from unreasonable searches and seizures precisely because they are homes, not some large, multi-room purely commercial establishment. Above all else, the Fourth Amendment protects the sanctity of the home. *See Steagald v. United States*, 451 U.S. 204, 212 (1981) ("the Fourth Amendment has drawn a firm line at the entrance to the house"). Residential rental properties are no less sacrosanct because they let others stay there for a short period of time. And because the Proposed STR Ordinance regulates homes and not the conventional, large, multi-room commercial establishments address in *Patel*, the short-term residential rentals in Glynn County and their related records should not even qualify for an administrative search in the first place.

Even if the record collection and surrender requirements in the Proposed STR Ordinance were not constitutionally infirm, they are invalid and unenforceable because they violate state law. Georgia law prohibits local governments from investigating or inspecting residential rental property unless the government has probable cause to believe there is a violation of the law. *See O.C.G.A. § 36-74-30(b)* ("No local government is authorized to perform investigations or inspections of residential rental property unless there is probable cause to believe there is or has been a violation or violations of applicable codes"). The act of obtaining, auditing, examining, and copying records are all components of both investigating and inspecting. *See Merriam-Webster Dictionary* ("investigate" means "to observe or study by close examination and systematic inquiry" and "inspect" means "to examine officially").

The Proposed STR Ordinance attempts to give the County and its representatives unfettered authority to investigate and inspect records of all short-term rental activity including number of guests, booking dates, rental income, and taxes remitted, without establishing the statutorily required probable cause. This is a direct violation of O.C.G.A. § 36-74-30(b) which eliminated the County's legislative authority to pass an ordinance permitting inspections of this type without probable cause. As such, these provisions of the Proposed STR Ordinance are preempted by state law and if passed, will be invalid and unenforceable.

Conclusion.

We understand that the Commission may be tempted to amend the Proposed STR Ordinance such that it would no longer use the term “license,” but instead refer to the registration by some other term. This will not fix the legal infirmity of the law, just like referring to pre-conditions as a “license” instead of “registry” did not fix it for the City of Marietta. The Georgia General Assembly explicitly removed Glynn County’s legislative authority to pass ordinances requiring the registration of any residential rental properties and to inspect or investigate residential rental property without probable cause. The text matters. Although it may be tempting to try to work around the state law, we strongly urge the Commission to respect the laws of the State of Georgia.

Based on our initial analysis, it is our determination that the Proposed STR Ordinance clearly violates Georgia Code Section 36-74-30(b), the Georgia Constitution, and the United States Constitution. We trust that you will find our legal analysis helpful as the Commission continues to debate and vote on the Proposed STR Ordinance. We are hopeful that Glynn County will act within the legislative authority granted to it and will not pass an invalid and unenforceable ordinance. However, we are fully prepared to litigate this matter if need be.

Yours in Freedom,

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