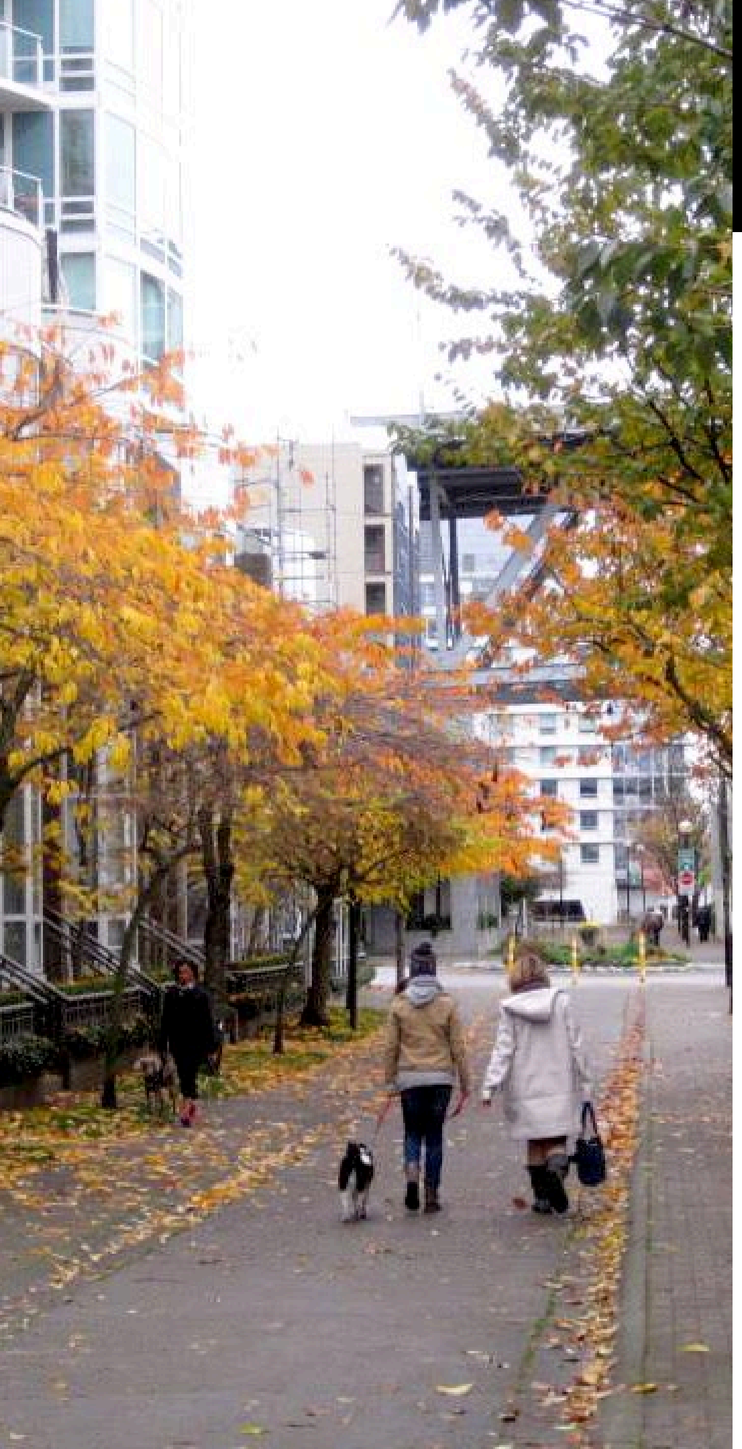
Regulation of Short-Term Rentals (STRs)

ISSUES AND CONSIDERATIONS



IMLA, Friday, April 21, 2023

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Purpose and outline

Purpose of today's presentation:

- Discuss some of the issues driving consideration of locally regulating short term rentals (STRs)
- Discuss some of the common legal issues arising out of STRs
- Discuss some of the challenges seen thus far to STRs

Presentation outline:

- Overview of issues
- Exploration of legal issues and caselaw
- General discussion

Motivations Driving Local Regulation of STRs

- **Pressures due to lack of adequate housing supply**
  - Needed housing
  - Affordable housing
  - Workforce housing



Motivations Driving Local Regulation of STRs

- **Pressures due to community livability issues**
  - Land use violations
  - Building and fire code violations
  - Community health and safety issues
    - Trash
    - Noise
    - Parking



Motivations Driving Local Regulation of STRs

- **Other motivators and considerations**
  - Property rights and regulatory takings
  - Protecting resource lands



Cost and fee considerations

- **Cost recovery for STR program components:**
  - Staff review and issuance of licenses
  - Contract with STR monitoring company
    - Address identification
    - Monitor leasing activity
    - 24/7 hotline for neighbor complaints
  - Staff license enforcement in response to complaints
    - Investigating complaints
    - Warning letters and notices
    - Compliance hearings





Cost and fee considerations

- **License fee considerations:**
  - Level of cost recovery baked into license fee revenues?
  - Lower fee for owner-occupied STRs?

What do you want to regulate?

- **Zoning/land use**
  - Appropriate zoning districts
  - Density requirements
  - Parking
- **STR business operations**
  - Registration
  - Tax collection
  - Nuisance issues
- **Platform regulations**

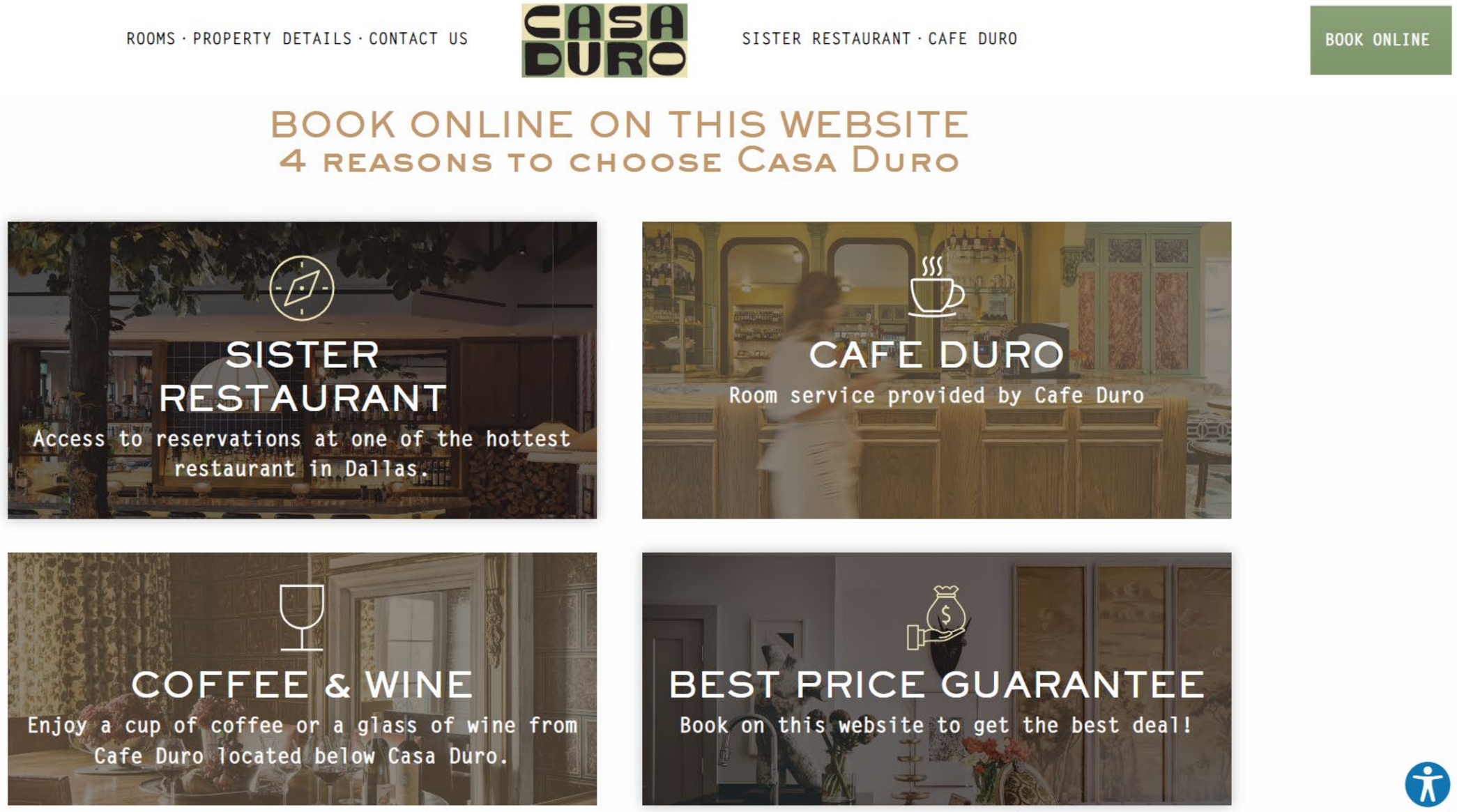
Definitions

- **Permitted Use?**
  - Courts review whether an STR is a permitted use based on the regulations and definitions in the municipal code.
  - The challenge is, however, most older codes did not have regulations related to STRs because STRs were not on anyone's radar.

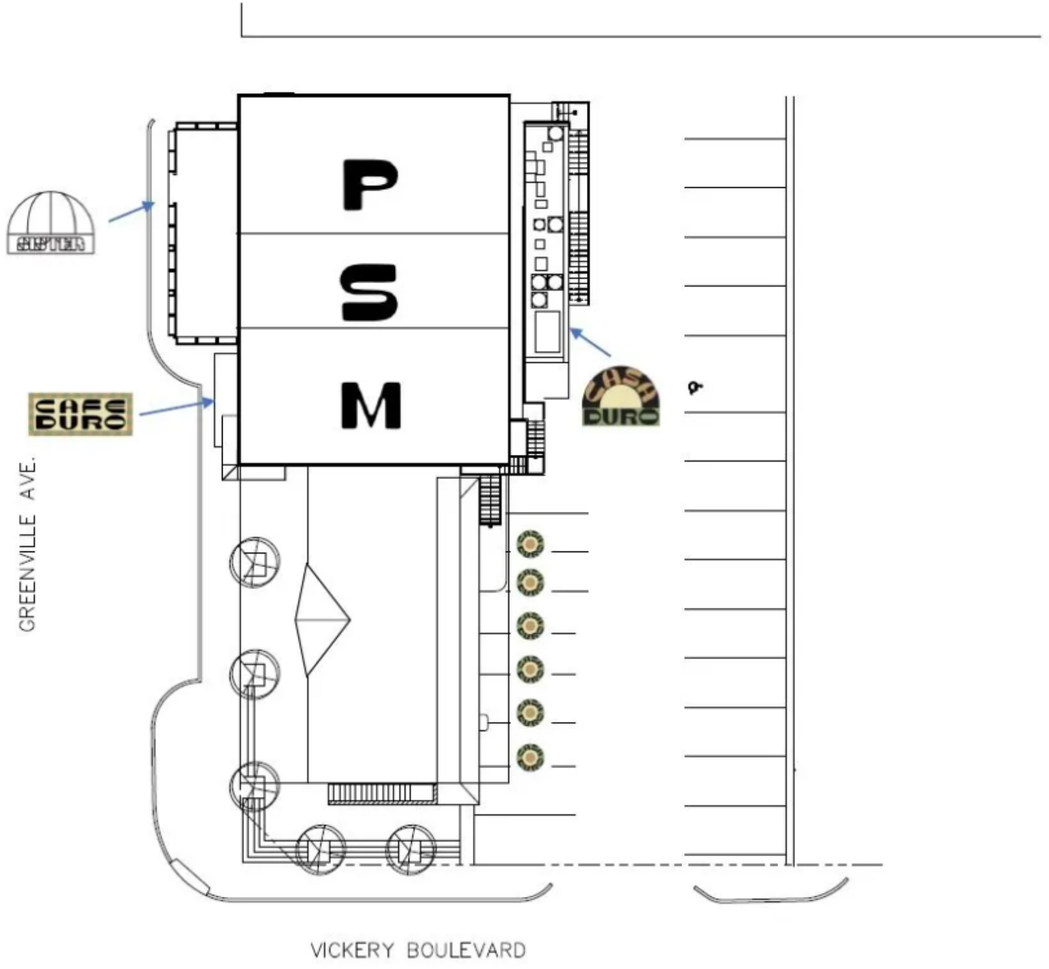
Definitions



Definitions



Definitions



LEGEND

SISTER ENTRANCE

CAFÉ DURO ENTRANCE

CASA DURO STAIRWAY

CASA PRICILLA P

CASA SUSANNA S

CASA MARCIA M

CASA PARKING SPACES

Definitions

- ***City of Grapevine v. Muns***, 651 S.W.3d 317 (Tex. App.—Fort Worth 2021, pet. filed)
- ***Tarr v. Timberwood Owners Association***, 556 S.W.3d 274 (Tex. 2018)
- ***Heyman v. Cooper,*** 31 F.4th 1315 (11th Cir. 2022)

Nonconforming rights

- If a use was legally operating in compliance with the zoning regulations in place at the time it was established, it can continue to operate with nonconforming rights.
- ***Village of Tiki Island v. Ronquille***, 463 S.W.3d 562 (Tex. App.—Houston [1st Dist.] 2018, no pet.)
- ***Heyman v. Cooper,*** 31 F.4th 1315 (11th Cir. 2022)

Settled rights

- Relatively new legal concept some public interest law firms have been advancing in the courts.
- Applies a three-factor test:
  - Nature and strength of the public interest to be served as evidenced by the legislature's factual findings.
  - Nature of the prior right impaired by the statute.
  - Extent of the impairment.

Settled rights

- ***Zaatari v. City of Austin***, 615 S.W.3d 172 (Tex. App.—Austin 2019, pet. denied)
- ***City of Grapevine v. Muns***, 651 S.W.3d 317 (Tex. App.—Fort Worth 2021, pet. filed)
- ***Chu v. Windermere Lakes Homeowners Association, Inc.,*** 652 S.W.3d 899 (Tex. App.—Houston [14th Dist.] 2022, pet. filed)

Settled rights

- The concept appears to be making a jump to general zoning laws.
  - ***TXI Operations, LP v. City of McKinney,*** 2023 WL 161942 (E.D. Tex. 2023)

Due course of law

- Courts generally apply a rational basis test when reviewing an ordinance.
- Apply a due course of law analysis which requires a city's ordinance to be upheld if the ordinance is designed to accomplish an objective within the city's police power.

Due course of law

- ***Draper v. City of Arlington,*** 629 S.W.3d 777 (Tex. App.—Fort Worth 2021, pet. denied)
- ***Nekrilov v. City of Jersey City,*** 528 F.Supp.3d. 252 (D.N.J. 2021)
- ***Marfil v. City of New Braunfels,*** 2022 WL 18034356 (W.D. Tex. 2022)

Constitutional issues

- ***Hignell-Stark v. City of New Orleans,*** 46 F.4th 317 (5th Cir. 2022)
  - Ordinance that prohibited issuing STR license to properties that were not owner occupied violated the interstate commerce clause because it discriminated against out-of-state property owners.
- ***Rosenblatt v. City of Santa Monica,*** 940 F.3d 439 (9th Cir 2019)
  - Ordinance banning STRs unless the primary resident remained in the dwelling did not discriminate against interstate commerce because it did not discriminate against out-of-state property owners from sharing their homes.

Constitutional issues

- ***Zaatari v. City of Austin,*** 615 S.W.3d 172 (Tex. App.—Austin 2019, pet. denied)
  - Ordinance's requirements on how many people could use a property and when found to violate guests' right to assembly.

Minimum stay

- ***Weisenberg v. Town Board of Shelter Island***, 404 F.Supp.3d 720 (E.D.N.Y. 2019)
  - Upheld ordinance prohibiting leasing an STR more than once in a 14-day period.
- ***Heyman v. Cooper,*** 31 F.4th 1315 (11th Cir. 2022)
  - Residential leases required to be for at least a week.
- ***Anding v. City of Austin,*** 2020 WL 2048255 (Tex. App.—Austin 2020, no pet.)
  - Property owner attempted to circumvent ordinance by entering leases with multiple parties for more than 30 days and allocated STR to parties for a certain number of days.

Platform regulation

- While cities cannot regulate the website content of platforms like AirBNB or VRBO, courts have ruled that cities are free to regulate the platforms as booking agents.
- ***AirBNB, Inc. v. City and County of San Francisco,*** 217 F.Supp.3d 1066 (N.D. Calif. 2016)
- ***AirBNB, Inc. v. City of Boston*****,** 386 F.Supp.3d. 113 (D.Mass. 2019)
- ***Homeaway.com, Inc. v. City of Santa Monica,*** 918 F.3d 676 (9th Cir. 2019)

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