

5 Rathkopf's The Law of **Zoning** and Planning § 81:11 (4th ed.)

Rathkopf's The Law of **Zoning** and Planning

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Chapter 81. Regulation of Occupancy, Ownership, Rental Housing, and Conversions

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I. **Zoning** Control of Occupancy or Ownership

References

§ 81:11. Short term rentals

Zoning restrictions involving the type of occupancy allowed in residential areas generally have been upheld where the restrictions are found to be substantially related to land use impact on the area.¹ Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the **zoning** power.²

In *Ewing v. Carmel-By-The-Sea*,³ a California appellate court upheld the validity of a **zoning** ordinance provision that prohibited rental of residential property for fewer than thirty days. The ordinance in question prohibited "transient commercial use of residential property" defined as:

the commercial use, by any person, of Residential Property for bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession, or tenancy of the property by the person entitled to such occupancy, possession or tenancy is for less than thirty (30) consecutive calendar days.

The ordinance defined "remuneration" as "compensation, money, rent, or other bargained for consideration given in return for occupancy, possession or use of real property."⁴ The court rejected equal protection, taking, and vagueness constitutional claims and held that the ordinance did not violate any fundamental rights of association or privacy. The court found that the ordinance was supported by the city's chief purpose in adopting the ordinance—"to provide an appropriately **zoned** land area within the City for permanent single-family residential uses and structures, and to enhance and maintain the residential character of the City."⁵ The court stated:

It stands to reason that the 'residential character' of a neighborhood is threatened when a significant number of homes—at least 12% in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or 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.

Plaintiffs attempt to equate this case with *Parr v. Municipal Court*, 3 Cal. 3d 861, 92 Cal. Rptr. 153, 479 P.2d 353 (1971), in which the Supreme Court confronted a Carmel **zoning** ordinance prohibiting, among other things, sitting or lying upon public lawn. The ordinance was accompanied by a "Declaration of Urgency" explaining that it was geared toward "an