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The Planning and Law Division's Case Law Digest presents summaries of recent federal and state court decisions addressing issues at the intersection of planning and law, with takeaway lessons to assist planners and land use attorneys in their practice.

In this Issue

- Takings, investment backed expectations: [Braden's Folly, LLC v. City of Folly Beach, Supreme Court of South Carolina](#)
- Sidewalk regulations: [Knight v. Metropolitan Government of Nashville & Davidson County, Sixth Circuit](#)
- Landlord-tenant: [Yim v. City of Seattle, Ninth Circuit](#)
- Signs in chambers: [Tyler v. City of Kingston, Second Circuit](#)
- Short-term rentals: [South Lake Tahoe Property Owners Group v. City of South Lake Tahoe, California Court of Appeals](#)
- Affordable housing, environmental impact: [Matter of Save Sag Harbor v. Village of Sag Harbor, Supreme Court of New York](#)
- Split-zoning: [3000-3032 St. Claude Avenue, LLC v. City of New Orleans, Louisiana Court of Appeal](#)
- Abandonment: [City of Danville v. C.A. Collins Enterprises, LLC, Illinois Appellate Court](#)
- Green Amendment to NYS constitution: [Marte v. City of New York, Supreme Court of New York](#)

To view this issue in your browser click [here](#) and to view past CLD issues visit PLD's [Case Law Digest web page](#).

California Appellate Court Holds Annual Permits Allowing Short-Term Rentals Do Not Provide Vested Rights, But Communities Must Justify Exempting Residents from Short-Term Rental Prohibition Under Dormant Commerce Clause

South Lake Tahoe Property Owners Group v. City of South Lake Tahoe, 92 Cal. App. 5th 735 (2023)

By: [Ryan D. Hoyler, Robinson & Cole, LLP](#)

In [South Lake Tahoe Property Owners Group v. City of South Lake Tahoe](#), 92 Cal. App. 5th 735 (2023), the California Court of Appeals, Third District, held that there was no violation of vested property rights that arose from annual zoning permits where the permit was not guaranteed but that an ordinance prohibiting short-term rentals in residential zones that also provided an exemption for town residents facially violated the Dormant Commerce Clause of the U.S. Constitution. The City of South Lake Tahoe has regulated short-term rentals since 2003, requiring an annually renewed, ministerial license for such rentals, capped at 1,400 licenses across the city. In 2015, the city amended its regulations to indicate that such permits “shall not be construed as providing property rights or vested interests and entitlements in continued operation of a vacation home rental.” In 2018, “Measure T” passed by popular vote, amending the regulations to state that the “City shall not permit any vacation home rental . . . within any residential zone.” Existing permits would be continued through the end of 2021, after which the city would be prohibited from issuing new permits. However, the measure contained an exemption for permanent residents, permitting such residents to use their homes in residential zones for short-term rentals up to 30 days per year. An association of owners and managers of vacation rental homes sued over the measure, arguing, *inter alia*, that it interfered with their vested property rights and contained an unconstitutional durational residency requirement to qualify for exemption from the measure. The trial court dismissed the plaintiffs’ case on summary judgment, and the plaintiffs appealed. The appellate court held that any vested property rights granted by previously issued permits were limited to the rights explicitly stated on the permits, which expired annually. While the court agreed that the licenses were ministerial, it held that, given the limit on the number of licenses, no permit holder was guaranteed renewal of their license. Additionally, the court held that the plaintiffs had failed to provide any evidence to the trial court quantifying their incurred expenses or anticipated losses; therefore, the court was unable to determine the extent to which the plaintiffs monetarily relied on any previously issued permits. However, the court also held that the exemption for permanent residents facially violated

the dormant Commerce Clause. The court held that the measure required out-of-state property owners who did not maintain residency in the city to become residents in order to compete on equal terms in the short-term rental market. The case is back at the trial court on remand to permit the parties to brief the dormant commerce clause issues more fully.

Practice Significance:

Non-guaranteed permits do not provide any vested rights beyond those rights granted by the permit itself. Permits that expire do not extend those rights beyond the expiration date. Also, the Dormant Commerce Clause prevents treating out-of-state residents and in-state residents differently when regulating short-term rentals. Municipalities must justify any such discrimination by showing that the differential treatment advances legitimate local purposes that cannot be adequately served by reasonable nondiscriminatory alternatives.

Submit a Case

Is there a case you would like to see featured in PLD's Case Law Digest? Submit it for consideration to the editor at PLD@planning.org.

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