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Defending short-term rentals against city regulation

By: Rich May, David Glod, James B. Heffernan

Recently, the City of Quincy attempted to shut down a client's ability to rent part of her home on Airbnb. We defended the client in a hearing in July, and this week the court ruled against the City and in favor of our client.

Many municipalities including Quincy have recently been tightening their regulation of short-term property rentals through services like Airbnb. On March 15, 2021, Quincy passed a zoning ordinance imposing new registration and licensing requirements on rentals for fewer than 31 days. The ordinance also banned all short-term rentals in the Residence A zoning district where the client's home is located.

The City initially wanted to leave the decision to the Quincy Zoning Board of Appeals by having the client seek a variance permitting the short-term rental use. But a variance was not the appropriate process in this case, and worse, risked having the client forfeit her already established property rights. The client and her husband had been renting rooms in their two-family home on Airbnb since 2016. Suddenly losing the right to do so would have been a significant hardship for them. So when the City began sending notices demanding that they immediately stop all short-term rental use of their home, they came to Rich May for help.

After review of the variance application and the history of the site, we decided to withdraw from the variance process and protect our clients' property rights in court. At first, the case seemed like an uphill battle. Quincy had just won another enforcement proceeding against another Airbnb operator a few weeks before our hearing. And the Supreme Judicial Court had recently reaffirmed the legal principle that courts must "accord deference to a local board's reasonable interpretation of its own zoning bylaw." *Styller v. Zoning Board of Appeals of Lynnfield*, 487 Mass. 588 (2021). In the *Styller* case, the Court held that the Lynnfield Zoning Board could reasonably determine that the town's "single residence district" was incompatible with transient uses like short-term rentals, and therefore upheld the town's right to prohibit short-term rentals.

But there were some additional factors in our case. The first was the concept of



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preexisting, nonconforming use. We argued that when our client purchased her home and began renting rooms in 2016, the law gave her the legal right to do so, so the City was now trying to unconstitutionally take her property rights without due process or compensation. The City's retort was that just as in *Styller*, the Quincy Zoning Code prohibited all uses of property that were not explicitly permitted. Therefore regardless of the new short-term rental ordinance, short-term rentals had actually *never* been allowed. The City claimed it was not taking any rights away, but only enforcing an existing law for the first time.

One fact in particular helped us distinguish our case from *Styller*. In our discussions with the City's attorney, she acknowledged that long-term rentals such as traditional lease arrangements are permitted in the Residence A zoning district. However the zoning code did not explicitly say anything about long-term rentals, just as it had said nothing about short-term rentals prior to the new ordinance. Therefore the City's position was internally inconsistent. If the code did not address long-term rentals but these were nonetheless permitted, the City could not argue that short-term rentals had always been prohibited.

Based primarily on these arguments, we were able to persuade the Court that Quincy did not have a sufficient likelihood of success on its claims. Therefore the City was not entitled to a preliminary injunction barring our client's short-term rentals. The decision is *City of Quincy v. Liao*, Norfolk Superior Ct. No. 2382-CV-432 (September 8, 2023). This case may be instructive to other property owners seeking to protect their rights against cities and towns trying to ban or heavily restrict short-term rentals. If you find yourself in a similar situation, feel free to contact [David Glod](#) or [James Heffernan](#) to evaluate whether these or other defenses might apply in your case.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys [David Glod](#) and [James Heffernan](#).

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