

**The Real Houselawyers of Planning**  
APA-IL State Conference  
September 27, 2016

**Action Items on Trending Topics**  
**#RHOPanning**

1. **Content-Based Regulations.** The content-neutrality revolution is sweeping from signs to panhandling, solicitor licenses, and donation bins. Stop enforcing content-based regulations. Collaborate with your attorney and staff on new content-neutral strategies. Listen for more unexpected challenges to content-based ordinances across the country.
2. **Short-Term Rentals.**
  - a. What do you have? Evaluate the short-term rental market in your community, including where rentals are located, the types of properties that are rented, when they are rented, and for how long.
  - b. What do you want? Identify your regulatory goals.
  - c. How do you get it? Tailor your regulation to your regulatory goal, stakeholder interests, and your enforcement capacity.

<b>Goal</b>	<b>Regulation</b>
Find the STRs	Make it Easy to Get a Permit Prohibit Advertising without Permit
Quality of Life	Trash & Parking Facilities Noise Limits Outdoor Curfew Require 24/7 Host/Renter Contact for STR Frequency Limits (Rentals per Year) Duration Limits (Days per Rental) Exterior Sign Limits Insurance
Safety	Reasonable Inspection Requirements Occupancy Limits (Day/Night)
Planning	Limit Number of STRs per Area Dispersal Requirements
Taxes	Require Hosting Platform to Collect Taxes Direct Staff to Monitor Compliance
Fair Housing	Require STR to acknowledge it is a Public Accommodation Prohibit Discrimination in STR Rentals
Affordable Housing	Limit STRs to Permanent Residents No STRs in Long-Term Rental Housing
Economic Development	Encourage STRs in Areas Underserved by Hotels

3. **Fair Housing.** The Fair Housing Act (“FHA”) prohibits more than just overt discrimination based on an individual’s race, religion, or sex. Zoning ordinances that produce discriminatory consequences can also violate the FHA. As a result, zoning officials must carefully consider a zoning regulation’s potential consequences (ideally, before the regulation is enacted) to ensure that the regulation does not result in discrimination against a protected class. To learn more, check out the Supreme Court’s recent decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, available at [https://www.supremecourt.gov/opinions/14pdf/13-1371\\_m64o.pdf](https://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf).
4. **Takings.** Takings law regularly evolves and *Murr v. Wisconsin*, which will be taken up by the U.S. Supreme Court as soon as October, has the potential to cause new changes, including weakening or invalidating the “Whole Parcel Rule” first announced in *Penn Central Transportation Co. v. City of New York*.
  - a. However, state and regional courts are preserving and bolstering long held principles in takings law, creating a legal bulkhead against higher federal interference
  - b. One of the most influential cases in takings law significantly relied on by property rights advocates, *Lucas v. South Carolina Coastal Commission*, provides several regulatory avenues for planners to address modern planning issues such as addressing climate change.
  - c. Takings law is still suffering the effects of the *Koontz v. St. John’s River Water Management District*, leaving the following issues that affect planning and development regulations:
    - i. A taking can be found where no taking has yet occurred.
    - ii. Ad hoc development approvals must now pass the Nollan and Dolan nexus and rough proportionality tests.
    - iii. Monetary conditions (e.g. impact fees) can be the subject of takings claims under the nexus and rough proportionality tests.
  - d. However, in spite of *Koontz*, land use regulatory authorities can help themselves by engaging in planning activities that concretely tie the comp plan’s policies to development regulations.
5. **School Zoning.** Public Act 99-890 confirms that school districts are subject to local zoning, but requires “reasonable efforts” to “streamline” the process, and to minimize “administrative burdens” by reducing application fees, site plan revisions, document copies, and expediting zoning review. The new law leaves many questions unanswered, requiring careful consideration of school district requests for zoning relief.

Notes:

This handout is available for download from the Resource Center at [ancelglink.com](http://ancelglink.com). If you have questions about today’s presentation, feel free to email to David S. Silverman ([dsilverman@ancelglink.com](mailto:dsilverman@ancelglink.com)), Gregory W. Jones ([gjones@ancelglink.com](mailto:gjones@ancelglink.com)), or Daniel J. Bolin ([dbolin@ancelglink.com](mailto:dbolin@ancelglink.com)).

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