

Hot Topics in Texas Land Use Law

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Hot Topics in 2025

Dallas Combats Displacement and Gentrification: Builders of Hope

Gentle Density in Dallas? Not So Much

Do We Need That Much Parking?

Yet Another *Brief* Litigation Update on Short-Term Rentals

Give Deference to Your Zoning Board of Adjustment

Quirky Dallas Zoning Provision

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Displacement and Gentrification

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AFFORDABLE HOUSING IN DALLAS

- Affordable housing stock in short supply
- In 2022, Dallas began preparation of Housing Policy 2033
- Adopted by City Council in 2023—DHP33
- Racial disparity in housing was striking



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<u><i>Racial Disparity</i></u>	<i>White</i>	<i>Hispanic/Latinx</i>	<i>African American</i>
Households with Severe Housing Problems (July 2019 Data)	15%	34%	28%
Median Home Values (October 2018 Data)	\$295K	\$90K	\$85K
Homeownership Rates (2016-2020 Data)	52.3%	41.9%	27.5%

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A Few Facts About DHP33

- **DHP33 lacked an implementation strategy**
- **In December 2024 City’s Dept. of Housing & Community Development outlined the challenges:**
 - **Housing cost**
 - **Accessing home ownership**
 - **Preservation of housing**
 - **Shortage of lower income housing units**
 - **Supply and projected demand**
- **City could supply roughly 32,000 of needed 68,000 units**

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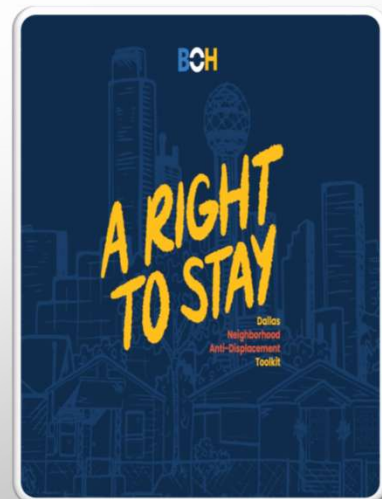
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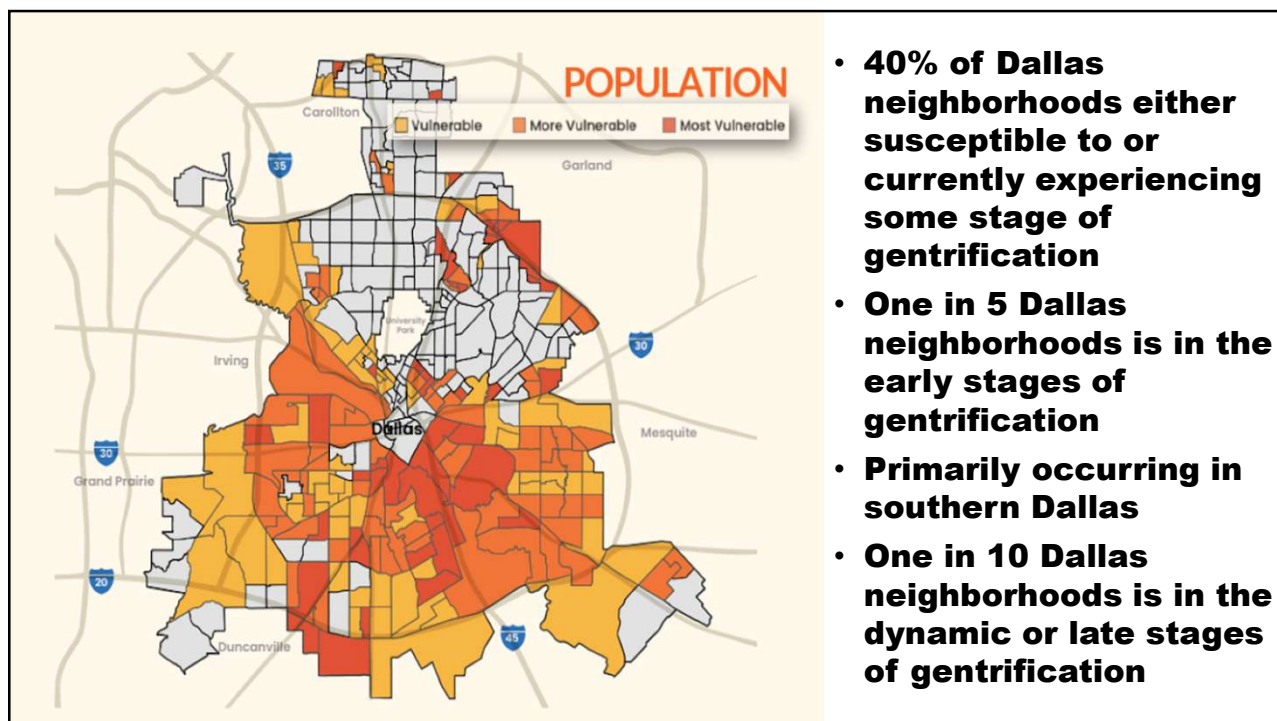
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Builders of Hope

- **Grassroots neighborhood and anti-displacement advocacy group**
- **Goal: to preserve Dallas' vulnerable neighborhoods by combatting gentrification and displacement**
- **Generous funding from JPMorgan Chase Foundation and Dallas Foundation**
- **In November 2024, BOH released its Dallas Neighborhood Anti-Displacement Toolkit, "A Right to Stay"**



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Toolkit: Options and Recommendations

- **Emergency rental relocation assistance programs for vulnerable residents**
- **City ordinances strengthening of tenant rights by requiring good cause for evictions and lease non-renewals, including advance notice of termination and rent increases**
- **All rental properties seeking any city support—subsidies, tax abatements, zoning entitlements and letters of support for LIHTC projects—utilize a standard lease addendum that addresses the foregoing issues**

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Toolkit: Options and Recommendations

- Rights of tenants to organize
- City creation of eviction advocacy center—perhaps with private funding and providing high-quality pro bono legal services
- Creation of neighborhood-based voucher programs to mitigate the displacement of legacy residents in gentrifying neighborhoods



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Toolkit: Options and Recommendations

- For homebuyers, emergency homestead stabilization fund to provide short-term property tax and mortgage assistance to low-income homeowners
- Neighborhood stabilization loan program for long-term assistance in paying tax bills
- Targeted home repair programs to assist residents in gentrifying neighborhoods



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Toolkit: Options and Recommendations

Displacement Mitigation Zoning Overlay:

- Incorporates design standards from existing area residential development
- At a minimum, regulates height, square footage and roof types
- Can include porches and garage placement, where appropriate

Other land use options:

- Land banking
- Use of public land for long-term and deeply affordable housing
- Density bonuses in residential neighborhoods

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Toolkit: Will The Tools Work?



- These are aggressive solutions, all of which will not be utilized simultaneously
- In some cases they are costly solutions
- City funding is a huge issue—is it feasible that the funds to address displacement and gentrification in a meaningful way can be found?
- *Dallas Morning News: Toolkit's recommendations would turn "City Hall into a housing welfare agency"*
- *BOH: Dallas needs to "meet the moment with bold ideas, forward-facing vision and innovation that disrupt the old way of doing things"*

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Gentle Density:

Is it in Dallas'
Future?
Not So Much



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What is Gentle Density?

- In the Dallas context, it refers to the infill of existing single-family neighborhoods to allow up to six units per lot—in most cases, the increased density is allowed “as of right”
- Can include accessory dwelling units (ADUs), 2-to-4 unit housing, small scale apartments or condominium buildings
- Austin adopted gentle density through its zoning regulations in December 2023 and Houston allows it through its platting regulations
- Some cities around the U.S. have adopted similar gentle density ordinances

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- On September 25, 2024, Dallas City Council in *Forward Dallas 2.0* (comp plan) allowed it only with “justification, higher scrutiny, and adherence with a locational strategy”
- Public Opposition remained intense throughout the debate
- Efforts by public to neutralize it appear to have been successful

Dallas City Council Response

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Does Gentle Density Impact Affordability?

- **Toolkit:** “Likely insufficient to address housing affordability”
- **Prof. Michael Allan Wolf:** (1) Unless existing buildings are razed, gentle density ordinances “will be irrelevant”; (2) HOA restrictive covenants and high cost of HOA dues will doom gentle density; (3) meeting code requirements (height and setbacks) will be difficult; and (4) state legislation preempting covenants as well as height and area restrictions would be necessary
- **Texas Housers:** If there is high demand to live in a neighborhood, the housing won’t be affordable to low-income households

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Off-Street Minimum Parking Requirements: The Critique

- **Minimum parking requirements were a function of rapid suburbanization after World War II and the proliferation of the automobile, with less reliance on public transportation**
- **Minimum parking requirements based on 2 faulty assumptions: (1) shoddy statistical basis on which minimum parking requirements were formed; and (2) hidden costs of free and ample parking**
- **Result: Changes in parking requirements around the world (Toronto, London, Mexico City) and in the US (at least 50 cities and 2 states—Minnesota and Colorado)**

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Austin and Dallas Take Different Approaches

- In November 2024, Austin City Council voted to eliminate practically all minimum parking requirements
- It was estimated that a parking spot in a typical surface lot costs \$5,000 to \$10,000 while a parking spot in a parking garage ranges from \$25,000 to \$65,000
- Austin determined that 1 additional parking space per unit increases rent by \$200 per month while also limiting the number of units that can be built
- Those costs are passed on to the tenants

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Austin and Dallas Take Different Approaches

- Dallas currently follows standard parking ratios
- Nonresidential land uses generally require parking spaces per square foot of floor area, while some are based on beds (hospitals/nursing homes) classrooms (schools) or guest rooms (hotels)
- Residential land uses prescribed by a certain number per dwelling unit, bedroom or suite
- Exceptions are allowed

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Austin and Dallas Take Different Approaches

- Dallas has studied parking minimums for years
- Dallas focused on the burden that parking requirements add to housing costs—a parking space adds \$100-\$200 to monthly rent or mortgage costs, and each additional \$100 per month requires \$4,000 per year of additional income
- In January 2025, Dallas Plan Commission given draft 72-page parking ordinance amendments
- Proponents: Parking is costly, hinders affordability and diverted residents from public transportation, hiking or biking
- Opponents: While some reform may be helpful, some business owners will provide no parking

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Austin and Dallas Take Different Approaches

- No final decision on parking—City Council will consider soon
- Plan Commission has recommended some changes to minimum parking standards
 - All SF residential and Townhome parking standards unchanged
 - Duplex parking minimums: 1 space per dwelling unit
 - Parking minimums for all uses eliminated within ½ mile radius of light rail and streetcar station
 - All MF parking minimum remain for property within 300 feet of SF residentially zoned property

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Dallas Commentary on Minimum Parking Standards



- Dallas Morning News: Suggested a pilot program advisable; “wait and see,” noting that “Dallas is not a social engineering playground”
- Dallas Cothrum, a developer and editorialist for DMN, complained that parking breaks down on generational lines in Dallas: Baby Boomers look backward to wide open parking lots and they vote, so expect the City Council to conform to the standards of people who won’t be living in it
- **“Think Fred Flintstone when George Jetson is more appropriate”**

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Lots of Other Texas Cities Making Changes, Too!

- Bandera
- Beaumont
- Brownsville
- Cleburne
- Decatur
- El Paso
- McGregor
- Elgin
- Killeen
- Laredo
- Longview
- Lubbock
- Midland
- Plano
- San Angelo
- San Antonio
- San Marcos
- Texarkana
- Uvalde
- Waco
- Weatherford

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***Brief* Municipal STR Litigation Update**

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Dallas Short-Term Rental Alliance v. City of Dallas



Villanueva v. Village of Volente, Texas



Marfil v. City of New Braunfels, Texas

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Dallas STR Litigation

- Dallas unsuccessful in district court and trial judge found Dallas' STR ordinances [zoning & regulation] "likely unconstitutional"; found for the plaintiffs on virtually every issue; and enjoined enforcement
- Dallas appealed to 5th Court of Appeals
- February 7, 2025, Court of Appeals upheld injunction and held Dallas had not shown trial court abused its discretion
- On February 24, Dallas filed for rehearing *en banc*, arguing Dallas' modest regulatory ordinance was distinct from zoning ordinance, and Court of Appeals conflated the two
- *Dallas Morning News*: "Dallas should consider giving up a legal fight it is likely to lose"

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But 2 Cities Won!

***Villanueva v. Village of Volente*, 2024 WL 2143596 (W.D. Tex. May 13, 2024)**

- 2023 STR ordinance adopted
- Conditional use permit required for STR
- Detailed process for approval described, as well as complaint process
- Federal district court denied preliminary injunction
- Court wrote that at this stage of proceedings, it would not “interfere with the wide range of discretion the Village is afforded to decide for itself which STR uses are compatible with its community and which are not”

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But 2 Cities Won!

***Marfil v. City of New Braunfels*, 2025 WL 243028 (W.D. Tex. Jan. 10, 2025)**

- In 2011 City grandfathered all existing STRs and new STRs were prohibited in residential zones; adverse impacts of STRs described
- All plaintiffs bought their homes after 2011 and wished to operate STRs—and sued when denied permits
- U.S. Magistrate used federal rational basis analysis, not strict scrutiny
- Magistrate wrote “no consensus among the Texas courts in determining whether the right to lease is fundamental and subject to strict scrutiny”
- U.S. Magistrate and federal district judge granted City’s motion for summary judgment
- Plaintiffs appealed to Fifth Circuit on January 13, 2025

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City of Grapevine v. Muns

- In denying review on June 16, 2023, Texas Supreme Court Justice Evan Young wrote that the constitutionality of municipal bans of STRs is “of increasing and demonstrable importance”
- In *Muns*, each party and amici all had requested that the constitutional questions be addressed
- But this case was “a less-than-ideal vehicle for resolving the constitutional issues” of STRs due to the specific facts of the case (administrative exhaustion and enforcement)
- We still wait until the Texas Supreme Court finds “an ideal vehicle” to address municipal regulation of STRs

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Judicial Deference to BOA Decisions

TCHDallas2, LLC v. Espinoza, 2024 WL 3948322 (Tex. App. – Dallas Aug. 27, 2024)

- City building official approved CO for poker club, then assistant building official revoked it
- Building official takes BOA to court
- Trial court rules BOA abused its discretion and reinstates CO
- Court of appeals holds trial court impermissibly substituted its discretion in place of the BOA
- Court of appeals affirms the BOA's reinstatement of the CO
- Texas Supreme Court denies review on September 5, 2025

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Section 51A-4.701(e), Dallas Development Code

- Both applicant and opposition within the area of notification of a zoning case may request postponement of a scheduled public hearing by paying a fee of \$150 and submitting a formal letter of request to the Director of Planning and Development
- Must set forth the grounds for the postponement
- Postponements are automatic with receipt of fee and letter of request
- 1 postponement allowed prior to CPC and 1 prior to City Council (4 weeks or more)
- Often triggers another newspaper notice and a second mailout to affected properties owners
- ZOAC, CPC and Staff recommended repeal
- Council: 14-0 to retain provision

**QUIRKY
DALLAS
ZONING
PROVISION
LIVES ON!**

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What to Take Away from Today's Presentation?

- Affordability of housing, displacement of vulnerable populations and gentrification of vulnerable neighborhoods remain huge issues, and solutions are costly
- The issue of gentle density will continue in Texas' large cities, but most city councils in larger cities will shy away from it—and it will be anathema in suburban areas
- A year or two from now, let's see if Austin's full-throated elimination of minimum parking requirements or Dallas' more measured response is preferred by city residents—or maybe both cities will be happy with their respective courses of action
- There was some good news on the STR front for Texas cities—other than in Dallas—but until the Texas Supreme Court acts, it's anybody's guess

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