

# **HOT TOPICS IN TEXAS LAND USE LAW**

**Texas City Attorneys Association  
Fort Worth Convention Center  
Fort Worth, Texas  
October 30, 2025**

**Terrence S. Welch  
Brown & Hofmeister, L.L.P.  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
[www.bhlaw.net](http://www.bhlaw.net)  
[twelch@bhlaw.net](mailto:twelch@bhlaw.net)**

## I.

### **Introduction**

As usual, when considering hot topics in Texas land use law, there are a few topics we cannot seem to avoid—short-term rentals, for example<sup>1</sup>—as well as some new ones. The topic of neighborhood displacement has become a hot topic in Dallas (and in other large cities around the country), with a group named Builders of Hope tackling the issue in coordination with the City of Dallas. Will it work? On a similar note, last year we discussed the concept of “gentle density” and the negative reaction that it received in Dallas. What is the current status of gentle density in Dallas? More and more cities are significantly changing or eliminating vehicle parking requirements. Will reduced (or no) parking standards be heading your way soon? These and a few other topics will be addressed in the 2025 edition of Hot Topics in Texas Land Use Law.

## II.

### **Efforts to Combat Displacement and Gentrification: Meet Builders of Hope in Dallas**

Both large and small cities around the nation have struggled with providing affordable mixed-income housing for their residents. Dallas is no different than any other American city—affordable housing stock is in very short supply. Starting in July 2022, Dallas began the preparation of its Dallas Housing Policy 2033 (DHP33), and DHP33 was adopted by the Dallas City Council in April 2023. Its data about racial disparities in housing in Dallas was striking, and not surprisingly it was noted that historically disadvantaged communities are more severely impacted by housing inequities<sup>2</sup>:

---

<sup>1</sup> A topic that one of last year’s attendees termed a lukewarm topic rather than a hot topic!

<sup>2</sup> See “Dallas Housing Policy 2033” at 2-3, found at <https://dallascityhall.com/departments/housing-neighborhoodrevitalization/Documents/DHP33%20Documents/03.30.2023%20Dallas%20Housing%20Policy%202033%20-%20English%20-%20Final.pdf>. Notes about the terminology used in the following table: the term “severe housing problems” is defined by the U.S. Department of Housing and Urban Development as “housing units in which the household has at least one of the following: lack of complete kitchen facilities, lack of plumbing facilities, overcrowding or spending more than 50% of its income on rent and utilities. For median home values, the fourth largest racial/ethnic group in Dallas—Asian/Pacific Islanders, is \$245,000. Home ownership rates for the remaining 6% of Dallas households are as follows: 34.8% for Asian/Pacific Islanders, 44.3% for Native Americans, 37% for others (includes “two or more races” and “some other race”). *Id.*

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

DHP33 had seven “pillars” of housing equity that are to “weave together the strategies guiding implementation, leverage internal and external partnerships, and revitalize neighborhoods through housing development that meets the needs of all Dallas residents.”<sup>3</sup> The seven “Equity Pillars” and Aims were as follows<sup>4</sup>:

<b>Pillar No.</b>	<b>Pillar</b>	<b>Policy Statement/Aim</b>
1	Equity Strategy Target Areas	Identify specific disparities in housing opportunities and reduce them utilizing a targeted approach
2	Citywide Production	Increase production to improve housing affordability for a broad mix of incomes in all areas of the city
3	Citywide Preservation	Increase preservation to improve housing affordability for a broad mix of incomes in all areas of the city
4	Infrastructure	Prioritize infrastructure investments in equity strategy target areas

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.* at 8.

5	Collaboration and Coordination	Align strategies and resources to maximize the impact of partnerships with internal and external stakeholders
6	Engagement	Cultivate diverse and multi-lingual avenues of communication with residents across all neighborhoods to guide City's housing investment decisions
7	Education	Develop a city-wide, collaborative campaign to increase YIMBYism (Yes in My Backyard) for housing affordability and the people who need it

What was lacking in DHP33 was an implementation strategy, and the City of Dallas recognized that the City was unable to implement DHP33 on its own. On December 10, 2024, the City's Department of Housing and Community Development provided an update on implementation strategies and outlined the areas where challenges existed: housing cost burden; accessing homeownership; preservation of housing; the shortage of lower-income housing units; and the supply of housing needed to meet projected demand and population growth.<sup>5</sup> A key statistic was that Dallas is projected to gain 68,000 net new households by 2033, and to meet that demand, the City believed that half of the housing produced should be ownership units and half should be rental units.<sup>6</sup> The City estimated that it could supply roughly 32,000 of the 68,000 needed units.<sup>7</sup> According to Dallas Area Redevelopment Manager Jasmine Bazley,

the remaining units would need to be supplied by the market or other outside forces. . . . There is a strong call for the City to use its existing land or buildings for affordable housing. We should be exploring opportunities to pilot projects on City-owned property and finding ways to fast-track development on these sites.<sup>8</sup>

---

<sup>5</sup> "Action Plans for Implementing Dallas Housing Policy 2033," presented to the Housing & Homelessness Solutions Committee on December 10, 2024, found at <https://cityofdallas.legistar.com/View.ashx?M=F&ID=13607702&GUID=C8951BEB-74E1-47F1-A79E-070FA21A4D3D> ("Action Plan").

<sup>6</sup> *Id.* at Slide 5.

<sup>7</sup> "Dallas Housing Officials: City Can Provide about Half of the Needed Affordable Units by 2033," by April Towery in *Candy's Dirt* (Dec. 16, 2024), found at <https://candysdirt.com/2024/12/16/dallas-housing-officials-city-can-provide-about-half-of-the-needed-affordable-units-by-2033/>.

<sup>8</sup> *Id.*

City of Dallas housing development personnel expressed the concern that affordable housing should be spread throughout the City rather than in pockets, which would create a “concentration of poverty.” Assistant Housing Director Thor Erickson stated:

We know the composition of a lot of our neighborhoods in the City. Some lean very heavy renter, some are homeowner, and some are balanced. When we look at the placement of future affordable housing buildings that have a lower income [element], we need to be very aware of the concentration of poverty and we also need to be very aware of displacement when those units are more market-rate.<sup>9</sup>

North Oak Cliff councilmember Chad West was critical of the information presented in the Action Plan for DHP33, stating that it did not include “specific housing unit needs per income level, so our City can understand exactly how many new units of housing we need at what affordability levels.”<sup>10</sup> He noted the Action Plan was a “beautiful document,” but it included “a lot of words” but an unclear picture. “We need to be able to articulate to [the City’s philanthropic partners] what that gap is and how they can step in to help us.”<sup>11</sup>

Far North Dallas councilmember Cara Mendelsohn was appreciative of the City’s work on the issues, but the Action Plan advisory committee did not include enough neighborhood advocates. “Not tenant advocates, not high-density advocates, but neighborhood advocates. You know, the people who fill our [city council] chambers. . . . That is a portion of our City and we have to be listening to them also, and I feel that we are not.”<sup>12</sup>

Enter Builders of Hope, a grassroots neighborhood organizing and anti-displacement advocacy group originally founded in 1998 in West Dallas.<sup>13</sup> Its goal is, in part, to preserve Dallas’ vulnerable legacy communities by combatting gentrification and displacement throughout Dallas, no longer just in West Dallas. With generous funding from the JPMorgan Chase Foundation and the Dallas Foundation, among others, in November 2024 Builders of Hope released its Dallas Neighborhood Anti-Displacement

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Builders of Hope website at [https:// www.bhocdc.com/ about](https://www.bhocdc.com/about).

Toolkit entitled *A Right to Stay*.<sup>14</sup> As stated by CEO James A. Armstrong III, “[i]t was quickly discovered that displacement is much more complicated than shrinking housing affordability and is more deeply rooted than present-day increases in land values.” In fact, Builders of Hope found that over the past 10 years, affordability for Dallas homeowners has shrunk from 44% of housing stock in 2012 to 12% in 2022, while affordability for renters decreased from 50% of rental units to 30%. Moreover, by 2032, the typical Dallas renter will only be able to afford 21% of rental units while homebuyers earning the median income will only be able to afford less than 2% of homes on the market.<sup>15</sup>

According to the *Toolkit*, “gentrification” is a process of neighborhood change in which:

- New investment floods a historically marginalized neighborhood;
- Property values rise, increasing housing costs and reducing the supply of affordable units;
- The neighborhood is physically transformed through the influx of new, higher-end construction;
- Neighborhood demographics shift as new, higher-income residents move into an area previously seen as “undesirable”;
- Existing low-income residents, often Black or Latino, are directly or indirectly displaced; and
- The cultural character of the neighborhood is fundamentally altered.<sup>16</sup>

As discussed in greater detail in the *Toolkit*, gentrification results in various types of displacement:

- *Direct displacement* is forced or involuntary household movement from one’s place of residence. This occurs when residents can no longer afford to remain in their homes due to rising housing costs.

---

<sup>14</sup> See “*A Right to Stay*,” Builders of Hope Dallas Neighborhood Anti-Displacement Toolkit (hereinafter, “*Toolkit*”), at <https://static1.squarespace.com/static/64ecf08c9f73124e9e190f31/t/6759c501e6fd847e38a29d16/1733936387973/BOH-Toolkit-Print+MAIN.pdf>.

<sup>15</sup> *Toolkit* at 5-6.

<sup>16</sup> *Id.* at 9.

- *Indirect or exclusionary displacement* refers to changes in demographics with regards to who can afford to move into a neighborhood as lower-income residents move out.
- *Cultural displacement* is the practice of making communities feel unwelcome and alienated in their own neighborhoods.<sup>17</sup>

Builders of Hope found that even though the most vulnerable communities are found in South and West Dallas, there are pockets of high vulnerability in the northern half of Dallas as well—the Vickery Meadow neighborhood, located northeast of North Park Mall, is one of those vulnerable communities. In fact, 40% of all Dallas neighborhoods are either susceptible to or currently experiencing some stage of gentrification, ranging from early to middle to late. One in five neighborhoods are in the early stages of gentrification and one in ten neighborhoods are in the dynamic or late stages of gentrification.<sup>18</sup>

What to do about it? Builders of Hope offer numerous recommendations—indeed a toolkit of strategies and options, many of which rely upon action by the City of Dallas—and City funding. While all of the suggested alternatives are not addressed in this paper, the *Toolkit* outlines many policy changes and recommendations. First, it was imperative to protect vulnerable residents from direct displacement through emergency rental and relocation assistance programs to residents who are facing an immediate threat of eviction, and help them avoid harmful disruptions in employment, education and social networks. Second, tenant rights could be strengthened through city ordinances that require good cause for evictions and lease non-renewals, advance notice requirements of termination and rent increases, opportunities to cure alleged lease violations, and the elimination of junk fees.<sup>19</sup> Third, the *Toolkit* provides that Dallas should mandate that all rental properties seeking any type of city support—subsidies, tax abatements, zoning entitlements and letters of support for Low Income Housing Tax Credit projects—utilize a standard lease addendum that incorporates the foregoing protections.

Builders of Hope also recommend that the City of Dallas adopt an ordinance explicitly affirming and protecting the rights of tenants to organize as well as allocate funding to establish an eviction assistance advocacy center to help residents facing eviction. It is also suggested that private funding could be utilized in helping vulnerable tenants facing eviction through the provision of high-quality pro bono legal services and representation. Similarly, neighborhood-based voucher programs could be instituted to mitigate the displacement of legacy residents in gentrifying neighborhoods, giving priority

---

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 34.

<sup>19</sup> “Junk fees” are defined in the *Toolkit* as “hidden or excessive charges that tenants must pay their landlords in addition to rent.” *Id.* at 84, n. 27.

placement to affordable units within a neighborhood or target area to low-income applicants who have been displaced.

For homebuyers, the City could establish an emergency homestead stabilization fund to provide short-term property tax and mortgage assistance to low-income homeowners facing a financial crisis. Additionally, the City could create a neighborhood stabilization loan program to provide income-eligible homeowners long-term, low-interest loans that would assist them in paying their tax bills and staying in their homes. The City also could create targeted home repair programs to assist vulnerable populations in gentrifying neighborhoods. Builders of Hope suggest several programs to both preserve and construct affordable housing in Dallas, including a “displacement mitigation zoning overlay.” This new zoning overlay would incorporate design standards that draw from the existing residential development in the area to regulate height, square footage and roof types, at a minimum. It can also consider the inclusion of porches and garage placement, where appropriate, to preserve neighborhood character. This concept is already referenced in Dallas’ new comprehensive plan ForwardDallas 2.0. Other land use options include land banking, utilization of publicly owned land for the construction of long-term and deeply affordable housing to serve vulnerable residents in gentrifying neighborhoods, and density-bonuses in residential neighborhoods which could include parking reductions and the general deregulation of zoning and land use laws as a catalyst for the construction of more affordable housing.<sup>20</sup>

While the *Toolkit* contains many recommendations and options,<sup>21</sup> will they work? Recognizing that the *Toolkit* does not suggest or imply that all recommendations be followed, rather, it provides a literal toolbox of various tools that may be implemented to address gentrification and displacement. The *Dallas Morning News* Editorial Board opined that many of the *Toolkit*’s recommendations would turn “City Hall into a housing welfare agency.”<sup>22</sup> Builders of Hope CEO James Armstrong responded in an opinion article shortly thereafter, writing:

Dallas is in its golden hour—a defining moment that will chart the future. It’s imperative to have leadership that meets the moment with bold ideas, forward-facing vision and innovation that disrupt the old way of doing things. We can’t afford a vision absent on housing, transportation, education or equitable urban planning. We must expect better and use our voice and

---

<sup>20</sup> *Id.* at 55-71.

<sup>21</sup> The *Toolkit* also includes recommendations regarding community outreach and education programs, dedicated City staff members who focus on redevelopment and gentrification issues, fair lending practices, marketing, neighborhood-led planning efforts, community ownership of residential and commercial real estate, and community benefits agreements, among others.

<sup>22</sup> *Dallas Morning News*, “Report Errs on Solutions for Gentrification Woes” (Nov. 24, 2024) at 2P.

vote to demand it. What kind of city do we want? We have an opportunity to create it.<sup>23</sup>

The primary concern with the *Toolkit* suggestions is that many of them rely on funding—and in all likelihood significant funding—from the City of Dallas. In this era of state-mandated property tax caps and calls for local governments to adopt higher homestead exemptions, finding the funding to address gentrification and displacement will be limited. It is difficult to imagine that adequate funding for an eviction assistance advocacy center, a neighborhood-based voucher program, property tax and mortgage assistance to low-income homeowners and the creation of a neighborhood stabilization loan program is financially feasible for Dallas. Even selecting one of those options could be very expensive.

On the other hand, I believe that several *Toolkit* proposals certainly are feasible. Targeted home repair programs are and have been utilized by many cities around the nation, and Dallas previously has funded critical repairs for the benefit of vulnerable homeowners in high-need neighborhoods.<sup>24</sup> Similarly, a “displacement mitigation zoning overlay” that incorporates design standards in keeping with a neighborhood’s historical character does not appear to be “too heavy of a lift” for the City of Dallas to adopt. As for the viability of density bonuses in Dallas, keep reading.

### III.

#### **Is “Gentle Density” in Dallas’ Future?: Not So Much**

“Gentle density” refers to the infill of existing single-family neighborhoods to allow up to six units per lot, and can include accessory dwelling units (ADUs),<sup>25</sup> two-to-four unit

---

<sup>23</sup> *Dallas Morning News*, “City Hall must go beyond the basics[,] There’s no reason Dallas can’t walk and chew gun at the same time with the right leadership” (Dec. 15, 2024) at 6P.

<sup>24</sup> *Toolkit* at 62.

<sup>25</sup> An accessory dwelling unit (“ADU”) is generally defined as a smaller, independent residential dwelling unit located on the same lot as a stand-alone (*i.e.*, detached) single-family home. ADUs go by many different names throughout the United States, including accessory apartments, secondary suites, and granny flats. ADUs can be converted portions of existing homes (*i.e.*, internal ADUs), additions to new or existing homes (*i.e.*, attached ADUs), or new stand-alone accessory structures or converted portions of existing stand-alone accessory structures (*i.e.*, detached ADUs). Internal, attached and detached ADUs all have the potential to increase housing affordability (both for homeowners and tenants), create a wider range of housing options within the community, enable seniors to stay near family as they age, and facilitate better use of the existing housing fabric in established neighborhoods. Consequently, many cities and counties

housing, small-scale apartments or condominium buildings. Proponents argue that while high-rise apartments in strategic locations could be part of the solution, many single-family neighborhoods could easily yield more housing—and therefore more affordable housing—if zoning/land use rules allowed “gentle” increases in density.<sup>26</sup>

As I addressed in last year’s Hot Topics presentation, in Texas, only Austin has adopted gentle density through its zoning regulations. On December 7, 2023, Austin amended its Land Development Code generally to (1) create a new three-unit residential use in three single family residential districts, and (2) revised two-unit residential uses and duplex residential uses in two single-family residential districts by easing site development restrictions. Now, the foregoing uses will be permitted in certain single-family districts as of right.<sup>27</sup> Even though Houston has no zoning, beginning in 1998 it achieved gentle density through amendments to its platting regulations by allowing landowners by right to subdivide or replat existing lots into much smaller parcels.<sup>28</sup> With subsequent amendments, it has been estimated that almost 80,000 townhomes have been developed in Houston owing to these changes.<sup>29</sup> Houston also included an opt-out process that enabled residents to exempt their block from the new rules. These so-called “block votes” allow homeowners to vote to incorporate into one of two special districts where land-use regulations are determined not by citywide ordinance but by the characteristics of existing lots in the area.<sup>30</sup>

A brief history of the gentle density debate in Dallas follows. On November 8, 2023, five city council members requested a discussion about potential options to expand the “zoning menu” for a wider variety of housing options. There was no specific proposal submitted; rather, the council members requested a briefing to explain the process and

---

have signaled support for ADUs in their plans and adopted zoning regulations that permit ADUs in low-density residential areas. See <https://planning.org/knowledgebase/accessorydwellings/>.

<sup>26</sup> See “‘Gentle’ Density Can Save Our Neighborhoods,” by Alex Baca, Patrick McAnaney and Jenny Schuetz (December 4, 2019), Brookings Institute, found at <https://brookings.edu/articles/gentle-density-can-save-our-neighborhoods/>.

<sup>27</sup> Ordinance No. 20231207-001, City of Austin, Tex., adopted on Dec. 7, 2023.

<sup>28</sup> See “Houston, we have a solution,” by Anya Martin (Sept. 7, 2023) in *Works in Progress*, found at <https://worksinprogress.co/issue/houston-we-have-a-solution/>.

<sup>29</sup> *Id.*

<sup>30</sup> See “Lot-Size Reform Unlocks Affordable Homeownership in Houston,” by Alex Horowitz and Tara Roche (Sept. 14, 2023), found at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/09/lot-size-reform-unlocks-affordable-homeownership-in-houston>.

potential effects of amending Dallas' zoning regulations by (1) defining new uses called "tri-plex" and "four-plex"; (2) reducing minimum lot size of single family districts; and (3) amending single family and duplex district regulations to allow tri-plex and four-plex uses.<sup>31</sup> Almost fifty percent (50%) of the City of Dallas is zoned for single-family use.<sup>32</sup>

On January 31, 2024, Dallas' Planning & Urban Design departmental representatives briefed the Dallas City Council on gentle density and housing development options that Dallas could consider. First, the question was asked why are other cities considering these options? The answers:

- To create more housing options at different price points and for diverse households including multi-generational households, single parents, those who want to age in place, and students.
- Allow greater access to neighborhood living.
- Gentle density was a common housing type in cities before development code updates in the 1980s.
- Requests are growing again for these housing types, but cities do not have the proper zoning to facilitate good design.<sup>33</sup>

With that context, Dallas city staff outlined possible land use and zoning paths by which to attain gentle density. The first land use option was to allow accessory dwelling units and duplexes on any single-family lot. Similarly, tri-plexes and four-plexes would be allowed on single-family lots; however, they would be required to meet certain additional criteria: house-scale homes; same footprint (lot size, lot coverage, height, and yard size); same design standards as existing homes; include maximum square footage for accessory dwelling units; adopt a maximum amount of impervious surface on a lot; and maintain the requirement for at least one tree per lot.<sup>34</sup>

The zoning path would include the creation of a floating base zoning district for small multiplexes, perhaps allowing attached, stacked and detached small scale homes. Another suggestion was to consider updating current zoning district requirements by

---

<sup>31</sup> See "Discussion of Expanding Housing Development Options with Potential Regulations for Two-Four-Unit Housing and Minimum Residential Lot Size," City Council Briefing (Jan. 31, 2024), at 4, found at <https://dallascityhall.com> (hereinafter "Expanding Housing Development Options").

<sup>32</sup> "Expanding Housing Development Options," at 9.

<sup>33</sup> "Expanding Housing Development Options," at 10.

<sup>34</sup> *Id.* at 21.

addressing dwelling units/bedroom density or housing types; rethink lot pattern requirements; and rethink front yards and their relationship with streets.<sup>35</sup> A longer term consideration included reforming lot sizes after community conversations on the topic as well as consider minimum lot sizes across the board.<sup>36</sup>

In adopting Forward Dallas 2.0, Dallas' updated comprehensive land use plan, the City Council in late 2024 in effect neutralized the concept, requiring that other than single-family uses in single-family zoning districts would be secondary uses which would require "justification, higher scrutiny, and adherence with the locational strategy."<sup>37</sup>

The *Toolkit* addresses the current gentle density debate in Dallas:

The recent adoption of the City's new comprehensive land use plan, ForwardDallas 2.0, has stirred up both significant excitement and trepidation around the idea of increased density in residential neighborhoods and what it could potentially mean for housing affordability. Many housing advocates and "YIMBYs" have championed increased density, parking reductions, and the general deregulation of zoning and land use laws as the primary policies for making housing more affordable in Texas.<sup>38</sup>

The *Toolkit* concluded, however, that "increased density and land use deregulation alone are likely insufficient to address the housing affordability needs for the majority of cost-burdened households in Texas."<sup>39</sup> The *Toolkit's* conclusion about the impact of gentle density on affordability of housing is echoed by a noted land use commentator who has written that the concept of gentle density "may well prove to be much more of a band-aid than a cure."<sup>40</sup> Professor Michael Allan Wolf cites four reasons why the concept of gentle density is problematic:

First, many subdivisions, especially older ones, are already built out, meaning that, unless current buildings are razed, [gentle density]

---

<sup>35</sup> *Id.* at 22.

<sup>36</sup> *Id.* at 23.

<sup>37</sup> See City of Dallas agenda packet for the September 25, 2024, City Council meeting, found at <https://cityofdallas.legistar.com/View.ashx?M=F&ID=13303299&GUID=2121F169-9367-4F98-A337-C55E609091A9>.

<sup>38</sup> *Toolkit* at 70 (footnote omitted).

<sup>39</sup> *Id.* at 71.

<sup>40</sup> Michael Allan Wolf, *Zoning Reformed*, 70 U. Kan. L. Rev. 171, at 194 (2021).

ordinances will be irrelevant. Second, homeowners association (HOA) fees run on average from a few to several hundred dollars a month. Third, there is a high likelihood that the neighborhoods in single-family residential zones are covered by restrictive covenants that prohibit more than one building per lot, duplexes, townhouses, and other more intensive uses of undeveloped lots. Fourth, because the missing middle housing must still meet the area (for example setbacks) and height requirements for the most restrictive zoning classification, the impact of these measures will be limited. In order to overcome the last two barriers, state lawmakers who are serious about creating a blend of single- and multi-family housing in new neighborhoods (and in those with available lots) should introduce legislation preempting covenants and height and area restrictions that frustrate good-faith efforts to address segregation by class and race and to augment the supply of affordable housing in desirable communities.<sup>41</sup>

The sentiment that gentle density measures likely will do little to address housing affordability issues is also echoed by Texas housing advocates:

Consider the proposal to allow ADUs by-right in all single-family zoned areas. The purpose of such a reform is to reduce housing costs in an area by increasing supply and decreasing the size of units for rent or sale, which would have the effect of decreasing costs compared to large single-family homes even at a still relatively high cost per square foot. However, if there is high demand to live in the neighborhood, those new ADUs are still going to be in high demand and almost certainly not affordable to low-income households who need affordable housing the most, even though they may be relatively more affordable than the existing homes in the neighborhood due to their smaller size. In a high demand neighborhood, allowing ADUs by-right is not likely to achieve the scale of additional supply needed.<sup>42</sup>

The *Toolkit*, I believe, is kind in its description of the Dallas public response to gentle density as “stirring up trepidation.” In my estimation, as described in my Hot Topics presentation last year, public and editorial response to the concept was highly negative, and as a result, the 2024 ForwardDallas 2.0 comprehensive land use plan very gingerly addressed the issue—and certainly did not advocate higher density by right in single-family zoned areas. So, is gentle density a viable option in Dallas? Probably not, but if there are areas where the concept is implemented, it will likely only be with strong community support—that is, with “justification, higher scrutiny, and adherence with the locational strategy.”

---

<sup>41</sup> *Id.* at 194-95 (internal citations omitted).

<sup>42</sup> Martin, Ben and Beaty, Sidney, “The Limitations of Land Use Deregulation for Housing Affordability,” at 18 (footnote omitted), found at <https://texashousers.org/wp-content/uploads/2024/10/Land-Use-Short-Report-FINAL.pdf>.

#### IV.

#### **Do We Really Need That Much Parking?**

With Austin in the forefront, cities across the country are rethinking parking requirements in an effort to reach broader transport, housing, and sustainability goals. Municipal studies and review of parking requirements are popping up all over the nation, as well as in cities like Toronto, London and Mexico City.

The City of Dallas has provided some historical context surrounding the rationale underlying the adoption of most parking requirements around the nation:

The driving force behind required parking minimums was an attempt by 20th century city planners to relieve congestion on public right-of-way caused by the sudden appearance and mass adoption of private passenger motor vehicles, which carried workers between work in dense commercial city centers and home in remote suburban subdivisions. Within the span of a century, the invention of steel, concrete, and electricity led major American metropolises to develop their centers into dedicated business districts while suburban single-family subdivisions, built at break-neck speed after World War II and offering affordable land ownership that echoed an agricultural past, proliferated in outer reaches around cities. Once built incrementally with a mix of residential and nonresidential land uses at “human scale” distances to be easily traversed by foot, horse, bicycle, or, later, trolley and rail, cities quickly bifurcated into uniform land use categories at great distances bridged only by the automobile and new highway system.<sup>43</sup>

The changes associated with rapid suburbanization and increased use of the automobile for travel, coupled with steadily lower usage of public transportation systems in many cities, resulted in increased parking requirements. Academic critique of parking minimums has focused on two faults: the shoddy statistical basis on which minimum parking ratios were formed and the hidden costs of free and ample parking.

Parking ratios are based on on-site empirical observations and statistical analysis by transportation engineers, compiled and reported in the Parking Generation Manual produced by the Institute of Transportation Engineers. The parking generated by various land uses are charted and a line of best fit is assigned to establish a parking ratio per square foot. However, critics accuse the manual of basing ratios on very few studies. The low amount of data creates statistically insignificant ratios that are nonetheless taken as

---

<sup>43</sup> See City of Dallas Plan Commission Staff Report, December 5, 2024, at 25-6, found at <https://cityofdallas.legistar.com/View.ashx?M=F&ID=13587738&GUID=76081E00-D316-403A-A20D-9007E8EACA3F> (citations omitted) (hereinafter, “Dallas Plan Commission Staff Report”).

authoritative and precise by city planners and community members participating in creating parking regulations. Not only are they imprecise, [but] they use free, suburban parking lots (already driving-distance from any points of origin) as their sources of data, totally agnostic to the area's built environment, transit, bike and pedestrian infrastructure, or the new vehicular trips that are generated by provision of free parking itself.<sup>44</sup>

To date, over 50 U.S. cities have reported the complete elimination of parking minimums citywide, and additionally, two states, Minnesota and Colorado, have considered prohibitions on city-imposed parking minimums. Other cities considering the elimination of parking requirements include Minneapolis and St. Paul, San Francisco, Richmond and Raleigh. In the fall of 2023, New York City's mayor proposed the elimination of parking minimums for the entire city and currently, Manhattan, downtown Brooklyn, transit centers and affordable housing are all exempted from parking minimums. Other American cities, both large and small, such as Fayetteville, Arkansas and Seattle, have eliminated parking minimums in significant portions of the city or for entire categories of land uses. Most recently, Atlanta has enhanced its existing exemptions around transit and around activity centers by eliminating minimums inside their BeltLine ring, a 22 square-mile redeveloping industrial zone following a commercial rail-turned-multi-use trail that encircles the city center. Other major cities such as Houston and Boston have eliminated minimums for downtown cores, transit and activity centers, and some housing uses.

Since much of this shift in policy has been so recent and the timelines of development projects and cultural preference can be prolonged, studies of the impacts of reductions or removal of parking minimums have been few but provide general insights: new developments still provide most, all, or even more than the previously required amounts of off-street parking due to customer, tenant, or resident expectations, or development financing requirements. Elimination of parking minimums in Minneapolis in 2021 was found by a 2024 Pew Research Center report to directly contribute to flat rent prices in the city compared to increasing prices across Minnesota and comparable metropolitan areas. The elimination of parking minimums in Buffalo was found to lower new parking spaces by 21%, although this was driven by mixed-use development, while new dedicated residential or commercial development continued to produce more parking spaces than the previous minimum requirements. Seattle's parking reforms resulted in 40% less new parking being built, which exactly corresponds to a study published by King County (which includes Seattle) showing that 40% of parking spaces county-wide are never used.<sup>45</sup>

Let's pivot back to Texas. On November 2, 2024, the Austin City Council voted to eliminate practically all minimum parking requirements, including those for single-family

---

<sup>44</sup> *Id.* at 25-7 (citation omitted).

<sup>45</sup> *Id.* at 25-12—25-13 (citations omitted).

homes, apartment buildings, offices and shopping malls.<sup>46</sup> Many developers and housing advocates contend that parking requirements—often referred to as “parking minimums”—drive up housing costs while enabling dependency on cars, a major source of carbon emissions.<sup>47</sup>

Until now, Austin set out requirements for virtually every way people use land: community gardens, art galleries, funeral homes and restaurants. In a state with a high number of drunken driving incidents, Austin — like other major Texas cities — required a certain amount of parking at liquor stores, cocktail lounges and breweries.

For residential properties, those requirements stifle the amount of housing that can be built and lead to higher housing costs for tenants who may not even own a car, critics of the rules say. Austin has required every single-family home to have room to park at least two cars. For apartments, that requirement was one-and-a-half spaces for a one-bedroom apartment plus half a space for every additional bedroom.

Building and maintaining those spaces is expensive, studies show—a cost that ultimately gets passed onto homeowners and renters. Some estimates peg the cost of a parking spot in a typical surface lot at anywhere from \$5,000 to \$10,000—while a spot in a structure like a parking garage can cost between \$25,000 to \$65,000.

An estimate by Austin officials projected that “requiring one additional parking space per unit increases rent by up to [\$200 a month]” while also cutting the amount of units developers can build on the land, which leads to tenants bearing a greater share of the land costs via their rent.<sup>48</sup>

Not unlike the issue of gentle density, Dallas has followed Austin’s lead on minimum parking requirements—and in likelihood will adopt revised minimum parking regulations that are incremental rather than comprehensive.

---

<sup>46</sup> See City of Austin, Tex., Ordinance No.20231102-028, adopted on November 2, 2024.

<sup>47</sup> Fechter, Joshua, “To fight climate change and housing shortage, Austin becomes largest U.S. city to drop parking-spot requirements.” *Texas Tribune* (Nov. 2, 2024), found at <https://www.texastribune.org/2023/11/02/austin-minimum-parking-requirements-housing-shortage/>.

<sup>48</sup> *Id.*

Like most cities, Dallas specifies the quantity of off-street parking spaces required, usually stated as a ratio of spaces per some characteristic of the land use. Most nonresidential land uses require parking spaces per square feet of floor area, while others allot parking spaces by another variable such as the number of beds (hospitals and nursing homes), type of classroom (schools), number of guest rooms (hotels), or other relevant characteristics. Most residential and lodging land uses have parking spaces prescribed per dwelling unit, bedroom, or suite. The Dallas Development Code allows partial reductions in required parking for tree preservation and bicycle parking provision, or in the case of an exception by the Board of Adjustment or director of the Department of Planning & Urban Design.<sup>49</sup>

At the request of the City Plan Commission in October 2019, in the following two years Dallas held virtual and public input sessions to better define issues with the City's parking regulations, particularly as they impacted neighborhoods and businesses. The City focused on the burden that parking requirements added to housing costs, and ultimately suggesting that parking minimums needed to be lowered. City staff confirmed that parking spaces add \$100-\$200 to monthly rent or mortgage costs, and that each additional \$100 per month requires \$4,000 per year of additional income to afford that home.<sup>50</sup> Additional detailed studies were performed by the City, and a long-awaited Plan Commission workshop was held on January 16, 2025. Plan Commissioners were given a 72-page draft of parking ordinance amendments, and the workshop (which included public comments) lasted more than seven hours. Proponents of parking reform believed that the minimum parking requirements hindered new business and diverted residents from using public transportation, hiking or biking. Opponents of parking reform generally agreed that some amendments to the City's outdated parking regulations were necessary, but the elimination of minimum parking requirements was not one of them. The concern, according to the opponents, was that some business operators will provide no parking unless the City mandates it.<sup>51</sup>

The *Dallas Morning News* Editorial Page previously had weighed in on the matter, writing that “[r]educing parking requirements rather than eliminating them is the better course of action, and it should happen carefully and gradually.” It suggested that a pilot program would be advisable, “reduc[ing] parking requirements in a few areas to see if the policy really delivers on its promises.” While noting that many cities across the country have eliminated minimum parking requirements, “this policy shift is fairly recent, and

---

<sup>49</sup> See Dallas Plan Commission Staff Report at 25-4.

<sup>50</sup> *Id.* at 25-14.

<sup>51</sup> See, e.g., “Plan Commission Seeks Compromise on Parking Minimums, Will Revisit the Matter on Feb. 13,” by April Towery in *Candy’s Dirt* (Jan. 19, 2025), found at <https://candysdirt.com/2025/01/19/plan-commission-seeks-compromise-on-parking-minimums-will-revisit-the-matter-on-feb-13/>.

studies about its effects are limited.” The better course, according to the Editorial, was to wait and see before eliminating minimum requirements. It ended by stating

The city should have learned an important lesson with the hotly contested Forward Dallas [comprehensive land use] plan. Trying to force major urban planning changes on residents who don’t want them is a bad move, and there is ample concern about the parking proposal. Dallas is not a social engineering playground. . . . Sweeping policy ideas that aren’t well understood need to be tested first.<sup>52</sup>

Regular City Hall columnist Dallas Cothrum, a developer in the Dallas area, bemoaned the generational aspect of the parking dispute:

The subject likely will break down along generational lines. . . . We’ll see a big boomer turnout of affluent voters who are committed to looking backward. Think expansive, open parking lots and suburban-like development based on required parking ratios. The median age in Dallas is around 40. The median voter is well into their 60s. . . . When this issue reaches the City Council, votes will be more important than public policy or economic development. Dallas is paving (literally) the future by making it conform to the standards of people who won’t be living in it. Think Fred Flintstone when George Jetson is more appropriate.<sup>53</sup>

But on January 16, all minimum parking requirements were not tossed overboard by the Plan Commission. Dallas city staff members were requested to bring back various revisions to the proposed parking regulations at a February 13 meeting. Briefly, in general, (1) all single-family residential and townhome parking minimums would remain unchanged; (2) duplex parking minimums would match residential parking minimums (one space per dwelling unit); (3) all parking minimums would be eliminated for all uses (including all residential uses) within a one-half mile radius of light rail or streetcar station; and (4) all multifamily parking minimums would remain intact for property within 300 feet of single-family zoned property.<sup>54</sup> Ultimately, on May 14, 2025, in a 14-1 vote, the revisions suggested by the Plan Commission were approved by the Dallas City Council. The “wait and see” approach suggested by the *Dallas Morning News* Editorial Board won the day.

---

<sup>52</sup> *Dallas Morning News*, “Don’t Throw Out Required Parking” (Dec. 16, 2024) at 9A.

<sup>53</sup> *Dallas Morning News*, “Dallas is fumbling parking solutions again” (Jan. 16, 2025) at 6A.

<sup>54</sup> See City of Dallas Plan Commission Staff Report, February 13, 2025, at 2-3—2-4, found at <https://cityofdallas.legistar.com/View.ashx?M=F&ID=13738212&GUID=5D0F2654-998B-41B0-AE6E-244710C87D72>.

Although parking reform was in the media spotlight in Dallas and Austin, attracting newspaper, television and social media coverage, other Texas cities have also been experimenting with reducing or abolishing parking minimums.<sup>55</sup> Bastrop's parking reforms have come as part of a comprehensive urban renewal program meant to provide a path to sustainable growth and protect against extreme weather as the city continues to grow. Like Austin, Bastrop has been growing at a rapid pace and has faced increasing challenges from an unpredictable climate, which could have contributed to its decision to adopt a far-reaching, comprehensive plan to account for these future needs. Bastrop's comprehensive plan, however, has even broader application than the one implemented in Austin. In certain parts of Bastrop, new developments must conform to a specific design system known as the "Bastrop Block" and described in a dedicated pattern book available from the city website.<sup>56</sup> Besides helping resist flooding, these blocks emphasize traits meant to make the area attractive to new residents, like walkability, sustainability, and easy navigability.<sup>57</sup> Since abolishing parking minimums, Bastrop has managed to keep such regulations off the books. Bastrop's website confirms that the city does not require minimum parking for commercial property.<sup>58</sup> It seems that these reforms have taken hold, as of now.

---

<sup>55</sup> Other Texas cities that have implemented city-wide parking minimums or zone- or district-specific parking minimums are Bandera (citywide), Beaumont (central business district), Brownsville (new downtown businesses), Cleburne (downtown core district), Decatur (Decatur Square business district), El Paso (downtown), McGregor (central business district), Elgin (Downtown Historic District), Killeen (a district in the city), Laredo (central business district and Arts and Entertainment District), Longview (central business district), Lubbock (in Base Mixed-Use District), Midland (central business district), Plano (BG Downtown Business/Government District), San Angelo (central business district), San Antonio (Downtown "D" District), San Marcos (central business district with certain restrictions for multifamily uses), Texarkana (central business district), Uvalde (central business district), Waco (C-4 Central Commercial District), and Weatherford (central business district and certain non-residential uses). The foregoing listing is a brief summary of parking regulations in each city; for more comprehensive analysis, please refer to each city's land use regulations. The foregoing listing of cities was compiled by Matthew Goebel of Clarion Associates of Denver, Colorado, and was presented by Mr. Goebel on April 11, 2025, at the 29th Annual Land Use Conference sponsored by the law school of The University of Texas at Austin.

<sup>56</sup> Simple city design, "*Authentic Bastrop Pattern Book*" 2019, 10, found at <https://www.cityofbastrop.org/upload/page/0107/docs/B3%20PATTERN%20BOOK%20-%20Compressed.pdf>.

<sup>57</sup> *Id.*

<sup>58</sup> FAQ, City of Bastrop Development Process Webpage, found at <https://www.cityofbastrop.org/page/plan.development/>.

Likewise, Taylor, Texas, located approximately 40 miles northeast of Austin, eliminated its parking minimums in 2023 to return to a trajectory favoring the population-dense grid system that characterized urban planning before cars became the dominant mode of transportation. According to Taylor’s former Assistant City Manager, Tom Yantis, such measures help lower housing costs and increase the potential tax bases of the cities that implement them.<sup>59</sup> This method resembles the approach taken four years earlier in Bastrop by favoring a grid system consisting of dense, mixed-use units separated by streets meant to accommodate bike and pedestrian use as well as cars. Lowering housing costs and maximizing tax revenue are powerful motivators for the leadership of growing cities, especially when similar measures have already been taken in larger cities in the region, like Austin.

Taylor’s parking regulations are tied to its use of “Place Types” in its planning and zoning decisions. “Place types” refer to an approach to zoning that focuses on the general character of a place rather than attempting to regulate the specific uses of that place.<sup>60</sup> There are different categories of place type outlined in the paper Taylor provides. High-density, walkable, mixed-use developments that provide a range of services as well as housing are encouraged. Taylor’s complete rejection of parking minimums in areas covered by this plan is meant to incentivize maximizing the utility of each property.

Not every city in Texas, however, has pursued a comprehensive overhaul of local parking laws. Houston, aware of Austin’s move to abolish parking minimums, has been incrementally abolishing or decreasing its own parking minimums in its city center since 2018.<sup>61</sup> Beginning with its Central Business District, Houston has slowly added parts of its downtown to the list of zones exempt from the parking minimums applicable to the rest of the city, adding the remainder of its east downtown and parts of midtown.<sup>62</sup> Houston, famous for refusing to adopt zoning ordinances, came to rely on parking minimums as a roundabout way of establishing *de facto* retail zones. This system flew in the face of Houston’s otherwise market-oriented approach to urban planning, something that multiple news outlets and advocacy groups were not afraid to point out. Perhaps Houston’s slow

---

<sup>59</sup> Fechter, Joshua “Why some Texas cities are getting rid of their minimum parking rules” *The Texas Tribune*, (Mar. 18, 2024), Found at <https://www.texastribune.org/2024/03/18/texas-cities-parking-rules-housing-climate/>.

<sup>60</sup> Planning & Zoning –“Designing the Future of Taylor.”

<sup>61</sup> Houston Planning & Development Department, Market-Based Parking Frequently Asked Questions, Found at <https://www.houstontx.gov/planning/docs/pdfs/Market Based Parking FAQs final 6.20.19.pdf>.

<sup>62</sup> *Id.*

move toward market-based parking will serve as a guide for Dallas to follow in its future efforts to wean off large surface lots.

Austin and Dallas, the two largest Texas cities to enact such parking reforms, have taken two different approaches to solving the off-street parking problem. Austin's sweeping action, coupled with more direct housing regulations, has had noticeable results on Austin's downtown housing prices. While Dallas' new policies have only been effective for a short time, other cities that have followed the gradual approach to parking reform like Minneapolis have shown promising results that result in less initial shock to existing local property owners. In Texas, however, it seems that most cities that have implemented parking reform have arrived at the same conclusion as Austin and implemented these reforms as part of broader urban renewal plans. Bastrop and Taylor both reference urban design philosophies used before cars dominated American transport, but these lofty ambitions are not what allowed these cities to change course so quickly. Unlike a city the size of Dallas, Bastrop and Taylor have relatively small populations and city centers, so implementing these reforms will not be as arduous as attempting to do so in a larger city. Further, the comprehensive approach provides good publicity for a new generation of homeowners for whom climate change is an ever-growing concern and that is aware of the impact a car-centric society has on these dangers.

As the number of cities reforming their parking regulations grows, they will have to evaluate how to effectuate this transition without causing panic among car-dependent residents and businesses. This is especially true for Texas cities, which score notoriously poorly on public transit usability and walkability. In fact, Arlington, Texas, is the most populous city in the United States to have no public transit network.<sup>63</sup> Houston, the Texas city with the highest percentage of commuters using public transit, has only 3.56% of commuters routinely using public transit.<sup>64</sup> Without a population accustomed to using public transit and often lackluster transit networks, Texas cities may have a hard time adjusting to reduced parking capacity and increased demand that will come with decreased car use. Further examination of this issue should focus on steps that Texas cities could take to provide residents with effective public alternatives to car travel as cities shift away from car-centric design. Until people have a convenient and cost-effective alternative to private car travel, they will feel the pressure of ever-shrinking parking availability in downtown areas.

Parking reform, both in Austin and in Dallas, has been a lengthy process, usually with both advocates and opponents stating valid justifications for their positions. It will be interesting to see if Austin teaches Dallas something about how to handle minimum

---

<sup>63</sup> AllTransit, "Dallas, TX Fact Sheet," found at <https://alltransit.cnt.org/metrics/?addr=Dallas,%20TX,%20USA>.

<sup>64</sup> AllTransit, "Houston, TX Fact Sheet," found at <https://alltransit.cnt.org/metrics/?addr=Houston,%20TX,%20USA>.

parking requirements or whether Dallas learns from Austin that eliminating minimum parking requirements does not have the intended effects upon lowering housing costs and reducing dependency on cars. Probably a coin toss at the moment!

## V.

### **Yet Another Very Brief Update on Recent Developments in Texas Municipal STR Litigation**

Municipal regulation of short-term rentals is a topic that I have addressed on multiple occasions at The University of Texas Land Use Conference. Consequently, I will simply refer you to my previous presentations for details about the history, case law and so far, unsuccessful legislation regarding municipal STR regulations in Texas. But during the last twelve months or so, Texas courts remain active in this evolving area of the law. In fact, there have been three court decisions since last year's gathering in Austin—unreported federal district court decisions upholding STR ordinances in both the City of New Braunfels and the Village of Volente, as well as an appellate decision prohibiting the City of Dallas from enforcing its STR ordinance. Since I reside in Dallas, let me start with my hometown.

A state district court in Dallas County entered a preliminary injunction against the City of Dallas on December 6, 2023, prohibiting it from enforcing its then-recently adopted STR regulations.<sup>65</sup> The Dallas Opinion by Judge Monica Purdy contained fairly detailed findings of fact in issuing the preliminary injunction, including:

- Short-term rentals have been a vibrant industry in Dallas for decades and STRs provide temporary lodgings for a variety of guests: out-of-state visitors traveling to Dallas for weddings, concerts, to see family members who are hospitalized, or local Dallas citizens who are briefly dislodged from their residences for construction or emergency<sup>66</sup>;
- As early as October 2019, Dallas began collecting hotel occupancy taxes from STRs and established an online registration portal to assist STR owners to register their properties with the City<sup>67</sup>;

---

<sup>65</sup> *Dallas Short-Term Rental Alliance, Sammy Aflalo, Vera Elkins, Danielle Lindsey and Denise Lowery v. City of Dallas*, Cause No. DC-23-16845, 95th Judicial District Court, Dallas County, Texas (hereinafter "Dallas Opinion"). A copy of the Dallas Opinion can be found online at <https://www.dallascounty.org/services/record-search/>. Dallas adopted two STR ordinances, one a zoning ordinance and one a registration ordinance. The plaintiffs sought only declaratory relief.

<sup>66</sup> Dallas Opinion at 2.

<sup>67</sup> *Id.* at 3.

- Dallas adopted STR regulatory ordinances on June 14, 2023, and the “short-term rental lodging” regulations will ban approximately 95% of STRs in the City of Dallas<sup>68</sup>;
- Notwithstanding the City’s June 2023 studies it relied upon in enacting the STR ordinances, the City’s “alleged governmental interests” mostly “centered around a small number of ‘nuisance’ properties” as well as the City’s “apparent concerns regarding the lack of affordable housing,” complaints from community members, “preventing excessive traffic, noise, and density” and “broad and undefined interests regarding life, health, safety, noise, and welfare”<sup>69</sup>;
- The plaintiffs presented evidence that the 2023 studies were inconclusive and overestimated the associated concerns with STRs, and therefore were rationally unrelated to the City’s claimed governmental interests, many of which interests “are unquantified and unquantifiable, and that the City does not know how much improvement the [STR ordinances] will actually achieve in those areas—if any”<sup>70</sup>; and
- The City’s registration regulations, adopted in conjunction with the short-term rental lodging regulations, are “oppressive regulations.”<sup>71</sup>

Based on those findings of fact, the state district court’s conclusions of law were not surprising. The trial judge held that Dallas regulations “are likely unconstitutionally oppressive,” and that “the right to conduct STR activity is a vested right in Texas that is a component of home ownership.” Moreover, she concluded that “nuisance ordinances that already exist in the Dallas City Code could be enforced to prevent any nuisance violation.”<sup>72</sup> Further, echoing prior case law in Texas, the trial court concluded that the City’s STR regulations “constitute a taking of Plaintiffs’ property, particularly those properties that were acquired and improved upon for the purpose of operating an STR, in that they can no longer engage in the STR activity to which they have a vested right to

---

<sup>68</sup> *Id.* The two Dallas ordinances in question were Ordinance No. 32482 (creating short-term rental lodging as a land use in the Dallas Development Code) and Ordinance No. 32473 (registration requirements for short-term rentals). As noted in the Dallas Opinion, both ordinances were adopted by the Dallas City Council on June 14, 2023.

<sup>69</sup> *Id.* at 4.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 5.

conduct under Texas law.”<sup>73</sup> The Dallas STR regulations were determined to be unconstitutionally retroactive, in violation of the plaintiffs’ equal protection rights, concluding that Dallas’ STR ordinances violated the Texas Zoning Enabling Act because they were a ban on residential use, “remembering that STR activity is a vested property right as a component of home ownership.”<sup>74</sup>

The one legal issue that has not been addressed to date in Texas STR jurisprudence is the effect of House Bill 2127, the “super preemption” or “death star” legislation enacted by the Texas Legislature, and signed by the Governor, in 2023. The Dallas Opinion addressed that issue head on:

Plaintiffs are likely to prevail on their claim that the [Dallas ordinances] violate the so-called “Death Star Act,” enacted in the last legislative session as HB 2127, and codified in relevant part of section 1.004 of the Property Code. The Court notes that this law is presently the valid and enforceable law of Texas, and that the City will have received any required notice of the claim by the time of trial on the merits. The Court concludes that sections 92.001, 92.002, 92.010, and 92.153 of the Property Code,<sup>[75]</sup> when construed in the full context of applicable Texas law (including established rights under property law and the HOT Tax provisions of the Texas Tax Code), show the Legislature’s intent to occupy the field of STR regulation and thus cause the [Dallas] Ordinances to be preempted and unenforceable under HB 2127.<sup>76</sup>

The City of Dallas filed an interlocutory appeal on December 27, 2023, in the Court of Appeals for the Fifth District of Texas at Dallas.<sup>77</sup> In its appeal, the City of Dallas strongly pushed back on the notion that House Bill 2127 preempts municipal regulation

---

<sup>73</sup> *Id.* at 5-6.

<sup>74</sup> *Id.* at 6-7.

<sup>75</sup> Chapter 92 of the Texas Property Code is entitled “Residential Tenancies.” Section 92.001 provides for definitions; Section 92.002 provides that Chapter 92 applies only to the relationship between landlords and tenants of residential rental property; Section 92.010 addresses occupancy limits in residential dwellings; and Section 92.153 addresses security devices on residential dwellings.

<sup>76</sup> Dallas Opinion at 7-8.

<sup>77</sup> Case No. 05-23-01309-CV in the Court of Appeals for the Fifth District of Texas at Dallas.

of STRs, asserting that House Bill 2127 is unconstitutional.<sup>78</sup> Moreover, Dallas contended that Chapters 92 and 93 of the Texas Property Code “not only fail to show occupation of the field of [municipal] STR regulation but . . . do not apply to that field at all.”<sup>79</sup>

The Court of Appeals did not buy Dallas’ arguments. In a short, and arguably not well written, opinion on February 7, 2025, the appellate court briefly analyzed the standard of review for granting temporary injunctions (probable right to relief and irreparable injury), and concluded that Dallas had not shown that the trial court abused its discretion in granting an injunction against the City’s enforcement of its STR ordinance.<sup>80</sup> Further, in two short paragraphs, the Court of Appeals briefly addressed, and then summarily dismissed, the City’s contention that House Bill 2127 was relevant to its review of the case:

Assuming arguendo that House Bill 2127 does not preempt the City’s [STR] ordinances, the constitutionality thereof is irrelevant to our review of the trial court’s order for an abuse of discretion concerning appellees’ due-course-of-law point. . . . Thus, we overrule the City. . . .<sup>81</sup>

On February 24, 2025, the City filed its Motion for Rehearing En Banc, generally arguing that Dallas has two STR ordinances (one is zoning, one is registration) and that the Court of Appeals erred by conflating the two ordinances. Moreover, the City argued that (1) Dallas’ modest registration requirements for STRs do not impede or deny the STR operators any vested right,<sup>82</sup> the Court of Appeals employed an improper analysis of the

---

<sup>78</sup> See *id.*, City of Dallas Brief at 34-40, relying in part upon *City of Houston v. State*, 2023 WL 5618634 (345th Dist. Ct., Travis County, Tex. Aug. 30, 2023), for the proposition that House Bill 2127 is facially unconstitutional.

<sup>79</sup> City of Dallas Brief at 36-37.

<sup>80</sup> Memorandum Opinion, *City of Dallas v. Dallas Short-Term Rental Alliance, Sammy Aflalo, Vera Elkins, Danielle Lindsey and Denise Lowery*, Appeal No. 05-23-01309-CV (Feb. 7, 2025). A copy of the Court of Appeals Memorandum Opinion can be found online at <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=9b6a0a15-8c6d-4cb7-a44d-3bc6b665b9c7&coa=coa05&DT=Opinion&MediaID=9ff2d164-ec22-41cf-a785-747fadcc77d6/>.

<sup>81</sup> *Id.* at 10.

<sup>82</sup> Motion for Rehearing En Banc at 7, *City of Dallas v. Dallas Short-Term Rental Alliance, Sammy Aflalo, Vera Elkins, Danielle Lindsey and Denise Lowery*, Appeal No. 05-23-01309-CV (Feb. 24, 2025). A copy of the Motion for Rehearing En Banc can be found online at (filed Feb. 24, 2025), found at <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=a0d3a613-e827-4a52-925d-fc1153bef914&coa=coa05&DT=Motion&MediaID=a2e2fa6b-e26d-4986-91c1-49421ea26256>.

operators' due course of law claim,<sup>83</sup> and the appellate panel failed to refer to any evidence in the record that supported the operators' due course of law claims.<sup>84</sup>

Editorial reaction and commentary were swift—and all against the City of Dallas continuing this litigation. On February 14, 2025, in an editorial the *Dallas Morning News* wrote:

Dallas can keep litigating by appealing to the Texas Supreme Court, but we can all see where this is headed. The appellate court ruling should be a cue to the council to come up with new restrictions that don't go as far as a ban and that are more likely to pass legal muster. . . . Dallas should consider giving up a legal fight it is likely to lose so it can create a better framework of regulations that crack down on bad actors while permitting some short-term rentals in neighborhoods.<sup>85</sup>

But recently two Texas cities have been successful defending their STR ordinances in federal court. The first is an unreported federal case from the United States District Court for the Western District of Texas, *Villanueva v. Village of Volente*.<sup>86</sup> The Village of Volente, Texas, on the shores of Lake Travis with approximately 600 full-time residents, amended its STR ordinance in March of 2023. According to the 2023 ordinance, STRs are not authorized in a residential or commercial zoned district unless a property owner receives a conditional use permit. The 2023 Ordinance lays out the following permitting application process. First, a property owner must submit an application that involves certifying that he or she has complied with various requirements. One of the requirements is that the property owner must submit an affidavit that states that neighbors within 500 feet of the property of an STR application must be given, among other things, information about how to report violations of the STR ordinance. Second, the City Secretary shall conduct an administrative review of the application to determine if the application is complete. Third, the Planning and Zoning Commission will hold a public hearing on the application after which it will make a recommendation to the City

---

<sup>83</sup> *Id.* at 8-9.

<sup>84</sup> *Id.* at 9.

<sup>85</sup> *Dallas Morning News*, "Dallas Must Restart on Short-Term Rental Ban" (Feb. 14, 2025) at 9A. The titles of commentary belied the thrust of reporting. See "Dallas Keep Spending Taxpayer Money to Fight Short-Term Rentals? Tab Is Up to \$3.5M," by April Towery in *Candy's Dirt* (Feb. 12, 2025), found at <https://candysdirt.com/2025/2/12/will-dallas-keep-spending-taxpayer-money-to-fight-short-term-rentals-tab-is-up-to-3-5m/> and "Dallas Airbnb, VRBO Owners To Keep Booking Guests Following Latest Court Victory: The city's list of legal options for banning short-term rentals is dwindling," by Kelly Dearmore in *The Dallas Observer* (Feb. 11, 2025), found at <https://www.dallasobserver.com/news/dallas-short-term-rental-owners-win-again-keep-operating-21728205>.

<sup>86</sup> 2024 WL 2143596 (W.D. Tex. May 13, 2024).

Council. Fourth, the City Council will then hold a public hearing and make a final decision on the STR application. The Ordinance instructs that when considering STR applications, both the Commission and the Council shall evaluate “the impact of the STR’s use on and the compatibility of the use with surrounding properties to ensure the appropriateness of the use at a particular location.” The Ordinance also gives both bodies the authority to recommend or impose conditions on the STR use that are “reasonably necessary to assure compliance with the[ ] standards and the purpose and intent of” the ordinance.<sup>87</sup>

The 2023 Ordinance also lays out a process by which Village residents can submit a written complaint to the City Secretary regarding an STR. The City Secretary is mandated to notify the property owner or operator within ten business days of any “substantiated complaint.” If the City Secretary finds that an STR owner has received three separate “substantiated complaints” in one twelve-month period, the STR permit shall be suspended. The Planning and Zoning Commission will then hold a public hearing to determine whether to recommend that the City Council revoke the STR permit. The Ordinance stipulates that the City Council, after public notice and a public hearing, has the authority to revoke a permit for the following reasons: (1) if there has been a substantial violation of the conditions of the CUP or a substantiated violation of any village ordinance or state law or regulation; (2) if the property owner has maintained the property in such a manner that is detrimental to the public’s health or safety or in a manner that constitutes a nuisance; (3) or if there has been a discontinuance of the STR use altogether. If an STR permit is revoked, the owner must wait one year before filing a new STR conditional use application.<sup>88</sup>

The plaintiffs in the lawsuit requested a preliminary injunction, relying upon a retroactivity claim under the Texas Constitution, an ultra vires claim under Texas law, and a freedom of assembly claim under both the U.S. and Texas Constitutions.<sup>89</sup> The district court rejected all plaintiffs’ claims, concluding that

[i]n passing the 2023 Ordinance, the Village of Volente sought to find a compromise between the private property rights of those who wished to operate STRs and other residents in their community who wished to enjoy their property free of the issues that had arisen in the Village due to STR tenants. In doing so, the Village’s action abides by a well-trodden principle in property law: that “all property in this country is held under the implied obligation that the owner’s use of it shall not be injurious to the community.” The Court finds no reason at this stage of the litigation to 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. For the reasons stated above, the Court finds that Plaintiffs are unlikely to succeed on the

---

<sup>87</sup> *Villanueva* at \*2.

<sup>88</sup> *Id.* at \*3.

<sup>89</sup> *Id.* at \*5.

merits of the three claims that form the basis of their motion for preliminary injunction.<sup>90</sup>

The second, and most recent, city that was successful in federal court was the City of New Braunfels. In 2011, New Braunfels announced plans to begin regulating short-term rentals, and all owners engaging in short-term rental were grandfathered in, while “later entrants” to the market were not allowed the same permits.<sup>91</sup> Later that year, the City adopted a new zoning ordinance, and short-term rentals within residential zones (single-family and duplex) were prohibited, while short-term rentals in commercially zoned districts need a permit to engage in short-term rentals. The City referenced “several workshops’ on the ‘protection of residential neighborhoods’ as the support for the Ordinance.” The preamble to the ordinance contained evidence of the basis for the restrictions and the purpose for the ordinance was to preserve STRs in some instances “while ensuring that such rental use does not create adverse impacts to residential neighborhoods due to excessive traffic, noise and density.”<sup>92</sup>

All of the plaintiff homeowners bought their homes after 2011, articulated various reasons why they wished to operate short-term rentals, and none of them intended to simply rent their homes. The New Braunfels prohibition on STR rentals in residentially zoned areas prohibited them from offering their homes for such rentals, and they filed suit, alleging that the City’s ordinance violated the equal protection and due process provisions of the Texas and United States Constitutions.<sup>93</sup>

In addressing the plaintiffs’ due process and equal protection claims, the U.S. Magistrate determined that rational basis review applied to their claims, not strict construction. The City contended “that the concept of strict construction in the zoning ordinance context refers to the initial step of interpreting an ordinance to determine whether it applies to the conduct in question.” The U.S. Magistrate agreed, writing that “strict construction functions solely to determine when an ordinance applies to given conduct.”<sup>94</sup>

---

<sup>90</sup> *Id.* at 14 (citation omitted).

<sup>91</sup> See Report and Recommendation of The United States Magistrate Judge at 2 (July 29, 2021) in *Rafael Marfil, Verge Productions, LLC, Enrico Marfil, Naomi Marfil, Korey A. Rohlack, Daniel Olveda and Douglas Wayne Mathes v. City of New Braunfels, Texas*, Case No. 6:20-CV-00248-ADA-JCM (W.D. Tex.).

<sup>92</sup> *Id.* at 2-3.

<sup>93</sup> *Id.* at 3-4.

<sup>94</sup> *Id.* at 6.

It was noted “[t]hat since STRs are a relatively novel issue, there is no consensus among the Texas courts in determining whether the right to lease property is a fundamental right protected by the Due Process Clause. Nonetheless, from a survey of Texas case law, the Court is convinced that the right to lease is not a fundamental right subject to strict scrutiny.”<sup>95</sup> Moreover, even though the Texas Attorney General had intervened in the *Zaatari* case when Austin’s STR ordinance had been challenged, “no Texas or Fifth Circuit court . . . has expressly held that the right to lease is fundamental and subject to strict scrutiny. Even if *Zaatari* had expressly held that the right to lease is fundamental, the Texas Supreme Court has not yet reviewed the case.”<sup>96</sup> The homeowners’ federal equal protection claims were similarly dispatched by the U.S. Magistrate:

Homeowners complain that the City had no rational basis for concluding that homes rented out for short periods actually affect trash, noise, or parking more significantly than long-term rentals. . . . Even assuming this is true, the test is not whether STRs actually affect these elements but whether the court can conceive that the [New Braunfels] Ordinance could potentially assuage these problems. Moreover, the Court need not use its imagination to conceive of the way zoning ordinances preserve the nature of a city center or understand a community member’s concerns; these are scenarios that already exist.<sup>97</sup>

After concluding that the plaintiffs’ state law claims of preemption also failed,<sup>98</sup> the U.S. Magistrate recommended that the case be dismissed with prejudice.<sup>99</sup> In a short opinion on January 10, 2025, Federal District Judge Alan Albright adopted the U.S. Magistrate’s Report and Recommendation, and granted the City’s motion for summary judgment.<sup>100</sup> Judge Albright determined that rational basis is the appropriate standard here and “[t]his Court “can certainly understand how short-term renters could affect the residential character within neighborhoods, specifically those which are zoned for single

---

<sup>95</sup> *Id.* at 7 (citations omitted).

<sup>96</sup> *Id.* at 8-9, citing *Zaatari v. City of Austin*, 615 S.W.3d 172, 190-91 (Tex. App.—Austin 2019).

<sup>97</sup> *Id.* at 14.

<sup>98</sup> *Id.* at 15-16.

<sup>99</sup> *Id.* at 18.

<sup>100</sup> See *Rafael Marfil, et al. v. City of New Braunfels, Texas*, 2025 WL 243028 (W.D. Tex. Jan. 10, 2025).

or dual family living.”<sup>101</sup> Further, the Court failed “to see how it can be unduly burdensome to use a house in accordance with the limitations that were in place when they chose to purchase the additional properties,” concluding that “there are rational government interests” that support New Braunfels’ STR ordinance.<sup>102</sup> Plaintiffs filed a Notice of Appeal to the Fifth Circuit on January 13, 2025, where it is currently pending.<sup>103</sup>

While the last year has yielded two federal court opinions favorable to cities and a state appellate decision to the contrary, it is unmistakably clear that uncertainty reigns supreme about the scope of municipal regulation of short-term rentals in Texas. A year ago, I quoted Texas Supreme Court Justice Evan A. Young. He wrote in a short opinion in support of the denial of the petition for review in *City of Grapevine v. Muns*<sup>104</sup> that Grapevine, like many other municipalities, sought to outlaw the STR market entirely, and due to the “explosion” of the short-term rental market, he “tended to agree” that there are constitutional questions which should be addressed by the Texas Supreme Court.<sup>105</sup> Notwithstanding those constitutional questions, he wrote that the *Muns* case “starts out as a less-than-ideal vehicle for resolving the constitutional issues” associated with short-term rental bans due to complex administrative exhaustion and enforcement issues unique to *Muns*:

Given the seeming prevalence of short-term rental bans, and of the opposition against them, I am confident that other cases—unburdened by potentially dispositive collateral questions—will lead to a better vehicle for this Court to address the bans’ constitutionality.<sup>106</sup>

As the U.S. Magistrate wrote in *Marfil*, absent a decision by the Texas Supreme Court, state and federal courts must individually decide how Texas law will be interpreted in reviewing municipal STR regulations. Which case will be “a better vehicle” for the Texas Supreme Court to determine the constitutionality/legality of municipal bans on STRs? I believe the uncertainty will continue until such time as the Texas Supreme Court finds that “better vehicle” to provide guidance to cities struggling with this issue.

---

<sup>101</sup> *Id.* at 2.

<sup>102</sup> *Id.*

<sup>103</sup> See Notice of Appeal (Jan. 13, 2025) in *Rafael Marfil, Verge Productions, LLC, Enrico Marfil, Naomi Marfil, Korey A. Rohlack, Daniel Olveda and Douglas Wayne Mathes v. City of New Braunfels, Texas*, Case No. 6:20-CV-00248-ADA-JCM (W.D. Tex.).

<sup>104</sup> 651 S.W.3d 317 (Tex. App.—Fort Worth 2021, pet. denied).

<sup>105</sup> Opinion on Petition for Review in *City of Grapevine v. Muns*, Case No. 22-0044, Texas Supreme Court (June 16, 2023) at 2-3.

<sup>106</sup> *Id.* at 4.

## VI.

### **Deference to Decisions of a Zoning Board of Adjustment**

The City of Dallas has had a long, tortured history with poker clubs. In 2020, Dallas' building official issued TCHDallas2 a certificate of occupancy (CO) for commercial amusement (indoor) use for a poker club on Harry Hines Boulevard in northwest Dallas. On December 17, 2021, an assistant building official revoked TCHDallas2's CO because the operations at the location violated Section 47.04 of the Texas Penal Code, and the CO had been issued in error. On January 5, 2022, TCHDallas2 appealed the revocation of its CO to the Zoning Board of Adjustment (BOA). On February 22, 2022, and March 22, 2022, the BOA held hearings on TCHDallas2's appeal.<sup>107</sup>

The Dallas BOA was tasked with deciding "whether the building official erred when the building official revoked the certificate of occupancy by concluding that it was issued in error because the applicant violates Texas Penal Code Section 47.04, keeping a gambling place." The BOA's attorney clarified, "so a violation of one of those [ordinances, regulations, or laws] is what you have to determine." The BOA presumed that the TCH use of the property was a legal use. The BOA discussed whether TCHDallas2 came within the "safe harbor" provided by Section 47.04(b) of the Penal Code. In doing so, the BOA noted that it took TCHDallas2 two years of due diligence to obtain the CO. One board member stated, "we, as a Board, are deciding whether or not the city official erred, not whether or not the use is illegal." The BOA also discussed the fact that TCHDallas2 had not been prosecuted by the district attorney, and the issue of whether its operation was legal or illegal remained undetermined by a court of law. At the conclusion of the hearing, the BOA voted unanimously to reverse the building official's decision and reinstate TCHDallas2's CO.<sup>108</sup>

On April 1, 2022, the building official in his official capacity for the City of Dallas timely filed an original petition and petition for writ of certiorari against the BOA, seeking a reversal of the BOA's decision. Following a trial before the court on October 25, 2022, the trial court entered an order granting the building official's first amended petition and petition for writ of certiorari. The trial court determined that the BOA "abused its discretion and made an illegal decision" when it reversed the building official's revocation of TCHDallas2's CO "which was issued in violation of state law." The trial court reversed the BOA's decision and entered judgment in favor of the building official. On November

---

<sup>107</sup> *TCHDallas2, LLC v. Espinoza*, No. 05-22-01278-CV, 2024 WL 3948322 (Tex. App.—Dallas Aug. 27, 2024) at \*1. Section 47.04 of the Texas Penal Code generally addresses places of gambling and provides criminal penalties for operating places of gambling.

<sup>108</sup> *Id.* at \*1-2.

28, 2022, TCHDallas2 filed its notice of appeal.<sup>109</sup>

The court of appeals, in a detailed discussion of the deference owed to the decisions of boards of adjustment, held that the trial court had impermissibly substituted its own discretion in place of the BOA's, thereby concluding that the trial court erred in failing to afford the required deference to the BOA's decision. Because the BOA could have reasonably reached more than one decision in the case, the trial court was required to give deference to the BOA's decision. Consequently, the appellate court reversed the trial court's judgment and affirmed the BOA's reinstatement of TCHDallas2's CO.<sup>110</sup> On December 19, 2024, the Dallas Building Official filed a petition for review in the Texas Supreme Court, arguing that a certificate of occupancy should not have been issued for the poker club, and an amicus brief was filed by the City of Houston.<sup>111</sup> On September 5, 2025, the Texas Supreme Court denied the building official's petition for review.

## VII.

### Conclusion

During the last year we have seen a Dallas community development corporation endeavor to provide a toolkit of options for cities in addressing gentrification and displacement of vulnerable communities. Will implementation of all or some of the proposed tools actually address those problems? Dallas shied away from gentle density last year and opted to allow it only if there is strong community support—that is, with “justification, higher scrutiny, and adherence with the locational strategy.”<sup>112</sup> Will that ever happen, and even if it does, will gentle density actually address gentrification and housing affordability? It will be interesting to see whether Austin's and Dallas' approach to minimum parking regulations are effective and actually reach broader transport, housing, and sustainability goals. That determination may take years, and it is highly unlikely that next year we will have answers to those questions. And while our “old friend” short-term rentals and municipal regulation of them remains a very hot topic with the landscape rapidly evolving against most such municipal regulation (although the *Volente* and *New Braunfels* decisions offered some hope for municipalities), there is no reason to expect that next year we will be closer to final resolution of this issue. With the continued population growth in Texas during the next year, and housing affordability and the scope of municipal regulatory authority remaining ill-defined, we should expect another bumpy ride!

---

<sup>109</sup> *Id.* at \*2.

<sup>110</sup> *Id.* at \*4-5.

<sup>111</sup> *Andres “Andrew” Espinoza, in his Official Capacity as the Building Official of the City of Dallas v. TCHDallas2*, No. 24-0851.

<sup>112</sup> *See* n. 37, *supra*.

## **ABOUT THE PRESENTER:**

### **Terrence S. Welch**

Terry began his legal career in the Dallas City Attorney's Office and he currently is one of the founding partners of Brown & Hofmeister, L.L.P. Over the years Terry has represented numerous growing communities in North Texas.

Terry received his Bachelor of Arts degree at the University of Illinois at Urbana-Champaign, his law degree from the University of Houston College of Law and a Master of Public Affairs at the Lyndon Baines Johnson School of Public Affairs at The University of Texas at Austin. Terry has authored and presented over 200 papers to various groups, including the American Bar Association, the Texas City Attorneys Association, the Texas Municipal League, the American Planning Association, the North Central Texas Council of Governments, CLE International, the National Business Institute and The University of Texas at Austin Continuing Legal Education Program. Terry's most recent publication was a chapter on municipal regulation of natural gas drilling in *Beyond the Fracking Wars*, published by the American Bar Association in late 2013. He has had four law review articles published in *The Review of Litigation*, *Southern Illinois University Law Journal*, *Baylor Law Review* and *The Vermont Journal of Environmental Law*. Terry also published articles on Confederate monuments, urban sprawl in Texas, municipal regulation of governmental uses as well as an article on the 2023 Colony Ridge fiasco in the *Zoning and Planning Law Report*. He was the 2004-05 Chair of the State and Local Government Law Section of the American Bar Association and Immediate Past Section Chair of the State and Local Government Relations Section of the Federal Bar Association. He also serves as the Vice Chair of the Board of Trustees of Dallas Academy, an exceptional school for children with learning differences, located in the White Rock Lake area of East Dallas. In May 2014, Terry was appointed an adjunct member of the City of Dallas Civil Service Board, subsequently was appointed to the Civil Service Board in August 2015 and currently serves as Chair of the Civil Service Board.

In his free time, Terry enjoys long distance running, having finished 54 marathons and 116 half-marathons as well as many 20Ks, 25Ks and 30Ks. Unfortunately, he is a slow runner!