



A Discussion of SB 840:

Its origin, the response, where it's going, and the key legal issues

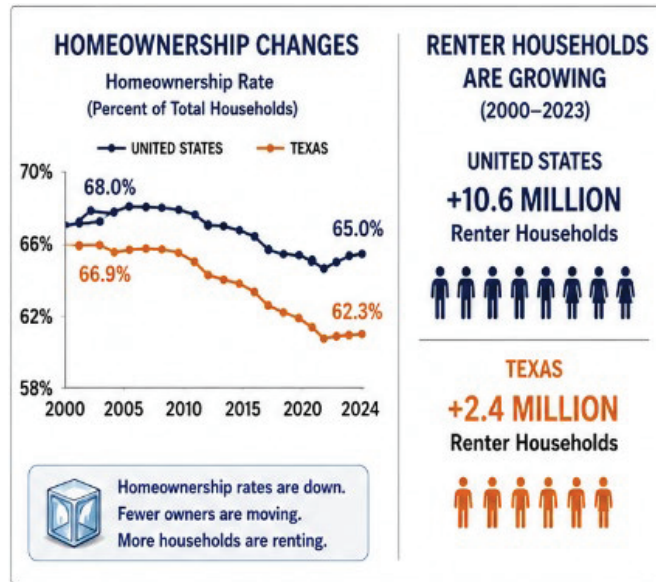
Tommy Mann, Winstead PC (Dallas)

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The Ingredients

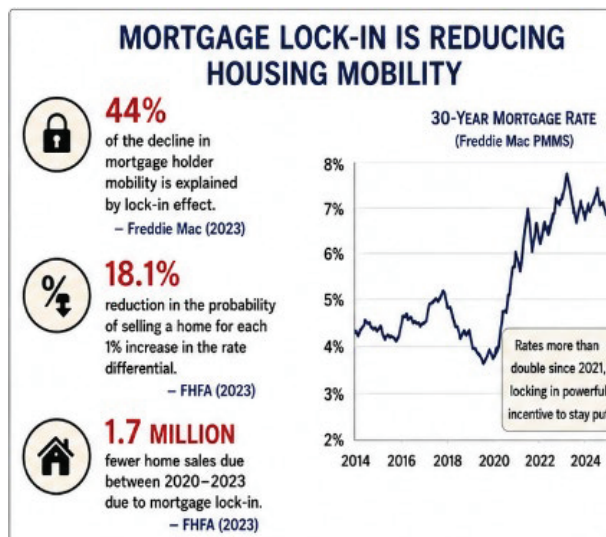
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More Renters



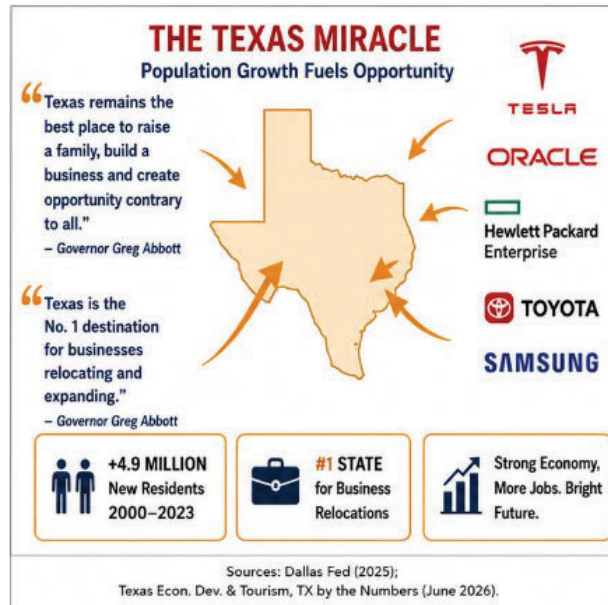
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Low Interest Rate Hangover



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Corporate Recruitment



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NIMBYISM

Hsieh & Moretti estimate that restrictive housing rules in high-productivity cities kept workers from moving to the places where they would be most productive, reducing U.S. aggregate growth by 36% from 1964–2009.

Chang-Tai Hsieh & Enrico Moretti, “Housing Constraints and Spatial Misallocation,” *American Economic Journal: Macroeconomics*, 2019.



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The Result

Senate: The motion prevailed by the following vote: Yeas 31, Nays 0.

House: **SB 840**, as amended, was passed by (Record 3127): 106 Yeas, 33 Nays, 2 Present, not voting.



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City Responses

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City	Response
Frisco	- “Heavy Industrial”
Irving	- Minimum Height (8 stories) - Minimum 10% three bedroom units - Adequate public facilities
Grand Prairie	- Olympic size swimming pools - 60% three bedroom units - \$1mill+ in public art
Plano	- Minimum height depending on zoning - Increased park fees
Dallas	- No changes to local regulations - New processes adopted

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Legal Issues

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Uniformity

Sec. 211.005. DISTRICTS. (a) The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) Zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality.

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Vested Rights

Sec. 245.002. UNIFORMITY OF REQUIREMENTS.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

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Vested Rights – “Cherry Picking”

City of Austin v. Garza, 124 S.W.3d 867 (2003)

City’s Argument: “The City argues that section 245.002(d) allows developers like Garza, in addition to the locked-in right to develop the project under regulations in place when the initial application is filed, to cherry-pick what other regulations will govern development of his project. Rather than applying the comprehensive set of regulations in effect at the time of the first application, section 245.002(d) allows a developer to pick and choose bits and pieces of other development regulation passed over time to compile his own 'set' of applicable regulations. By granting developers that authority to compile their own set of rules, § 245.002(d) unconstitutionally delegates governmental authority to private actors.”

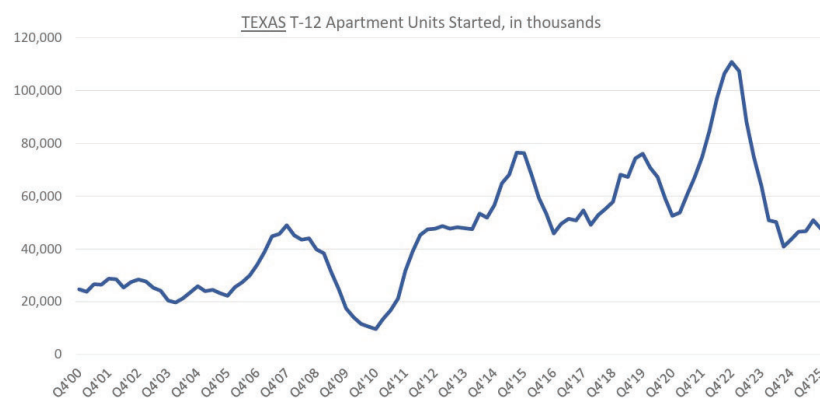
The Court: “...Here, the Legislature has allowed a private landowner to choose between two regulatory schemes: the one applicable at the time of the original application to subdivide and the one indicated in the subdivision plat... Because section 245.002(d) allows the developer to choose between two distinct [§24] regulatory schemes but does not allow the developer to create the scheme, it is not a delegation of legislative power...”

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What's next?

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City	Housing Starts under SB 840
Frisco	- ZERO
Irving	- ZERO
Grand Prairie	- ZERO
Plano	- SOME
Dallas	- MARKET DETERMINED



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Conclusion

