

SHORT-TERM RENTALS

Legal Landscape

PRESENTED BY THE CITY OF HOUSTON LEGAL DEPARTMENT



Constitutional Challenges to Short Term Rental Laws

- Takings
- Retroactivity
- Due process/Due course of law
- Equal Protection
- Right to Assembly

Taking Claims

“No person's property shall be taken, damaged, destroyed for or applied to public use without adequate compensation being made...” Tex. Const. art. I, § 17.

Types:

- 1) Physical taking: An unwarranted physical appropriation or invasion of the property.
- 2) Regulatory taking: When a governmental agency imposes restrictions that either deny a property owner all economically viable use of its property or that unreasonably interfere with the owner's right to use and enjoy the property.

Town Park Ctr., LLC v. City of Sealy, 639 S.W.3d 170, 192 (Tex. App.—Houston [1st Dist.] 2021, no pet.)

Retroactive Claim

“No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.” Tex. Const. art. I, § 16.

What is a retroactive law?

- “A retroactive law is one that extends to matters that occurred in the past.”
Tenet Hosps. Ltd. v. Rivera, 445 S.W.3d 698, 707 (Tex. 2014)

When is a retroactive law unconstitutional?

- Texas Supreme Court’s 3 prong test to determine whether a retroactive law is unconstitutional:
 - (1) the nature and strength of the public interest served by the statute as evidenced by the Legislature's factual findings;
 - (2) the nature of the prior right impaired by the statute; and
 - (3) the extent of the impairment.

Robinson v. Crown Cork & Seal Co., Inc., 335 S.W.3d 126, 145 (Tex. 2010)

Due Process/Due Course of Law Claim

“No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.” Tex. Const. art. I, § 19.

When does the government violate due process?

Step 1: Is there a liberty, property, or other enumerated interest that is entitled to protection?

Step 2: The person challenging the law must demonstrate the statute's purpose could not arguably be rationally related to a legitimate governmental interest, or the statute is so burdensome as to be oppressive in light of the governmental interest.

Patel v. Tex. Dep't of Licensing & Regulation, 469 S.W.3d 69, 87 (Tex. 2015)

Village of Tiki Island

Vill. of Tiki Island v. Ronquille, 463 S.W.3d 562, 565 (Tex. App.—Houston [1st Dist.] 2015, no pet.)

- 2014 - Village of Tiki Island (“Tiki”) adopted an STR ordinance prohibiting STRs but grandfathered certain STRs that were operating before March 24, 2011.
- Property owners who were not grandfathered filed a lawsuit claiming the STR ordinance was a regulatory taking

Trial Court: Temporary injunction issued against Tiki.

Court of Appeals: Affirmed the trial court’s ruling and noted that “[t]he ordinance interfered with the property owner’s right to use and enjoy their property and [plaintiffs] presented sufficient evidence of the ordinance’s economic impact on the value of their property and their reasonable, investment-backed expectation as required to show a probable right of recovery on regulatory takings claim.

KEY TAKEAWAY: Tiki’s STR ordinance was unconstitutional because it was a regulatory taking.

City of Grapevine

City of Grapevine v. Muns, 651 S.W.3d 317 (Tex. App.—Fort Worth 2021, pet. denied)

- 2018 - City of Grapevine (“Grapevine”) adopted an ordinance prohibiting all STRs based on a 2000 zoning ordinance that did not expressly allow STRs. The zoning ordinance allowed bed and breakfasts but not “single-family dwelling transient rental,” a term not defined. From 2000 - 2018, Grapevine permitted STRs to operate.
- STR operators filed suit against Grapevine seeking injunctive relief claiming the STR ordinance was unconstitutional because: (1) it was retroactive, (2) violated due-course-of-law rights; and (3) constituted a regulatory taking,

Trial Court: Temporary injunction issued against Grapevine and denial of Grapevine’s claims to dismiss the lawsuit.

Court of Appeals: Affirmed the trial court’s ruling and held that Grapevine’s STR ordinance violated the Constitution.

Supreme Court : Declined Grapevine’s petition for review.

KEY TAKEAWAY: Grapevine’s STR ordinance was unconstitutional because it was retroactive, violated due course of law rights, and constituted a regulatory taking.

City of Austin

Zaatari v. City of Austin, 615 S.W.3d 172, 180 (Tex. App.—Austin 2019, pet. denied)

- 2012 - City of Austin (“Austin”) adopted an STR ordinance by amending its zoning and land-development regulations.
- 2016 - Austin amended its STR ordinance and created 3 categories:
 - Type 1 owner-occupied
 - Type 2 non owner-occupied single family or duplex
 - Type 3 multi-family
- The ordinance phased out Type 2 rentals by April 1, 2022.
- Austin’s STR ordinance also imposed conditions:
 - (1) no assemblies (e.g. wedding, parties, concerts, or group activity other than sleeping) between 10:00 p.m. and 7:00 a.m.;
 - (2) no outdoor assemblies of more than six adults;
 - (3) no more than six unrelated adults or ten related adults using the property; and
 - (4) City officials permitted to “enter, examine, and survey” for compliance with city codes.
- STR operators filed a lawsuit seeking declaratory judgment and injunctive relief alleging violations of property rights, privacy, freedom of assembly, due course of law, and equal protection.
- State of Texas intervened arguing the termination of Type 2 STRs was an unconstitutional, retroactive law and an uncompensated taking of private property.

City of Austin

Zatari v. City of Austin, 615 S.W.3d 172, 180 (Tex. App.—Austin 2019, pet. denied)

Trial Court: All parties appealed the trial court's various rulings.

Appellate Court: Found the provisions regarding Type 2 rentals of non-homestead property unconstitutional as a retroactive law and as an uncompensated taking of property, and provisions limiting assemblies unconstitutional as a significant abridgment of the fundamental right to assembly.

KEY TAKEAWAYS:

- 1) Austin's ban on the use of single-family residences that were not owner-occupied as STRs was an unconstitutional infringement on settled property rights, and
- 2) Austin's regulations restricting assembly in STR property was an unconstitutional restriction on the fundamental right to assembly.

City Of Austin

Anding v. City of Austin, No. 1:22-CV-01039-DAE, 2023 WL 4921530, at *1 (W.D. Tex. Aug. 1, 2023)

- 2022 - after *Zaatari*, Austin stopped issuing Type 2 licenses (non owner-occupied single family or duplex)
- Anding did not have an STR license when Austin passed its 2016 amendment prohibiting non owner occupied STRs (by April 2022). Austin claimed the *Zaatari* decision was narrow, applying only to owners who already had STR licenses in 2016.

Trial Court: Denied Austin's summary judgment motion but granted homeowners' summary judgment motion.

Appellate Court: Austin has not appealed trial court's ruling.

KEY TAKEAWAY: Austin's STR ordinance prohibiting non owner-occupied STRs was unconstitutionally retroactive and should not distinguish between different kinds of homeowners when regulating STRs.

City of Arlington

Draper v. City of Arlington 629 S.W.3d 777, 781 (Tex. App.—Fort Worth 2021, pet. denied)

- 2019 - City of Arlington (“Arlington”) adopted 2 ordinances after a 2-year study (which included hired consultants and mapped distribution of STRs based on census-tract data) and public comment: 1) amendment to Arlington’s zoning ordinance limiting STRs to a zone; and 2) an ordinance regulating the operation of STRs.
- STR operators filed a lawsuit claiming the ordinances violated their due course of law, equal protection, and freedom-of-movement rights under the Texas Constitution.

Trial Court: Denied temporary injunction to prevent enforcement of both ordinances.

Appellate Court: Denied temporary injunction to prevent enforcement of both ordinances.

Supreme Court: Denied petition for review.

KEY TAKEAWAY: Arlington’s ordinance was supported by data and evidence substantiating a rational basis for the regulations.

City of Dallas

Dallas Short-Term Rental Alliance v. City of Dallas, No DC-23-16845 (95th Dist. Ct., Dallas County, Tex. Dec. 6, 2023)

- 2023 – the City of Dallas (“Dallas”) adopted:
 - 1) A zoning ordinance banning STRs in single-family zones; and
 - 2) A registration ordinance imposing conditions and occupancy restrictions on STRs in multi-family buildings.
- Dallas Short-Term Rental Alliance filed a lawsuit alleging violations of due course of law, takings, retroactivity, discrimination, Zoning Enabling Act, and preemption claims.

Trial Court: injunction against Dallas.

Appellate Court: Pending – Dallas filed an appeal on December 27, 2023.

Other relevant STR caselaw

***Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 321 (5th Cir. 2022)**

- Key takeaway: New Orleans's STR residency requirement banning non-resident owners was discriminatory and unconstitutional.

***Browning v. Town of Hollywood Park, Tex.*, No. SA-23-CV-01485-XR, 2023 WL 9503457, at *1 (W.D. Tex. Dec. 22, 2023)**

- Key takeaway: Hollywood Park's Town's STR ordinance banning STRs anywhere in town was prohibited after plaintiffs claimed it to be retroactive law.

***Marfil v. City of New Braunfels, Tex.*, 70 F.4th 893 (5th Cir. 2023)**

- Key takeaway: New Braunfels must demonstrate rational basis for its STR regulations which it claims were necessary to ensure that STRs don't create adverse impacts to residential neighborhoods due to traffic, noise and density.

***Crystal Cruise Investments v. City of Dickinson*, No 22-CV-1659 (Dist. Ct., Galveston County, Tex. January 4, 2024).**

- Key takeaway: City of Dickinson's STR ordinance prohibiting STRS in residential areas without a special use permit was unconstitutional.