

# Short-Term Rentals, Long-Term Struggles

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For many looking to go on a vacation or getaway for the weekend, booking a short-term rental (STR) makes a lot of sense. Travelers enjoy the comforts of home, sometimes at a lower cost than a hotel, and the property owners can also earn some extra income. As a result, these rentals have increased in popularity over the past few years. However, the issues surrounding these properties has increased as well. The concern over how STRs are managed has led to attempts to regulate the industry, forcing property owners to prepare for court.

An article in the winter 2025 issue of *Tierra Grande* discussed court cases addressing deed restrictions on STRs. However, in some locations, STRs are also under fire from government regulation. This begs the question, “what powers do governments have with respect to regulating STRs?”

In *City of Univ. Park v. Benners*, the Texas Supreme Court held that municipal zoning ordinances are within the scope of the municipal police power and may require the termination of nonconforming uses under reasonable conditions. A nonconforming use is a use that existed legally when the zoning restriction became effective and has continued.

While property owners have rights in their property, they do not have a constitutionally protected right to use their property in any certain way without restriction. An exercise of the police power is valid if it is reasonable and fairly related to the purpose for which it is exercised.

Recent Texas cases shed light on what governments can and can’t do with respect to regulating STRs. Note that while some of the ordinances described in this article define STRs by a specific duration, there is currently no statewide definition of an STR for purposes of restricting STRs.

## Zaatari v. City of Austin

In *Zaatari v. City of Austin*, property owners sued the City of Austin, challenging the city’s ordinance regulating STRs.

The ordinance banned STRs of nonhomestead properties. It also banned all assemblies, including “a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping,” whether inside or outside, after 10 p.m. In addition, it banned outdoor assemblies of more than six adults at any time and prohibited more than six unrelated adults



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or ten related adults from using the property at any time. City officials were given authority to enter, examine, and survey the STRs to ensure compliance.

The property owners brought claims under the due-course-of-law and equal protection clauses of the Texas Constitution. The State intervened, contending that the ban was unconstitutionally retroactive and that it was an uncompensated governmental taking.

## The State's Claims

The Austin Court of Appeals found the ban was unconstitutionally retroactive. Not all retroactive laws are unconstitutional. To determine whether a retroactive ordinance is unconstitutional, courts consider the three “Robinson factors.” These were established in the 2010 Texas Supreme Court decision, *Robinson v. Crown Cork & Seal Co., Inc.*

1. The nature and strength of the public interest served (it must be compelling).
2. The nature of the prior right impaired by the ordinance.
3. The extent of the impairment.

As to factor one, the court found that the city had no findings to justify the ban. The city claimed it was concerned about fire hazards, overwhelming the sewer system, and nuisances negatively impacting historic Austin neighborhoods. However, the city did not demonstrate how these issues were specific to non-homestead STRs, or why the problems were not already prevented by existing laws and ordinances. No citations were issued to STR owners or guests in the previous four years. There were few notices of violations, and the city did not revoke a single STR license in response to complaints about parties. Since both STRs and owner-occupied homes are residential in nature, the court decided the ban did not advance a zoning interest.

As to factor two, the court noted that private property ownership is a fundamental right, and the ability to lease property is a fundamental right of property ownership. Austinites have long exercised their right to lease via STRs and had a settled expectation that their right to do so would not be extinguished.

As to factor three, the ordinance eliminated the right to rent STRs if the owner does not occupy the property. Since the ordinance had a significant impact on the property owners' substantial interest in a well-recognized property right, and the ordinance served a minimal public interest, the court held that the ordinance was

unconstitutionally retroactive. Because the court found that the ordinance was unconstitutionally retroactive, it did not reach the takings question.

## The Property Owners' Claims

The court addressed the property owners' claim that the ban was unconstitutional because it violates the Texas Constitution's due course of law provision—specifically, the right of citizens to assemble in a peaceable manner. (The Texas Constitution has three due course of law provisions.)

The court held that the ordinance unconstitutionally infringes on the fundamental right of assembly. Therefore, it did not reach any of the owners' other challenges.

Additionally, the court emphasized that Austin is not powerless to regulate STRs or to address the possible negative effects. The city may still achieve its goals by means more reasonable and narrowly tailored, such as enforcing various nuisance ordinances that already exist.

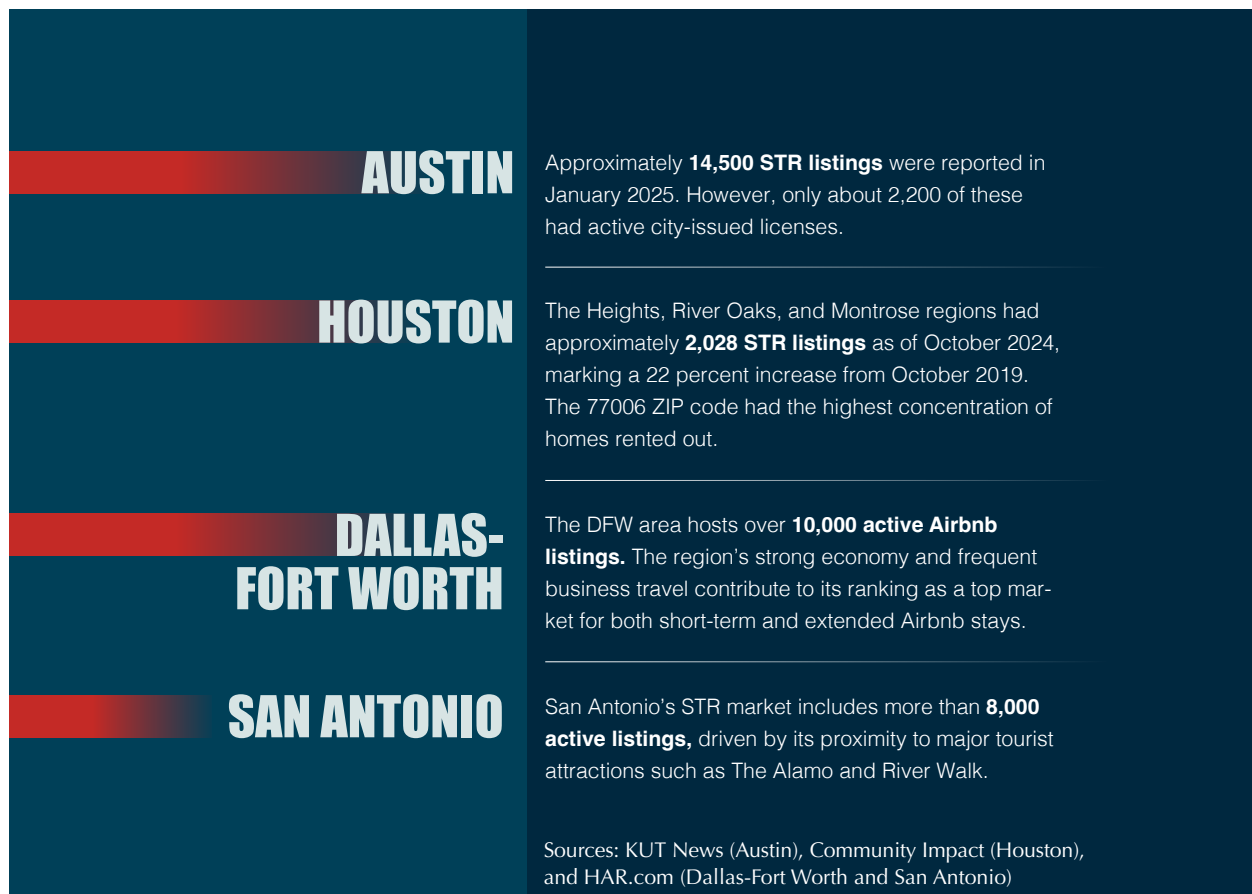
In *Anding v. City of Austin*, a federal district court also found the Austin ordinance unconstitutional because the non-homestead prohibition improperly discriminates against owners who live outside of Austin or out of state.

## Draper v. City of Arlington

*Draper* involved an Arlington zoning ordinance allowing STRs (lodging for less than 30 days) only in certain areas, as well as a separate ordinance regulating STRs. The STR ordinance prescribed a permitting process and imposed regulations, including:

- a prohibition on occupants congregating outside between 10 p.m. and 9 a.m.;
- a prohibition on advertising of an on-premises special event such as a “banquet, wedding, reception, reunion, bachelor or bachelorette party, concert, or any similar activity that would assemble large numbers of invitees”;
- limitation on the number of occupants;
- parking restrictions;
- a prohibition on physical conversion of the premises to add additional bedrooms for STR use;
- a prohibition on the use of amplified sound equipment that “produces sound audible beyond the property line of the premises between the hours of 10 p.m. and 9 a.m.”; and
- a prohibition on putting trash out on non-pickup days.





In developing the ordinances, the city engaged in an “extensive period of public comment, public input, and work sessions with the legislative body and planning commission” to strike a “reasonable balance” between the interests of residents and of STR owners and operators.

Rawnda Draper and others owned residential properties in Arlington and operated STRs. They sued, asserting claims similar to those in *Zaatari*. Notably, however, there was no claim that the ordinance was unconstitutionally retroactive and, because of that, the court did not conduct the same analysis used in *Zaatari*.

The Fort Worth Court of Appeals decided the case on a “rational basis” analysis. To be constitutional, the ordinance must be designed to accomplish an objective within the government’s police power and be rationally related to that purpose. It does not matter whether the ordinance is effective in accomplishing that purpose. Since the City has a legitimate interest in protecting its neighborhoods and the STR restrictions were rationally related to that interest, the court upheld the ordinances.

The property owners also argued that the ordinance violated the right of assembly. The court overruled this

issue because the ordinance regulated only the occupants of the properties, not the owners. Therefore, the owners did not have standing to sue for the violation of this right.

### City of Grapevine v. Muns

Another Fort Worth case addressed a City of Grapevine ordinance banning STRs (lease of a home for fewer than 30 days). The court held that the homeowners had pleaded several valid constitutional challenges, including regulatory taking, retroactivity, and due course of law. Due to the procedural posture of the case, the court sent the case back for a trial on the merits.

In regulatory takings cases, the test for whether governmental action unreasonably interferes with a landowner’s use and enjoyment of property is called the Penn Central test. It examines the facts with respect to three factors:

1. The economic impact of the regulation on the claimant.
2. The extent to which the regulation interferes with distinct investmentbacked expectations.
3. The character of the governmental action.



The homeowners had invested in purchasing and improving their properties at a time when STRs were allowed in Grapevine and alleged they had suffered economic impact due to lost profits. The court held that these allegations were sufficient to allege a regulatory takings claim.

The homeowners also pleaded a retroactivity claim. The court held that the homeowners had adequately alleged a retroactivity claim to be considered under the Robinson factors listed on page 25.

The homeowners pleaded a due course of law claim as well, which must be supported by a vested right and not just a settled right. The court denied the homeowners' claim that they had a vested right under the zoning ordinance, which did not prohibit STRs. However, the court did hold that they had a vested right to lease their property. The source of this right is not the ordinance, but their ownership of the property. The court did not express an opinion on whether the durational restrictions violate due course of law. That question goes to the merits of the case and is for a trial court to decide.

In June of 2023, the Texas Supreme Court denied a petition for review of the case. Despite the growing importance of STR cases, the Court concluded that it was best to wait for a case with fewer collateral issues. Interestingly, Justice Evan Young noted that the protections in the Texas Constitution are different and potentially greater than those in the U.S. Constitution, and that Texas law on the differences is not well-developed.

## What's Next For Short-Term Rentals?

The law on STR regulation is still developing. Court holdings vary greatly depending on the wording of the ordinances, the claims pleaded by the parties, and the facts of each case. While these cases can provide guidance, each ordinance will be considered by the courts on a case-by-case basis.

Nothing in *Tierra Grande* should be considered legal advice. For advice or representation on a specific situation, consult an attorney. **TG**

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

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

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

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

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

*Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978).

*City of Grapevine v. Muns*, 671 S.W.3d 675 (Tex. 2023) (denying pet.).

## Additional Reading:

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

*Villanueva v. Vill. of Volente, Tex.*, No. 1:23-CV-1246-RP, 2024 WL 2143596 (W.D. Tex. May 13, 2024), appeal dismissed, No. 24-50396, 2024 WL 4815039 (5th Cir. June 13, 2024).

*City of Baytown v. Schrock*, 645 S.W.3d 174 (Tex. 2022).

Rusty Adams talks more about STRs.



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