

# **HOT TOPICS IN LAND USE LAW**

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## **Terrence S. Welch**

In 1981, 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. Since 1981, Terry has represented numerous growing communities in North Texas. He routinely represents and advises local governments on a variety of issues, including employment, land use, civil rights, police, election, natural gas drilling and other regulatory matters.

Terry received his Bachelor of Arts degree at the University of Illinois at Urbana-Champaign in 1976, his law degree in 1979 from the University of Houston College of Law and a Master of Public Affairs in 1981 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 recently had published an article on urban sprawl in Texas 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. In August 2015 he was appointed a member of the Board and in September 2019 Mayor Eric Johnson appointed him as the Chair of the Civil Service Board.

In his free time, Terry enjoys long distance running, having competed in 90 half-marathons as well as many other long-distance races. He completed his 52nd marathon in Austin in February 2020. He has competed in the Chicago, New York, San Diego, White Rock/Dallas, Cowtown, Illinois, Marine Corps, Canadian International (Toronto), St. Louis, Austin and Berlin Marathons.

## I.

### Introduction

Local governments are often an incubator for novel land use practices—sometimes not because local governments themselves are necessarily innovative, but because local governments must respond to proposed innovative land uses. For example, most local governments did not adopt short-term rental ordinances in advance of the Airbnb or VRBO phenomenon; rather, short-term rental ordinances usually were adopted in response to the burgeoning short-term rental business already occurring in the community. The purpose of this paper is to identify several current hot-button land use topics and analyze how cities across Texas and the nation have endeavored to address these issues. In no particular order, I have attempted to provide a synopsis of those topics.

## II.

### Short-Term Rentals in Texas and the Evolving Law

As I referenced in my 2017 presentation to this conference,<sup>1</sup> lodging platforms, such as Airbnb, HomeAway, and VRBO, facilitate the rental of private residences on a short-term basis. Generally, prospective hosts register a residence with a platform – providing descriptions, pictures, available dates, and other information useful to prospective renters. The platform provides the app, links to relevant information, advice regarding how to advertise and provide lodging services, and some rules for participants using the site. The platform may inform prospective hosts of potentially applicable regulations, but leaves compliance up to the hosts. Prospective renters also can register as users with a short-term lodging platform, allowing them to search, identify options, contact hosts, and reach a rental agreement. The platform receives and holds the rental payment, disbursing the amount after deducting its fee and only after the renter has arrived. The platform also provides an opportunity for both hosts and renters to rate their transactions.<sup>2</sup>

#### **A. What Are Texas Cities Doing?**

Not surprisingly, local governments in Texas have struggled (and still struggle) about how to address short-term rentals (“STRs”) and the multitude of issues that they present—what length of stay qualifies as a short-term rental, whether “owner occupancy” or “owner presence” is required for such rentals, inspections and licensing fees for rental property, insurance requirements, payment of local hotel occupancy taxes, and a host of

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<sup>1</sup> See *Land Use Issues in a “Sharing Economy,”* presented to the 21st Annual Land Use Conference at The University of Texas at Austin (April 6, 2017).

<sup>2</sup> *Id.* at 4 (citations omitted).

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