Hot Topics in Land Use Law

Short Term Rentals, Single Family For Rent Developments, Poker Rooms and Gambling, and Light Industrial Developments

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As certain innovative land uses increase in popularity around the state, municipalities are faced with the task of creating a regulatory scheme to address these new uses. For uses like short-term rentals, the new regulations may be challenged in court as property owners seek to minimize city regulation. Other times, a review of how certain cities are beginning to regulate these new uses may provide helpful insight into the direction of a future statewide or municipal regulatory scheme. This paper will provide updates on a few of these hot topics in land use, including short-term rental use, single family for rent use, light industrial use, and poker house use.

I. SHORT-TERM RENTALS.

In recent years, platforms such as Airbnb and VRBO have become increasingly successful as homeowners and travelers have taken advantage of the rental of private residences on a short-term basis. Many cities have only recently begun regulating these uses, motivated in part by complaints from residents of single-family areas about issues such as noise and lack of sufficient parking with the constant flow of visitors to a short-term rental ("STR") in the neighborhood. While some cities have chosen not to regulate STRs, others have banned them outright. Accordingly, a few of these cities have ended up in litigation as homeowners have fought the regulation of STRs. While the Texas Supreme Court has not yet issued an opinion on whether cities can outlaw STRs, recent cases from lower courts provide some guidance on the regulation of STRs.

A. DRAPER V. CITY OF ARLINGTON (*full case text provided at the end*).

In a July 15, 2021 decision, the Fort Worth Court of Appeals ruled on STR regulations enacted by the City of Arlington. In *Draper v. City of Arlington*, homeowners brought suit after Arlington adopted two ordinances regulating STRs in the City.[1] The first ordinance (the "Zoning Ordinance") amended the City's Unified Development Code to allow STRs only with a short-term rental permit, and in the area extending one mile from the City's entertainment hub (the "STR Zone"), a residential medium-density zoning district, a residential multifamily zoning district, or a nonresidential and mixed-use zoning district.[2] The second ordinance (the "STR Ordinance") created the STR permitting process as well as the requirements for STR owners and tenants.[3] Some of the regulations enacted by the City under the STR Ordinance were as follows:

- Requires proof of insurance coverage of up to $1 million per occurrence;
- Requires physical inspection by the City to ensure compliance with minimum health and safety requirements for use and occupancy;
- Prohibits the congregation of occupants outside at the premises between the hours of 10:00 p.m. and 9:00 a.m.;

[1] *Draper v. City of Arlington*, 629 S.W.3d 777, 781 (Tex. App.—Fort Worth 2021, pet. denied).
[2] *Id.* at 782.
[3] *Id.*

- Proscribes the 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;
- Limits the number of STR occupants;
- Imposes parking restrictions and limits the number of vehicles permitted at an STR;
- Prohibits the physical conversion of the premises to add additional bedrooms for STR use;
- Disallows the use of amplified sound equipment that produces sound audible beyond the property line of the premises between the hours of 10:00 p.m. and 9:00 a.m.;
- Prohibits an owner or occupant from putting trash out for pickup before 7:00 p.m. the evening before scheduled pickup or on a day not scheduled for pickup by the City; and
- Requires STR owners and operators to notify STR occupants of these regulations.[4]

The trial court denied the homeowners' request for a temporary injunction. The Appeals Court addressed three issues argued by the homeowners. First, the homeowners argued that under their substantive-due-course-of-law rights under Article 1, Section 19 of the Texas Constitution, they have a vested right to lease their property, and that the Zoning Ordinance is not rationally related to a legitimate governmental interest.[5] The City argued its legitimate governmental interests as follows: safeguarding the life, health safety, welfare, and property of STR occupants, neighborhoods, and the general public; and minimizing the adverse impacts resulting from increased transient rental uses in neighborhoods that were planned, approved, and constructed for single-family residences.[6] Additionally, the City used testimony from a resident negatively impacted by STRs, as well as the City Council findings from the public comment and input regarding STRs, to argue that the STR regulations are rationally related to objectives within the City's police powers.[7] The Court of Appeals found that the City's decision to allow STRs in the STR Zone and in high- and medium-density residential areas but not in low-density residential areas is rationally related to objectives within the City's police powers.[8] The second argument made by the homeowners was that the STR Ordinance unconstitutionally restricts their tenants' freedoms of assembly and movement because the ordinance unilaterally prohibits assembly on private property at certain times.[9] The Court of Appeals concluded that the homeowners lacked standing because they were not arguing that the statute unconstitutionally restricted their rights, but someone else's.[10] The third argument the homeowners made is that the Zoning Ordinance and the STR Ordinance violate their equal protection rights under the Texas Constitution by treating STR renters and landlords differently

[4] *Id.* at 782-83.
[5] *Id.* at 785.
[6] *Id.* at 786.
[7] *Id.* at 788-89.
[8] *Id.* at 789.
[9] *Id.*
[10] *Id.* at 791.

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