

# KEEPING CURRENT

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## Texas appeals court upholds injunction against Dallas short-term rental ban (*City of Dallas v. Dallas Short-Term Rental Alliance*)

By Stephen Thiele

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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Online platforms such as Airbnb and VRBO have allowed property owners around the world to easily rent their respective homes on a short-term basis, primarily to tourists.

As someone who is impacted by a proposed Bill to ban short-term rentals on over 7,000 units in Maui, I am extremely interested in decisions related to attempts to ban short-term rentals elsewhere.

Although I am neither an American citizen nor a member of any state Bar in the United States, it is my understanding, from the rulings in precedent-setting US decisions, that short-term rental bans are contrary to the US Constitution and many State Constitutions, and that such bans are accordingly illegal.

In some places, like Maui, the ability to utilize a property for the purpose of short-term rentals was codified in zoning ordinances decades ago, thereby creating a vested property right in those properties affected by the ordinances. Notwithstanding any subsequent change in zoning, the vested right continues as a "grandfathered" right.

In general, under provincial laws in Canada, planning statutes also recognize the "grandfathering" of property use rights in circumstances where a municipality passes a new zoning by-law that prohibits or restricts the future use of a property for a certain purpose, but the owner of the property has used it for the prohibited purpose immediately before the passage of the by-law.

For example, a property owner legally uses their property as a gasoline station beginning on Day 1 and continuously thereafter, and on Day 180 the City passes a by-law that prohibits the property from being used as a gasoline station thereafter. The property owner can continue to operate their gasoline station after the passage of the by-law because the property owner's right is "grandfathered" and protected under the doctrine of legal non-conforming use.

The strong protection afforded to vested property rights by courts in the United States was once again on display in *City of Dallas v. Dallas Short-Term Rental Alliance*, (Court of Appeals, 5<sup>th</sup> District of Texas, No. 05-23-01309-CV, July 18, 2025).

In this case, the City of Dallas had passed two ordinances concerning short-term rentals within city limits that were opposed by individual property owners and a special interest group (the “**Property Owners**”). The first ordinance was a “zoning ordinance”. The second ordinance was a “registration ordinance”.

The City had enacted the ordinances after studying the proliferation of short-term housing rentals within Dallas. One ordinance sought to ban them in areas zoned for “single family residential” use, while the second ordinance sought to regulate the remaining short-term rentals through a permitting process.

The Property Owners contended that the ordinances were unconstitutional and sought injunctive and declaratory relief.

The Property Owners contended that they enjoyed the right to lease their properties under Texas law, including the Texas Constitution which stated: “No citizen of this State shall be deprived of life, liberty, property, privileges, immunities, or in any manner disenfranchised, except by due course of law of the land.”

Based on *City of Grapevine v. Muns*, 651 S.W.3d 317 at p. 347, they also contended that they had “a vested right to lease their properties and [that] this right [was] sufficient to support a viable due-course-of-law claim.”

The Property Owners also relied on *Severance v. Patterson*, 370 S.W.3d 705, which stands for the proposition that: “Private property rights have been described ‘as fundamental, natural, inherent, inalienable, not derived from the legislature[,] and as pre-existing even constitutions.’”

The City contended that the judge who initially granted a temporary injunction against the ordinances erred in concluding that the Property Owners had proved a probable right to relief

sufficient to enjoin the enforcement of the ordinances and that the judge has abused their discretion to grant an injunction. However, the Texas Court of Appeals rejected the City’s arguments.

With respect to the zoning ordinance, the Appellate court found that the property owners and special interest group had proved their probable right to relief against it under their due-course-of-law argument because they allegedly possessed well-established rights that would be denied by the ordinance.

Similarly, the Appellate court rejected the City’s arguments related to the registration ordinance. While the City attempted to rely on evidence obtained from the Property Owners, an appendix to recommendations from a Dallas Task Force and the testimony of an interim Director of Planning, the Property Owners submitted that this ordinance imposed significant burdens upon them, including excessive fees, limits on maximum occupancy, day limit, parking restrictions, and density restrictions.

The Appellate court concluded that the trial court had not abused its discretion by concluding that the Property Owners had demonstrated a probable right to relief against the registration ordinance because the City had failed to both (1) attack the trial court’s findings and (2) point to evidence showing its legitimate government interests associated with restricting maximum occupancy in short-term rentals.

The Court noted that to obtain a temporary injunction, which is intended to preserve the *status quo*, the party seeking the injunction must prove (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. The first two elements had been met.



With respect to irreparable harm, the City contended that the Property Owners' claim inherently included a readily compensable money damages component because it was a "regulatory-taking" claim, and that injunctive relief in these circumstances was inappropriate.

However, the Texas Court of Appeals found that the Property Owners were not making a regulatory-taking claim and that they were not seeking monetary damages. The Property Owners were simply seeking an injunction and declaratory relief based on the alleged unconstitutionality of the City's ordinances.

Furthermore, the Texas Court of Appeals explained that without an injunction the Property Owners would suffer probable, imminent, and irreparable injury to their vested property rights because both ordinances stated that they took effect immediately and that enforcement against them could be taken within 6 months, but no earlier, from and after passage.

Lastly, it was noted that the record before the trial court contained at least some evidence that the Property Owners would suffer irreparable injury without injunctive relief.

While the City raised a couple of other issues in regard to appealing the injunction, the Texas Court of Appeals rejected those other issues as well, with the exception that it agreed that a cleaning business owner, who provided cleaning, maintenance, and other support services to rental properties, was wrongly granted an injunction against the ordinances. The business operator did not have a constitutionally vested property interest.

This case demonstrates that banning short-term rentals is difficult, especially where those rights are considered vested property rights. Certainly, in the United States, where property rights are enshrined in the US Constitution, it is puzzling

that several municipal governments continue their attack on property owners. Even though one might contend that permitting a property owner to use their property for short-term vacation rentals removes such property from the affordable housing stock, there is a dearth of evidence to prove that banning short-term rentals leads to an increase in affordable housing. Accordingly, in my view, based on this Texas Court of Appeals case and other similar cases that have reached the same conclusion and blocked short-term rental bans, governments are wiser to implement policies which ensure that taxes, whether income taxes or short-term rental accommodation taxes, are collected and declared, and that the tax revenues generated from the short-term rentals of properties are reinvested in affordable housing, education and social services programs rather than litigation, which simply appears to be wasting taxpayer dollars.

### **Contact us**

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** in our dispute resolution group at 416.865.6651 or via email at [sthiele@grllp.com](mailto:sthiele@grllp.com).

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