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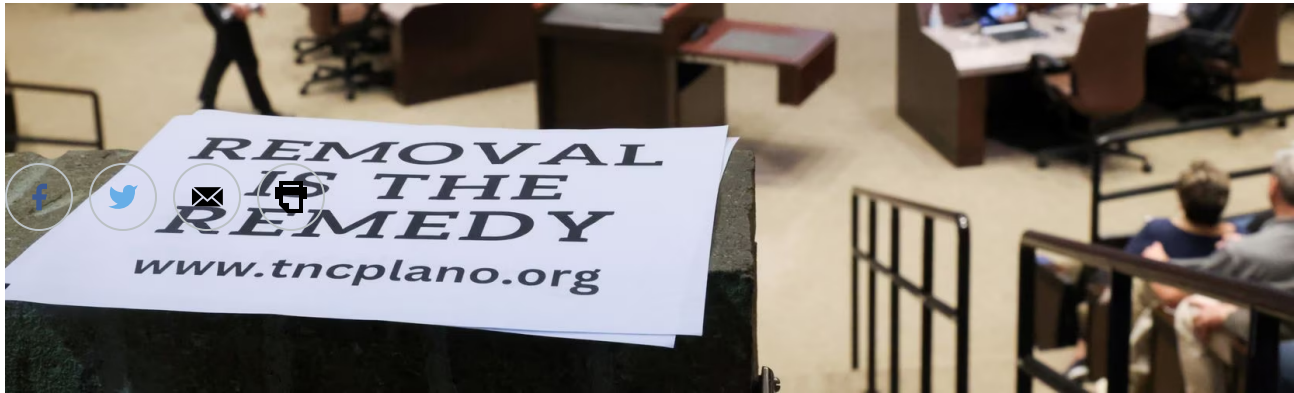


NEWS

# Can Plano have short-term rental ban? What legal experts say

Plano is misreading the Grapevine case; ban is enforceable, says Texas Neighborhood Coalition founder





develop a new ordinance, the threat of litigation will be a large part of the discussion.

At a City Council meeting March 13, city attorney Paige Mims cited Texas cities that have faced legal trouble in regulating the properties rented out for 30 days or less through platforms such as Airbnb and Vrbo.

While Plano residents say they want an outright ban of STRs in their neighborhoods, Mims said current short-term rentals should be allowed to be “grandfathered” in when any new restriction is implemented. She cited the constitutional takings, retroactivity and due process claims.

In addition, Mims said municipalities cannot enforce a city-wide ban or restrict assembly at short-term rentals. Nor can they “sunset” or phase out STRs over time, she said.

She added that relying on current zoning definitions to prohibit short-term rentals would be indefensible. Mims cited litigation in Austin and Grapevine, in addition to the [a 2018 Texas Supreme Court case](#), to support these positions.

“We can’t have a city-wide ban of STRs,” Mims said. “That is what the City of Grapevine case is litigating right now. It’s still going through the courts, and they have not been successful on that issue. And we know that sunset or phasing out STRs over time was not upheld in the City of Austin case.”



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Plano city officials say they are also mindful of HB2665, which, if passed in the state legislature, would preempt zoning action.

Members of the Plano chapter of the Texas Neighborhood Coalition say [they want the city to follow the model of Arlington](#). Despite legal challenges, Arlington has been successful in restricting short-term rentals out of single-family residential neighborhoods and into the entertainment district.

Janet Spugnardi, deputy city attorney for Irving, researches code enforcement topics and has watched the short-term rental issue statewide. She said outright bans are risky.

“If you’re going to basically prohibit or ban them altogether, taking away that property right that they have today would likely expose the city to liability,” Spugnardi told *The Dallas Morning News*.

Some residents said they feel Plano should risk litigation if it means preserving neighborhoods.

Plano is gathering data from other municipalities as it seeks a solution. Here are the legalities, repercussions and what attorneys have to say regarding what happened in other cities:

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## Arlington

Arlington [adopted two STR ordinances](#) in April 2019 that banned short-term rentals from single-family residential areas, except around the entertainment district. One of the ordinances also created regulations.

Dave Schwarte, a retired attorney in Arlington and co-founder of the Texas Neighborhood Coalition, said short-term rental owners challenged the ordinances in court. They believed the ordinances violated assembly and equal protection rights, among others, but a temporary injunction was denied. The Texas Attorney General filed an amicus brief in support of the homeowners, but the Fort Worth Court of Appeals sided with the city.

“The city’s decisions to restrict STRs to the STR Zone and certain zoning districts and to regulate the operation of STRs are rationally related to objectives within the City’s police powers,” the Fort Worth Court of Appeals wrote in July 2021 for the case [Draper v. City of Arlington](#). “...The homeowners failed to offer evidence tending to prove that either the Zoning Ordinance or the STR Ordinance violates their equal protection rights.”

The plaintiffs escalated the case to the Texas Supreme Court, Schwarte said, and the Court denied their petition for review in January 2022.

Schwarte said that in December the case was dismissed with prejudice and that the ordinances stand and cannot be challenged again.

While Plano residents want to follow the Arlington model, Mims said the cities' zoning definitions are different. Arlington was more specific in defining lodging facilities as places "where tenancy may be arranged for a period of less than 30 days," Mims said.

Spugnardi said most zoning ordinances don't list time periods, an important distinction. Some city officials have maintained that Plano doesn't have a specific ordinance regulating short-term rentals.

## **Austin**

In 2016, Austin implemented a short-term rental ordinance that suspended the licensing of new non-owner occupied short-term rentals (Type 2) in residential areas and designated 2022 as the end date for all Type 2 rentals.

The Austin Court of Appeals ruled the ordinances as unconstitutionally retroactive in 2019. It claimed they violated assembly rights. The Texas Attorney General sided with homeowners.

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“It limits assembly on private property without regard to the peacefulness of or reasons for the assembly,” the court wrote in November 2019 for [Zaatari vs. City of Austin](#). “And because the infringement of the fundamental right to assemble is not narrowly tailored to serve a compelling government interest, it violates the Texas Constitution’s guarantee to due course of law.”

Austin petitioned the case for review to the Texas Supreme Court in 2020. The court denied it in 2021.

In an unrelated issue, the Texas Supreme Court [ruled against homeowners’ association enforcement](#) of STRs in 2018.

Austin has refused to issue new Type 2 permits in residential areas, though preexisting Type 2 STRs remain. Plano residents want existing STRs expelled from neighborhoods and for the properties to be banned in single-family residential areas moving forward. Schwarte said Austin failed to zone and license the short-term rental properties in tandem.

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“They issued express permits to operate these and then tried to revoke them,” Schwarte said. “Plano’s done no such thing.”

Schwarte said Plano almost made the same mistake as Austin in November when it published proposed legislation that would require short-term rentals to have a permit, though it did not specify where they could operate.

He said the proposed legislation could be interpreted as permitting STRs to operate in single-family residential areas. Schwarte said he sent a letter to the Plano City Council that described how the proposal would violate the Texas Local Government Code and the city’s zoning ordinances.

**Grapevine**

Grapevine revised an existing zoning ordinance in September 2018 to clarify the definition of a short-term rental and affirm that short-term rentals had always been prohibited based on a 1982 ordinance it claimed didn't expressly permit STRs, according to Grapevine city attorney Matthew Boyle.

Boyle said bed and breakfasts were similarly not permitted in the original ordinance. The term "single-family dwelling transient rental" was introduced into the zoning ordinance as part of an amendment that allowed bed and breakfasts, according to Boyle. He said single family dwelling transient rentals were explicitly listed as a use that was not allowed as part of a bed and breakfast.

"STRs have never been listed as a permitted use under the Grapevine Zoning Ordinance," Boyle wrote in a statement sent to *The News*. "Texas Courts have ruled for decades that cities can apply and amend their Zoning Ordinances to protect the health, safety and welfare of their residents."

Short-term rental operators sued the city, claiming the ordinance was unconstitutionally retroactive and violated other rights. Boyle said the trial court issued a temporary injunction to a specific list of short-term rental properties owned by the plaintiffs at the time of the adoption of the challenged ordinance.

Grapevine filed two separate pleas to the jurisdiction, both of which were denied by the trial court, according to Boyle. Boyle said the city and the plaintiffs filed competing motions for summary judgments regarding the merits of all claims, but the motions for both sides were denied by the trial court.



Despite ongoing litigation, Grapevine officials say they are continuing to enforce the ordinance. Pre-existing STRs remain, but new ones cannot operate in the city.

Mims told *The News* that while Plano agreed to support Grapevine's amicus brief and participated as a member of the Texas Municipal League and Texas City Attorneys Association, the city can't follow legal concepts that have been struck down.

Schwarte said Plano is misreading the Grapevine case because the ban is enforceable on new STRs that didn't exist in September 2018 when the ordinance was adopted. He also said Plano's zoning definitions are different.

"Under the ordinance that's in effect in Plano, the short-term rentals fit the definition of bed and breakfast very clearly," Schwarte said. "And therefore, the history here shows to operate a short-term rental in Plano, you needed a change in zoning, which they don't have."

**Related:** Shooting at Airbnb, Vrbo property has Plano residents doubling down on short-term rentals





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