

TEXAS PUBLIC POLICY FOUNDATION

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**LEGISLATOR'S
GUIDE**
to the issues



TEXAS PUBLIC POLICY
FOUNDATION

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The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

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Affordability

The Issue

The Texas Model of low taxes, light regulation, and respect for private property has empowered Texans to secure the blessings of liberty by keeping the cost of living low and the benefits from private enterprise high. However, Texas cities' burdensome land use regulations weaken property rights and consequently hinder voluntary exchange, price signals, and the ability to profit from one's efforts. One symptom of this regulatory excess is Texas' growing housing affordability problem.

In a May 2018 report, the Texas A&M University Real Estate Center demonstrates that home price growth is outpacing disposable income growth in Texas, negatively impacting housing affordability. The report states that the variation in housing affordability across metro areas is largely due to differing city land use restrictions, which increase land values.

The National Association of Home Builders found that about 25% of the final cost of a new home for sale is attributable to federal, state, and local regulations. Nationally, for every \$1,000 increase in price, about 152,903 households are priced out of the market for the median-priced new home.

In sum, local land use regulations constrain supply and thereby increase housing costs, and for every marginal increase in cost, thousands of Texas households are priced out of the market for a new home. In order to preserve Texas' affordability, lawmakers must pay more attention to Texas' local land use regulations.

Two land-use restrictions in particular deserve a hard look: minimum lot size requirements and mandatory parking minimums. Minimum lot size regulations restrict housing density by mandating the smallest possible area on which something may be built. Parking minimums mandate that a specified set of parking spaces be provided per building based on the government's forecast of the parking demand that would be generated by the buildings' use.

Minimum lot size requirements contribute more than any other land use regulation to restricting the supply and increasing the cost of housing. Similarly, parking minimums artificially restrict density and push up home prices. In each area, there is no reason why market forces would not be better able to determine the adequate size of a lot upon which to build, or the amount of parking that should accompany a building, rather than dubious government forecasts.

But to truly sustain housing affordability into the future, the state must affirm its historic commitment to robust private property rights.

In 1995, Texas passed into law the Texas Private Real Property Rights Preservation Act. A portion of the law addresses regulatory takings: When a government action restricts a property owner's right to use his land, and thereby reduces the property's value by at least 25%, the property owner is entitled to compensation. Unfortunately, the law largely exempts cities from its regulatory takings provisions. Since cities are the major actors when it comes to land use restrictions, this exemption sharply mitigates the law's property rights protections.

Therefore, state lawmakers should protect private property by extending the reach of the Texas Private Real Property Rights Preservation Act to city government actions, as well as state and county government actions. Further, the 25% devaluation threshold should be eliminated.

The Facts

- In a May 2018 report, the Texas A&M University Real Estate Center demonstrates that the extent of Texas' housing affordability problem varies across metro areas largely due to differing city land use restrictions.
- A 2016 study by the National Association of Home Builders estimates that government regulations account for about 25% of the final price of a new single-family home, on average.
- Minimum lot size regulations restrict housing density by mandating the smallest possible area that something may be built on. Minimum lot size regulations conducted by the Mercatus Center shows that minimum lot size requirements contribute more than any other land use regulation to restricting the supply and increasing the cost of housing.
- Parking minimums mandate that a specified set of parking spaces be provided per building based on the government's forecast of the parking demand that would be generated by the buildings' use. Like minimum lot size regulations, these policies raise the price of housing.
- The Texas Private Real Property Rights Preservation Act provides that when a government action restricts a property owner's right to use his land, and thereby reduces the property's value by at least 25%, the property owner is entitled to compensation. Currently, however, the law primarily applies to state and county governments, not city governments, which limits its effectiveness.

Recommendations

- Prohibit local governments from mandating minimum lot size requirements.
- Prohibit local governments from mandating parking minimum requirements.
- Strengthen the Texas Real Private Property Rights Preservation Act by extending its property rights protections to city government action and eliminate the property devaluation threshold before the law's protections apply.

Resources

[*Out of Reach? Texas Affordable Housing*](#) by Luis B. Torres and Wayne Day, Texas A&M University Real Estate Center (May 2018).

[*Government Regulation in the Price of a New Home*](#) by Paul Emrath, National Association of Home Builders (May 2016).

[*"Households Priced-Out by Higher House Prices and Interest Rates,"*](#) National Association of Home Builders (2016).

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Affordability (cont.)

[*Bringing Down the Housing Restrictions*](#) by Kathleen Hunker, Texas Public Policy Foundation (May 2016).

[*How Land-Use Regulation Undermines Affordable Housing*](#) by Sanford Ikeda and Emily Washington, Mercatus Center (Nov. 2015).

[*Private Property and Public Use: Restoring Constitutional Distinctions*](#) by Bill Peacock, Texas Public Policy Foundation (Oct. 2006).

“[*Piketty vs. Rognlie: Land Use Restrictions Inflate Housing Values, Drive Wealth Concentration*](#)” by Chuck DeVore, *Forbes* (July 22, 2015).

[*The Freedom to Own Property: Reforming Texas’ Local Property Tax*](#) by Kathleen Hunker, James Quintero, and Vance Ginn, Texas Public Policy Foundation (Oct. 2015).

[*Testimony: Ten Facts About Texas’ Property Tax*](#) by James Quintero, Texas Public Policy Foundation (April 2015).

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