

## STATE POLICYMAKERS' ROLE IN PROTECTING THE RIGHT TO BUILD HOUSING IN MONTANA

**Emily Hamilton**

*Senior Research Fellow, Urbanity Project, Mercatus Center at George Mason University*

Montana House of Representatives Local Government Committee

January 31, 2023

Chair Brewster and members of the House Local Government Committee, thank you for allowing me to offer testimony on the issue of reducing minimum lot size requirements. I am Emily Hamilton, a senior research fellow at the Mercatus Center at George Mason University, where I am codirector of the Urbanity Project. The Mercatus Center is dedicated to advancing knowledge relevant to current policy debates. Toward this end, its scholars conduct independent, nonpartisan analyses of legislation, rules, and proposals.

You don't need me to tell you about the increasing problem of housing affordability in Montana. As land use regulations in other states are pricing people out of coastal markets, Montana's own land use regulations threaten to cause similar problems here. I've had the pleasure of working with few of your colleagues on Governor Gianforte's Housing Task Force to identify ways that the legislature can alleviate this problem.

Research shows that zoning rules and long, uncertain approval processes for new housing construction are the key drivers of housing scarcity and high house prices.<sup>1</sup> We see that places that make it easy to build new housing of all types can remain affordable even as they grow quickly. The task force identified capping minimum lot size requirements as one way to create opportunities for the lower-cost construction Montana needs.

### MINIMUM LOT SIZE REQUIREMENTS AND OPPORTUNITIES FOR REFORM

Minimum lot size requirements mandate that each house sit on a yard of a certain size. They take away property owners' right to build a house on a smaller piece of land than rules require. In places where land is expensive, these rules mandate that each house is packaged with an expensive piece of land. Requiring that each house has an expensive yard also leads home builders to build only large, fancy houses, because land prices alone push home prices beyond what families looking for basic starter

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<sup>1</sup> Emily Hamilton, "Land Use Regulation and Housing Affordability," in *Regulation and Economic Opportunity: Blueprints for Reform*, ed. Adam Hoffer and Todd Nesbit (Logan, UT: The Center for Economic Growth and Opportunity, 2020), 193.

homes can afford.<sup>2</sup> Minimum lot size requirements are one of the land use regulations that has the largest effect in making housing expensive.<sup>3</sup>

Allowing small-lot construction is a proven path toward abundant, relatively low-cost housing. Because small-lot construction makes lower-cost, fee-simple homeownership possible, it can take advantage of the simple financing and lower interest rates available to owner-occupied housing.<sup>4</sup> And in places where this type of development is legal, homeowners have shown that it's a type of housing they want.

In 1998, Houston policymakers reduced the minimum lot size requirement within the city's I-610 loop to 1,400 square feet, down from 5,000 square feet. This reform has facilitated the construction of at least 25,000 new houses.<sup>5</sup> Following its success, policymakers expanded the reform in 2013 to cover the entire city. This small-lot construction takes place in many parts of the city, both in new subdivisions at the outskirts of the city as well as at infill sites close to job centers. Economist Mike Mei estimates that the reform benefited the average Houston household by about \$18,000.<sup>6</sup> Owing, in part, to its openness to small-lot construction, Houston has a median house price below the national median despite having grown faster than the rest of the country for decades.

Montana leaders don't have to look to Texas for a model of small-lot construction. Helena allows small-lot, single-family construction. The Helena Area Habitat for Humanity is one builder that has taken advantage of this to serve more households more cost-effectively than they could have if larger lots were mandated.

## CONCLUSION

Although local land use restrictions are the key obstacles to less expensive housing, state policymakers have a role to play in addressing this statewide concern. Local governments' authority to regulate housing development, including minimum lot sizes, rests on their power to pass rules that protect Montanans' health, safety, and welfare. When these rules instead cause statewide affordability problems, state legislators have a responsibility to set some limits on the extent to which local governments can restrict property owners' right to build housing.

Abundant housing is crucial for Montana to continue to provide opportunities for its residents and to continue to attract business investments. When local requirements stand in the way of housing affordability, state policymakers should step in to protect housing construction.

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<sup>2</sup> Emily Badger, "Whatever Happened to the Starter Home?," *New York Times*, September 25, 2022.

<sup>3</sup> Paul Boudreaux, "Lotting Large: The Phenomenon of Minimum Lot Size Laws," *Maine Law Review* 68, no. 1 (2016): 1-43.

<sup>4</sup> Daniel Parolek, *Missing Middle Housing: Thinking Big and Building Small to Respond to Today's Housing Crisis* (Washington, DC: Island Press), 86.

<sup>5</sup> M. Nolan Gray and Adam A. Millsap, "Subdividing the Unzoned City: An Analysis of the Causes and Effects of Houston's 1998 Subdivision Reform," *Journal of Planning Education and Research* (2020): 1-17.

<sup>6</sup> Mike Mei, "House Size and Household Size: The Distributional Effects of the Minimum Lot Size Regulation" (Working Paper, November 16, 2022), 33.