



## **URBAN MINIMUM LOT SIZES: THEIR BACKGROUND, EFFECTS, AND AVENUES TO REFORM**

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How much land does one home reasonably require? As of 2021, the median new detached single-family home in the United States contained approximately 2,270 square feet of living space,<sup>1</sup> but some jurisdictions across the country have mandates that require a home to sit on as many as three acres of land or more. In spite of those mandates, buyer demand for small lots has continued to increase. Only one-quarter of new homes were built on lots of less than 7,000 square feet in 2009, but by 2022, that proportion had increased to 36 percent.<sup>2</sup> Long accepted as an integral part of the landscape of American zoning regulations, minimum lot sizes have come under increasing scrutiny in recent years as an impediment to homeownership, a prime enabler of exclusion by municipalities, and a significant contributor to decreasing housing affordability.<sup>3</sup>

The use of minimum lot sizes as a regulatory tool in the United States dates back to the early 20th century. Although most studies of the practice have focused on the very large lot sizes common in suburban and exurban areas, virtually all American cities—including those, such as Houston, that lack use-based zoning—have adopted minimum lot sizes as well. These minimums, existing in locations where city sewer and water are typically available, appear to have a dubious foundation in health and safety concerns, yet they have rarely been the subject of legal challenges. Reforming lot minimums through legislative means, as a handful of cities have done, has resulted in development booms that rapidly increased the supply of homes while helping to keep housing costs in check. At the state level, reforms to urban lot size regulations could involve direct preemption of local lot size minimums but could also include narrowing the scope of review for zoning boards and commissions. The result would link site planning standards to objective health and safety criteria contained in state codes and uniformity standards for those areas served by urban infrastructure, including water and sanitary sewers. Changes such as these have the potential to unlock urban land value and spur diverse infill development in cities starved for housing supply.

## THE HISTORICAL EVOLUTION OF MINIMUM LOT SIZES AS AN EXCLUSIONARY TOOL

The practice of mandating a minimum lot size on which a home can be built may be the most common element of municipal zoning ordinances in the United States, existing even in the handful of jurisdictions that do not practice segregation by use or by density. The city of Houston, Texas, which has rejected proposals to introduce use-based zoning on several occasions, maintains minimum lot size requirements for single-family homes.<sup>4</sup> The town of Bethlehem, Connecticut, which is one of only two towns in that state to lack formal zoning ordinances or a zoning commission, nonetheless imposes a minimum lot acreage.<sup>5</sup>

That these requirements can have a major effect on urban form is evident from the disparity between Bethlehem's requirements, which mandate at least 76,230 square feet per home, and Houston's requirements, which permit lots as small as 1,400 square feet. Even without the use of multifamily or attached homes, and setting aside areas dedicated to streets, Houston's regulations permit a residential density more than 50 times greater than in Bethlehem, representing the difference between a car-dependent exurban environment and an urban one compatible with mass transportation.<sup>6</sup> Perhaps more than any other residential regulation, minimum lot size requirements shape the way in which American cities—where most land typically is zoned for single-family homes—are physically constituted and help determine whether the built environment will be urban, suburban, exurban, or even rural.<sup>7</sup>

Figure 1. Single-family forms of Bethlehem, Connecticut (left), and Houston, Texas (right), at the same scale



Source: Microsoft Bing Maps. © 2023 Microsoft.

## **A BRIEF HISTORY OF MINIMUM LOT SIZES**

Minimum lot sizes have existed as a regulatory category almost from the outset of zoning, yet their widespread adoption in American towns and cities did not begin until the late 1940s. One detailed study of property tax data from 1925 to 2010 estimated that approximately 20 percent of American municipalities had adopted minimum lot size regulations by 1940, and an additional 59 percent adopted them between 1940 and 1970.<sup>8</sup> The timing of these changes reflected a fear that the young families of the baby boom era, in search of modest starter homes, would fail to pay sufficient property tax to account for the cost of educating their growing families. A minimum lot size, by setting a floor for land costs, was intended to slow, if not exclude entirely, the entry of such families, particularly in localities in which the bulk of municipal revenue was derived from residential property tax. Towns also perceived that large lots, which could accommodate on-site wastewater disposal, would avoid the considerable cost of expanding sanitary sewers or upgrading wastewater treatment facilities. In addition, the timing of the adoption of lot size minimums in non-southern American cities and their suburbs is correlated with the arrival of Black Americans into those cities during the so-called Second Great Migration and with school desegregation, suggesting that exclusionary motives behind minimum lot sizes were both racial and fiscal.<sup>9</sup> As one example, the effect of those changes was such that by the late 1960s, nearly two-thirds of the undeveloped land zoned for residential use within 50 miles of Manhattan's Times Square required at least one acre for a single-family dwelling.<sup>10</sup> Lot size minimums have generally continued to increase since that time.<sup>11</sup>

Although academic study of minimum lot sizes has most often focused on suburban and exurban lot minimums of an acre or more, existing neighborhoods of major American cities became subject to minimum lot sizes as well. Austin, Texas, adopted a 3,000 square foot minimum lot size in 1931, which was increased to 5,750 in 1946, where it remains to this day.<sup>12</sup> In 1946, Los Angeles adopted a minimum lot size of 5,000 square feet despite having previously built a multitude of freestanding cottage homes on less than 1,000 square feet of land.<sup>13</sup> Portland, Oregon, adopted a 4,000 square foot minimum lot size in 1959, which was later increased to 5,000 square feet, even though the city contained numerous 2,500 square foot and 3,300 square foot lots, which had been platted and developed as early as the 19th century.<sup>14</sup> The result of those changes was to render large numbers of preexisting urban lots noncompliant with city zoning and to outlaw subdivision of urban lots into even smaller parcels that might accommodate smaller and lower-cost homes.

Certain cities such as Houston and Los Angeles have reformed their zoning to allow smaller lots in certain areas, but most retain the minimums adopted in the 1940s and 1950s even as their populations have grown dramatically and demand to live in central city areas has surged, leaving supply unable to meet the growing demand for urban living.<sup>15</sup> Lot size minimums have also served to limit single-family homeownership in cities by prohibiting the creation of new lots for single-family detached houses in built-up areas, even if existing lots have abundant undeveloped space. Instead, the majority of new housing is in multifamily forms, which tend to be more likely

to be offered for rent, while increasing cost pressure on remaining single-family dwellings pushes homeownership out of the reach of all but the wealthiest residents. The example of Houston and the experience of cities lacking minimum lot sizes altogether, such as Tokyo and other Japanese cities, shows that this outcome is not the inevitable result of market forces but rather the product of regulations that unjustifiably interfere with residents' preferences.<sup>16</sup>

## **ACADEMIC STUDY OF LOT MINIMUMS**

The legal basis for minimum lot size regulations and the economic effect they have on the housing markets of metropolitan areas were the subject of widespread scholarly attention from the late 1950s to about 1970. The general conclusions of those research efforts were that minimum lot sizes failed to achieve their purported objectives of preserving open spaces and protecting the character of the community and, in fact, were even counterproductive to those goals: they adversely affected housing affordability, they promoted automobile dependence, and their constitutionality—even under a rational basis standard of review—was open to question.<sup>17</sup> After 1970, in response to a series of litigation setbacks, defenders of large minimum lot sizes proposed the use of ecological rationales to assuage the concerns of skeptical courts and to serve as a plausible general welfare justification for regulations requiring an acre or more of land for each single-family home.<sup>18</sup> Environmental legislation was also proposed as a more politically acceptable alternative to exclusionary zoning that was capable of achieving the same results.<sup>19</sup> With the ascendance of the modern environmental movement during the 1970s lending credence to those contentions, litigation challenging minimum lot sizes dwindled, and the subject received limited attention from legal scholars in the four decades following.<sup>20</sup>

Economics research into the effects of minimum lot sizes on housing prices and urban form continued, however. By the 2010s, in conjunction with a growing movement for liberalizing zoning regulations, minimum lot size regulations had begun to generate renewed academic interest among economists and legal scholars. The conclusions of those studies generally mirrored those of the research performed several decades earlier, finding that large lot size minimums hinder affordability, assist exclusionary objectives, encourage automobile dependency, and increase the rate at which undeveloped land is consumed for housing.<sup>21</sup> In addition, the minimum lot size reductions enacted by Houston in 1998 furnished a vivid case study of the consequences of reform in the context of an already developed urban area. Houston, which had rejected use-based zoning in a 1993 referendum, cut lot size minimums in central city neighborhoods by more than two-thirds and, in response, a wave of market-led investment and development reinvigorated an aging housing stock and strengthened the city's tax base. The success of the initial reform led the city to expand the area to which the reduced lot minimums applied in 2013.<sup>22</sup>

The experiences of cities that have legalized a greater number of units per structure without permitting small lot subdivision illustrates the potential advantages of Houston's approach to zon-

ing reform. In Minneapolis, for example, which in 2019 legalized up to three units per structure in formerly single-family zones but did not adopt minimum lot size reform, only 104 duplex or triplex units were built the first two years following the reform.<sup>23</sup> In Houston, by contrast, more than 1,000 small-lot homes (homes on lots between 1,400 and 5,000 square feet) were built in the first year after the 1998 reform, which applied only to a limited area of the city.<sup>24</sup> By 2016, more than 25,000 small-lot homes had been constructed in Texas's Harris County.<sup>25</sup> In the case of Minneapolis, limitations on the size of structures may have hindered the effectiveness of the city's reform efforts,<sup>26</sup> whereas in Houston, parking regulations continue to present an obstacle to constructing three-family homes on 5,000 square-foot lots rather than three single-family homes on 1,400 square-foot lots.<sup>27</sup> The intricacies and particularities of land use regulations and real estate finance interfere with drawing any sweeping conclusions about preferences for renter or owner-occupied housing. In the case of Houston, however, observed patterns may reflect a wider pool of potential buyers for noninvestment properties, a buyer preference for fee simple ownership, or other factors relating to developer or buyer financing in the context of smaller residential structures.<sup>28</sup>

With respect to accessory dwelling units (ADUs), the advantage of making additional units available for sale under separate ownership, rather than remaining under sole ownership, appears to derive from the greater value that prospective buyers place on a plot of vacant land for use as a homesite compared with the value the existing homeowner derives from the same plot as yard area or a potential site for an ADU.<sup>29</sup> One 2020 study of detached accessory dwelling units (DADUs) in Edmonton, Canada, found that homeowners were willing to pay an average of \$124,000 to build a DADU but that the average cost to construct a DADU was \$184,000.<sup>30</sup> By contrast, detached homes of less than 750 square feet in Edmonton as of June 2023 had a median listing price of \$250,000.<sup>31</sup> Under those conditions, allowing additional homes to be sold rather than simply rented has the potential to increase housing production. After Durham, North Carolina, modified its ADU ordinance in 2018 to allow lot splits, applications for lot splits exceeded applications for ADU permits by a ratio of more than two to one.<sup>32</sup> Whatever the underlying reasons, the small lot home has a demonstrated track record of generating housing abundance in the American housing market of the late 20th and early 21st centuries in a manner that small multifamily homes (often characterized as *missing middle* housing) have not yet matched.<sup>33</sup>

## THE JUDICIAL POSTURE TOWARD MINIMUM LOT SIZES

Since about 1960, American state courts have generally required municipalities to demonstrate tangibly and quantifiably how a challenged zoning regulation—including minimum lot size regulations—advances the purposes of the applicable state zoning enabling act.<sup>34</sup> Both environmental protection and exclusionary effects today are routinely considered as factors in evaluating the constitutionality of zoning ordinances, although the degree to which those factors are scrutinized varies from case to case. To a limited extent, courts have begun to assess zoning regulations in terms of uniform health

and safety concerns, questioning why minimums should vary where all other factors are held equal. Overall, the jurisprudence in this area has seemed to some observers confoundingly inconsistent, both as to legal analysis and to the scope of remedies the courts are willing to order.<sup>35</sup>

The argument for holding zoning classifications to a stricter, more rigorous, and more evidence-based standard is one that has had the benefit of decades for development and for input from many thinkers. As early as 1962, Justice Frederick Wilson Hall of the New Jersey Supreme Court issued a forceful dissent in a case involving the exclusion of mobile homes from a municipality in which he pleaded with the majority to discard an overly permissive version of a “fairly debatable” standard and hold local governments to a higher burden of proof.<sup>36</sup> Writing in 1983, attorney Richard Babcock outlined an ambitious litigation strategy for challenging single-family zoning in which builders, demographers, engineers, planners, environmentalists, and land economists might all be disclosed as witnesses.<sup>37</sup> In 2003, Jeffrey Lehmann argued for the invalidation of zoning ordinances that have an exclusionary intent or effect or, with specific respect to minimum lot sizes, require minimums of more than one acre unless the municipality demonstrates the ordinance’s contribution to public welfare.<sup>38</sup>

With respect to large lot minimums in areas without sanitary sewers, attempts to establish bright-line analytical rules for judicial application have been generally unsuccessful. The courts of Pennsylvania, the state in which the judiciary has pushed back more than any other against minimum lot sizes, experimented with a two-acre cutoff for reversing the burden of proof on municipalities<sup>39</sup> but ultimately abandoned it.<sup>40</sup> Although attempts to set clear boundary lines have the obvious benefit of establishing predictability and usable guidance for municipalities and property owners, in practice the science of on-site wastewater disposal is inherently complex, multifactorial, and not susceptible to any but the broadest general presumptions. Basic minimums are subject to modification by a dizzying array of additional factors, from soil quality and water absorption rates, which affect the area needed for leaching fields, to proximity to wetlands, watercourses, and other protected areas from which even greater setbacks may be required. For all those reasons, courts are understandably hesitant to second guess lot sizes in excess of one, two, or even three acres.

Although lot size minimums in urban areas may stand on shakier legal ground, courtroom challenges in this context have been uncommon. Given the current state of the case law, the presence of city water and sewer connections is important for nullifying the primary public health and environmental concerns that have dissuaded courts from scrutinizing minimum lot sizes in areas where no such services exist. Deprived of that rationale, municipalities must rely on other bases to sustain urban minimum lot sizes, which may be related only tangentially to genuine public health or safety, such as speculative concerns about the ease of emergency vehicle access or generalized worries about stormwater runoff.

## THE POTENTIAL FOR STATE LEGISLATIVE CHANGES

In light of the benefits of reform and the limitations of the judicial remedies that have been won through litigation to date, what options are available for state legislative agendas? The primary avenue for legislative reform to municipal zoning laws has in recent years been through direct preemption of local ordinances, such as the laws that have been proposed or adopted in states including Vermont, Texas, Montana, California, and New York.<sup>41</sup> Pursuant to bills that have been proposed or passed, municipalities are typically barred from excluding certain building typologies, such as small multifamily housing or ADUs or from requiring certain minimums, such as those for parking spaces or lot size. Other legislation has had a wider focus, seeking to require counties and municipalities to revise their zoning ordinances to accommodate certain quantities of housing through zoning changes adopted by those local governments. A third means of reform, adopted in certain states and under certain circumstances, is for states to directly provide a heightened standard of review for zoning ordinances, including those ordinances governing minimum lot sizes.<sup>42</sup>

Examples of those reforms can be found in Connecticut, where, for purposes of the state affordable housing statute, proposed developments that comply with certain income-restriction criteria are presumed to be approved and can be denied only if (1) necessary to protect substantial public interests in health, safety, or certain other matters; (2) such public interests clearly outweigh the need for affordable housing; and (3) such public interests cannot be protected by reasonable changes to the affordable housing development.<sup>43</sup> California's so-called builder's remedy requires approval of residential projects in cities and counties that are out of compliance with state targets for housing capacity unless the locality can demonstrate that (1) the project would have a specific adverse impact on public health and safety and (2) the impact cannot be mitigated or avoided without making the development unaffordable.<sup>44</sup> The impact that serves as the basis for the denial must be founded on objective, written public health or safety standards in place when the application was deemed complete.

Mirroring the litigation approach outlined previously, statutory changes that narrow the scope of authority of local zoning commissions regarding concrete health and safety standards could, in effect, override local minimum lot sizes that are beyond what those standards would require. For example, a state statute might provide that a proposed development that complies with all state building and sanitary codes must be issued a permit, with provisions allowing applications to petition the courts for a writ of mandamus in the event that an application is wrongfully denied. Connecticut adopted such an approach in response to the state supreme court decision discussed earlier,<sup>45</sup> in which the state zoning enabling act has been amended to prohibit zoning regulations from “[e]stablish[ing] for any dwelling unit a minimum floor area that is greater than the minimum floor area set forth in the applicable building, housing or other code.”<sup>46</sup> Connecticut, like certain other states, also has a uniformity requirement mandating that all zoning regulations be uniform for each zoning district, but the state nonetheless allows regulations in one district to vary from those in another district.<sup>47</sup> That provision, which pays lip service to

the idea of uniform legal standards of the sort that characterize health and safety regulations, has only encouraged a proliferation in the number of zoning districts over time because each minor adjustment within a zone may only be lawfully accommodated through the creation of another zone. A coherent uniformity provision might require cities to establish a uniform lot size in areas served by public sewer and water, a uniform density (measured by units per acre) in those areas, or other uniform standards for massing, setbacks, or other building and site planning regulations.

For minimum lot sizes, a preemption provision likewise might bar municipalities from requiring a quantity of land greater than the minimum needed to satisfy the provisions of the applicable health or sanitary code or, in urban areas, prohibit requiring frontages beyond a certain length, setbacks of a certain depth, or lot sizes larger than necessary to accommodate the minimum frontage and setbacks. Although this approach carries the risk of politicizing state codes, their uniformity and basis in professional expertise to some extent shields them from shifting political winds.

States may also consider modifying their state zoning enabling acts, without which municipalities lack the power to enact zoning and by which that same zoning power is circumscribed. The original Standard State Zoning Enabling Act (SSZEA), printed by the United States Department of Commerce in 1924, defined this power broadly in terms of health—deliberately omitting use of the term “public health” lest courts inquire about the benefits to public health of yard size mandates—while defining the public welfare to be served as that of the “community,” a term that the otherwise meticulous drafters of the act left undefined.<sup>48</sup> In spite of those careful definitions, the United States Supreme Court decided in the case of *Nectow v. Cambridge* in 1928 that the proper test was whether the application of a particular zoning requirement “bear[s] a substantial relation to the *public health*, safety, morals, or general welfare.”<sup>49</sup> In accordance with *Nectow*, at least 16 states have specifically incorporated a “public” health rationale into their zoning enabling acts.<sup>50</sup> In addition, several states have now added affirmative obligations to use zoning for inclusive, rather than exclusionary, purposes.<sup>51</sup> Concerns about exclusion, unaddressed by the drafters of the SSZEA, have expanded as the adverse effects of exclusionary zoning have made themselves more and more apparent and as scholars, courts, and state governments became solicitous of the rights and welfare of those intentionally excluded.<sup>52</sup> To the extent that courts have left undetermined the question whether the “public welfare” to be served is that of the particular locality or of a wider area,<sup>53</sup> certain states have clarified that the zoning powers are to be exercised in the interest of the state as a whole or the general public.<sup>54</sup> Finally, two states (Maine and New Jersey) have identified prevention of “sprawl” as a zoning objective, which, although not defined, is implicitly directed at low-density, large lot development.<sup>55</sup> Those sorts of changes do not have an immediate impact on local zoning policy but, by outlining the contours of the local zoning power, provide local governments and the courts with the sort of guidance needed to evaluate current zoning ordinances.



## CONCLUSION

In a country where most homes are single-family and detached<sup>56</sup> and where minimum lot sizes are virtually ubiquitous, allowing property owners to subdivide their land to accommodate additional detached homes is a critically important means of increasing the housing supply and promoting the option of fee simple homeownership for American households. The success of accessory dwelling units in California and of minimum lot size reform in Houston shows the potential for these changes to result in major increases in housing production that restrain cost increases while allowing better use of existing infrastructure.

State legislative bodies have made efforts to directly preempt local minimum lot sizes. Efforts such as those to enshrine a higher standard of judicial review or to further limit the zoning power to matters of public health, safety, and the general welfare of all citizens can further assist in constraining zoning practices where a purpose other than exclusion or income-sorting is difficult to discern. Reinforcing this trend are amendments to state zoning enabling acts made in recent years, which have narrowed the scope of local authority to enact zoning ordinances, and which can assist legal challenges to minimum lot size regulations or other zoning laws by providing a clearer statement of purpose by which to judge those laws and regulations.

## ABOUT THE AUTHOR

Charles Gardner is a research fellow at the Mercatus Center whose research focuses on planning law and housing affordability. During a career as an attorney devoted primarily to the practice of civil litigation, he nurtured an interest in cities and urban planning which he developed into an area of expertise through his work at the Old Urbanist blog and his involvement in state and local policy and planning. In particular, Charlie works on zoning and land use issues as a local elected official and as an active participant in state policymaking, where he serves on the Connecticut Advisory Committee to the U.S. Commission on Civil Rights (USCCR) and on the Commission on Connecticut's Development and Future (CCDF).

## NOTES

1. US Census Bureau, "Highlights of 2022 Characteristics of New Housing," <https://www.census.gov/construction/chars/highlights.html>.
2. US Census Bureau, "Current Data, Annual Characteristics Tables, Lot Size of New Single-Family Houses Completed," <https://www.census.gov/construction/chars/current.html>.
3. Weihua Zhao, "The Long-Run Effects of Minimum Lot Size on Housing Redevelopment," *Journal of Housing Economics* 55 (2022): 101806, <https://www.sciencedirect.com/science/article/abs/pii/S1051137721000619>; Joseph Shortell, "The Effect of a Minimum Lot Size Reduction on Residential Property Values: The Case of Houston" (master's thesis, University of Barcelona, 2022), [https://diposit.ub.edu/dspace/bitstream/2445/187972/1/TFM-ECO\\_Shortell\\_2022.pdf](https://diposit.ub.edu/dspace/bitstream/2445/187972/1/TFM-ECO_Shortell_2022.pdf); Salim Furth and M. Nolan Gray, "Do Minimum-Lot-Size Regulations Limit Housing Supply in Texas?" (Mercatus Policy Research, Mercatus Center at George Mason University, Arlington, VA, May 1, 2019), <https://www.mercatus.org/students/research/research-papers/do-minimum-lot-size-regulations-limit-housing-supply-texas>; Robert C. Ellickson,

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4. HOUSTON, TX, ORDINANCES § 42-182 to 42-183 (2013).
  5. BETHLEHEM, CT, SUBDIVISION REGULATIONS (March 13, 1955), [Subdivision-Regulations.pdf](https://www.bethlehemct.org/files/subdivision-regulations.pdf) (bethlehemct.org).
  6. See, for example, Robert Cervero and Erick Guerra, “Urban Densities and Transit: A Multi-dimensional Perspective” (UCB Working Paper no. UCB-ITS-VWP-2011-6, University of California, Berkeley, Institute of Transportation Studies, Berkeley, September 2011); Murtaza Haider, “Diminishing Returns to Density and Public Transit,” *Transport Findings*, October 2019. Cervero and Guerra find that a density of about 30 people per gross acre can justify light rail transit, consistent with the density level achievable with single-family homes on 1,400 square foot lots (approximately 20–25 units per acre).
  7. For example, the greater Los Angeles region, comprising six counties and nearly 20 million people, has 78 percent of its residential land reserved for single-family detached homes (Stephen Menendian, Samir Gambhir, and Chih-Wei Hsu, “Single-Family Zoning in Greater Los Angeles” [University of California, Berkeley, Othering & Belonging Institute, March 2, 2022]). In Cuyahoga County, Ohio, home to the city of Cleveland, 58 percent of land is zoned to allow single-family homes exclusively, and 16.9 percent allows two-family homes or larger (Michael Lepley and Lenore Mangiarelli, “Exclusionary Zoning in Cuyahoga County” [Fair Housing Center for Rights & Research, January 2020]). On the state-wide level, numbers are even starker: the Connecticut Zoning Atlas found that single-family housing is allowed on 90.6 percent of land in Connecticut, whereas structures with four or more units are allowed on only 2.2 percent.
  8. Tianfang Cui, “The Emergence of Exclusionary Zoning across American Cities” (working paper, University of Pennsylvania, Wharton School, January 11, 2023).
  9. Cui, “The Emergence of Exclusionary Zoning.”
  10. David S. Schoenbrod, “Large Lot Zoning,” *Yale Law Journal* 78, no. 8 (1969): 1418–41.
  11. According to a study of Connecticut towns, the town of Guilford increased the minimum lot size for the northern section of the town from 10,000 square feet in 1953 to 40,000 in 1955 to 60,000 square feet in 1969 and 160,000 square feet in 1978. In Woodbridge, Connecticut, lot minimums in its most common residential zone increased from 20,000 square feet in 1932, to 60,000 square feet in 1938, to 65,000 square feet in 1966 and 87,000 square feet in 2001. (Robert C. Ellickson, “Zoning and the Cost of Housing: Evidence from Silicon Valley, Greater New Haven, and Greater Austin,” *Cardozo Law Review* 42, no. 1611 [2021]).
  12. AUSTIN, TX, ZONING ORDINANCE § 12 (1931), <https://www.austincontrarian.com/files/1931-zoning-ordinance.pdf>; Andra Lim, “Should Austin Block or Welcome Development of New Homes on Tiny Lots?,” *Austin American-Statesman*, September 4, 2016.
  13. See *Clemons v. City of Los Angeles*, 36 Cal. 2d 95, 222 P.2d 439 (1950).
  14. PORTLAND, OR, “Portland’s Historically Narrow Lots,” appendix G, October 2017, of “Residential Infill Project: An Update to Portland’s Single-Dwelling Zoning Rules,” adopted August 12, 2020, ORDINANCE No. 190093, [https://www.portland.gov/sites/default/files/2019-12/vol\\_3\\_appendix\\_g\\_historicallynarrowlots.pdf](https://www.portland.gov/sites/default/files/2019-12/vol_3_appendix_g_historicallynarrowlots.pdf).

15. See Houston, TX, ORDINANCES § 42-181 (effective May 24, 2013) and see LOS ANGELES, CA, CODE § 12.22 C.27 (effective March 18, 2006). The Los Angeles ordinance legalized residential lots as small as 600 square feet but did so only in areas zoned for multifamily and commercial uses, exempting all areas zoned for single-family use. The ordinance further imposed a burdensome special permitting process for small lot subdivisions and complex design standards, which limited the usefulness of the ordinance.
16. See “Introduction of Urban Land Use Planning System in Japan” (日本の都市計画制度の導入), mlit.go.jp. Per regulations, only two meters of street frontage is required per lot. Floor area ratio (FAR) is prescribed according to zone, lot size, and street width, but lot size is not regulated in any zone, and the number of units per structure is likewise not limited. Notwithstanding those regulations, which are highly permissive by American standards and typically allow FAR of at or close to 1 for even the most restrictive zones, Tokyo’s urban landscape is dominated by single-family detached homes. The homeownership rate in Japan of approximately 61 percent as of the late 2010s was only slightly less than the rate in the United States despite Japan having 10 times the population density of the United States.
17. For a sampling of this research, which presents many thoughtful and well-reasoned arguments, see Massachusetts Department of Commerce and Development, “The Effects of Large Lot Site Zoning on Residential Development,” *Technical Bulletin* 32 (1958); “Zoning against the Public Welfare: Judicial Limitations on Municipal Parochialism,” *Yale Law Journal* 71, no. 4 (1962); 720–35; Peter Ames Eveleth, “An Appraisal of Techniques to Preserve Open Space,” *Villanova Law Review* 9, no. 4 (1964); David M. Becker, “The Police Power and Minimum Lot Size Zoning Part 1: A Method of Analysis,” *Washington University Law Review* 1969, no. 3 (1969); Schoenbrod, “Large Lot Zoning.”
18. See, for example, John Anderson, “Environment—Environmental Considerations: New Arguments for Large-Lot Zoning,” *Urban Law Annual/Journal of Urban and Contemporary Law* 7, no. 370 (1974); Dwight Preston, “Zoning—Rural America: A New Lease on Life?” *San Diego Law Review* 10, no. 887 (1973).
19. See Frank F. Skillern, “Environmental Legislation—An Alternative to Minimum Acreage Zoning,” *Texas Tech Law Review* 6, no. 1 (1975) (noting that “environmental legislation ... may be an alternative to traditional zoning that achieves basically similar objectives in a less controversial manner”).
20. Paper on topic: Hafiz A. Pasha, “Suburban Minimum Lot Zoning and Spatial Equilibrium,” *Journal of Urban Economics* 40, no. 1 (1996): 1–12.
21. See, for example, Paul Boudreaux, “Lotting Large: The Phenomenon of Minimum Lot Size Laws,” *Maine Law Review* 68, no. 1 (2016); Furth and Gray, “Do Minimum-Lot-Size Regulations Limit Housing Supply in Texas?”; Zhao, “The Long-Run Effects”; Jake Wegmann, “Bayou City Townhouse Boom: Does Houston Have Something to Teach Us about Pro-climate Urban Transformation?,” University of Texas School of Architecture *Platform*: 12–17 (2020–2021); Mike Mei, “House Size and Household Size: The Distributional Effects of the Minimum Lot Size Regulation” (Job Market Paper, University of Michigan, Ann Arbor, MI, 2022).
22. Houston adjusted its minimum lot size for single-family homes in certain areas from 5,000 square feet to 1,400 square feet in 1998. See 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* (July 2020), and M. Nolan Gray and Jessica McBirney, “Liberalizing Land Use Regulations: The Case of Houston” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, August 17, 2020). Houston’s reform was exceptional both in the degree to which minimums were relaxed and in the area to which it applied, however, and it has been imitated by few, if any, other American cities.
23. Reicher, “‘Tall Skinny’ Takeover.”
24. Gray and Millsap, “Subdividing the Unzoned City.”
25. Gray and Millsap, “Subdividing the Unzoned City.”
26. Emily Hamilton, “Learning from Houston’s Townhouse Reforms” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 11, 2023).
27. Gray and Millsap, “Subdividing the Unzoned City.”

28. See Hamilton, “Learning from Houston’s Townhouse Reforms.” Rental units continue to be built in large quantity in Houston but typically in the form of large structures with many dozens of units rather than in small multifamily structures such as duplexes or triplexes.
29. Christopher J. Hoffler, “Tiny Home Lot Split Policy: A Needed Adjunct to Accessory Dwelling Units in Promoting Affordable Housing,” *North Carolina Banking Institute* 27, no. 145 (2023) (discussing the practical economic advantages of lot splits as an alternative to accessory dwelling units under common ownership, including market incentives, financial risk, availability of loans, and the simplicity and profitability of simply selling excess land compared with financing and constructing a second dwelling).
30. Hoffler, “Tiny Home Lot Split Policy.”
31. Results from a Zillow search performed in June 2023 for single-family homes of 750 square feet or less in Edmonton, Alberta.
32. Hoffler, “Tiny Home Lot Split Policy” (noting that from the fourth quarter of 2019 to the third quarter of 2022, Durham’s planning department received 152 submissions for lot split permits and 60 submissions for ADU permits).
33. See Daniel G. Parolek, *Missing Middle Housing: Thinking Big and Building Small to Respond to Today’s Housing Crisis* (Washington, DC: Island Press, 2020). Parolek defines *missing middle housing* as “house-scale buildings with multiple units in walkable neighborhoods,” which excludes detached single-family homes without reference to the size of the lot on which they sit. See also <https://missingmiddlehousing.com/about>.
34. For a review of these changes from an earlier perspective, see Carol M. Rose, “Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy,” *California Law Review* 71, no. 3 (May 1983): 837–912 (stating that “during the last two decades [1963–1983], judges and legal scholars have shown increasing doubt that local governments make land development decisions fairly and rationally.”
35. Daniel R. Mandelker and A. Dan Tarlock, “Shifting the Presumption of Constitutionality in Land-Use Law,” *Urban Lawyer* 24, no. 1 (1992): 1–50 (noting that “zoning decisions are too often ad hoc, sloppy and self-serving decisions with well-defined adverse consequences without off-setting benefits”).
36. *Vickers v. Twp. Comm. of Gloucester Twp.*, 37 N.J. 232, 181 A.2d 129 (1962), overruled by *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 92 N.J. 158, 456 A.2d 390 (1983). Justice Hall would later author the well-known decision in *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 192, 336 A.2d 713, 734 (1975).
37. Richard F. Babcock, “The Egregious Invalidity of the Exclusive Single-Family Zone,” *Land Use Law & Zoning Digest* 35, no. 7 (July 1983).
38. Jeffrey M. Lehmann, “Reversing Judicial Deference toward Exclusionary Zoning: A Suggested Approach,” *Journal of Affordable Housing & Community Development Law* 12, no. 2, Smart Growth and Affordable Housing (Winter 2003): 229–69.
39. *Appeal of Kit-Mar Builders, Inc.*, 439 Pa. 466, 471, 268 A.2d 765, 767 (1970) (holding that minimum lot sizes beyond two acres are presumptively invalid “[a]bsent some extraordinary justification”).
40. *C & M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd.*, 820 A.2d 143, 146–47 (2002).
41. Eli Kahn and Salim Furth, “Breaking Ground: An Examination of Effective State Housing Reforms in 2023” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, August 1, 2023).
42. This approach was perhaps first suggested by Richard Babcock in *The Zoning Game: Municipal Practices and Policies* (Madison: University of Wisconsin Press, 1966): 159–66; see discussion of potential reforms there and also in Bernard H. Siegan’s *Land Use without Zoning* (Blue Ridge Summit, PA: Lexington Books, 1972): 174–75.
43. Affordable Housing Land Use Appeals Act of 1989, CONN. GEN. STAT. § 8-30g (1989).
44. CAL. GOV’T CODE § 65589.5 (2023).
45. *Builders Serv. Corp. v. Plan. & Zoning Comm’n of Town of E. Hampton*, 208 Conn. 267, 298, 545 A.2d 530, 546 (1988).

46. CONN. GEN. STAT. § 8-2(d)(7) (2023).
47. CONN. GEN. STAT. § 8-2(a)(2) (2023) (“Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All zoning regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district.”)
48. Standard State Zoning Enabling Act (1924), p. 4.
49. *Nectow v. City of Cambridge*, 277 U.S. 183, 187, 48 S. Ct. 447, 448, 72 L. Ed. 842 (1928) (emphasis added).
50. Those states are AZ, FL, IL, KS, MI, MN, MT, NC, NJ, NY, OH, PA, RI, SC, TN, and VT.
51. See, for example, ME (ME. REV. STAT. § 4312), CT, FL, ID, MA, NV, PA, RI, SC, VA, and VT. Notwithstanding those statutes, only two states, Florida and Nevada, have a requirement in their zoning enabling acts to ensure an adequate supply of housing (although other states, such as California, have adopted housing targets elsewhere), and only one state, Idaho, mentions property rights in its zoning enabling act.
52. See Standard State Zoning Enabling Act (1924). The SSZEA contains no mention of housing supply.
53. For what remains one of the clearest judicial statements on this question, see *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 177, 336 A.2d 713, 726 (1975) (“The warning implicates the matter of whose general welfare must be served or not violated in the field of land use regulation. Frequently the decisions in this state, including those just cited, have spoken only in terms of the interest of the enacting municipality, so that it has been thought, at least in some quarters, that such was the only welfare requiring consideration. It is, of course, true that many cases have dealt only with regulations having little, if any, outside impact where the local decision is ordinarily entitled to prevail. However, it is fundamental and not to be forgotten that the zoning power is a police power of the state and the local authority is acting only as a delegate of that power and is restricted in the same manner as is the state. So, when regulation does have a substantial external impact, the welfare of the state’s citizens beyond the borders of the particular municipality cannot be disregarded and must be recognized and served.”)
54. See, for example, IDAHO CODE § 67-6502 (“The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho”); TENN. CODE ANN. § 13-7-103 (2010) (“Such regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the state and of its counties.”); N.J. REV. STAT. § 40:55D-2 (2022) (intent of act to “ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole”); CONN. GEN. STAT., C.124 § 8-2 (2012) (zoning regulations shall “consider the impact of permitted land uses on contiguous municipalities and on the planning region”).
55. See ME. REV. STAT. § 4312 and N.J. REV. STAT. § 40:55D-2.
56. According to 2021 American Community Survey (ACS) 1-Year Estimates, 62.9 percent of all occupied American housing units are single-family detached units, and as many as 5.2 percent are freestanding mobile homes. Accordingly, 69.3 percent of Americans live in freestanding homes, whether site-built, manufactured, or mobile. Another 6.4 percent live in attached single-family housing. Only 25.5 percent of occupied housing units are apartments, although some of them may be held in ownership through condominiums, cooperatives, or other forms of common interest community.