

## Liberalizing Land Use Regulations: The Case of Houston

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Over the past decade, housing affordability has emerged as a pressing issue in many American cities. In an annual survey of mayors conducted by researchers at Boston University, one-third of the mayors surveyed ranked housing affordability as one of the top challenges their cities face.<sup>1</sup> The data confirm the urgency of this concern: from 1970 to 2010, median home values appreciated at a rate outpacing median household incomes.<sup>2</sup> By one estimate, half of all renters were “rent burdened” in 2018, meaning that they spent more than a third of their income on rent, and a quarter of American renters spent more than half of their income on rent.<sup>3</sup>

That is the bad news. The good news is that policymakers and planners can ameliorate this crisis by liberalizing the restrictions on land use that drive up housing costs and block new development.

There is substantial agreement in the literature that restrictive local land use regulations, such as zoning and subdivision regulations, are a major driver of housing costs, to the extent that they limit the quantity of new housing developed and raise construction costs.<sup>4</sup> Reducing regulations that inhibit new construction would make housing more affordable, but often a powerful constituency of local homeowners opposes building new housing, as new housing is often seen as a threat to property values.<sup>5</sup> Simultaneously, urban renters might have antidevelopment attitudes tied to fears of gentrification.<sup>6</sup> State and local leaders face a tricky political minefield on the road to affordability.

Sweeping subdivision regulation reform in Houston, Texas, provides an instructive alternative to what can often seem like a no-win scenario for local planners.<sup>7</sup> The circumstances surrounding the city’s 1998 reduction of minimum lot sizes for single-family homes hold two key lessons for policymakers: First, allowing homeowners who are strongly opposed to reform to opt out of

a reform's effects can effectively negate local opposition to citywide reform. Second, postreform redevelopment following a citywide reform is likely to occur mostly in middle-income residential neighborhoods and underutilized former industrial and commercial areas, not the marginalized residential communities that urban renters are concerned about. This policy brief outlines what researchers know about minimum-lot-size regulation, sketches out Houston's unique system of urban land use regulation, and draws lessons from Houston's successful experience with subdivision liberalization.

## **WHAT DO RESEARCHERS KNOW ABOUT MINIMUM-LOT-SIZE REGULATION?**

Subdivision regulations control the process of breaking larger lots into smaller lots.<sup>8</sup> Minimum lot sizes are foundational to this process, requiring that every parcel of land in a defined area meet a specified minimum square footage. These rules are often accompanied by other land use regulations controlling elements such as street design. Cities sometimes grant exceptions, or variances, to their set minimums, but the resulting noncompliant lots are generally within a few square feet of the regulated minimum, allowed only to accommodate topographical irregularities.<sup>9</sup>

The consensus in the research community is that minimum-lot-size rules have a limiting effect on new development. That is, these rules tend to keep lot sizes larger than what might otherwise be demanded by housing consumers. Clustering of lot sizes just larger than the set minimum evinces the extent to which minimum-lot-size regulations affect new development. This clustering suggests that developers are barely meeting the minimum regulatory criteria and might have platted smaller lots if allowed. One of us (Nolan Gray), with Salim Furth, finds strong evidence of binding effects in suburban Texas, showing that “where minimum sizes creep above 5,000 square feet, actual lot sizes tend to cluster at the zoned minimum.”<sup>10</sup>

Minimum-lot-size regulations may leave prospective buyers who require small, lower-priced homes with no options within their price range, locking these prospective buyers out of the housing market entirely.<sup>11</sup> The housing market thereby distorts, with housing costs rising above what they would otherwise be in a less regulated building environment.<sup>12</sup> Setting relatively large minimum lot sizes also restricts density, which drives excessive urban horizontal expansion (colloquially referred to as “sprawl”) and increases transportation and commuting costs for buyers already compromising on cost.<sup>13</sup>

## **HOUSTON LAND USE REGULATION IN CONTEXT**

Houston famously does not enforce traditional zoning laws, which broadly restrict densities and segregate land uses. In fact, it is the only major American city without zoning, which was heavily promoted by the US Department of Commerce beginning in the 1920s.<sup>14</sup> Houston voters rejected the policy in three separate referenda in 1948, 1962, and 1993.<sup>15</sup>

But the Bayou City is not without any land use regulations.<sup>16</sup> For example, Houston restricts certain businesses, such as sex shops and junkyards, from locating close to schools and certain residential areas. Similarly, Houston subdivision standards hew closely to standards in other cities, with setbacks for residential units, minimum-parking-space requirements, and minimum block widths. These rules are written on a shall-approve basis.<sup>17</sup> That is, the Houston Planning Commission must approve any replats that comply with all the subdivision guidelines, making Houston's development process highly predictable and transparent.<sup>18</sup>

Beyond these standard public regulations lies a unique, extensive network of private deed restrictions, which are "binding upon every owner in a subdivision."<sup>19</sup> Many Houston homeowners rely on restrictive covenants to privately regulate zoning mainstays such as use, density, and design within their neighborhoods, beyond what would be required by the Houston Planning Commission. A deed restriction could, for example, restrict a neighborhood exclusively to single-family homes, blocking the development of new apartments. Researchers have characterized these deed restrictions as a kind of *de facto* zoning.<sup>20</sup>

Nonetheless, by 1998 Houston provided an exceptionally liberal, pro-growth regulatory environment for housing development. One exception to this was the city's minimum-lot-size regulations, which required 5,000 square feet of land for detached single-family homes and 2,500 square feet of land for townhouses. The former requirement restricted most housing development to a standard low-density, suburban form, while the latter generally proved to be infeasible. The 1998 overhaul of Chapter 42, Houston's "Subdivisions, Developments, and Platting" code, amended these regulations.

The reform ordinance broke the city into urban and suburban zones, the former bounded by the I-610 ring road, which broadly encompasses the most intensely developed area of Houston. Within this urban area, the as-of-right minimum lot size for single-family homes dropped from 5,000 square feet to 3,500 square feet. Yet, subject to certain lot-coverage and width conditions, the minimum lot size could go as low as 1,400 square feet. The reform also removed certain unworkable open space and setback requirements. These provisions combined to reduce minimum-lot-size requirements by as much as 72 percent, effectively unlocking substantial new housing development opportunities across Houston.

## **THE WISDOM OF AN OPT-OUT PROVISION**

The 1998 reform was motivated by at least two major factors. The first was an economic boom that raised Houston's population and income considerably. Between 1990 and 2000, Harris County's population grew by 21 percent, and median household incomes grew by 38 percent, boosting demand for new housing, especially in the urban area encircled by the I-610 loop.<sup>21</sup> According to market participants, this was driven in part by young professionals moving to the city in order

to live close to major job centers.<sup>22</sup> The impact of these market pressures can be observed in the lead-up to 1998, when the planning commission began to take a liberal attitude toward smaller lots near Houston’s major employment centers.

Before reform, permission to replat sub-5,000-square-foot lots came easily via planning commission variances, which points to the second source of reform pressure: changing attitudes among planners. There was a growing interest among both the commission and planning staff in “urban revitalization,” defined as increasing urban densities and improving walkability.<sup>23</sup> This helps explain the frequency with which pre-1998 variances were granted to allow sub-5,000-square-foot lots as well as the 1998 reform’s additional, nonresidential density measures, such as its reduction of commercial setbacks.

But market forces and planning objectives are often insufficient to override antiliberalization interests. Homeowners, for example, often effectively resist the loosening of zoning or subdivision requirements because they fear that new housing supply may lower their own property values, detract from public services, or diminish neighborhood character, a concern often loaded with racial or class animosities.<sup>24</sup> Houston homeowners, however, uniquely rely on private deed restrictions rather than on public regulation to assert local development preferences. This institutional buffer mitigated opposition to the 1998 subdivision reform: homeowners with the strongest opposition to the smaller lot sizes were mostly already protected against them.

For reform opponents who could not fall back on a private deed restriction, the planning commission added an opt-out provision to Chapter 42, which allowed local homeowners to petition to adopt a “Special Minimum Lot Size,” which typically limits new lot minimums to the current local average for 40 years, with the approval of 60 percent of nearby owners. In 2013, when the subdivision reforms were later extended to the entirety of Houston, the threshold dropped to 55 percent. The added protection meant that even homeowners without deed restrictions could organize with their neighbors to exempt themselves from the loosened regulations. Homeowners with extreme lot-size preferences thus had little incentive to stymie the reforms, clearing a path for liberalization.

## **GROWTH WAS CONCENTRATED IN MIDDLE-INCOME NEIGHBORHOODS**

Allowing wealthy property owners to exempt themselves from a reform designed to encourage more affordable housing risks being counterproductive. If residents of high-demand areas can block new development, developers may instead shift to low-income neighborhoods with less expensive land and proceed to price longtime residents out of their old communities. An analysis of US census tract data from before and after the reform reveals that this was not the case: rather, reform-style development occurred at a statistically significant rate in underbuilt middle-income neighborhoods and underutilized former industrial areas.

Between 1999 and 2016, 25,269 new residential parcels smaller than 5,000 square feet were developed, according to data from the Harris County Appraisal District.<sup>25</sup> A regression analysis of census tract data reveals that the relationship between income and new development is not linear, but rather an inverted “U” shape, meaning new development was concentrated in middle-income tracts.<sup>26</sup> Indeed, many areas picked up as hotspots for reform-style development by 2016 were largely middle- or upper-income neighborhoods in 2000. The typical development in these areas consisted of two to three townhouses replacing a detached single-family house on a 5,000 square foot lot. The result has been a dramatic increase in density in many of Houston’s western and northern inner suburbs: while the city’s overall population density held steady between 2000 and 2016, densities in these neighborhoods more than doubled.

At the same time, postreform development activity was significantly correlated against households receiving public assistance. A hotspot analysis likewise revealed that postreform development did not occur at significant rates in southeast Houston, historically home to more moderate-income households, including portions of the city’s large African American community. On the one hand, this might help to alleviate traditional concerns related to gentrification; on the other, this might rekindle traditional concerns related to disinvestment. We leave an interpretation of the appropriate balance here to policymakers and planners.

## **CONCLUSION**

The experience of Houston reaffirms much of what researchers already know: minimum-lot-size regulations limit urban development, driving up lot sizes and thereby increasing housing prices. By liberalizing these rules, the 1998 subdivision reforms allowed developers to meet a large and growing demand among Houstonians for smaller houses closer to major job centers.

But the reforms also chart new territory: a key element of their success involved allowing homeowners with the most extreme lot-size preferences to opt out of reform, thereby mitigating opposition to the broader reform. Even accounting for this concession, postreform subdivision has been heavily concentrated in neighborhoods that were either middle class or sparsely populated, without imposing an undue burden on traditionally marginalized communities. As planners and policymakers across the country wrestle with the complicated politics of land use liberalization, the case of Houston thus offers an instructive example.

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## NOTES

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