

Protecting Private Property Rights, Fostering Economic Growth, and Limiting Growth of Land Use Controls by Counties

Testimony before the Senate Intergovernmental Relations Committee

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Findings

- Cities generally need less regulatory authority over construction and land use, rather than counties needing more.
- Houston is a good example of a local government that gets by with less regulation of land use and construction.
- Counties currently have sufficient authority to manage construction and land use within their borders.

Mr. Chairman, members, thank you for having me here today. My name is Bill Peacock. I am the Vice President of Research and Director of the Center for Economic Freedom at the Texas Public Policy Foundation. I appreciate you allowing me the opportunity to speak with you today about regulation of land use and construction by counties.

Article 9 of the Texas Constitution relates specifically to counties. The article allows for the creation of counties and details their very limited constitutional authority. Texas does, and has always, operated under the “Dillon Rule” for counties; the rule states that counties may exercise no power unless it is expressly granted by the state legislature, or can be fairly implied by an express grant of power from the legislature.

Contrary to popular belief, there is some zoning specifically allowed by Texas law in unincorporated areas in Texas. Chapter 231 of the Texas Local Government Code is actually entitled “County Zoning Authority.” These zoning powers are narrowly construed and generally extend roughly 5,000 feet beyond the feature in question, or otherwise cover an area in which potential impacts of development around the feature were sufficient to convince the legislature that enhanced land use control was necessary to protect the feature.

Chapter 231 of the Government Code is an example of the Legislature’s historical preference to only grant specific counties specific authority to address a specific problem. Many of the arguments for increasing county regulatory authority are based on the notion that since municipalities should have extensive regulatory authority, counties should too.

However, the problem is not that counties do not have enough regulatory authority; the problem is often that cities have too much. Or to put it another way, there are insufficient controls in place to ensure that the exercise of the current regulatory authority by cities does not result in harm to property rights.

Our recent research paper, *Regulatory Takings Still a Threat to Property Rights*, explains this in detail and makes recommendations about how to better protect property rights from regulatory takings. Regulatory takings are regulations imposed by a subdivision of government that reduces the use and therefore the value of private property.

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Houston is a good example of a local government that gets by with less regulation of land use and construction. Houston, the fourth largest city in the United States, does not have zoning authority, which has been rejected time and time again by Houstonians. In fact, it is the lack of zoning that has helped Houston lead the way in Texas and across the United States when it comes to economic and job growth.

Counties currently have sufficient authority to manage land use within their borders. The correct action is to decrease city regulatory authority to make them more like Houston—and the counties—not to increase county authority.

Protecting private property rights through keeping land use controls in check is crucial to Texas' continued economic and job growth. The Foundation opposes increasing the regulatory authority of counties. ★

