

RESTORING PRIVATE PROPERTY RIGHTS: REGULATORY TAKINGS

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APRIL 2026

KEY POINTS

- Private property rights are under threat from municipal zoning ordinances and design mandates.
- Texas law has failed to adequately protect property owners from regulatory takings.
- By closing the municipal loophole, Texas can be the national leader in private property rights.

INTRODUCTION

In the wake of the 89th Legislature’s landmark housing reforms, a cadre of North Texas cities has moved to undermine the intent of two new laws: Senate Bills (SBs) 840 and 15 ([Fechter, 2025](#); [Britschgi, 2025a](#)). These measures were enacted to remove artificial constraints on market participants and stimulate increased housing supply ([SB 15 Bill Analysis, 2025, p. 1](#)). Yet rather than honoring the legislature’s intent, several municipalities have enacted new ordinances imposing costly, arbitrary mandates that prioritize control over affordability.

In some cases, property owners seeking to construct developments authorized under the new state laws must build a swimming pool, create designated “art spaces,” include a community amenity center, or ensure that no two adjacent homes share the same façade due to local regulations ([Britschgi, 2025b](#); [City of Arlington, 2025](#); [City of Killeen, 2025](#); [City of Irving, 2025](#)). None of these requirements relates to health or safety; they are aesthetic and exclusionary. Such regulations weaponize local police power to recreate, through design mandates, the very barriers to property that SB 15 and SB 840 sought to remove.

These ordinances in Arlington, Plano, Frisco, Irving, and other cities represent more than municipal circumvention of state law ([Bonura et al., 2025](#)). When government dictates how an owner must use his property—not to prevent harm or nuisance, but to satiate bureaucratic tastes—it commits a regulatory taking. Texas once recognized

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The Texas Constitution of 1876 affirms that “no citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

that legal principle clearly. Over time, however, land-use regulations have eroded private property rights, transmogrifying ownership into a conditional privilege.

ISSUE

Private property rights are foundational to all other rights (Brannan et al., 2010). Early American and Texas founders alike emphasized their preeminence. The Texas Declaration of Independence proclaims it as part of a sacred trio: the right to “life, liberty, and property” (1836). Likewise, the Texas Constitution of 1876 affirms that “no citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land” (1876). Prior to Texas’s independence, America’s framers staunchly defended private property rights as well. Consider John Adams, who wrote (1787), “the moment the idea is admitted into society that property is not sacred as the laws of God, and there is not a force of law and public justice to protect it, anarchy and tyranny commence.” Early American jurists, such as Justice Paterson, believed that the right to acquire and possess property, and to have it protected, is one of the natural, inherent, and inalienable rights of man (1795).

This proud tradition of private property rights sprang from an even older strand of English liberty. John Locke (1690) thought their preservation was the chief end of government. Blackstone (1765) noted

that property rights consist of “free use, enjoyment, and disposal of all his acquisitions, without any control or diminution.”

Texas, as an inheritor of the Anglo-American legal order, once embodied this view. In *Spann v. City of Dallas* (1921, p. 1), the Texas Supreme Court articulated one of the clearest defenses of property in American jurisprudence, stating:

“Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal. Anything that destroys any of these elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use is denied, the value of the property is annihilated, and ownership is rendered a barren right. Therefore, a law which forbids the use of a certain kind of property, strips it of an essential attribute and, in actual result, proscribes its ownership.”

By the high court’s logic, then, government action that inhibits the use, enjoyment, or disposal of one’s property degrades its value. Government action that forbids a use destroys the property itself, inviting the argument that a thing’s value has been unfairly taken through the force of law. While the police power may be employed to stop injurious and hazardous uses that harm others, it should not extinguish ordinary and natural ones without compensation. Regulations that do so are takings no less worthy of legal protection than physical seizure.

Yet, despite these strong legal and historical protections, the right to use one’s property in Texas has been steadily eroded (Bonura et al., 2025). What once constituted a violation of property rights came to be reclassified as an ordinary exercise of police power (Hunker, 2014).

At the local level, municipalities have imposed land-use ordinances that greatly limit how property owners may develop or improve their land. Such regulatory takings do not physically appropriate

property, but rather are “restrictions [that] are imposed on private property to such a degree that the right to use the land is diminished” (Brannan et al., 2010, p. 1).

Supreme Court Justice Oliver Wendell Holmes, Jr., warned of such erosion in *Pennsylvania Coal Co. v. McMahon*:

“When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more, until at last private property disappears” (1922).

Indeed, as early as 1972, in *City of University Park v. Benners*, the Texas Supreme Court held that “property owners do not acquire a constitutionally protected vested right in property uses,” meaning that Texans own only the physical aspects of their land, and use is contingent on government permission (1972). From then on, ownership in Texas became largely nominal: land could be owned in deed but controlled by ordinance.

The economic consequences are visible statewide: excessive zoning inflates land prices, suppresses new construction, and deepens the housing supply shortage (Hunker, 2016; Bonura et al, 2025). Yet the deeper consequence is liberty lost. When non-injurious use of property is denied, ownership becomes what *Spann* called a “barren right” (1921)

THE TEXAS REAL PRIVATE PROPERTY RIGHTS PRESERVATION ACT

Recognizing these challenges (1995), Texas attempted to ameliorate the damage to property rights through the adoption of the Private Real Property Rights Preservation Act (PRPRPA). The Act created a cause of action for regulatory takings and required “takings impact assessments” for certain government actions. However, the law largely failed to protect property owners for three reasons.

First, the Act exempts some of the most egregious forms of regulatory takings, including most municipal actions. Given that zoning is one of the most widespread forms of regulatory takings in Texas, property owners are left without adequate protection. Second, the law applies only if a regulation reduces property values by 25% or more; this number is entirely arbitrary and somewhat self-defeating, as it allows uncompensated losses (Brannan et al., 2010; Hunker, 2014). Governments should not be allowed to confiscate 24 % of a property’s value without a remedy. Third, the burden of proof rests largely on the property owner, which could result in years of delay. Few owners have the resources to mount a lengthy legal challenge.

Consequently, as TPPF scholars have previously noted, Texas law today shields regulators, not property owners (Hunker, 2014).

AN ALTERNATIVE

In contrast to Texas’s law stands Arizona. Following *Kelo v. City of New London*, Arizona voters approved Proposition 207, also known as the Private Property Rights Protection Act, which is regarded as the strongest property rights protection for regulatory takings in the nation. Moreover, it specifically addresses land-use laws and provides compensation to property owners except in cases where the regulation is a health or safety regulation (Sandefur, 2016; Furth et al., 2025). Finally, the political subdivision has the burden of demonstrating that a land use law is exempt.

RECOMMENDATIONS

Texas was founded on the belief that private property is a natural right to be protected by the state, not subservient to thousands of regulatory fiefdoms. Ownership without rights of use is a notion so enfeebled as to render the holder of land titles a mere vassal. The 1995 Act was meant to reverse the trend, but substantial exceptions and loopholes abound. The core problem of protecting private property from takings—physical and regulatory—remains.

Texas should strengthen its existing law to align with its first principles and require local governments to bear the cost of their economic injuriousness rather than shifting it onto individual landowners. The right to property is the right to be left alone, in one's castle, free to build, live, and develop the bounteous land that inspired our founders to come here in the first place. Without that right, every other liberty is conditional. To that end, the 90th Texas Legislature should enact legislation that:

- 1. Closes the municipal loophole in the PRPRPA.**
Remove the blanket exemption for municipalities. All levels of government should be accountable when regulations diminish private property ([Texas Public Policy Foundation, 2020](#)).
- 2. Eliminates the takings threshold in the PRPRPA.**
Replace the arbitrary value-loss requirement with a clear standard: any government action that restricts lawful use and reduces value constitutes a taking subject to compensation or waiver ([Hunker, 2014](#)).

- 3. Adds a waiver provision as an alternative to financial compensation in state law.**

Authorize regulatory waivers as an alternative to financial compensation. This allows local governments to withdraw or modify restrictive ordinances instead of paying damages, reducing litigation, and restoring property use ([Texas Public Policy Foundation, 2020](#)).

- 4. Adopts a sunset provision in the Texas Property Code.**

Require that any zoning or land-use ordinance that eliminates economically viable uses expire after a defined period unless re-authorized by affirmative vote of the city council or relevant governing body ([HB 4866, 2025](#)).■

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ABOUT THE AUTHOR



Ben Crockett is a Policy Scholar at the Texas Public Policy Foundation, where he combines data-driven research with accessible commentary to advance liberty, opportunity, and free enterprise.

Crockett's commitment to civic life began early through his involvement in Junior Statesmen of America and Texas Boys State. A proud member of the Fightin' Texas Aggie Class of 2025, he earned

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In 2024, the City of College Station recognized Crockett for his outstanding service and commitment to respectful civic discourse. In that same spirit, he founded 451 Now, a public-affairs book review podcast, where he has interviewed leading thinkers and public figures including former U.S. Senator Phil Gramm, George Will, and Dennis Prager.

His writing and commentary have appeared in regional and national publications, including *The Dallas Morning News* and *The Federalist*, and his work has been cited by outlets such as *Chron.com* and *The Bryan-College Station Eagle*. He has also served as a member of the Bush School Youth Leadership Program Advisory Board and as a contributor with Young Voices.

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