Developing Houston: Land-Use Regulation in the “Unzoned City” and its Outcomes

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Executive Summary

Houston is recognized nationally for its unique approach to land-use regulation and lack of formal zoning. The city possesses a number of tools that are or can be used to regulate and shape development in lieu of zoning. The tools that exist in Houston are similar to those found in peer cities such as Dallas and Los Angeles. And in all three cities there are similar development patterns, especially in residential development. While much of Houston’s existing land-use rules allow development to function similarly to how it functions in these other cities, Houston’s regulations struggle to offer predictability to both developers and residents. Because many of its regulations are one-size-fits-all, the city is unable to easily tailor plans to the needs of specific business areas or neighborhoods. This report lays out the existing elements of Houston’s land development system and highlights several areas where it could be improved to better serve the city, residents, businesses and developers.

Findings

• Although Houston does not have formal zoning, its land-use regulations combine to create a de facto zoning system that replicates elements of a traditional code.

• Houston controls all the same land-use categories as other comparable cities with zoning, but it lacks a citywide overlay zoning map.

• Despite the popular perception that Houston’s “lack of zoning” allows for a uniquely untethered housing market, it performed similarly to the cities of Dallas and Los Angeles in new housing construction and housing costs.

• Houston’s one-size-fits-all approach makes it more difficult to produce detailed plans for smaller areas—i.e. along commercial corridors or for different neighborhoods.

• The use of nuisance lawsuits to challenge otherwise legal land use has been challenging to interpret in a city with an informal zoning code. Although the success of these lawsuits varies, this form of land-use challenge still manages to stall construction and increase legal costs for developers.

• Houston’s less formal development system also means that challenging unwanted land uses requires that residents have the financial resources or know-how to take advantage of the existing tools to protect a neighborhood. This leads to disparities in which Houstonians are able to effectively organize and influence development within their neighborhoods.
Introduction

Houston is famous for its lack of a formal zoning code. This reality is alternately credited for providing the city with an enhanced ability to adjust to market pressures and blamed for creating an unregulated development free-for-all in the region.\(^1\)\(^2\) The absence of use zoning and the attention this absence gets, though, obscures the fact that Houston has a number of land-use and land-development regulations that effectively mirror the zoning codes found in other cities. Moreover, the discussion of the lack of zoning masks a more meaningful discussion of the limits of the system that the city does have and what steps could be taken to improve it.

Houston’s municipal code already contains extensive land-development regulations that Matt Festa has styled a *de facto* zoning system.\(^3\) As Houston continues to grow and grapple with issues around its development, it is essential that the extent of these existing regulations and the system they create be understood.

The majority of the city’s regulations provide a one-size-fits-all approach that limits flexibility to define or achieve street-by-street, or even community-by-community development outcomes. The current system is not able to adequately support the diverse planning and development goals held by elected officials, private developers and citizens. This existing reality makes, for example, the careful planning of density more difficult. The lack of predictability around the placement and shape of density makes developers wary of taking on projects that could extend timelines or costs. Unpredictable development also makes the locating of future shared services such as transit or greenspace much more difficult.

Another challenge is that existing development regulations do not create an even, accessible playing field for citizens across the city to participate in shaping their communities. Existing regulations permit smaller, protective designations such as minimum lot size areas, but these tools must be sought as one-off measures by neighborhoods or property owners. Such approaches are often only available to a smaller subset of organized, well-resourced residents. While such tools are successful in affluent neighborhoods, in places where they have not been deployed or residents lack the resources to enforce them, development patterns are highly unpredictable and neighborhoods can change practically overnight.

This report assesses Houston’s unique land development regime, demonstrates its similarity with peer cities, and highlights how its peculiarities and limitations require a collective, comprehensive reconsideration of the city’s development goals and the tools put in place to meet them. Officials, developers and citizens have to work together to improve the existing system in ways that allow it to fulfill the economic development goals and community desires of the entire city, not just select geographies or populations.

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Land-Use Regulation in Houston

The task of understanding Houston’s existing land-development regulations is essential because formal zoning is unlikely ever to be implemented in the city. This is primarily due to Houston’s city charter explicitly prohibiting the adoption of a zoning code without approval by popular vote. Zoning referenda have been proposed and defeated three times, though narrowly, in 1948, 1962 and, finally, 1993. After the latest referendum defeat, the voter approval requirement was formally added to the city charter in 1994.

Instead of a formal zoning code, though, Houston has created its own land development approach—one that mixes private and public mechanisms to control the form and function of buildings in specific areas.

Development Regulations

Even though Houston does not have use zoning, the ordinances contained within its municipal code create many of the same forms of land development regulation found in typical zoning codes employed elsewhere. These restrictions include the following:

- **Minimum lot sizes**: Prevents lots from being divided below a certain size, with Houston requiring that each lot in a subdivision plat must at a minimum allow for the construction of a single-family residential building. Restrictions can be enhanced through an application for a “special minimum lot size,” which typically requires the support from a majority of an area’s property owners.

- **Minimum building lines**: Prevents new structures from being built closer to the street than most of the existing buildings in that area. Restrictions can be enhanced through an application for a “special minimum building line,” that typically requires the support from a majority of an area’s property owners.

- **Landscape buffer areas**: Regulates the space of land between single-family homes and high-rise developments, which may also require the creation of landscaping buffers made of trees and shrubs.

- **Parking requirements**: Sets the minimum number of parking spaces a structure must have based on factors such as the use of the property and total floor area. Additionally,
Houston designates special parking areas, which allow businesses to apply for more lenient requirements or the complete removal of requirements.\(^\text{13}\)

- **Lot classifications:** Applies differing development restrictions, such as minimum street widths and open space requirements, depending on a structure’s designation as single-family,\(^\text{14}\) multi-family residential,\(^\text{15}\) commercial or other categories.\(^\text{16}\)

- **Minimum distance requirements:** Regulates locally unwanted land uses, such as sexually oriented businesses\(^\text{17}\) and alcoholic beverage vendors,\(^\text{18}\) by requiring them to be a minimum distance away from certain protected structures, such as schools and churches.

### Overlay Zoning

Houston’s municipal code also creates several instances of overlay zoning. Similar to traditional zoning, overlay zoning involves creating zones that can permit, deny or incentivize different types of development in designated locations.

- **Airport zones:** Creates a three-tiered zoning system regulating construction and certain activities based on a structure’s distance from an airfield.\(^\text{19}\)

- **Flood plain zones:** Adds certain requirements for the development and use of structures in hazardous areas, such as flood mitigation plans and regulations for mobile homes.\(^\text{20}\)

- **Landmarks and historic districts:** Imposes restrictions requiring approval for the alteration, construction or demolition of certain structures, whether they be individual properties or designated areas.\(^\text{21}\) Historic districts have become a popular way to control land use and development change in recent years, with 19 districts having been established in Houston since 1996.\(^\text{22}\)

- **Central business district:** Designates a zone that is afforded loosened parking requirements, street widths, building lines and alcohol service standards,\(^\text{23}\) while increasing certain requirements such as designating proper garbage disposal and valet parking standards.

- **Transit corridors:** Proposes sidewalk, parking, driveway and exterior standards to increase pedestrian access in the walkable areas around transit lines. Corridors allow structures in

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\(^{13}\) “Special Parking Areas,” Houston, Texas Code of Ordinances. Chapter 26. Article VIII. Division 3 §.


\(^{15}\) “Multi-Family Residential Developments,” Houston, Texas Code of Ordinances. Chapter 42. Article III. Division 6. §.


\(^{17}\) “Same - Issuance or Denial,” Houston, Texas Code of Ordinances. Chapter 28. Article III. Sec 28-125 §.

\(^{18}\) “Location of Dealer’s Premises near Church, School or Hospital,” Houston, Texas Code of Ordinances. Chapter 3. Article I. Sec 3-2 §.

\(^{19}\) “Airport Land Use Regulations,” Houston, Texas Code of Ordinances. Chapter 9. Article VI §.


\(^{21}\) “Designation of Landmarks, Protected Landmarks, Historic Districts and Archaeological Sites,” Houston, Texas Code of Ordinances. Chapter 33. Article VII. Division 3 §.

\(^{22}\) “Historic Preservation Manual” (City of Houston Planning & Development Department, 2014).

\(^{23}\) “Conflict with off-Street Parking Requirements,” Houston, Texas Code of Ordinances. Chapter 42. Article III. Division 1. Sec. 42-101 §.
the area to opt-in to those standards in exchange for favorable construction incentives, such as allowing development within a building's setback line.24

Variance & By-Right Development

Houston’s multitude of development regulations and overlay zones provide the city with a great deal of power in controlling land development. However, in Houston, as in most cities, variances are used to change the requirements for a project and are decided by the city’s planning commission on a case-by-case basis. In principle, variances are intended to allow for a degree of flexibility when the imposition of development restrictions results in undue hardship or to help make a project meet a specific development goal, such as an improved pedestrian realm. However, they are often controversial and seen as a way for developers or landowners to acquire an exemption from city rules. Beyond this, much of Houston’s development occurs as-of-right, which does not require any discretionary action by the city provided it complies with all applicable regulations. Houston’s use of variances is further complicated by the city’s inability to create area-specific plans or set clear development goals. This situation means variances cannot be used as effectively as they could be as a tool to proactively support desired development and deny unwanted uses or designs.

One example of this challenge is the city’s unsuccessful transit corridor development ordinance. In 2009, the City of Houston added the transit corridor ordinance to encourage more developed pedestrian realms around certain transit areas.25 The ordinance allows development within the 25-foot setback line provided developers meet certain performance standards, such as requiring a clear pedestrian space and prohibiting doors from swinging onto the sidewalk. However, because the ordinance is opt-in rather than mandatory, developers can continue to build projects within corridors by accepting the setback and parking rules that apply to a site by-right rather than applying for the transit-oriented development ordinance. The program lacks strong and predictable incentives such as reduced parking requirements for developers, making it less desirable for developers to opt-in. Of the 290 projects built within the identified corridors, only 17 percent have opted in to the standards.26

If the city instead shifted the ordinance to establish a mandatory set of standards within the corridors, standards that could be set through conversation with developers and citizens, then variances would only need to be sought for projects that wanted to perform outside the set standards. This move would give the city the oversight to ensure that development within the defined corridors was meeting intended goals.

Other Development Restrictions

Several other restrictions and enforcement mechanisms also regulate development within the city.

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25 Ibid.
26 Data provided by the City of Houston Planning Department and its Walkable Places Committee.
Deed Restrictions

Unlike most other major American cities, the City of Houston has the power to enforce private deed covenants. The city can enforce privately enacted restrictions that affect the use of property, the setback lines, the dimensions of a lot or structures on the lot, structural orientation and fences requiring a building permit. Restrictions are not uniform across the city, as many subdivisions have no restrictions whatsoever. Existing restrictions run with the land and their enforcement falls under the authority of the city’s Deed Restriction Enforcement Team. However, while municipal authorities have the power to file suit on behalf of the city against violations, in practice the city typically relies on the local homeowners’ association to pursue private enforcement.

Not every area with restrictions has the means to enforce them. Since the enforcement of restrictions largely depends on the initiative of local residents and the capacity of local associations, restrictive covenants are enforced far more consistently in affluent neighborhoods than in lower-income communities. The disparity in enforcement leaves some neighborhoods vulnerable to inconsistent development.

Residential Buffering Ordinance

The Residential Buffering Ordinance sets buffering requirements when a development is over 75 feet high, or about six stories, and abuts a single-family residential property. The buffering ordinance applies throughout the city except for in eight mapped “major activity centers,” themselves constituting yet another geographic overlay. The ordinance requires a buffer of 40 feet between developments abutting local streets and 30 feet if they abut a collector street, which must also include a 10-foot landscape buffer, trees and an 8-foot tall fence. The ordinance was passed in part as a reaction to the controversy over the Ashby high-rise project near Rice University, which will be discussed in further detail below.

Special Districts and Financial Incentives

Houston employs a variety of tools available under state law that create special districts and financial incentives. These policies functionally create overlapping overlay zones containing increasingly large portions of the city, and are areas within which different development regulations are or can be applied.

Tax Increment Reinvestment Zones

Tax Increment Reinvestment Zones, or TIRZs, are common tools used throughout Texas to reinvest tax revenue increases from a defined geographic area back into the community for infrastructural improvements. Houston currently has 26 TIRZs, which cover nearly 13

percent of the city’s land area. Most of the existing TIRZs are concentrated within the 610 Loop.

Although TIRZs are primarily understood as a tool for financing infrastructural investments, they may also include their own land-use regulations if they are created by petition.\textsuperscript{31} In Houston, the St. George Place TIRZ #1 in the Uptown/Galleria area was the first TIRZ to employ extensive land-use restrictions while creating sub-district overlays with their own zoning regulations.\textsuperscript{32} These restrictions include requirements for setbacks, height, use (including classifications such as the Neighborhood Commercial Planned Unit Development Zone) and other area regulations typical to a municipal zoning system.\textsuperscript{33}

For its part, the city council has approved and amended the St. George’s Place TIRZ zoning ordinances on several occasions.\textsuperscript{34} This TIRZ sets a precedent for the use of extensive zoning powers by an entity created by the municipal government, despite the Houston city charter’s provisions requiring a referendum to create zoning. The question of whether this is in conflict with the city charter remains largely unanswered.

\textit{380 Agreements}

Houston also makes extensive use of so-called “380 agreements,” economic development agreements permitted under Chapter 380 of the Texas Local Government Code, which allow a municipality to grant developers privileges to spur economic development.\textsuperscript{35} Awarded on a project-by-project basis, these programs take the form of public grants, loans and the construction of public infrastructure such as roads and utility improvements. These agreements allow the city to provide incentives in exchange for specific land-development standards on a publicly supported project, such as requiring a developer to include a larger pedestrian realm, mixed-income housing or green space.

One important example of this program is the agreement between the City of Houston and the downtown TIRZ #3 to help create the Downtown Living Initiative, which provides developers with a reimbursement of up to $15,000 per residential unit for multi-family residential developments.\textsuperscript{36}

\begin{footnotesize}
\begin{footnotes}
\item[33] “Planning and Zoning Regulations, Reinvestment Zone Number 1” (City of Houston, ).
\item[34] “An Ordinance Approving the Second Ammendment of the Project Plan and Reinvestment Zone Financing Plan for Reinvestment Zone Number One, City of Houston, Texas (St. George Place); Authorizing the City Secretary to Distribute Such Plans; Containing Various Provisions Related to the Foregoing Subject; and Declaring an Emergency,” City of Houston, TX, Ordinance No. 1999–755 §.
\item[35] “An Ordinance Establishing an Economic Development Program pursuant to Chapter 380 of the Local Government Code, to Be Administered by the Planning & Development Department; Containing Findings and Other Provisions Related to the Subject; and Declaring an Emergency,” City of Houston Ordinance 99–674 §.
\end{footnotes}
\end{footnotesize}
Overlay Overview

Figure 1: Citywide view of Houston’s Land Development Regulations. Map by Mingming Zhang.

The mixture of land-development regulations at work in Houston creates many geographic zones governed by their own sets of rules. While the city falls short of the full land-use regulation that comes with formal zoning, its regulations create a city that is smattered with a variety of development regulations that set lot-specific rules and overlay zones, such as TIRZs and transit corridors, that present the opportunity for additional development standards to be included.
While these land development tools can be found throughout the city, the bulk of the regulated areas can be found within or just outside of Loop 610.

**Contrasting De Facto and Formal Zoning**

To gain a broader perspective on where Houston’s land-development regulations fall relative to other areas, the cities of Dallas and Los Angeles serve as useful comparison case studies. Both Dallas and L.A. are sprawling, high-growth Sun Belt cities that are often criticized for development that seems uncoordinated, with the most significant difference from Houston being that they possess formal zoning systems.

As can be seen in Table 1, with the exception of citywide use zoning, Houston possesses a comprehensive set of regulations that match and at times go beyond the comparison cities. Of course, the degree to which each city regulates the areas listed below may vary. For instance, while all three cities have deed restrictions, only Houston has the power to enforce the covenants.
<table>
<thead>
<tr>
<th>Land Use Restriction</th>
<th>Houston</th>
<th>Dallas</th>
<th>Los Angeles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Sizes</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Building Lines</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Landscape Buffer Areas</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Parking Requirements</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Lot Classifications</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Minimum Distance Requirements</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Airport Zones</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Flood Plains</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Historic Preservation</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Central Business District</td>
<td>Y</td>
<td>(Central Area District)(^{37})</td>
<td>(Central City Community Plan)(^{38})</td>
</tr>
<tr>
<td>Transit Corridors</td>
<td>Y</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>Deed Restrictions</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>(City Enforced)</td>
<td>(HOA Enforced)</td>
<td>(HOA Enforced)</td>
<td></td>
</tr>
<tr>
<td>Citywide Use Zoning</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>

Table 1: Zoning Restrictions in Houston, Dallas, and L.A.

Although Houston utilizes more land use tools and more overlay zones than the other two cities, this is not a reflection of increased regulation so much as compensation for its lack of formal zoning powers. Certain overlays, such as the central business district, actually serve to loosen parking requirements and other development restrictions.

Houston has not adopted land use regulations in a comprehensive fashion as other cities typically do. Rather, Houston’s informal zoning system has led the city to pass ordinances governing each of these regulations in a piecemeal and reactive fashion. For instance, minimum lot sizes and historic districts – tools typical of zoning codes in most major cities – are used in Houston by homeowners who seek to preserve the character of their neighborhoods. Overlays such as airport zones and flood plains arose from a need to regulate certain structures due to public safety concerns.

\(^{37}\) “Central Area Districts,” City of Dallas, Texas, Sec. 51A-4.124 §.

\(^{38}\) “Central City Community Plan,” A Part of the General Plan (City of Los Angeles).
Rather than being an unzoned city, Houston should be understood as a city with loose or *de facto* zoning, whose policies have arisen from reaction to specific situations rather than an overall free-market ethos or a central vision for the city’s development.

**Comparison to Dallas and Los Angeles**

Dallas is frequently compared to Houston, as it too is a Texas metropolitan area similar in density, growth and ethnic diversity, which has also maintained its reputation as a Texas boomtown. Unlike Houston, the near-entirety of its detailed zoning is done within the Planned Development District (PDD) system. Dallas has 899 PDDs, each with its own litany of sub-ordinances and many containing sub-PDs within them. This process has led to a fragmented style of zoning regulation that allows for significantly more variance in each area’s construction, at times leading critics to argue that PDD rules are consistently rewritten to developer convenience.

Dallas’ uncoordinated lenience is reflected in its built environment, with a reputation for rapid construction rates and a fragmented, sprawling urban core. Despite city goals to give its urban core more walkable mixed-use developments, a spate of recently granted block-wide projects that disrupt the street grid and make walkable infrastructure difficult to implement demonstrate that the city has not yet successfully matched its goals with its developments.

Los Angeles is also a natural comparison city to Houston, as it is also large, sprawling and defined by a web of freeways. However, unlike Houston or Dallas, in Los Angeles the process of getting a development approved is long, difficult, expensive and on a case-by-case basis. The approval process often drags out further if there is protest or opposition. This slow approval process is partly a symptom of a zoning code that hasn’t been comprehensively updated since its adoption in 1946, which has only been changed piecemeal since but is finally in the process of being revamped, and a reliance on a set of 35 community plans – most of which are out of date by more than 15 years.

Due to the political difficulty of amending the zoning code in L.A., city planners have instead opted to achieve desired changes by using lot-specific overlays modifying the original conditions. For instance, a lot might be zoned as a single-family home but have a lot overlay specifying that it was for commercial use only, thus changing its use beyond consistent meaning. This process, which has been compared to spot zoning, has added hundreds of pages of site-specific conditions to city lots, now covering two-thirds of the city in additional overlays.

A similar phenomenon can be noticed in both comparison cities: Dallas has a highly flexible PDD zoning system and L.A. uses a spot zoning system to circumnavigate its outdated code.

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39 Mark Lamster, “Boxed in by Development, Dallas Needs to Figure out Its Growth Issues,” *Dallas News*, June 2014.
40 Ibid.
In each case, whenever the formal zoning system is too rigid or outdated, planners use individual workarounds on site-specific projects. Houston’s regulations are no exception to this trend, as the absence of a clear systematic approach has pushed developers and landowners to utilize their own sets of tools to achieve piecemeal changes.

Contrasting Development Patterns

Considering the different forms of zoning regimes in place in Houston, Dallas and L.A., as well as their respective pitfalls and workarounds, it may be useful to compare their actual development patterns as well as their zoning regimes.

Development Analysis

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Houston</td>
<td>2,298,628</td>
<td>600</td>
<td>3,831/sq. mi.</td>
<td>18.4%</td>
</tr>
<tr>
<td>Dallas</td>
<td>1,300,082</td>
<td>341</td>
<td>3,813/sq. mi.</td>
<td>13.6%</td>
</tr>
<tr>
<td>Los Angeles</td>
<td>3,971,896</td>
<td>469</td>
<td>8,469/sq. mi.</td>
<td>6.4%</td>
</tr>
</tbody>
</table>

Table 2: Population Statistics. 
*Square miles represent usable land area instead of total area within city limits.*

As Table 2 shows, Houston is twice the size of Dallas in both population and geographic area, making their near-identical population densities, similar growth rates and close location to one another ideal for comparison. Los Angeles falls right between Houston and Dallas in terms of land area but is significantly more populous than either other city.

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44 “American Community Survey” (U. S. Census Bureau,).
Houston Lags in Multi-Family Growth

**Chart 1: Housing Growth by Unit Type**

<table>
<thead>
<tr>
<th>Year</th>
<th>Houston</th>
<th>Dallas</th>
<th>Los Angeles</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>466,115 (50.8%)</td>
<td>257,363 (48.8%)</td>
<td>642,596 (45%)</td>
</tr>
<tr>
<td>2010</td>
<td>451,877 (49.2%)</td>
<td>270,011 (51.2%)</td>
<td>784,466 (55%)</td>
</tr>
<tr>
<td>2011</td>
<td>441,877 (49.2%)</td>
<td>280,011 (51.2%)</td>
<td>784,466 (55%)</td>
</tr>
<tr>
<td>2012</td>
<td>431,877 (49.2%)</td>
<td>290,011 (51.2%)</td>
<td>784,466 (55%)</td>
</tr>
<tr>
<td>2013</td>
<td>421,877 (49.2%)</td>
<td>300,011 (51.2%)</td>
<td>784,466 (55%)</td>
</tr>
<tr>
<td>2014</td>
<td>411,877 (49.2%)</td>
<td>310,011 (51.2%)</td>
<td>784,466 (55%)</td>
</tr>
<tr>
<td>2015</td>
<td>401,877 (49.2%)</td>
<td>320,011 (51.2%)</td>
<td>784,466 (55%)</td>
</tr>
<tr>
<td>2016</td>
<td>391,877 (49.2%)</td>
<td>330,011 (51.2%)</td>
<td>784,466 (55%)</td>
</tr>
</tbody>
</table>

**Table 3: Total Housing Units by Share of City Residential Supply in 2015**

<table>
<thead>
<tr>
<th>Housing Unit Type</th>
<th>Houston</th>
<th>Dallas</th>
<th>Los Angeles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family</td>
<td>466,115</td>
<td>257,363</td>
<td>642,596</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>451,877</td>
<td>270,011</td>
<td>784,466</td>
</tr>
<tr>
<td>Total</td>
<td>917,992</td>
<td>527,374</td>
<td>1,427,062</td>
</tr>
</tbody>
</table>

**Chart 1 and Table 3** provide more insight into each city’s total share of single-family and multi-family units. Houston stands out for being the only city to have greater single-than multi-family growth, although the gap between these categories is gradually narrowing.

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45 Ibid.
46 Ibid.
The authorized permits presented in Table 4 provide a more detailed breakdown of Houston’s future housing stock, which appears to continue adding more single-family residences than either of its comparison cities. Taken together with Chart 1, it appears that although Houston has been gradually increasing its share of multi-family units, it may still be some time before development shifts away from single-family construction.

Houston Housing Costs Close to Dallas; L.A. Has Similar Trajectory

![Chart 2: Median Monthly Housing Costs in Harris, Dallas and Los Angeles Counties from 2005-2015](chart.png)

Table 4: Authorized Permits for New Privately Owned Housing Units in 2015

<table>
<thead>
<tr>
<th>Housing Unit Type</th>
<th>Houston</th>
<th>Dallas</th>
<th>Los Angeles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unit</td>
<td>36,786 (64.6%)</td>
<td>29,038 (50.8%)</td>
<td>8,447 (23.4%)</td>
</tr>
<tr>
<td>2 – 4 Units</td>
<td>317 (0.6%)</td>
<td>502 (0.9%)</td>
<td>1316 (3.7%)</td>
</tr>
<tr>
<td>5 Units or More</td>
<td>19,798 (34.8%)</td>
<td>27,606 (48.3%)</td>
<td>24,271 (67.4%)</td>
</tr>
<tr>
<td># of Structures with 5 or More Units</td>
<td>646</td>
<td>538</td>
<td>550</td>
</tr>
<tr>
<td>Total</td>
<td>56,901</td>
<td>57,146</td>
<td>36,034</td>
</tr>
</tbody>
</table>

47 “Table 3au. New Privately Owned Housing Units Authorized Unadjusted Units by Metropolitan Area. Annual 2015,” (U. S. Census Bureau).
Chart 2 presents historical housing costs to help interpret broader market trends in the three city economies. As seen in the chart, each city had similar overall trends. Although Los Angeles has greater changes in housing costs than the others, all comparison cities follow comparable overall patterns – with Houston and Dallas having consistently similar costs throughout the selected time period. Los Angeles’ higher housing costs are largely reflective of reduced available residential property, as the city has greater property restrictions as well as outward growth being geographically limited by the Pacific Ocean to the West and the mountain ranges to the North and East.

The fact that Houston and Dallas have nearly identical cost curves while Los Angeles had a similar arc, though much higher, does not fit well with idea that Houston’s unzoned status makes it especially reactive to market demand. Houston created the smallest amount of multi-family housing out of any of the comparison cities despite experiencing similarly high population growth – the opposite of what one would expect in a city with high population growth, increasing resident preferences for urban housing and supposedly no zoning system to inhibit it.

The Limits of Houston’s De Facto Land Development Regime

Clearly Houston has many of the characteristics of a zoned city. The city regulates common elements of land development, creates overlay mapping and creates new ordinances that seek to broadly direct development. These tools together form a de facto land development system that contains most the regulatory restrictions found in traditional zoning, without the precise targeting that zoned cities contain. The comparison of Houston, Dallas and Los Angeles highlights some differences, but overall the three cities grow and regulate that growth in a similar fashion while using different tools.

What is unique about Houston is the challenge the city faces because of how it has chosen to approach development regulation. In particular, Houston’s underlying one-size-fits-all citywide regulations make by-right development incredibly broad and powerful, which limits the city’s ability to direct development by avoiding low-quality construction and projects that do not mesh with desired municipal goals. The city’s reactive use of ordinances and overlays, combined with its lack of a detailed general plan, make it difficult to establish area-specific plans that can be flexible enough to meet the goals of both the city as a whole and those of the local community. This challenge is especially visible in the context of encouraging denser, more walkable commercial corridors and in attempts to protect individual neighborhoods from redevelopment.

Houston’s approach to land development also leaves the city facing a unique legal landscape. Because of the lack of zoning and the fact that existing regulations do not cover every part of the city in the same manner, Houston has experienced a number of controversies around developments that are at odds with surrounding land uses. This has most often happened within residential neighborhoods, resulting in nuisance suits. While Houston is far from the only city that contends with such nuisance suits, their ability to influence development in a city with few controls gives them unusual sway over the development process. Such influence is not equally available, however, as areas without the resources to file suit are at a disadvantage in controlling their development. Without standard protections for neighborhoods that are applied consistently throughout the city or developed for specific
areas, Houston is leaving under-resourced and less politically powerful communities vulnerable to rapid redevelopment.

Confronting Legal Issues

In the early twentieth century, the city planning movement and the rise of land-use regulation and zoning were explicitly designed to improve upon the traditional reliance on nuisance law to regulate land use. In the absence of a formal zoning system, Houston residents and developers have had to turn to the courts to decide many questions around land use.

The most prominent instance of a nuisance suit being used to try to prevent lawful development is the Ashby high-rise case, in which local homeowners in an affluent Houston neighborhood sued the firm developing a 23-story residential high-rise in their area. The plaintiffs alleged that the structure would create a nuisance since it would increase traffic congestion and reduce property values. The judge allowed the Ashby developers to continue construction but also ordered them to pay the local residents damages for the potential impact to their property values. This decision was later appealed, with the Texas Court of Appeals affirming the trial court’s ruling in favor of the developer and going further, asserting that there can be no such thing as a “prospective nuisance” and overturning the damages owed to the residents. After nearly 10 years the project still has not been built and all parties involved have little to show for the incredible amount of time and money expended.

Beyond the Ashby high-rise case, nuisance suits have been deployed in other instances where Houston’s limited ability to control use has led to conflict, as seen in the White Oak Music Hall lawsuit. In this case, the construction of a music hall and its use of an outdoor stage for concerts have been challenged for disturbing a nearby single-family residential community. Although the case has yet to be decided, and a second nuisance suit has been begun, the plaintiffs have been successful in acquiring an injunction against the music hall limiting the frequency and volume of outdoor events.

While the use of nuisance lawsuits to settle land use issues is infrequent overall, the fact that development such as the Ashby high-rise and White Oak Music Hall are being challenged is indicative of a larger issue. In most cities, these cases would never have arisen because their zoning systems would have been able to delineate areas for appropriate development and set forth rules beforehand. Lacking these tools, Houston allows for construction by-right regardless of potential incompatible land use – exposing developers to legal challenge and potentially freezing their work. This zoning-by-lawsuit strategy creates an uncertain legal environment and is unevenly applied, since it is primarily accessible to residents with the time, knowledge and resources for a long legal battle.

50 Olivia Pulsinelli, “Appeals Court Overturns Damages Award in Ashby High-Rise Case,” Houston Business Journal, June 1, 2016.
52 Co-author Matthew Festa was involved in this case as an expert legal witness on the behalf of the property developers.
Furthermore, should the existing system of regulations in place be deemed to legally be a *de facto* zoning regime, the city may be left vulnerable to legal challenge. Without a clear delineation on the limits of its regulatory powers, Houston’s entire land use regime could find itself before yet another judge who would have to make sense of the city’s numerous geographic overlays, site requirements and other tools.

**Creating Dense, Walkable Places**

In Houston, as in many other cities, there is a growing demand for creating more walkable, dense and economically productive neighborhoods. However, Houston’s current system makes cultivating these areas difficult. In many existing corridors, development that does not mesh with desired outcomes is able to claim key real estate because of existing by-right rules. There are also issues regarding a lack of a common standard and a degree of uncertainty on the part of developers in the efficacy of engaging with city development efforts.

By working collectively with developers, citizens and businesses, the city could create standards for major activity centers or transit corridor development that meet the goals of all, while also establishing a stronger baseline standard drawn from those plans. These standards would need to be binding rather than only opt-in, so that variances are used less often, as an exception for developers whose projects do not meet the area’s goals or development framework. Such an approach would provide consistency to developers and could also be tied to clearly defined incentives, such as lower or no parking requirements, that could help spur desired development. The application of any such policies must be available to areas throughout the city to ensure that all communities and residents can take advantage of them.

**Protecting Neighborhoods**

The limitations of Houston’s current land development regulations are perhaps most visible in the system’s inability to provide development predictability to all of its neighborhoods. Current development protections do not permit all residents to influence the shape of their communities to the same degree. In many neighborhoods, especially those that lack historic districts and minimum lot size requirements, rapid redevelopment can occur unimpeded and without the local involvement needed to ensure that any redevelopment taking place meshes with the existing character of a neighborhood.

The present tools to override development standards or add protections are not equally accessible, as many of the aforementioned remedies require time, money and knowledge – whether it is through protracted nuisance suits, applying for historic district designations, navigating variances or even deed enforcement through homeowners’ associations. Moreover, many of these protections ignore the large renter population of the city. These residents are typically unable to provide input into what protections should exist in their communities, which is further exacerbated by the inability for even long-term renters to join their local HOAs.

**Addressing Houston’s Limitations**

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Houston could encourage neighborhood- and area-specific standards through a local planning process. In practice, each of these areas could set communal standards using the same development categories that the city currently regulates – such as setbacks, minimum lot sizes, and so on – while stopping short of the specific lot use designations found in traditional zoning and in some TIRZs.

Creating a process for community planning would help prevent avoidable incompatibility issues that can be easily foreseen at the local level while empowering residents to help shape their neighborhoods. Localization would also allow for standards that would be more locally appropriate and would ideally reduce the use of variances. An example of this in practice could include a commercial downtown area with no minimum setbacks to encourage more walkable curbside development, which would already go a long way in rendering the central business district overlay unnecessary. If such area planning were to go into effect, it should be matched with the planning commission’s utilizing a heightened standard when evaluating variances out of line with the community standards to ensure that the neighborhood plan is adequately binding while allowing for a degree of flexibility.

Such changes should also ensure the participation of a wide array of stakeholders in each area, whether they are developers, homeowners, renters or business owners. Developers would benefit from greater predictability in construction with less need for a variance or fear from a nuisance suit, while residents would have a direct voice in their neighborhood’s future. While the details of decision-making are up to debate, ensuring diverse representation through flexible scheduling, the creation of multilingual committees and other steps for participation are essential to make sure all voices are heard.

**Conclusion**

Although Houston does not have single-use zoning, its land use system, including many ordinances scattered throughout the municipal code, constitutes the de facto equivalency of a traditional zoning system in many ways. The city regulates most of the same categories as comparable cities with traditional zoning with the addition of several of its own overlays. Beyond this, the lack of a formal zoning regime does not appear to produce significantly different results from that of traditionally zoned Dallas. This finding suggests that Houston’s system would more accurately be characterized as having loose development regulation, similar to Dallas, rather than none at all.

The current land development approach lacks the coordination, predictability and flexibility it needs to achieve both citywide economic development and neighborhood specific goals. Existing regulations are too often opt-in and easily skirted. Existing neighborhood protection tools are unequally accessible to the public and depend too heavily on one’s economic resources. Additionally, the legal tension arising from nuisance lawsuits challenging otherwise legal land use has been troublesome to interpret in a city with an informal zoning code. This lack of predictability creates an atmosphere of uncertainty for property owners and raises equity concerns over who can access regulatory remedies.

Houston would be well served by acknowledging and carefully assessing the limits of its various land use tools. “Plan Houston,” the city’s 2015 general plan, provides a potential
vehicle for such assessment. The plan’s call to prioritize the creation of more walkable streets, affordable housing and improved municipal infrastructure provides a blueprint for in-depth evaluation of our current system. 55 Another promising starting point for coordinating the city’s tools includes the recently established “Walkable Places” committee. This group is evaluating ways in which city regulations can be used to support walkable development and, if successful, this approach should be used to reevaluate other land-development regulations as well as their goals.

As Houston continues to grow and densify, a conscious understanding of the existing land use system and how to coordinate its tools is critically necessary. Until the rights of property owners are clearly delineated and a systematic avenue for land use alterations is created, Houstonians will have to continue navigating an uncoordinated system of variances, lawsuits and spot ordinances to address their needs.

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55 “Plan Houston: FY 2018 Priorities Exercise Result” (City of Houston, January 10, 2017).