Did the Legislature Pull Cities Out of their "Comfort Zone"?

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In 2024, Comptroller Glenn Hegar issued a report on Texas's housing shortage, noting that median home prices in Texas rose by 40 percent between 2019 and 2023 and cited a study claiming that Texas had 306,000 fewer homes than needed.[2] Comptroller Hegar and others have argued that part of the solution could be relaxing local zoning regulations that currently limit where housing can be built and, if it is allowed in a particular area, how dense the housing can be.[3]

The 2023 legislative session saw several unsuccessful efforts to curtail or modify cities' land use and zoning authority in the name of housing affordability. Advocates made an even stronger push in 2025 and won several powerful champions for their efforts. For example, Lieutenant Governor Dan Patrick named affordable housing one of his priority issues and pushed for legislation prohibiting certain cities from mandating minimum lot sizes of greater than 1,400 square feet in certain new developments.[4] Speaker of the House Dustin Burrows fast-tracked the same bill when it hit a procedural snag late in the legislative session, and he designated another bill aimed at facilitating rezonings to build more housing as a priority item.

****N.B.:** This paper was submitted on June 2, 2025, the day that the Legislature adjourned sine die. Tex. Const., art. III, § 24(b). The Governor's deadline to veto bills is June 22, 2025. *Id.*, art. IV, § 14. So, the legislation addressed in this paper and my June 20 presentation, if not signed by the Governor, could still be subject to veto. Anyone relying on this paper should double check that the legislation was actually finally enacted.****

SB 15—Minimum Lot Size for Certain Greenfield Development

Senate Bill 15 by Senator Paul Bettencourt (R–Houston) aims to facilitate the development of smaller lots in greenfield development.

The bill applies to any tract of five acres or more that is zoned for single-family homes that has no recorded plat, in cities with a population of 150,000 or more

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[2] https://comptroller.texas.gov/economy/in-depth/special-reports/housing-affordability/96-1999.pdf

[3] *Id.* at 16.

[4] https://www.ltgov.texas.gov/2025/03/19/lt-gov-dan-patrick-statement-on-the-bipartisan-passage-of-senate-bill-15-removing-barriers-to-affordable-housing/

located at least in part in a county of 300,000 or more.[5] On these tracts, a city cannot require a residential lot to be more than 3,000 square feet, wider than 30 feet, or deeper than 75 feet. Additionally, for "small lots" on such a tract—defined as a lot of 4,000 square feet or less—a city cannot require:

- A front setback of greater than 15 feet, a rear setback of greater than 10 feet, or side setback of greater than 5 feet, except when related to environmental features, erosion, or waterways
- Covered parking
- More than one parking space per unit
- Off-site parking
- More than 30% open space or permeable surface, except that a city may enforce regulations relating to aquifer recharge and protection
- Fewer than three full stories not exceeding 10 feet in height
- A maximum building bulk
- A wall articulation requirement
- Any other zoning restriction inconsistent with SB 15

The bill expressly states that it does not preempt local regulation of short-term rentals, and it does not prevent enforcement of HOA rules or private deed restrictions. The bill abrogates governmental immunity, providing a private right of action that allows a prevailing claimant to recover attorneys' fees.

HB 24—Supermajority and Notice Requirements

House Bill 24 by Rep. Angelia Orr (R.–Hillsboro) drastically alters the supermajority and notification requirements imposed on cities by state law. Currently, if the owners of at least 20 percent of either the area covered by a proposed zoning change or in the immediately adjoining area extending 200 feet, three-fourths of all members of the city's governing body must vote in favor for the change to be approved. Additionally, notices currently must be mailed to property owners within the protest area at least ten days before a zoning commission's hearing on a proposed change in zoning classification.

The bill defines a "proposed comprehensive zoning change" as a municipal proposal to: (1) change an existing zoning regulation that: (A) will have the effect of allowing more residential development than the previous regulation; and (B) will apply

[5] The following cities fall within the bracket: Houston, San Antonio, Dallas, Fort Worth, Austin, El Paso, Arlington, Corpus Christi, Plano, Lubbock, Irving, Garland, Frisco, McKinney, Grand Prairie, Brownsville, Denton, Killeen, Mesquite. https://demographics.texas.gov/Estimates/2023/.

uniformly to each parcel in one or more zoning districts; (2) adopt a new zoning code or zoning map that will apply to the entire municipality; or (3) adopt a zoning overlay district that: (A) will have the effect of allowing more residential development than allowed without the overlay; and (B) will include an area along a major roadway, highway, or transit corridor.[6]

Under HB 24, the protest procedure does not apply to proposed comprehensive zoning changes, and a city does not have to send mailed notices for a proposed comprehensive zoning charge. Notably, this provision appears to supersede *City of Austin v. Acuna*, a case holding that Austin's comprehensive revision of its Land Development Code triggered Local Government Chapter 211's notice requirements and protest procedures. 651 S.W.3d 474, 477 (Tex. App.—Houston [14th Dist.] 2022, no pet.). HB 24 does require more robust notice in advance of the public hearing before a city's governing body for all zoning changes: in addition to newspaper notices, a city with a website must also publish the notice on its website.

For a proposed non-comprehensive zoning change that will allow more residential development than existing zoning and that does now allow additional commercial or industrial (unless the additional use is limited to the first floor of any residential development and does not exceed 35 percent of the overall development), the protest threshold increases to 60% and even if that threshold is met, a city's governing body can approve the proposed change with a simple majority. The 20% protest threshold still applies, and triggers a 3/4ths supermajority requirement, for other proposed non-comprehensive zoning changes.

HB 24 adds a new requirement in home-rule cities—although one that's consistent with many cities' existing ordinances—to post a notice sign 10 days before a zoning commission's hearing on the property affected by the change or, for a city-initiated zoning change that affects multiple properties, along public right-of-way. The sign must be at least 24 inches long by 48 inches wide the municipality. The bill does not specify the contents of the sign.

Finally, the bill eliminates a city's ability to adopt an ordinance requiring a three-fourths vote of the governing body to approve a zoning change if its zoning commission recommends denial.

HB 2559—Additional Requirements Before Imposing Development Moratoriums

[6] "Major roadway" and "transit corridor" are not defined in the bill.

House Bill 2559 by Jared Patterson (R–Frisco) puts several additional hurdles in the way of a city that seeks to impose a development moratorium:

- Any person who provides the city secretary written notice by certified or registered mail is entitled, for two years, to receive notice from the city via certified mail not less than 30 days before a hearing on a proposed moratorium.
- A city's governing body must hold at least two public hearings, thirty days apart, on a proposed moratorium.
- No later than twelve days after the second public hearing, the governing body must begin considering final approval of the proposed moratorium with a first reading.
- The second reading of the proposed moratorium must be at least 28 days after the first reading and requires a three-fourths vote of all members of the governing body to take effect.

Currently, certain moratoriums can last up to 120 days unless extended and can be adopted back-to-back. HB 2559 now provides for a uniform 90-day initial period for all moratoriums, a uniform 180-day maximum, and prohibits a subsequent moratorium that addresses the same harm, affects the same type of property, or affects the same geographic area identified by the previous moratorium.

SB 785—Limiting Regulation of HUD-code Manufactured Housing

Senate Bill 785 by Senator Pete Flores (R–Pleasanton) reduces cities' ability to regulate manufactured housing that meets HUD code. For new manufactured housing that meets federal law and the requirements of Chapter 1201 of the Occupations Code, a city cannot require a specific use permit if it does not require a specific use permit for other residential property in the same zoning classification. Additionally, a city must allow installation of a new HUD-code manufactured home under at least one residential zoning classification, type of residential zoning district, or dedicated zoning classification for residential HUD-code manufactured homes.

SB 840—Facilitating Multi-Family and Mixed-Use Residential Development

Senate Bill 840 by Senator Bryan Hughes (R–Tyler) seeks to facilitate the development of multi-family housing, including mixed-use development with a

substantial multi-family component.[7] The bill applies to cities with a population of 150,000 or more located at least in part in a county of 300,000 or more.[8]

In any zoning classification that allows office, commercial, retail, warehouse, or mixed-use use, a city must allow "mixed-use residential" use and development and "multifamily residential" use and development without a zoning change. "Mixed-use residential" is defined as a mix of residential and non-residential uses where the residential uses are at least 65% of the development's total square footage. "Multifamily residential" means a site for three or more dwelling units within one or more buildings. Both terms include condominium developments.

The bill also sets a floor for certain development rights for multifamily residential and mixed use developments that could preempt many local ordinances. For such developments, a city cannot impose or enforce:

- A limit on density is more restrictive than the greater of the highest residential density allowed in the city or 36 units per acre.
- A height limit more restrictive than the greater of the highest height that would apply to an office, commercial, retail, or warehouse development constructed on the site or 45 feet.
- A setback or buffer requirement more restrictive than the lesser of the setback that would apply to an office, commercial, retail, or warehouse development constructed on the site or 25 feet.

Additionally, cities cannot require more than one parking space per dwelling unit in such developments or impose floor area ratios based on lot size.

Finally, the bill seeks to promote the conversion of buildings with office, retail, and warehouse uses to multi-family and mixed use. For buildings constructed at least five years before a proposed conversion, a city cannot require preparation of a traffic analysis, construction or funding of traffic improvements, provision of additional parking spaces beyond those already on site, extension, upgrade, replacement, or oversizing of a utility facility except as necessary to provide the minimum capacity needed to serve the proposed converted building, or design requirements more

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[7] SB 840 is more expansive than SB 2477, which is limited to addressing the conversion of offices to mixed-use and multifamily. SB 2477 mirrors SB 840 in many respects, and SB 2477 expressly states that SB 840 controls in the event of any conflict.

[8] The following cities fall within the bracket: Houston, San Antonio, Dallas, Fort Worth, Austin, El Paso, Arlington, Corpus Christi, Plano, Lubbock, Irving, Garland, Frisco, McKinney, Grand Prairie, Brownsville, Denton, Killeen, Mesquite. https://demographics.texas.gov/Estimates/2023/.

restrictive than the IBC as adopted by the city. The bill also prohibits additional impact fees relating to the conversion.

SB 1567—Dwelling Unit Occupancy Limits in Certain "College Towns"

Originally drafted to apply much more broadly, SB 1567 by Senator Paul Bettencourt was narrowed to apply only to home-rule cities of less than 250,000 where the campus of a public college or university with enrollment of over 20,000 is located or adjacent to adjacent to—i.e., College Station (Texas A&M), Denton (University of North Texas), Edinburg (University of Texas Rio Grande Valley), Huntsville (Sam Houston State University), Richardson (University of Texas at Dallas), and San Marcos (Texas State University).

These cities cannot impose limits on the number of people who may occupy a dwelling unit based on age, familial status, occupation, relationship status, or whether the occupants are related to each other by a certain degree of affinity or consanguinity, except that they can impose limits on the number of occupants not more restrictive than one occupant per sleeping room with a minimum floor area of 70 square feet and one additional occupant for each additional 50 square feet of floor area in the same sleeping room.