

Limited County Land Use Authority: An Avenue to Protecting Private Property Rights

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Texas has always placed considerable importance on protecting property rights, and the case of county land use controls is no exception. The Texas Constitution addresses county land use authority in Article 9 where it lays out limited constitutional authority for county regulation of land use. This approach to county land use regulation directly correlates to Texas' historical protection of property rights.

Current County Land Use in Texas

Texas has always operated under the “Dillon Rule” for counties. The Dillon Rule is a rule of law stating 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. It represents a tradition of legislative oversight and restraint in balancing state and local interests, and has established a consistency in law and governance that has resulted in business growth and economic development.

This limited local authority does not preclude counties from having specific land use controls. For instance, there is some zoning specifically allowed by Texas law in unincorporated areas. Chapter 231 of the Local Government Code is entitled “County Zoning Authority” grants such power, 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 was sufficient to convince the Legislature that enhanced land use control was necessary to protect the feature.

In addition, Chapter 232 of the Local Government Code gives counties additional land use controls. Chapter 232, sets forth the provisions relating to county regulation of subdivisions located outside incorporated areas. Counties are given the authority to review, approve and regulate the subdivision of land. However, as with the Texas Constitution and the other chapters relating to county land use controls, these regulatory powers are for certain, specific circumstances and for limited purposes—such as water supply and drainage, transportation, and other purposes related to health and safety.

Chapters 231 and 232 of the Government Code are examples of the Legislature's historical preference to only grant specific counties specific authority to address a specific problem—unlike the broader and general land use authority typically provided to cities.

Additional Authority Is Not the Answer—Look at Municipalities

Many of the arguments for increasing county regulatory authority are based on the notion that since municipalities have extensive regulatory authority, counties should too. However, the problem is not that counties do not have enough regulatory authority; the problem is that

Key Points

- Texas has always operated under the “Dillon Rule” stating that counties may exercise no power unless it is expressly granted by the state Legislature.
- Limited local authority does not preclude counties from having specific land use controls.
- The Legislature has shown an historical preference to only grant specific counties specific authority to address a specific problem.
- Protecting private property rights through keeping land use controls in check is crucial to Texas' continued economic and job growth.

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: The Next Step in Protecting Property Rights in Texas*, explains how municipal land use controls such as zoning have resulted in regulatory takings. Regulatory takings are *regulations imposed by a subdivision of government* that reduces the value of private property.

Houston is a good example of a local government that gets by with *fewer* land use controls. 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, several recent articles point to the lack of zoning as a significant reason that Houston leads the way in Texas and across the United States when it comes to economic and job growth.

Solution

Counties currently have sufficient authority to manage land use within their borders. The correct action is to extend the existing statutory protections against regulatory takings to cover city regulatory authority. In the specific instances where more authority is required, counties may approach the state for help, which has responded in the past by passing controls in specific, limited instances where they might be needed. Texas has routinely refrained from granting counties broad powers. Protecting private property rights through keeping land use controls in check is crucial to Texas' continued economic and job growth. ★

* Cox, Wendell, "How Texas Avoided the Great Recession," *New Geography* (20 July 2010) <http://www.newgeography.com/content/001680-how-texas-avoided-great-recession>; see also Kotkin, Joel, "Houston: Model City," *Forbes.com* (7 June 2010) <http://www.forbes.com/forbes/2010/0607/opinions-houston-immigration-job-growth-on-my-mind.html>.

