



# Testimony

## HB 1200

### *Testimony Before the Texas House Committee on Land & Resource Management*

by Shelby Sterling, Policy Analyst

Mr. Chairman and Members of the Committee:

My name is Shelby Sterling, and I am a policy analyst at the Texas Public Policy Foundation. Thank you for the opportunity to address the committee today. I am here to testify in opposition to [House Bill 1200](#).

Private property rights are part of the foundation of this state and, as such, require eternal vigilance. The Zoning Enabling Act provides some measure of private property protections; however, some cities, like Houston, stray from those protections and impose burdensome regulations on property owners. These extra-regulatory actions merit a legislative response; however, bills such as HB 1200 represent movement in the wrong direction.

HB 1200 is constitutionally suspect, tramples private property rights, and will encourage cities to cleverly craft ordinances to circumvent the private property protections created by the Zoning Enabling Act. The Texas Public Policy Foundation therefore opposes this bill.

Texas courts have long held that the “the right of the citizen to use his property as he chooses so long as he harms nobody, is an inherent and constitutional right.”<sup>1</sup> Accordingly, Texas cities may only constitutionally regulate the use of property to abate common law nuisances or prevent other genuinely harmful uses of property.<sup>2</sup> Regulations designed for purely aesthetic purposes, or to fit the subjective preferences of one’s neighbors, have uniformly been held unconstitutional.<sup>3</sup>

Historic preservation ordinances generally conflict with this command because they focus almost exclusively on aesthetics—regulating everything from the type of brick one uses to repair their home to the color a homeowner can paint their shutters.

Despite this precedent, in 1987 the Texas Legislature amended the Zoning Enabling Act to allow cities to engage in some historic land-use regulation.<sup>4</sup> But while this amendment allowed cities to engage in the constitutionally suspect act of historic land-use regulation, it placed significant procedural restrictions on the exercise of that power.

Last session, the Legislature expanded these protections by amending the Zoning Enabling Act to require that cities receive property owner consent, or a three-fourths vote before enacting historic land-use regulations on a given property.<sup>5</sup> By requiring owner consent or the vote of a supermajority of the governing body, cities cannot easily trample on property owners. This amendment to the act further protects individual property rights by providing a uniform, statewide process for historical designation. Explicitly exempting a municipality from this provision goes against the intent of the Texas Legislature and circumvents the Texas Zoning Enabling Act.

In fact, HB 1200 takes this pattern in the opposite direction. As written, HB 1200 would allow cities to engage in historic land-use regulation without *any* of the procedural protections afforded by the original Zoning Enabling Act or the later amendments. Not only is it bad policy, but it is also unconstitutional.

Thank you for your time and consideration. I am happy to answer any questions you may have. ★

#### ENDNOTES

<sup>1</sup> *Spann v. City of Dallas*, 235 S.W. 513, 515 (Tex. 1921).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; see also, *Lombardo v. City of Dallas*, 73 S.W.2d 475, 479 (1934).

<sup>4</sup> Tex. Local Gov’t Code § 211.003.

<sup>5</sup> Tex. Local Gov’t Code § 211.0165.

## ABOUT THE AUTHOR



**Shelby Sterling, JD**, is a policy analyst for the Government for the People campaign at the Texas Public Policy Foundation.

Sterling is a licensed attorney in the state of Texas with a JD from Texas A&M University School of Law in Fort Worth. She participated in the law school's residency externship program and graduated with a concentration in public policy. Sterling received her BA in Letters from the University of Oklahoma, a combination study of philosophy, history, and literature on the U.S. Constitution and the Founding Fathers.

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