Houston Strong: A World Series Ring, But is There A Problem With a Lack Of Zoning Laws?

Brady Getlan

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HOUSTON STRONG: A WORLD SERIES RING, BUT IS THERE A PROBLEM WITH A LACK OF ZONING LAWS?

Brady Getlan

I. INTRODUCTION

Today, many cities, towns and localities throughout the world have zoning laws, which restrict various things including building height, building type, and building usage (residential, commercial, etc.). Houston, however, is one of the few cities that does not have formal zoning laws. Houston prides itself on having no formal zoning laws and calls itself the “city with no limits.” Some blame the lack of zoning laws for exacerbating the recent flooding from Hurricane Harvey, while others say the flooding would have been just as bad even if the city had zoning laws and zoning ordinances.

On August 25, 2017, Hurricane Harvey first made landfall in Houston. Harvey left over 444 square miles of Harris County flooded.1 For comparison, 444 square miles is over six times the size of Washington D.C.2 The destruction cost from Harvey is estimated to be anywhere from about $150 billion to $180 billion.3 The destruction from Harvey included damage to 203,000 homes, a death toll that has reached 82 people, and resulting in 37,000 people being displaced by the hurricane and placed into Houston’s shelters.4 As of late December 2017, thousands of Houstonians were still displaced.5 This comment will analyze whether a lack of zoning laws

2. Id.
4. Id.
contribute to the historical flooding in Houston due to Harvey, the positives and negatives of Houston’s lack of formal zoning laws, whether or not future zoning laws can help Houston from future flooding, and if there is an alternative for Houston in lieu of enacting formal zoning laws.

II. HISTORY OF ZONING LAWS

A. The Beginning of Zoning Laws in America.

i. Pre-zoning Ordinances

Prior to zoning laws in America, cities used nuisance laws in attempts to regulate land.6 If a citizen was unhappy with how someone else was using his or her own land, a citizen could attempt to challenge the use in court under nuisance laws.7 In 1885, a law was enacted to restrict apartment buildings to one and a half the size of the width of the street.8 This law was challenged in a 1909 Supreme Court case in which the Supreme Court subsequently ruled that the 1885 legislation was legal.9 The first major land use restriction in America came in 1885 when the city of San Francisco banned public laundries from most parts of the city.10 However, the next year the Supreme Court overturned the ban of public laundries.11 Los Angeles became the next city to enact restrictions on development in 1909 when the city enacted legislation to restrict factories and commerce from certain neighborhoods.12

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7. Id.
8. Id.
9. See Welch v. Swasey, 214 U.S. 91 (1909) (“[T]here is no unreasonable interference with the rights of property of the plaintiff in error, nor do the statutes deprive him of the equal protection of the laws.” “The reasons contained in the opinion of the state court are in our view sufficient to justify their enactment.”).
11. Id.
12. Id.
ii. New York City in 1916

In 1916, New York City implemented the first zoning ordinances in the United States of America. The idea to bring ordinances to New York City started in 1913 when the high-end retailers located on Fifth Avenue became increasingly upset that there were offices and factories being built near their stores. In 1916 ordinance laws were enacted, dividing New York City into multiple districts, and setting certain restrictions based on the district. Fifth Avenue for example, became a shopping district, therefore prohibiting industrial factories from encompassing in the zone of Fifth Avenue. By the mid 1920’s, almost 400 local governments had enacted zoning laws similar to those enacted in New York City.

iii. Two Landmark Zoning Cases in the Supreme Court

The Supreme Court defined the rights of cities to enact zoning laws in Village of Euclid v. Ambler Realty Company and in Nectow v. City of Cambridge. The Court in Euclid laid out the foundation for how a city can use its policing powers to enact zoning laws. While the Court in Nectow further defined the rights of a city to enact zoning laws and limited the powers of a city to enact zoning laws based on specific guidelines the Court set forth.

A. Village of Euclid v. Ambler Realty Co.

The first major Supreme Court case on zoning ordinances and their legality occurred in 1922 with the case, Village of Euclid v. Ambler Realty Co.

14. Id. at 829.
15. Id. at 830.
16. Id.
17. Id.
On November 13, 1922, the Village of Euclid enacted a zoning ordinance, which split the city up into various districts that had different building restrictions. The building restrictions included restrictions on what type of buildings could be built where, and what size the buildings could be in each district. Under the ordinance, Ambler Realty Company found itself owning land that was located in multiple districts. Ambler Realty felt that the zoning ordinances restricted their fourteenth amendment rights because the ordinances did not allow Ambler Realty to build what they wanted to on their own land.

The Supreme Court ruled in favor of the Village of Euclid. The Supreme Court reasoned that the Village of Euclid zoning ordinances were a valid use of the policing power, stating, “the ordinance now under review, and all similar laws and regulations, must find their justification in some aspect of the police power, asserted for the public welfare.” The Opinion of the Court further reasoned that it is not enough that, “the broad ground that the mere existence and threatened enforcement of the ordinance, by materially and adversely affecting values and curtailing the opportunities of the market, constitute a present and irreparable injury[].” The majority asserted that when an injunction is sought on the broad allegation that an ordinance is an infringement on certain rights, the Supreme Court will not read the provisions line by line to test each line’s constitutionality separately. The Court saw no basis to grant relief, and further ruled that there was nothing, other than mere speculation, to show that the ordinance affected the marketability of the land owned by Ambler Realty Company.

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22. Euclid, supra note 18.
23. Id. at 379-382.
24. Id.
25. Id. at 384. (The 14th Amendment states that “…No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”)
26. Id. at 387.
27. Id. at 387.
28. Id. at 395.
29. Id.
30. Id. at 397.
B. Nectow v. City of Cambridge

The Supreme Court decided a second case, Nectow v. City of Cambridge, in 1928. In this case, the plaintiff was looking for a mandatory injunction against the City of Cambridge to allow the plaintiff a permit to build lawful buildings regardless of the building type restrictions in the City of Cambridge’s zoning districts. The City of Cambridge’s zoning ordinance in question separated the city into three separate districts: residential, business, and unrestricted. The Court struck down the City of Cambridge’s zoning ordinance. In its reasoning, the Court cited to Euclid v. Ambler Realty stating that a Court should not set aside a city’s zoning laws unless the zoning has “no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense.”

The Court goes on to state that the power to enact and enforce zoning regulations “…is not unlimited, and… such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare.” Based on its reasoning, the Court found that the City of Cambridge’s zoning ordinance could not find any basis for its legality under the standards set forth in Euclid v. Ambler Realty.

III. HOUSTON, THE CITY WITH NO LIMITS

Houston is the only major city, and one of few cites or towns in America, that does not have formal zoning laws. Many Houstonians pride themselves on not having zoning laws. Some people outside of Houston believe that the lack of zoning laws in Houston is a positive, while there are others who believe that Houston must enact zoning laws. Among journalists, there is a large divide between those who want Houston to enact zoning laws

31. Nectow, supra note 19.
32. Id. at 186.
33. Id. at 185.
34. Id. at 188-189.
35. Id. at 187-188 (quoting Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926)).
36. Id. at 188 (quoting Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926)).
37. Id. at 188-189.
39. Id.
and those who do not want the city to enact zoning laws. Economists and legal scholars are also divided on whether or not the lack of zoning laws is good for the city.

A. Advantages

There are various advantages to not having zoning laws, which include various economic growth opportunities, and an apparent higher potential for cheaper housing. Edward Glasser, a Harvard economist, says that zoning laws and ordinances, “make housing more expensive and restrict the growth of America’s most successful metropolitan areas.”40 Glasser goes on to state that, “Land use controls that limit the growth of such successful cities mean that Americans increasingly live in places that make it easy to build, not in places with higher levels of productivity.”41 Glasser is essentially of the belief that the fewer zoning laws there are, the better chance that there will be more affordable housing.42

The lack of zoning laws in Houston allows Houstonians to build housing just about anywhere. This allows the prices to stay cheap because builders can build in places that other cities would not allow simply because the other cities and localities have zoning laws that only allow housing development specific locations. Economist Bill Gilmer of the Federal Reserve Bank of Dallas claims that the ability to build housing anywhere has helped “shield” Houston from the recent real estate crises.43 According to Gilmer, “Houston’s combination of available unrestricted land and municipal utility districts to fund infrastructure [has] allowed it to grow at a lower cost than other metropolitan areas.”44

Vanessa Brown Calder, a policy Analyst at the Cato Institute, talking about housing in Houston stated that, “The truth is that limited zoning means

41. Id.
43. Id.
44. Id.
more opportunity, more low-cost housing, and less politically-motivated and exclusionary policies.” A lack of zoning laws can also lead to less costly building expenses for homebuilders and housing complex builders. Minimal zoning laws can help to lower the obstacles that a builder would have to go through in complying with various zoning laws that give specific instructions on things such as building size and other building specifications that limit or specify what a builder can do. This likely would lead to builders saving money resulting in lower costs for purchasing a housing unit or house. Therefore, a lack of city wide zoning laws should increase the amount of affordable housing tremendously. The lack of zoning laws also encourages those who would normally be discouraged from building a house, due to all of the troubles with adhering to strict zoning laws, to build housing in Houston. An increase of overall housing units likely would lower the overall average cost of housing due to the large supply of housing. Zoning laws are also known to increase the inequality of wealth because high housing prices can, “hinder intergenerational mobility, by preventing parents from moving their kids to better neighborhoods with less crime, better school districts, and more opportunities.”

Having no formal zoning laws has also had a positive economic impact in Houston. “Between 2009 and 2013 [Houston’s] real GDP increased by 22%, more than twice as fast as the American economy as a whole.” Houston’s economy is not showing any signs of slowing down. Houston’s airports and ports are busier than ever with over 51 million people flying through Houston’s two airports per year, and the ports are receiving more foreign goods than in any other American city. The abundance of air traffic and port traffic shows the effects of a thriving economy. An absence of

49. Id.
zoning laws permits businesses and houses to be built closer together and more easily than in places with heavy zoning laws. “Affordable housing near retail services, home businesses unhindered by excessive regulation—these are the blessings, not cancers, of a city in which the people determine the use of their property.” Affordable housing in Houston is made possible not only by the scarcity of zoning, but also by Houston’s help with funding for affordable housing. Houston offers funding to developers who are building properties that are for those who are in need. In 2017, Houston’s Housing Authority broke ground on a new affordable housing development.

B. Disadvantages

Some of the various negatives that come out of Houston’s lack of zoning laws include long commutes due to congestion brought on by sprawl, and poor public transportation. Houston’s sprawl, which is partly due to their lack of housing zoning laws, helps to create busy roads and interstates. As of February 1, 2017, Houston had ten of the top 100 congested roadways in the United States. Five of the ten that are located in Houston are in the top 25 congested roadways in the United States. Houston also ranks 11th in

55. Id.
a list of America's most congested cities.\textsuperscript{57} The same study says that Houstonians on average were in traffic for 51.6 hours in 2016 alone.\textsuperscript{58} Although this number is insignificant compared to cities such as Los Angeles, and San Francisco,\textsuperscript{59} the number does show that there is significant congestion.

Houston’s absence of zoning laws also affects the housing market.\textsuperscript{60} Throughout Houston’s history, it has generally had large vacancy rates due to its high productivity.\textsuperscript{61} This can be good for affordability, but bad for those in the real estate business due to decreasing housing prices because of the high supply levels of available housing. An excess of housing can affect the entire housing market and can even lower the value of properties throughout the entire city.

C. Does Houston Make up for the Lack of Zoning law in Other Regulations?

Although Houston does not have formal zoning laws, Houston does have zoning ordinances. The Texas’ code gives Houston the ability to enforce ordinances under Texas Local Government code § 54.012.\textsuperscript{62} Houston also has other ordinances that restrict various things that zoning laws generally restrict in other cities. For example, some of the ordinances include: a minimum single family lot size in suburban areas,\textsuperscript{63} a minimum single family lot size in urban areas,\textsuperscript{64} the minimum width of a lot,\textsuperscript{65} fire protection


\textsuperscript{58} Id.


\textsuperscript{61} Id.

\textsuperscript{62} See generally Tex. Loc. Gov’t Ann. § 54.012.


\textsuperscript{64} HOUSTON, TEX., CODE OF ORDINANCES § 42-181(a)(2)(2013).

\textsuperscript{65} HOUSTON, TEX., CODE OF ORDINANCES § 42-185 (2013).
ordinances, parking space requirements, and even residential pool and spa ordinances. Houston claims to be a city without limits and a city with no zoning laws, but Houston does in-fact have city ordinances that act similar to how zoning laws act in other cities. The ordinances are not as strict as zoning laws found in almost every other city world wide, but nonetheless, Houston does have some regulations.

Houston also features various “policies” that almost act similar to zoning ordinances. Matthew Festa, Professor of Law at South Texas College of Law, claims that Houston does not have many “land-use regulations,” but does “have a lot of stuff that looks and smells like zoning.” Festa goes on to claim that Houston has “a lot of regulations that in other cities would be in the zoning code.” Some of these regulations that Festa is referencing include: deed restrictions; tax increment reinvestment zones; buffering ordinances; and lot size restrictions.

D. What do Houstonians Think of the Debate?

Houston has held several votes to decide whether or not they should enact formal zoning laws. All of the votes thus far have resulted in a continuance of no zoning laws for the city of Houston. A referendum is a vote that is brought to the registered voters by the legislature in a specific area. The issue of zoning has been voted on in three separate Houston referendums since the late 1940’s. In 1948, 1962 and 1993 Houstonians voted not to enact zoning laws. In the 1993 vote, the zoning vote was unsuccessful.

70. Id.
71. Id.
72. Id.
74. Id.
75. Id.
by 86,060 votes to 79,063. Since 1993, there has not been any votes or referendums on the enactment of zoning laws. After three unsuccessful attempts at voting to enact formal zoning laws, it appears unlikely that another vote will come anytime soon.

E. Sprawl

Houston is known for its sprawl, and known as an automobile dependent city. Houston has grown to encompass 627 square miles. Houston has attempted to combat the “problem” of sprawl by creating and upgrading its public transportation. In the past nine years, Houston has opened two new light rail lines, and expanded an already existing light rail line. Houston is also currently working to build two new light rail lines, one of which is expected to be completed in 2019. Over the past few years, Houston, like many other cities, including Baltimore and New York City, has steadily been increasing its bike-sharing network.

One ordinance that has increased Houston’s sprawl is one that regulates the minimum length between intersections. According to Houston code, “intersections along a major thoroughfare shall be spaced a minimum of 600 feet apart.” Whereas a federal report on pedestrian-friendly design endorses that blocks are about 300 feet in length. According to Michael Lewyn, professor of law at the Touro Law Center, “minimum lot size requirements and other anti-density regulations also encourage sprawl by encouraging population growth to shift away from Houston’s historic core to newer areas (which are typically more thinly populated and automobile-dependent).”

76. Id.
78. Id.
79. Id.
80. Id.
81. Id.
82. See source cited supra note 77.
84. Id.
85. Id. at 1181.
Lewyn also mentions another zoning ordinance that requires apartment owners to have a parking space for all renters. Lewyn believes that “minimum parking requirements constitute a government-mandated transfer of wealth from non-drivers to drivers, and thus encourage driving and discourage other forms of commuting.” Lewyn goes on to state that these parking ordinances result in additional sprawl due to the encouragement of driving and having a vehicle.

IV. DID HOUSTON’S LACK OF ZONING LAWS AFFECT THE RECENT FLOODING?

A. Lack of Zoning Laws Exacerbated Flooding

Some people believe that Houston’s lack of zoning laws exacerbated the effects of Hurricane Harvey. According to a Washington post article, “Growth that is virtually unchecked, including in flood-prone areas, has diminished the land’s already-limited natural ability to absorb water, according to environmentalists and experts in land use and natural disasters.” This article claims that one of the major reasons for the flooding is the fact that Houston does not have zoning laws that regulate building on flood plains. “Since 2010, at least 7,000 residential buildings have been constructed in Harris County on properties that sit mostly on land the federal government has designated as a 100-year flood plain, according to a Washington Post review of areas at the greatest risk of flooding.” Projects to widen the bayous and build thousands of retention ponds for excess water have not kept pace with the new rooftops, roadways and parking lots needed to accommodate about 150,000 new residents a year.

The developers in Houston were allowed to build almost anywhere and sometimes built in or right near flood plains, without regard for adverse

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86. Id. at 1185.
87. Id. at 1186.
89. Id.
90. Id.
91. Id.
weather conditions. As developers began to further develop Houston and the surrounding areas into neighborhoods and business parks they often built right over the Houston flood plains. Additionally, builders also began to pave roads and parking lots directly over wetlands and prairies that formerly helped to absorb rainwater. If left undeveloped, these wetlands and prairies would have lowered the risk of the flooding and potentially minimized the extent of the flooding because of their ability to absorb tremendous amounts of water.

Research has showed that if the wetlands, prairies, and flood plains in Houston were not developed, the flooding in Houston would not have been close to what was seen in the aftermath of Hurricane Harvey. Some may argue that Houston’s lack of government interference and regulation in the development of the city has affected the city in the recent events, and in recent years.

The rapid growth and rapid building in Houston has contributed to the deterioration of the flood-prone areas. In the 15 years between 2000 and 2015, about 360,000 new buildings were built in Harris County alone. This has resulted in thousands of hard surfaces, paved roads, and parking lots in areas that mostly had been undeveloped natural water-soaking environment. The hard surfaces and paved roads do not soak up rainwater nearly as well as the natural environment.


93. Id.

94. Id.

95. Id.


98. Id.

99. Id.

100. Id.
Some journalists believe that rapid growth and sprawl is “damaging” Houston.\textsuperscript{101} These journalists believe that Houston’s large growth and issues relating to climate change are mostly responsible for the heavy damage to the city.\textsuperscript{102} As Houston’s growth and sprawl has increased over the years, politicians have continually allowed developers to build right over the formally existing natural prairie land, which has the ability to hold large amounts of water.\textsuperscript{103} Houston’s lack of political involvement in zoning legislation, has allowed for tremendous sprawl.

The hands-off political approach in Houston has allowed for the massive sprawl that currently exists today.\textsuperscript{104} Although no city could have escaped Hurricane Harvey’s wrath without damage, Houston’s lack of political action has made it more vulnerable.\textsuperscript{105} Paving over land that formally absorbed rainwater, small flood-control reservoirs, and a lack of a sufficient drainage system, resulted in record flooding in Harvey’s aftermath.\textsuperscript{106}

\textbf{B. The Other Side: A Lack of Zoning Laws Did Not Exacerbate Flooding}

Although many are blaming the lack of zoning laws for the heavy flooding, many are also defending Houston’s lack of zoning laws, saying that the flooding would have happened whether or not there were zoning laws. Houston’s sprawl should not be blamed for the aftermath of Hurricane Harvey because of Houston’s unfortunate history of flooding.\textsuperscript{107} A 1935 Hurricane, which experienced less rain than Hurricane Harvey, saw flooding in the Buffalo Bayou, the main waterway through Houston’s downtown, at

\begin{itemize}
\item 102. Id.
\item 103. Id.
\item 105. Id.
\item 106. Id.
\end{itemize}
over 54 feet.\textsuperscript{108} While estimates for the same bayou following Hurricane Harvey saw flooding of about 40 feet.\textsuperscript{109} Houston has been flooding long before Houston’s sprawl reached its present state.\textsuperscript{110} Between 1837 and 1887 there were six major floods in Houston.\textsuperscript{111} Houston’s flooding continued into the early 20\textsuperscript{th} century, resulting in major floods in 1913, 1929, 1932 and 1935.\textsuperscript{112} One article discusses how the argument that Houston is a “concrete jungle” is incorrect. A “concrete jungle” is a term used for cities with a lot of infrastructure and concrete. “In total acres, Houston has more parkland and green space than any other large city in America and ranks third overall to San Diego and Dallas in park acreage per capita.”\textsuperscript{113} The article finishes by stating that the flooding was “a result of creeks and bayous backlogging and spilling over their banks as more water rushes in from upstream.”\textsuperscript{114}

The flooding issue is a more of a consequence of a climate change and incompetent city officials, than it is a consequence of bad planning.\textsuperscript{115} “Developers are required to offset the wetlands they destroy with remedies like detention ponds to capture storm water.”\textsuperscript{116} A Houston Chronicle investigation stated that a “sampling of permits issued to local developers by the U.S. Army Corps of Engineers found more than half were not in compliance.”\textsuperscript{117} This investigation shows that developers are not doing proper due diligence, while the city government is also not following their obligations to ensure that the developers are adhering to the rules that they created.\textsuperscript{118}

\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Magness, supra note 107.
\textsuperscript{113} Id.
\textsuperscript{114} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id. (citing Kim McGuire and Mike Tolson, Is this the New Normal? After storms turn Space City into Flood City, experts believe the future could be even worse, Houston Chronicle, (April 23, 2016), http://www.houstonchronicle.com/houston/article/After-storms-turn-Space-City-into-Flood-City-7305830.php).
\textsuperscript{118} McGuire, supra note 117.
Historic flooding in Houston is due to the geography and landscape of the city, not the sprawl. Houston has multiple bayous that push the water out of the city and into the Gulf of Mexico. Unfortunately, due to Houston’s flat landscape, the bayous are not always fully efficient and can flood. Heavy regulations and less development have not resulted in fewer flooding issues for other cities, such as New Orleans and states, which include Tennessee, Georgia, Colorado, and various others. Climate change, and Houston’s “abnormally” flat topography are more responsible for recent flooding, than Houston’s lack of zoning.

C. Can Future Zoning Laws Stop This From Happening Again?

Unfortunately, there is no definitive way to protect against natural disasters such as hurricanes, floods, and tornados. In recent years, many are blaming the severe weather conditions on global climate change. In the specific case of Houston, some experts believe that enacting zoning laws can help reduce the effects of future hurricanes and the residual flooding, while others believe that the enactment will not help and that there are alternatives to the enactment of zoning laws that would benefit the city.

i. Yes, Enacting Zoning Laws Can Help to Minimize Future Flooding

Ian Bogost, professor at the Georgia Institute of Technology, claims that the flooding in Houston shows clearly that the city has a storm water management problem. “Roads, parking lots, sidewalks, and other pavements, along with asphalt, concrete, brick, stone, and other building materials, combine to create impervious surfaces that resist the natural

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120. Id.
121. Id.
122. Id.
123. See source cited supra note 119.
2018 Houston Strong 79

absorption of water.” Bogost claims that a reduction in building and development is a great way to limit flooding in cities. One of the ways a city can reduce development is to enact zoning laws that limit development in certain areas. Bogost also believes that Houston must address its lackluster storm management infrastructure. Bogost claims that one of the most efficient uses is to erect a storm water management system that works by “collecting water into cisterns for processing and reuse.” Bogost believes that although there is currently a lack of funding from the government and government intervention is essential to create proper storm water management systems.

ii. No, Zoning Laws Will Not Minimize Future Flooding

Some would argue that a lack of zoning laws was not the reason for the flooding, but rather urban sprawl was the leading culprit. “Comprehensive zoning laws don’t prevent the sort of sprawl that really does make Houston even more prone to the flooding which low elevation and the proximity of a warming ocean makes likely.” “Even if there wasn’t so much sprawl, and there were more wetlands and sufficient drainage, no one in Houston could have anticipated how frequent previously unusual flooding events would become.” “Houston has now had ‘500-year-floods’ — which means… there should only be a 1-in-a-500 chance of occurring in any one year — for three straight years now.” Houston’s sprawl includes about “140,000 homes in the 100-year floodplain in Greater Houston.” The extensive amount of houses located in Houston’s flood plain shows not only

125. Id.
126. Id.
127. Id.
128. Id.
129. See source cited supra note 124.
131. Id.
132. Id.
133. Id.
134. Id.
the great sprawl of Houston, but also the city’s willingness to build everywhere. This has increased Houston’s susceptibility to flooding.

Although Houston has historically been a flood prone city, Houston’s lack of zoning can help the city rebuild after natural disasters, such as Hurricane Harvey. Some believe that the idea that the lack of zoning is to blame for the historic flooding must be refuted. Houston sometimes gets the nickname of a concrete jungle, however “only 39 percent of the city’s land is taken up by impervious surface coverings according to U.S. Forest Service data.” Houston’s 39 percent can be compared to “41 percent in New Orleans, 54 percent in Los Angeles, and 61 percent in New York City— all cities with traditional zoning regulations.” Vanessa Brown Calder, a Cato Institute Urban Policy Analyst, claims that the rebuilding process will likely be easier due to the minimal zoning laws. Due to the zoning laws in New Orleans, the city “prevented damaged developments in flooded parts of the city to be rebuilt elsewhere.”

iii. Is There an Alternative To Enacting Formal Zoning?

There are various alternatives for Houston that does not include enacting formal zoning laws. Such alternatives include but are not limited to: restricting some development in the Houston floodplains, improving roads, improving the drainage system, and creating more building ordinances. A Texas Tribune article laid out four things that Houston must do to better prepare in the future. The four things include: preserve and restore as much prairie land as possible, restrict development in floodplains and buy flood-prone homes, plan for climate change, and educate the public on the risks of living in a flood-prone area. Houston’s city government must increase its

136. Id.
137. Id.
138. Id.
139. Id.
141. Id.
involvement in order for these four things to become a reality. If Houston can manage to do this, Houston can minimize the destruction of a future flood.

It is essential that Houston finds a balance between some government oversight, mainly in improving roads and the current drainage system, and over regulating the city through imposing zoning like restrictions. Many experts and residents say that the developers’ encroachment into the wetlands and prairies that used to serve Houston as natural sponges has inevitably exacerbated the misery that the city is suffering today. Therefore, it is important for Houston to find a new way to withstand future Hurricane’s and minimize future flooding. “In 2010, city voters narrowly passed a major financing mechanism, ReBuild Houston, to improve roads and an out-of-date drainage system.” These programs are important for Houston, but it is also important for the city government to make sure it does not overregulate. Thus, a balance between regulating to achieve its goal, and overregulating is essential for a better future in Houston and better protection against future flooding.

An expert on causes of flooding, Professor Samuel Brody at Texas A& M, argues that one of the most important things is to educate Houstonians on the risks of living in a flood-prone area. Brody claims that, “there’s a real lack of awareness and messaging that reaches out to those neighborhood levels.” Educating the public on the risks of building and living in flood prone areas can help the public to better decide where they want to live, and

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142. Id.
144. Id.
145. Id.
146. Id.
147. Id.
148. Fernandez and Fausset, supra note 144.
150. Id.
to also use this knowledge to better prepare themselves in the event that another catastrophic flood comes to Houston. As previously mentioned above, Houston “is situated on a low-lying coastal plain with little topographic relief and the soils beneath it are clay-based, thwarting drainage.”

Houston is bound to flood again, but with education on flooding risks, Houstonians can better prepare for the next one.

In 1993, Associate Professor of law at the Thurgood Marshall School of Law, Marcia Ann Johnson, wrote a comment on the city of Houston and how it can use zoning ordinances to its advantage. Johnson proposed that it would be more effective if the entire state of Texas had the same ordinances. Johnson stated that, “measures taken by the City of Houston should be combined with inclusionary measures for the entire state of Texas.”

iv. What Are The Politicians Doing to Reduce Future Flood Destruction?

A. Mayor Turner Introduced New Legislation, While City Council Lobbied Congress

The Houston Mayor, Sylvester Turner, recently introduced legislation that would set requirements for homes, which would help protect citizens from future flooding. The new legislation proposes that all new houses in Houston be built at least two feet above the 500-year flood plain and must be equipped with a water retention system to move water in the event of a large rainstorm or flooding. Turner introduced the legislation in

151. Id.
153. Id. at 260-62.
154. Id. at 254.
155. Id. at 262.
157. Id.
February 2018.\textsuperscript{158} The legislation would cost developers and homebuilders about $10,000 extra for the cost associated in raising the houses and buildings.\textsuperscript{159} However, this extra preventative cost is well below the amount it would cost to have to rebuild or remodel a house after another flood. Turner also plans to introduce legislation that would create an ordinance that allows Houstonians to use temporary trailers on a person’s own property so that people can have somewhere to live while rebuilding their homes.\textsuperscript{160} This new ordinance is catered towards those with existing homes that were destroyed.

Since early February 2018, Houston’s City Council has been actively lobbying congress for additional funds for its recovery efforts.\textsuperscript{161} These additional funds are meant to help offset Houston’s costs to build more flood infrastructure.\textsuperscript{162} Since the city council has recently received some of the funding it has petitioned for,\textsuperscript{163} it is important for the council to not stop its lobbying efforts and begins to focus on the long-term success. This includes either lobbying for money for storm-water management infrastructure, or in the form of requesting help from FEMA in a buyout program to reduce the development on the flood plains.

On February 16, 2018, the Houston Mayor, Sylvester Turner, published a letter to Houstonians giving his proposed plans and also asking them to give their input on his proposed changes to Houston’s flood ordinances.\textsuperscript{164} Along with the letter, the mayor asked Houstonians to fill out a survey that was created to gain information on where people live and their

\begin{itemize}
\item \textsuperscript{159} Shay, \textit{supra} note 157.
\item \textsuperscript{160} Id.
\item \textsuperscript{162} Click 2 Houston Staff, \textit{Federal funding for Harvey recovery approved}, CLICK 2 HOUS., (Feb. 9, 2018, 4:58 PM), https://www.click2houston.com/news/federal-funding-for-harvey-recovery-approved.
\item \textsuperscript{163} Id.
\end{itemize}
thoughts on his proposal.\textsuperscript{165} Public input could also be solicited through email and sent to the local district council member.\textsuperscript{166} Mayor Turner requested that all public input should be given by March 5, 2018.\textsuperscript{167} He plans to subsequently introduce the new legislation to the Houston Council on March 21, 2018.

V. THE VERDICT

Something must be done. However, this is very a complex issue. Houston cannot continue to be flooded year after year. Yes, Houston’s lack of zoning laws does help it rebuild faster, but the government and the people simply cannot afford to continue to rebuild, time after time, if adverse weather conditions continues to ravish Houston.\textsuperscript{168} The government and the people must work together to improve Houston to help minimize future flood risks, while also maintaining the city’s reputation for tremendous prosperity and growth.\textsuperscript{169}

\textit{A. Institution of an Educational Program on Flooding}

The first thing that must be done is that the government of Houston must institute an education program to not only educate the citizens on the risks of living in the flood plains, but also on flood preparedness. The education should start with informing Houstonians of the great risks of living in the Houston flood plains. This education should also help to educate all Houstonians, not just the ones who live in the flood plains, on flood preparedness and what to do in the event a flood occurs in or around your house or place of business. Although nobody knows when the next major storm or hurricane will hit Houston, being prepared can help reduce the possible devastation.

\footnotesize{\textsuperscript{165} Id.  
\textsuperscript{166} Id.  
\textsuperscript{167} Alanna Reed, Chapter 19 Floodplain Ordinance, HOUSTON RECOVERS (Feb. 13, 2018), https://houstonrecovers.org/houston19/.  
\textsuperscript{168} FERNANDEZ & FAUSSET, supra note 139, at 1.  
\textsuperscript{169} Id.}
B. An Emphasis on Flood Insurance

The city should put an emphasis on encouraging more Houstonians to get flood insurance. “As of August 2016, just 15% of the 1.6 million homes in Harris County, where Houston is located, had flood insurance, according to emailed data from the Insurance Information Institute, and only 28% of the homes in “high-risk” areas for flooding.”\(^{170}\) It is imperative that this number increases to ensure that if a flood does happen, Houstonians will be able to rebuild their properties.\(^{171}\) For example, someone whose home was flooded can use flood insurance money to move to a less flood prone area of Houston.\(^{172}\) Without the insurance, it is unlikely that many of those living in the floodplain would financially be able to rebuild outside of the floodplain.\(^{173}\)

Recently the United States Congress has been working to help those affected by Harvey.\(^{174}\) Congress recently budgeted $90 billion towards hurricane relief.\(^{175}\) Congress has until March 23\(^{rd}\) to create either a long-term solution or a short-term solution for the continuance of the National Flood Insurance Program (NFIP).\(^{176}\) Unfortunately Senator John Kennedy, who is on the Senate Banking Committee that is in charge of the NFIP, is not optimistic that a deal will be reached prior to the March 23\(^{rd}\) deadline.\(^{177}\) It is

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171. Id.

172. Id.

173. Id.


175. Id.


important for Houston that the federal government backs the NFIP to encourage Houstonians to buy flood insurance. If the government backs a strong NFIP overhaul, more people would trust the NFIP and would be more willing to buy into the NFIP.178

C. Investing in Infrastructure

Houston has spent about $4 billion in recent years towards its water removal infrastructure, and the city only spends about $100 million per year in upkeep.179 The city must continue this spending and increase the spending in the future for the upkeep of the infrastructure and to increase the infrastructure’s effectiveness.180

Since Hurricane Harvey, various Houston Politicians have been pushing for better infrastructure.181 Unfortunately, however, congress has yet to allocate funding for an investment in Houston’s storm water management infrastructure.182 United States Senator John Cornyn is currently pushing legislation in congress to fund infrastructure to protect Houston and surrounding cities from storm surges.183 Although this will help with storm surges, it unfortunately will not help reduce flooding from rain.184 The politicians both on a federal and local level must continue to push for better storm water management infrastructure.185 The better the infrastructure, the better Houston’s chances are to reduce damage from future flooding.186

Governor Greg Abbot has recently announced that Houston expects to get over one (1) billion dollars in funding from the Federal Emergency Management Agency (FEMA) that can be used for buyouts of flooded

178. See discussion infra Section V., part B.
181. Id.
182. Id.
183. Id.
184. Id.
185. See discussion infra Section V., part C.
186. See discussion infra Section V.
structures and elevating structures above floodplains; floodwalls, seawalls, jetties, sand dune restoration and channeling waterways; retrofitting houses and buildings to withstand hurricane winds; and storm surge protection projects.187

D. Limiting the Development in the Flood Plain and a Potential Buyout of Current Housing

Another thing that Houston could do to help its citizens is to limit, reduce, or eliminate future building on the Houston flood plain. Houston can do this without enacting zoning laws by enacting a city ordinance that either limits, reduces, or eliminates building in the flood plains. The Harris County Commissioner Court has started to increase requirements for building in the flood plain.188 The new requirement, which took effect on January 1, 2018, says that any new buildings “must be at least 24 inches above the 500 year flood plain.”189 Although this requirement does not take effect in the City of Houston itself, the city can look to this requirement for guidance on enacting a similar requirement. Additionally, the City of Houston could also look into a plan to start buying property that is in the most flood-prone areas. This would give some of the citizens who otherwise might not have been able to sell the property, a chance to get something for their property and use the money to buy housing in a less flood-prone area.

In order for a house to qualify for FEMA’s buyout program, the homes must pass FEMA’s extensive list of qualifications.190 Therefore, since FEMA would be buying at least some of the properties, Houston would only have to buyout those houses that do not qualify under the FEMA buyout program. This would greatly reduce the amount of homes that the Houston would have to buyout, making it less costly for the city. Since Hurricane

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187. Dave Harmon, Coastal communities hit by Harvey will get $1 billion for hazard mitigation, Abbott announces, THE TEXAS TRIBUNE, (Feb. 13, 2018, 4:00 PM),
189. Id.
Harvey, Harris County has bought over three thousand one hundred (3,100) properties and has received over three thousand five hundred (3,500) voluntary buyout requests. 191 Although these numbers are far from astronomical, it is clear that people are willing to participate in a buyout program.192

E. Sticking to the Current City Planning

While enacting an ordinance to limit the building in the flood prone areas, it is crucial that the Houston government does not make the ordinance into a formal zoning law.193 The current ordinances and the current lack of zoning laws help to allow Houston’s economy to flourish.194 A flourishing economy in Houston can help increase available jobs, while also allowing for cheaper rent prices for affordable housing and for business related renting.195 Houston, with its slogan of “the city with no limits”,196 prides itself on not having formal zoning laws. Therefore, the city must be careful in how it creates the new restrictions to ensure that they are not overly burdensome, and do not restrict further positive growth for the city.197

VI. CONCLUSION

Because Houston is the only major city in the United States to not have formal zoning laws,198 it is easy to make the argument that the city should also enact its own formal zoning laws. However, this is not the answer to their flooding problems.199 Houston can use its lack of zoning laws to its advantage while rebuilding the city, and into the city’s future.200 Houston is a flood prone area based on its topography and geographical location.201

191. Id.
192. See infra notes 184-187 and accompanying text.
193. See supra Section III, Part C.
194. See supra Section III, Part A.
196. Gentile, supra note 38.
197. See supra notes 184-187 and accompanying text.
198. Gentile, supra note 38.
199. See supra Section IV, Part C, Subsection ii.
200. See supra Section IV, Part C, Subsections iii-iv.
201. Boburg & Reinhard, supra note 87.
There have been many large floods in the city’s history. The city should consider erecting ordinances that limit or restrict future building on the flood plain. Houston’s city government should also begin programs that educate the public on the risks of living in flood prone areas, and should update its drainage system. This can allow people to make an informed decision when deciding whether to build on the flood plain, assuming the city does not restrict all building in the flood plains. If the city government does continue to allow at least some building in the flood plain, the city must enact uniform ordinances that will help prevent future flooding. Because these flood plain areas are not the most desirable areas to live based on its propensity to flood, this can allow the housing to be fairly cheap. Thus, the lack of zoning laws can allow the city to rebuild itself faster than if it had strict zoning laws.

Although new ordinances should be created, it is essential that these ordinances do not effectively become zoning laws. Houston’s economy has thrived by allowing businesses, single-family houses, and apartment complexes to be built wherever builders decide to place them, or wherever the market deems is in need of housing or a business. This keeps housing prices and business rental prices at an affordable rate. Houston must find the right balance between over regulation and the current lack of regulations in order for Houston to be better prepared future rainstorms, tropical storms, or hurricanes.