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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

1. Kevin Sullivan, Arelis R. Hernandez & David A. Fahrenthold, *Harvey leaving record rainfall, at least 22 deaths behind in Houston*, CHICAGO TRIBUNE, (Aug. 29, 2017, 9:26 PM), <http://www.chicagotribune.com/news/nationworld/ct-hurricane-harvey-flooding-houston-20170829-story.html>.

2. *Id.*

3. Reuters, *Hurricane Harvey Damages Could Cost up to \$180 Billion*, FORTUNE (N.Y.), (Sep. 3, 2017), <http://fortune.com/2017/09/03/hurricane-harvey-damages-cost/>.

4. *Id.*

5. Samantha Raphaelson, *In Houston, Thousands Remain Displaced As Harvey Recovery Continues*, NAT’L PUB. RADIO (D.C.), (Dec. 28, 2017, 2:37 PM), <https://www.npr.org/2017/12/28/574166438/in-houston-thousands-remain-displaced-as-harvey-recovery-continues>.

contributed 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

6. Amanda Erickson, *The Birth of Zoning Codes, a History*, CITY LAB (D.C.), (June 19, 2012), <https://www.citylab.com/equity/2012/06/birth-zoning-codes-history/2275/>.

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.”).

10. Erickson, *supra* note 6.

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.¹³ 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.¹⁴ In 1916 ordinance laws were enacted, dividing New York City into multiple districts, and setting certain restrictions based on the district.¹⁵ Fifth Avenue for example, became a shopping district, therefore prohibiting industrial factories from encompassing in the zone of Fifth Avenue.¹⁶ By the mid 1920's, almost 400 local governments had enacted zoning laws similar to those enacted in New York City.¹⁷

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*¹⁸ and in *Nectow v. City of Cambridge*.¹⁹ The Court in *Euclid* laid out the foundation for how a city can use its policing powers to enact zoning laws.²⁰ 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.²¹

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. Abler Realty*

13. John R. Nolon, Comment, *Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control*, 23 Pace Env'tl. L. Rev. 821, 830 (2006).

14. *Id.* at 829.

15. *Id.* at 830.

16. *Id.*

17. *Id.*

18. *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

19. *Nectow v. City of Cambridge*, 277 U.S. (1928).

20. *See generally Euclid*, 272 U.S. (1926).

21. *See generally Nectow v. City of Cambridge*, 277 U.S. 183 (1928).

Company.²² 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.²³ 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.²⁴ 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.²⁵

The Supreme Court ruled in favor of the Village of Euclid.²⁶ 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.”²⁷ 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[.]”²⁸ 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.²⁹ 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.³⁰

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 1928.³¹ 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.³² The City of Cambridge's zoning ordinance in question separated the city into three separate districts: residential, business, and unrestricted.³³ The Court struck down the City of Cambridge's zoning ordinance.³⁴ 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."³⁵ 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."³⁶ 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*.³⁷

III. HOUSTON, THE CITY WITH NO LIMITS

Houston is the only major city, and one of few cities or towns in America, that does not have formal zoning laws.³⁸ Many Houstonians pride themselves on not having zoning laws.³⁹ 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.

38. Jay Gentile, *The 9 Worst-Designed Cities in the US*, Thrillist (Mar. 4, 2016), <https://www.thrillist.com/travel/nation/the-9-worst-designed-cities-in-the-us>.

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

40. Ilya Somin, *Expanding housing and job opportunities by cutting back on zoning*, WASH. POST, June 20, 2017, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/06/20/expanding-housing-and-job-opportunities-by-cutting-back-on-zoning/?utm_term=.281f88e6f2bd.

41. *Id.*

42. Loren Steffy, *Lack of zoning has paid off for Houston*, CHRON, (May 28, 2008, 5:30 AM), <http://www.chron.com/business/steffy/article/Lack-of-zoning-has-paid-off-for-Houston-1678292.php>.

43. *Id.*

44. *Id.*

more opportunity, more low-cost housing, and less politically-motivated and exclusionary policies.”⁴⁵ A lack of zoning laws can also lead to less costly building expenses for homebuilders and housing complex builders.⁴⁶ 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.”⁴⁷

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.”⁴⁸ 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.⁴⁹ The abundance of air traffic and port traffic shows the effects of a thriving economy. An absence of

45. Vanessa Brown Calder, *Houston’s Lack of Zoning Laws Will Help it Rebuild*, FOUND. FOR ECON. EDUC. (Sept. 7, 2017), <https://fee.org/articles/houstons-lack-of-zoning-laws-will-help-it-rebuild/>.

46. Peter Barnes, *How Zoning Can Be a Hindrance to Housing Market Growth*, MKT. REALIST (Jan. 25, 2016, 11:52 AM), <https://marketrealist.com/2016/01/zoning-can-hindrance-housing-market-growth>.

47. Gillian B. White, *How Zoning Laws Exacerbate Inequality*, THE ATLANTIC, Nov. 23, 2015, <https://www.theatlantic.com/business/archive/2015/11/zoning-laws-and-the-rise-of-economic-inequality/417360/>.

48. The Economist, *Life in Sprawl*, THE ECONOMIST, (Mar. 12, 2015), <https://www.economist.com/news/united-states/21646221-americas-fastest-growing-metropolis-faces-up-cheaper-oil-life-sprawl>.

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.”⁵⁰ 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.⁵¹ 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.⁵²

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.⁵³ Houston’s sprawl, which is partly due to their lack of housing zoning laws, helps to create busy roads and interstates.⁵⁴ As of February 1, 2017, Houston had ten of the top 100 congested roadways in the United States.⁵⁵ Five of the ten that are located in Houston are in the top 25 congested roadways in the United States.⁵⁶ Houston also ranks 11th in

50. James D. Saltzman, *Houston Says No to Zoning: Zoning Has Numerous Costs*, FOUND. FOR. ECON. EDUC. (Aug. 1, 1994), <https://fee.org/articles/houston-says-no-to-zoning/>.

51. Travis Bubenik, *Housing Development At Houston Superfund Site Moving Forward*, HOUSTON PUBLIC MEDIA, (Jan. 17, 2018, 5:52 PM), <https://www.houstonpublicmedia.org/articles/news/energy-environment/2018/01/17/262230/housing-development-at-houston-superfund-site-moving-forward/>.

52. Paul Takahashi, *Affordable apartment project breaks ground in Houston*, Houston Business Journal (March 23, 2017, 9:34 AM), <https://www.bizjournals.com/houston/news/2017/03/23/affordable-apartment-project-breaks-ground-in.html>.

53. Joseph Kilroy, *Houston, Texas – and why the wrong planning regime can turn cities into monsters*, CITY METRIC (May 12, 2015), <https://www.citymetric.com/skylines/houston-texas-and-why-wrong-planning-regime-can-turn-cities-monsters-1026>.

54. Bryan Kirk, *Houston, We Have A Freeway Congestion Problem*, HOUS. PATCH, (Feb. 1, 2017, 11:05 AM), <https://patch.com/texas/houston/houston-we-have-freeway-congestion-problem>.

55. *Id.*

56. AMERICAN TRANSPORTATION INSTITUTE, <http://atri-online.org/2017/01/17/2017-top-100-truck-bottleneck-list/> (last visited Apr. 18, 2018).

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

Houston's absence of zoning laws also affects the housing market.⁶⁰ Throughout Houston's history, it has generally had large vacancy rates due to its high productivity.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 § 54.012.⁶² 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,⁶³ a minimum single family lot size in urban areas,⁶⁴ the minimum width of a lot,⁶⁵ fire protection

57. Ali Ellul, *Houston traffic ranked 11th-most congested in U.S., study says*, CLICK 2 HOUS., (Feb. 20, 2017, 4:11 PM), <https://www.click2houston.com/news/houston-traffic-ranked-11th-most-congested-in-us-study-says>.

58. *Id.*

59. Niall McCarthy, *Where American Commuters Spend The Most Time Stuck In Traffic [Infographic]*, FORBES, (Feb. 23, 2017, 08:44 AM), <https://www.forbes.com/sites/niallmccarthy/2017/02/23/where-american-commuters-spend-the-most-time-stuck-in-traffic-infographic/#fb028e361f7e>.

60. Bernard H. Siegan, *Conserving And Developing The Land*, 27 San Diego L. Rev. 279, 302-04 (1990).

61. *Id.*

62. *See generally* Tex. Loc. Gov't Ann. § 54.012.

63. HOUSTON, TEX., CODE OF ORDINANCES § 42-181(a)(1)(2013).

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

65. HOUSTON, TEX., CODE OF ORDINANCES § 42-185 (2013).

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ordinances,⁶⁶ parking space requirements,⁶⁷ and even residential pool and spa ordinances.⁶⁸ 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.⁶⁹ 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.”⁷⁰ Festa goes on to claim that Houston has “a lot of regulations that in other cities would be in the zoning code.”⁷¹ Some of these regulations that Festa is referencing include: deed restrictions; tax increment reinvestment zones; buffering ordinances; and lot size restrictions.⁷²

D. What do Houstonians Think of the Debate?

Houston has held several votes to decide whether or not they should enact formal zoning laws.⁷³ All of the votes thus far have resulted in a continuance of no zoning laws for the city of Houston.⁷⁴ 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.⁷⁵ In the 1993 vote, the zoning vote was unsuccessful

66. HOUSTON, TEX., CODE OF ORDINANCES § 42-233 (2013).

67. HOUSTON, TEX., CODE OF ORDINANCES § 42-234 (2013).

68. HOUSTON, TEX., CODE OF ORDINANCES § 43-5 (2013).

69. Ryan Holeywell, *Space City has a reputation for being the only big American city without zoning. That reputation is undeserved*, KINDER INSTITUTE (2015), <https://kinder.rice.edu/2015/09/08/forget-what-youve-heard-houston-really-does-have-zoning-sort-of>.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Houston Voters Again Reject Zoning*, WASHINGTON POST, (Nov. 6, 1993), https://www.washingtonpost.com/archive/realestate/1993/11/06/houston-voters-again-reject-zoning/47ad1558-465a-48f2-b330-a4a6fcb01387/?utm_term=.2ff91a90689c.

74. *Id.*

75. *Id.*

by 86,060 votes to 79,063.⁷⁶ 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.⁷⁷ Houston has grown to encompass 627 square miles.⁷⁸ Houston has attempted to combat the “problem” of sprawl by creating and upgrading its public transportation.⁷⁹ In the past nine years, Houston has opened two new light rail lines, and expanded an already existing light rail line.⁸⁰ Houston is also currently working to build two new light rail lines, one of which is expected to be completed in 2019.⁸¹ Over the past few years, Houston, like many other cities, including Baltimore and New York City, has steadily been increasing its bike-sharing network.⁸²

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.”⁸³ Whereas a federal report on pedestrian-friendly design endorses that blocks are about 300 feet in length.⁸⁴ 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).”⁸⁵

76. *Id.*

77. T.M. Brown, *The American Cities With The Worst Sprawl - And How They’re Trying to Change*, THRILLIST, (June 9, 2017), <https://www.thrillist.com/travel/nation/urban-sprawl-worst-cities>.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. See source cited *supra* note 77.

83. Michael Lewyn, *How Overregulation Creates Sprawl (Even In A City Without Zoning)*, 50 Wayne L. Rev. 1171, 1189 (2005) (*quoting* HOUSTON, TEX., CODE OF ORDINANCES § 42-127(b) (2004)).

84. *Id.*

85. *Id.* at 1181.

Lewyn also mentions another zoning ordinance that requires apartment owners to have a parking space for all renters.⁸⁶ 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.”⁸⁷ 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.”⁸⁸ 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.⁸⁹ “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.”⁹⁰ “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.”⁹¹

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

86. *Id.* at 1185.

87. *Id.* at 1186.

88. Shawn Boburg and Beth Reinhard, *Houston’s ‘Wild West’ Growth*, WASHINGTON POST, (Aug. 29, 2017), https://www.washingtonpost.com/graphics/2017/investigations/harvey-urban-planning/?utm_term=.6a974adab3ab.

89. *Id.*

90. *Id.*

91. *Id.*

weather conditions.⁹² 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.⁹³ Additionally, builders also began to pave roads and parking lots directly over wetlands and prairies that formerly helped to absorb rainwater.⁹⁴ 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.⁹⁵

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.⁹⁶ 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.⁹⁷ In the 15 years between 2000 and 2015, about 360,000 new buildings were built in Harris County alone.⁹⁸ This has resulted in thousands of hard surfaces, paved roads, and parking lots in areas that mostly had been undeveloped natural water-soaking environment.⁹⁹ The hard surfaces and paved roads do not soak up rainwater nearly as well as the natural environment.¹⁰⁰

92. Vikas Bajaj, Jessie Ma, and Stuart A. Thompson, *How Houston's Growth Created the Perfect Flood Conditions*, THE NEW YORK TIMES, (Sept. 5, 2017), <https://www.nytimes.com/interactive/2017/09/05/opinion/hurricane-harvey-flood-houston-development.html>.

93. *Id.*

94. *Id.*

95. *Id.*

96. Billy Fleming, *The Real Villains in Harvey Flood: Urban Sprawl and the Politicians Who Allowed it*, THE GUARDIAN, (Aug. 31, 2017, 10:13 AM), <https://www.theguardian.com/commentisfree/2017/aug/31/real-villains-harvey-flood-urban-sprawl> (citing Brody, S.D., Davis, S.E., Highfield, W.E. et al. *Wetlands* (2008) 28: 107. <https://doi.org/10.1672/07-90.1>).

97. Thom Patterson, *How Houston's Layout May Have Made Its Flooding Worse*, CNN, (Aug. 31, 2017, 3:59 PM), <http://www.cnn.com/2017/08/31/us/houston-harvey-flooding-urban-planning/index.html>.

98. *Id.*

99. *Id.*

100. *Id.*

Some journalists believe that rapid growth and sprawl is “damaging” Houston.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.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.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.¹⁰⁴ Although no city could have escaped Hurricane Harvey’s wrath without damage, Houston’s lack of political action has made it more vulnerable.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.¹⁰⁶

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.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

101. Al Shaw Neena Satija, and Kiah Coliier, *Why Houston Isn’t Ready for Harvey*, PRO PUBLICA, (Aug. 25, 2017), <https://projects.propublica.org/graphics/harvey>.

102. *Id.*

103. *Id.*

104. Peter Coy and Christopher Flavelle, *Harvey Wasn’t Just Bad Weather. It Was Bad City Planning*, BLOOMBERG BUSINESSWEEK, (Aug. 31, 2017, 5:00 AM), <https://www.bloomberg.com/news/features/2017-08-31/a-hard-rain-and-a-hard-lesson-for-houston>.

105. *Id.*

106. *Id.*

107. Phillip W. Magness, *Don’t Blame Sprawl for Houston’s Floods*, Houston Chronicle, (September 4, 2017), <http://www.houstonchronicle.com/local/gray-matters/article/Don-t-blame-sprawl-for-Houston-s-floods-12172004.php>

over 54 feet.¹⁰⁸ While estimates for the same bayou following Hurricane Harvey saw flooding of about 40 feet.¹⁰⁹ Houston has been flooding long before Houston's sprawl reached its present state.¹¹⁰ Between 1837 and 1887 there were six major floods in Houston.¹¹¹ Houston's flooding continued into the early 20th century, resulting in major floods in 1913, 1929, 1932 and 1935.¹¹² 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."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."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.¹¹⁵ "Developers are required to offset the wetlands they destroy with remedies like detention ponds to capture storm water."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."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.¹¹⁸

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Magness, *supra* note 107.

113. *Id.*

114. *Id.*

115. Henry Grabar, *Don't Blame Houston's Lax Zoning for Harvey's Destruction*, Slate, (August 31, 2017), http://www.slate.com/articles/business/metropolis/2017/08/how_houston_and_harris_county_s_zoning_approach_affected_hurricane_harvey.html.

116. *Id.*

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>).

118. McGuire, *supra* note 117.

Historic flooding in Houston is due to the geography and landscape of the city, not the sprawl.¹¹⁹ Houston has multiple bayous that push the water out of the city and into the Gulf of Mexico.¹²⁰ Unfortunately, due to Houston's flat landscape, the bayous are not always fully efficient and can flood.¹²¹ 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.¹²² Climate change, and Houston's "abnormally" flat topography are more responsible for recent flooding, than Houston's lack of zoning.¹²³

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.¹²⁴ "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

119. Scott Beyer, *Did Houston Flood Because Of A Lack Of Zoning?*, Forbes, (August 30, 2017, 1:46 AM), <https://www.forbes.com/sites/scottbeyer/2017/08/30/did-houston-flood-because-of-a-lack-of-zoning/#4703f0c05580>.

120. *Id.*

121. *Id.*

122. *Id.*

123. See source cited *supra* note 119.

124. Ian Bogost, *Houston's Flood Is a Design Problem*, THE ATLANTIC, (Aug. 28, 2017), <https://www.theatlantic.com/technology/archive/2017/08/why-cities-flood/538251/>.

absorption of water.”¹²⁵ Bogost claims that a reduction in building and development is a great way to limit flooding in cities.¹²⁶ 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.¹²⁷ 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.”¹²⁸ 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.¹²⁹

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.¹³⁰ “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.”¹³¹ “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.”¹³² “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.”¹³³ Houston’s sprawl includes about “140,000 homes in the 100-year floodplain in Greater Houston.”¹³⁴ 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.

130. Ed Kilgore, *More Zoning Wouldn’t Have Protected Houston From Harvey’s Fury, But Less Sprawl Would Have Helped*, DAILY INTELLIGENCER, (Aug. 29, 2017, 8:00 AM), <http://nymag.com/daily/intelligencer/2017/08/less-sprawl-would-have-helped-houston-weather-harvey.html>.

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.¹³⁵ 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."¹³⁶ 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."¹³⁷ Vanessa Brown Calder, a Cato Institute Urban Policy Analyst, claims that the rebuilding process will likely be easier due to the minimal zoning laws.¹³⁸ Due to the zoning laws in New Orleans, the city "prevented damaged developments in flooded parts of the city to be rebuilt elsewhere."¹³⁹

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.¹⁴⁰ 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.¹⁴¹ Houston's city government must increase its

135. Christian Britschgi, *No, Flooding in Houston Was Not Caused By a Lack of Zoning Laws*, REASON, (Nov. 1, 2017, 5:25 PM), <http://reason.com/blog/2017/09/01/no-flooding-in-houston-was-not-caused-by>.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Kiah Collier & Neena Satija, *Analysis: Four Things Houston-area Leaders Must Do To Prevent Future Flooding Disasters*, THE TEXAS TRIBUNE, (Aug. 29, 2017), <https://www.texastribune.org/2017/08/29/four-things-houston-area-leaders-must-do-prevent-future-flooding-disas/>.

141. *Id.*

involvement in order for these four things to become a reality.¹⁴² 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.¹⁴³ “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.”¹⁴⁴ Therefore, it is important for Houston to find a new way to withstand future Hurricane’s and minimize future flooding.¹⁴⁵ “In 2010, city voters narrowly passed a major financing mechanism, ReBuild Houston, to improve roads and an out-of-date drainage system.”¹⁴⁶ These programs are important for Houston, but it is also important for the city government to make sure it does not overregulate.¹⁴⁷ “If the region begins to put stricter regulations on building, there is a chance that one of Houston’s great lures — affordable housing — may disappear.”¹⁴⁸ 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.¹⁴⁹ Brody claims that, “there’s a real lack of awareness and messaging that reaches out to those neighborhood levels.”¹⁵⁰ 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

142. *Id.*

143. Manny Fernandez & Richard Fausset, *A Storm Forces Houston, the Limitless City, to Consider Its Limits*, THE NEW YORK TIMES, (Aug. 30, 2017), <https://www.nytimes.com/2017/08/30/us/houston-flooding-growth-regulation.html>.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Fernandez and Fausset, *supra* note 144.

149. Veronica Stracqualursi, *Why Houston is Prone to Flooding*, ABC NEWS (Aug. 27, 2017, 8:09 PM), <http://abcnews.go.com/US/houston-prone-flooding/story?id=49452150>.

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.”¹⁵¹ 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.¹⁵² Johnson proposed that it would be more effective if the entire state of Texas had the same ordinances.¹⁵³ Johnson stated that, “measures taken by the City of Houston should be combined with inclusionary measures for the entire state of Texas.”¹⁵⁴ Johnson says that through a statewide integration “the City of Houston and the State of Texas could establish state wide communities connected by bridges rather than divided by walls.”¹⁵⁵

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.¹⁵⁶ 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.¹⁵⁷ Turner introduced the legislation in

151. *Id.*

152. Marcia Ann Johnson, *Converting Walls to Bridges: A Review of the Proposed Zoning Ordinance for the City of Houston*, 18 T. Marshall L. Rev. 231, 232-35 (1993).

153. *Id.* at 260-62.

154. *Id.* at 254.

155. *Id.* at 262.

156. Miya Shay, *Houston will propose tougher floodplain rules, allow FEMA trailers*, ABC 13 (Jan. 24, 2018), <http://abc13.com/houston-to-propose-tougher-floodplain-rules/2983697/>.

157. *Id.*

February 2018.¹⁵⁸ The legislation would cost developers and homebuilders about \$10,000 extra for the cost associated in raising the houses and buildings.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.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.¹⁶¹ These additional funds are meant to help offset Houston's costs to build more flood infrastructure.¹⁶² Since the city council has recently received some of the funding it has petitioned for,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.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

158. Hous. Pub. Works, *Ch. 19 Floodplain Ordinance*, (Feb. 2018), <http://www.houstontx.gov/council/committees/tti/20180212/floodplain-revisions.pdf>.

159. Shay, *supra* note 157.

160. *Id.*

161. Adam Bennett, *Houston Mayor, Council push Congress for more Harvey money*, KHOU 11, (Feb. 7, 2018, 6:33 PM), <http://www.khou.com/article/news/houston-mayor-council-push-congress-for-more-harvey-money/515836126>.

162. Click 2 Houston Staff, *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>.

163. *Id.*

164. Sylvester Turner, *Mayor Turner Requests Your Feedback on Proposed Flood Ordinance Changes*, CITIZENSNET, (Feb. 16, 2018), <http://www.houstontx.gov/citizensnet/FeedbackFloodOrdinanceChanges20180216.html>.

thoughts on his proposal.¹⁶⁵ Public input could also be solicited through email and sent to the local district council member.¹⁶⁶ Mayor Turner requested that all public input should be given by March 5, 2018.¹⁶⁷ 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.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.¹⁶⁹

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.

165. *Id.*

166. *Id.*

167. Alanna Reed, *Chapter 19 Floodplain Ordinance*, HOUSTON RECOVERS (Feb. 13, 2018), <https://houstonrecovers.org/houston19/>.

168. FERNANDEZ & FAUSSET, *supra* note 139, at 1.

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 23rd 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 23rd deadline.¹⁷⁷ It is

170. Heather Timmons, *Why 85% of Houston homeowners have no flood insurance*, QUARTZ, (Aug. 29, 2017), <https://qz.com/1063985/hurricane-harvey-why-85-of-homeowners-in-houston-dont-have-federal-flood-insurance/>.

171. *Id.*

172. *Id.*

173. *Id.*

174. Jill Ament, *In A Late Night Budget Deal, Congress Delivers Harvey Aid, But No DACA Agreement*, HOUS. PUBLIC MEDIA, (Feb. 9, 2018, 12:14 PM), <https://www.houstonpublicmedia.org/articles/news/2018/02/09/266757/in-a-late-night-budget-deal-congress-delivers-harvey-aid-but-no-daca-agreement/>.

175. *Id.*

176. Florian Martin, *Budget Deal Extends Flood Insurance Program – Again*, HOUSTON PUBLIC MEDIA, (Feb. 9, 2018, 12:14 PM), <https://www.houstonpublicmedia.org/articles/news/2018/02/09/266882/budget-deal-extends-flood-insurance-program-again/>.

177. Zachary Warmbrodt, *Sen. Kennedy to press ahead with flood insurance bill after Harvey*, POLITICO (Aug. 30, 2017, 12:13 PM), <https://www.politico.com/story/2017/08/29/kennedy-to-press-ahead-with-flood-insurance-bill-after-harvey-242143>.

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.

179. Alexis C. Madrigal, *How Much Does Houston Spend on Flood Control?*, THE ATLANTIC, (Aug. 28, 2017), <https://www.theatlantic.com/technology/archive/2017/08/how-much-does-houston-spend-on-flood-control/538257/>.

180. Kiah Collier, *Texas GOP leaders pushing for high-dollar, long-delayed flood infrastructure projects*, TEXAS TRIBUNE, (Sept. 11, 2017, 7:00 PM), <https://www.texastribune.org/2017/09/11/texas-gop-leaders-pursuing-high-dollar-flood-infrastructure-projects/>.

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

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),

188. Brien Straw, *Ed Emmett: Harris County Has Nation’s Toughest Floodplain Development Regulations*, HOUS. PUBLIC MEDIA, (Dec. 5, 2017, 12:29 PM), <https://www.houstonpublicmedia.org/articles/news/2017/12/05/254510/ed-emmitt-harris-county-has-nations-toughest-floodplain-development-regulations/>.

189. *Id.*

190. Grant Patternson, *Can Houston become better at buying out flooded homes?*, HOUS. CHRONICLE, (Feb. 8, 2017, 12:29 PM), <https://www.houstonchronicle.com/local/gray-matters/article/After-Harvey-Harris-County-can-learn-buyout-12562871.php>.

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.

195. *See Houston: The City with No Limits*, <https://www.thecitywithnolimits.com/> (last visited May 5, 2018).

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.²⁰² The city should consider erecting ordinances that limit or restrict future building on the flood plain.²⁰³ Houston's city government should also begin programs that educate the public on the risks of living in flood prone areas,²⁰⁴ and should update its drainage system.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ 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.²⁰⁸ Thus, the lack of zoning laws can allow the city to rebuild itself faster than if it had strict zoning laws.²⁰⁹

Although new ordinances should be created, it is essential that these ordinances do not effectively become zoning laws.²¹⁰ 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.²¹¹ This keeps housing prices and business rental prices at an affordable rate.²¹² 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.²¹³

202. *Id.*

203. *See supra* note 148 and accompanying text.

204. *See supra* Section V, Part A.

205. *See supra* Section V, Part C.

206. *See supra* Section V, Part A, C-D.

207. *See supra* Section V, Part C.

208. *See supra* Section V, Part E.

209. *See supra* Section V, Part E.

210. *See supra* Section V, Part E.

211. *See supra* Section III, Part A.

212. *See supra* Section III, Part A.

213. *See supra* notes 139-144 and accompanying text.