

# The High Cost of Exclusionary Zoning

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Robert C Ellickson, *Zoning and the Cost of Housing: Evidence from Silicon Valley, Greater New Haven, and Greater Austin*, available at [SSRN](#).

An article about the cost of housing may seem a surprising choice as one of the year's best environmental law articles. But there are good reasons for it: Housing costs in major coastal metro areas in the United States are soaring. Strong evidence suggests that the stringent of land-use regulations is a major contributor to those price increases. Some commentators also consider state-level environmental review laws, such as the California Environmental Quality Act, among those stringent land-use regulations – thus implicating environmental law as a cause of the housing crisis. At the same time, transportation is one of the primary contributors to greenhouse gas emissions in the United States, and is the largest single sector now in California. Addressing emissions from transportation requires a reduction in vehicle miles travelled by Americans, which in turn requires densification of the built landscape to facilitate walking, biking and public transit use. But densification may be difficult or impossible in the face of soaring metro housing costs and stringent land-use regulations that obstruct redevelopment.

Ellickson's piece provides a timely contribution to both of these debates, because it provides something that has been sorely lacking in the debates over how land-use law shapes housing policy and the built form: Data on how the land-use regulatory system actually operates in practice. Up to now, most of the literature (whether economic, planning, or law) that has tackled how land-use regulation operates on the ground has been either speculative, or it has relied on surveys of developers and planners. This is in part because the local nature of land-use regulation in the United States, combined with its sometimes extreme complexity in local jurisdictions, makes data collection expensive and difficult. Surveys attempt to elide this issue by asking for perceptions or knowledge of land-use regulation by actors (planners and developers) who should know much about the topic, but they may not always accurately reflect the realities of land-use regulation on the ground. But if we want to solve the problems of housing cost and greenhouse gas emissions from transportation, we need to have good data on the true nature of land-use regulation in the United States.

Ellickson's work is a great first step in this direction.

Ellickson painstakingly collects data on the zoning regulations for a few dozen jurisdictions in three major metro areas: Silicon Valley/San Jose, CA; Austin, TX; and New Haven, CT. Ellickson documents how all of these jurisdictions have significant limits on how much housing can be produced – in large part through the use of single-family zoning (requiring all development in a particular zone to be single-family houses) and minimum lot sizes (the minimum size of land that can be developed for a single-family house). Ellickson shows how some cities in these metro areas lock up almost all of their land through large-lot, single-family zoning, excluding multi-family housing and even relatively affordable single-family houses. These kinds of zoning regulations are antithetical to producing either affordable housing or walkable neighborhoods – they are the epitome of what is called exclusionary zoning. He uses simple summary statistics to emphasize how dramatically exclusionary much of the zoning is.

Ellickson also helpfully provides three additional elements to his data collection. First, he gives deep historical context for how each metro area has developed over time, including changes to the zoning system that he believes have been most impactful. Second, he does some nice comparisons across his metro areas, showing how the Austin, TX area

does have relatively more development-friendly zoning, and how the most exclusionary metro area of all is New Haven, CT. Third, Ellickson develops some very basic measures of how stringent zoning might be – the incidence of large-lot zoning and small-lot zoning, and the amount of land available for multifamily housing. This metric is quite useful in that it allows for rapid and high-level assessments of zoning stringency across a range of suburban jurisdictions, although the metrics would be less useful for assessing central-cities, which usually have a much more complicated zoning system.

If I were to have a critique of Ellickson's excellent piece, it is that he could engage more with the environmental law implications of his work. Ellickson is primarily descriptive rather than normative in the article, but at times he makes observations on the feasibility of development in areas such as hillsides, wetlands, or water supply districts that might be seen as understating the environmental and societal benefits of protecting those lands. For instance, Ellickson notes that large areas of the foothills of Silicon Valley have been protected as open space, though similarly hilly and steep areas have been developed in the East Bay – the Oakland and Berkeley hills. But those areas were subject to a tragic firestorm in 1991, killing 25 people and destroying thousands of homes – a major discussion today in California is whether those kinds of areas should be developed at all, given their vulnerability to increased fire risk in a world subject to climate change.

A more important connection with environmental law, however, is the implications of Ellickson's work for efforts to densify American cities and metro areas as a response to climate change. Ellickson doesn't touch on this, but his work highlights the deep challenges that cities and states around the country will face if they seek to decrease automobile use and reduce greenhouse gas emissions from transportation. That is a real contribution of his piece (albeit unstated), and I hope he continues to do more work in this vein (the footnotes promise a follow-on piece with a more historical bent) and considers building connections to environmental law in general, and climate change in particular. And I really hope that others follow Ellickson's lead in collecting data on land-use regulation on the ground (some of which I have been doing [with collaborators](#)). We need a lot more data in this area, given its central importance for housing, environmental law, climate change, and more.

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