

Displacement Mitigation Tools Off Limits in Texas

The following is a summary of popular tools used in other states to combat residential displacement that are illegal in Texas.

Linkage fees

A linkage fee is a form of impact fee whereby cities charge developers a fee for new market-rate development, with the funds then used to create or preserve affordable housing. The fee is based on the increased demand for affordable housing generated by the new development. Many cities have adopted linkage fees for commercial development, with a more recent surge of cities adding linkage fees for residential developmental (for example, Los Angeles and Denver). In 2017, the Texas Legislature passed a law ([House Bill 1449](#), codified in [Local Government Code, 250.008](#)) barring Texas cities from charging a fee “on new construction for the purposes of offsetting the cost or rent of any unit of residential housing,” thereby making linkage fees illegal.

Condo conversion restrictions

Dozens of cities and states around the country have adopted laws regulating the conversion of rental housing to condominiums, with the goal of discouraging the loss of the affordable rental housing. Most conversion ordinances require tenant relocation fees, advance notice, and rights of first refusal for tenants to purchase their units before they are converted to condominiums. Texas law ([Section 81.003\(b\) of the Texas Property Code](#)) bars cities from regulating condominiums differently from other types of similar structures and, thus, presumably bars cities from targeting only condominiums for tenant relocation fees and other tenant protections. Any such regulations would need to extend to similar types of developments, such as a tenant relocation ordinance that extends to all increases in rents, up-zonings, and redevelopment resulting in a loss of rental units.

Inclusionary zoning for homeownership (with exceptions)

Inclusionary zoning is a widely used tool that requires new housing developments to make a percentage of the housing available at affordable rates to low- and moderate-income residents. Texas law ([Section 214.905 of the Local Government Code](#)) bars cities from adopting inclusionary zoning in homeownership developments with several exceptions, including voluntary density bonus programs and areas served by a homestead preservation district. Inclusionary zoning for rental housing is not prohibited in Texas.

Source-of-income protections from discrimination

To help low-income renters afford the cost of rental housing in higher-income areas, including gentrifying neighborhoods, many cities have adopted laws prohibiting landlords from discriminating against renters paying a portion of their rent with housing vouchers or others forms of government assistance. In 2017, the Texas Legislature adopted a law (codified in [Local Government Code, Section 250.007](#)) prohibiting Texas cities from adopting source-of-income discrimination protections for renters.

Real estate transfer tax

Real estate transfer taxes are used by cities across the country to create a dedicated source of revenue for affordable housing. The tax, which is levied whenever the title of real property is transferred, is typically based on a percentage of the property value. In 2015, Texas voters approved an amendment to the Texas Constitution ([Section 29](#)) that bars real estate transfer taxes. An opening for a similar type of tax still exists: The 2015 constitutional amendment explicitly exempts from the real estate transfer tax ban a tax on the issuance of title insurance, but the Legislature would have to pass a law allowing cities to adopt such a tax.

Circuit breaker taxes

A circuit breaker tax places a cap on the amount of property taxes that lower-income homeowners pay based on the homeowner's income. Texas law does not allow for circuit breaker taxes. The Texas Constitution heavily regulates property taxes, requiring that property taxes be equal and uniform based on property values. Local taxing jurisdictions are restricted from adopting property tax exemptions or caps beyond those enumerated in the state constitution and state statutes.

Minimum wage

An important tool that dozens of cities use to help residents afford the cost of living, including housing costs, is a local minimum wage that exceeds the federal minimum wage. Texas law ([Section 62.0515 of the Labor Code](#)) bars Texas cities from adopting a minimum wage unless the wage floor applies only to city workers or is imposed through a contractual agreement with a private party, such as a city construction contract or an economic development agreement.

Partial Ban

Moratorium on development and rezoning

Texas law places heavy restrictions on when a city can adopt a moratorium on new developments, redevelopments, and re-zonings. Under [Chapter 212 of the Local Government Code](#), a moratorium on residential development is limited to 120 days, and a local government must follow detailed standards and processes before imposing or extending a moratorium. For a moratorium on residential development, a city must show a need for public facilities generated by the development. A moratorium on commercial development is limited to 90 days, and the allowable justifications for a moratorium are much broader and include an impact on public health, safety, and welfare. Some extensions of the time limits are available, subject to meeting certain standards and processes. A moratorium cannot cover existing building permits or rezoning requests filed before the effective date of the moratorium.

Common misperceptions about Illegality

Rent control

Contrary to popular belief, Texas statutes do not prohibit cities from adopting rent control. A provision of the Local Government Code ([Section 214.902](#)) explicitly authorizes cities to establish rent control in the event of a housing emergency due to a disaster, with approval by the governor. Cities may be able to adopt rent control ordinances in other circumstances, since Section 214.902 does not explicitly preempt home rule cities' authority to adopt rent control in other situations.

Inclusionary zoning for rental housing

As discussed above, the state legislative ban on inclusionary zoning applies only to homeownership units and not rental housing. As a result, requiring the inclusion of affordable rental housing in new apartment developments does not violate the inclusionary zoning ban.