



INSTITUTE FOR JUSTICE

February 8, 2022

**VIA EMAIL**

Mayor Donna Hanby  
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Highland Lake, Alabama 35121  
[Mayor.highlandlake612@gmail.com](mailto:Mayor.highlandlake612@gmail.com).

Members of the Town Council  
612 Lakeshore Drive  
Highland Lake, Alabama 35121  
Care of the Town Clerk, Joan Shirley  
[highlandlake612@gmail.com](mailto:highlandlake612@gmail.com)

**RE: Highland Lake's Unconstitutional Ban on Small Homes**

Mayor Hanby and members of the Town Council:

The Institute for Justice has learned that the Town of Highland Lake has an ordinance banning the construction of any new home under 1,800 square feet. The Town has used this ordinance to prevent residents from building affordable homes for themselves and their families. This includes residents who want to build on vacant land and residents who wish to rebuild after their homes were destroyed by an "Act of God." The Town's ban on small homes is unconstitutional and the Institute for Justice asks that it be repealed. People should be free to build any size home that they want, so long as it complies with reasonable health and safety standards.

The Town also seems to be violating the Alabama Open Records Law and Alabama Open Meetings Act by failing to respond to requests for documents about the 1,800 minimum square foot requirement, including requests for Town meeting minutes. The Institute for Justice requests that the Town rectify this immediately by responding to each of these requests for records.

The Institute for Justice (IJ) is a national nonprofit law firm that has fought to protect individuals' constitutional rights for over 30 years. We have litigated our cases at the U.S. Supreme Court ten times, as well as at multiple state supreme courts. One of our areas of expertise is property rights. We have sued dozens of local governments for infringing on individuals' property rights, including through unreasonable and unfair zoning regulations. For example, we recently sued Calhoun, Georgia, for its minimum square footage requirement for new homes of 1,150 square feet. See <https://ij.org/case/georgia-tiny-homes/>. We have also brought multiple lawsuits about violations of public records law.

Highland Lake's minimum square footage requirement is much higher than Calhoun's. In fact, Highland Lake's minimum square footage requirement of 1,800 for homes might be the

highest in the country. The Town used its ordinance to prevent the Cooley family from rebuilding their smaller home of about 1,250 square feet after it was destroyed in a fire last year. The Cooley family even tried applying for a variance for a home as big as 1,550 square feet, but the Town still denied the variance on September 27. The Cooleys were forced to live in a hotel for months and ultimately had to move out of town because they could not afford to rebuild a home as large as 1,800 square feet.

The Town also used this ordinance against resident Karen Hawkins Murphy, who is retired and who struggles to care for her larger home. Karen first asked the Town in 2016 if she could build a smaller home on her vacant land in which to live out her golden years. She wanted to build a house of about 1,000 to 1,100 square feet, but the Town told her no. Karen did not give up. When Karen learned of what was happening to the Cooleys, she collected signatures for a petition to change the law and submitted it to the Town Council in September. But the Town didn't budge. Karen asked the Town Council on February 1 what the status was of her request to change the law, and the Councilman Sid Nelson stated, "We found there just isn't an appetite at this time to change it."

The 1,800 square foot requirement is unconstitutional under the U.S. and Alabama Constitutions, both which protect substantive due process. Under substantive due process, all laws—including zoning ordinances—must be reasonable and rationally serve legitimate government interests, such as the general welfare and public safety. In contrast, municipalities cannot "impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities." *City of Russellville v. Vulcan Materials Co.*, 382 So. 2d 525, 527 (Ala. 1980).

Here, requiring homes to be big is unreasonable. Such a requirement has no rational connection to general welfare or public safety, as several courts have already found. *See, e.g., Builders Serv. Corp., Inc. v. Plan. & Zoning Comm'n of Town of E. Hampton*, 545 A.2d 530, 550 (Conn. 1988) (holding that town's minimum square footage requirement of 1,300 square feet for single family homes was "not rationally related to any legitimate purpose of zoning," including protecting general welfare and safety); *In re Medinger*, 104 A.2d 118 (Pa. 1954) (striking down minimum square footage requirement of 1,800 square feet after finding that it had no connection to public safety or welfare). This is especially true as smaller homes can easily comply with health and safety standards, including those standards in Highland Lake's ordinances. Imposing a minimum square footage requirement merely forces people to build homes they neither want nor need. It also makes homes needlessly expensive and discriminates against people of modest means who cannot afford anything else.

In addition, the Town seems to be violating state law regarding public records. For example, Karen made several requests for records, asking for the meeting minutes from the Cooley variance hearing as well as minutes from two town committee meetings about potentially changing the 1,800 foot requirement. Karen first made these requests in October, but the Town never gave her the documents. Even I sent a request to the Town on October 1 for records, with no response, not even an acknowledgment of receipt—despite trying to follow up with the Town. The Town has a statutory obligation under the Alabama Open Records Law to respond to requests. *See* Ala. Code § 36-12-40. The Town is likely also violating the Alabama Open Meetings Act by failing to provide and/or maintain minutes of its public meetings. *Id.* at § 36-25A-4.

We thus urge the town to repeal the ordinance and respond to the record requests. Doing so will benefit the Town's residents by respecting their property rights and their right to know. I am happy to discuss further. My number is 631-383-5302 and my email is [esmith@ij.org](mailto:esmith@ij.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Erica Smith".

Erica Smith  
Senior Attorney  
Institute for Justice

CC: Building Inspector Tim Moore, [tmoore@cityofoneonta.us](mailto:tmoore@cityofoneonta.us)