

Exclusionary Zoning in Cuyahoga County, Part II: School Districts and Group Homes

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for Rights & Research

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About Fair Housing Center for Rights & Research

Fair Housing Center for Rights & Research (The Fair Housing Center) is a 501(c)(3) non-profit organization whose mission is to protect and expand fair housing rights, eliminate housing discrimination, and promote integrated communities. The Fair Housing Center works to achieve its mission through work in three primary areas: research and mapping; education and outreach; and enforcement of fair housing laws through testing, complaint investigation and resolution, and litigation.

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A Brief Introduction to Zoning in America

Zoning is a mechanism used by municipalities to regulate land use and density of the built environment. Modern zoning, on its face, is a race-neutral policy. From its inception and throughout its use in the United States, zoning has generated and perpetuated racial segregation.

Typically, a municipal zoning code creates a set of “use districts,” wherein each district allows a set of building types and uses of those buildings to the exclusion of all other uses and building types. Zoning codes can regulate land use intensity within a district through a number of density-controlling mechanisms. These often include the dimensions of the built environment; i.e. minimum lot sizes, minimum or maximum lot coverage (the footprint of buildings in relation to the size of the lot), minimum or maximum floor space square footage, proximity restrictions, height restrictions, and setback distances (distance from the lot border to the wall of a building). Zoning codes also regulate density by restricting the number of people who can use a space (occupancy restrictions, defining which or how many people are included in a “family”). Prescribed uses within districts can be broad (residential, commercial) or specific (attached single-family houses, hospitals).

In Ohio, state law enabled municipalities to implement zoning ordinances starting in 1920. It spread quickly. By 1930, most Americans lived in municipalities that zone.¹ In the United States, citywide zoning evolved from two earlier forms of land-use regulation: *nuisance law*, in which noxious uses could be excluded or removed from proximity to residential use and *deed restrictions*, in which an owner of a parcel could ban future ownership based on the characteristics of a buyer, commonly their race and religion. Citywide zoning promised to be more effective. Some of the first zoning ordinances were explicitly racist and segregatory. The U.S. Supreme Court struck down racial zoning in 1916 (*Buchanan v. Warley*) and racial deed restrictions in 1948 (*Shelley v. Kraemer*). It is within this context that white Americans came to identify apartments as a noxious use and renters as a proxy for race and class. Their solution would be the exclusive single-family use district.

Countries throughout the world use zoning, but it has taken on a unique character in the United States. Across the U.S., zoning codes give primacy to one type of use in one type of building, the detached, single-family home. This is achieved through the exclusive, residential, single-family use district.² From its inception, zoning proponents understood the single-family home to be synonymous with ownership, those who have the right to and can afford to own their own home, but the problem is not the single-family house itself. The problem lies in the exclusive single-family use district. Zoning codes often ban any use deemed harmful to the single-family home and its occupants, which ends up including all other residential and nonresidential uses as well as the people who need them.³

In Cuyahoga County, the race and class implications of zoning were apparent from the beginning. U.S. cities already segregated in the early 20th Century were more likely to adopt zoning as a tool to reinforce racial hierarchy.⁴ Early 20th Century Cleveland was experiencing an influx of immigrants from Eastern and Southern Europe and African American refugees from the Jim Crow South, and Cleveland’s Black population was concentrating in the east side of the city.⁵ It was a region expanding outwards and experimenting with exclusion and zoning.

In 1923, a local developer challenged the constitutionality of the Village of Euclid’s new zoning code. Federal District Judge and Cleveland, D.C. Westenhaver found that Euclid violated the *Buchanan* decision with

¹ Norman Krumholz, “Zoning,” *Encyclopedia of Cleveland History*, Case Western Reserve University. Accessed November 11, 2019: <https://case.edu/ech/articles/z/zoning>

² Sonia Hirt, *Zoned in the USA: The Origins and Implications of American Land-Use Regulation* (Ithaca: Cornell University Press, 2014), 178-185.

³ *Ibid.*, 111-132.

⁴ Jessica Trounstein, *Segregation by Design: Local Politics and Inequality in American Cities* (Cambridge, United Kingdom: Cambridge University Press, 2018), 91.

⁵ Kenneth L. Kusmer, *A Ghetto Takes Shape: Black Cleveland, 1870-1930* (Urbana, Illinois: University of Illinois Press, 1978), 159-165.

its single-family use district. Westenhaver believed and opined the racist sentiment that immigrants and African Americans created nuisance conditions. He also understood that *Buchanan* prohibited municipalities from segregating based on race and class and predicted the segregatory nature of the single-family use district:

[I]t is equally apparent that the next step in the exercise of this police power would be to apply similar restrictions for the purpose of segregating in like manner various groups of newly arrived immigrants. The blighting of property values and the congesting of population, whenever the colored or certain foreign races invade a residential section, are so well known to be with the judicial cognizance.

[T]he result to be accomplished is to classify the population and segregate them according to their income and situation in life. The true reason why some persons live in a mansion and others in a shack, why some live in a single-family dwelling and others in a double-family dwelling and others in an apartment, is primarily economic. It is a matter of income and wealth [...] Aside from contributing to these results [this ordinance] further[s] such class tendencies. (*Village of Euclid v. Ambler Realty Co.*, 1924)

The Supreme Court overturned the Westenhaver decision and upheld the suburb's ordinance dubbing single-use zoning, *Euclidean Zoning*. In the majority opinion, Justice Southerland described apartments as parasitic nuisances.⁶

As cities spread out in the post-war period, single-family zoning went on to rule the American urban landscape, particularly the suburbs, and to alter the social structures of urban regions. In the American suburb, the ascendancy of exclusive single-family zoning gives cartel power to the home owning class. The zoning code enables class-based collective action.⁷ Homeowners, the majority class in many suburban municipalities, dominate municipal politics and suburban development with it.

Homeowners tend to vote for and lobby their local officials based on their perceived property values. They exclude anything and anyone that they believe will threaten their property values, and they use the zoning code to achieve their goal.⁸ The single-family use district is the primary tool for maintaining exclusion and political supremacy, but density restrictions can also control for class by decreasing affordability. Zoning restrictions, such as large minimum lot sizes, increase the cost of land by creating a false land scarcity. Codes that mandate larger houses through large lot coverage requirements or square footage requirements increase the cost of building a house, limiting who can live in a community.

Americans have long internalized that renting is a noxious use and that renters, as a proxy for race and class, reduce property values when in proximity to the single-family home. *Property values* became another proxy for race and class in ideological maintenance of the single-family use district and racial exclusion.⁹ In the U.S., home ownership is primarily the historical privilege of the white middle and upper classes.¹⁰ Most Black families rent, and in 2019, Black homeownership had fallen to historic lows. Black homeownership still has not recovered to pre-2008 housing crisis levels.¹¹ The single-family use district empowers whites to maintain white-only communities as a form of wealth hoarding and rent seeking and it achieves exactly that.¹² Homeowners reap an undo monopoly profit through an artificially depressed housing and land

⁶ Michael Allan Wolf, *The Zoning of America: Euclid v. Ambler* (Lawrence, Kansas: University Press of Kansas, 2008), 54-55, 110.

⁷ William A. Fischel, *Zoning Rules!: The Economics of Land Use Regulation* (Cambridge, Massachusetts: Lincoln Institute of Land Policy, 2015), 274-283.

⁸ *Ibid.*, 163-164, 312.

⁹ Trounstine, *Segregation by Design*, 46, 123.

¹⁰ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing Corporation, 2017), 59-76.

¹¹ Vanessa Gail Perry, et. al., *2020 State of Housing in Black America* (National Association of Real Estate Brokers Board of Directors).

¹² Jonathan Levine, *Zoned Out: Regulation, Markets, and Choices in Transportation and Metropolitan Land Use*

supply and reduced access to property-enhancing public goods provided by an exclusively zoned municipality and school district.¹³

(Washington, D.C: Resources for Our Future, 2006), 78-82.

¹³ Levine, *Zoned Out*, 94-95.

Trounstine, *Segregation by Design*, 92-96, 207.

Fischel, *Zoning Rules!*, 237.

Zoning and Public Schools in Cuyahoga County

Previous research by The Fair Housing Center on zoning in Cuyahoga County showed that the presence of use districts that permit multifamily housing corresponds with the presence of people of color living in that zoning district. Eleven out of fifty-nine Cuyahoga County municipalities ban multifamily housing through their zoning codes.¹⁴

In the United States, municipal zoning and the public provision of primary and secondary education are directly related. Most property tax revenue funds school districts. In Ohio, municipalities and school districts are distinct but inseparable entities. Through zoning, municipalities control school districts' revenue by regulating the property tax base. Municipalities can control expenditure per student by controlling how many families can access a school district by limiting the number of housing units. They can also regulate the economic profile of households by controlling housing affordability or whether or not renters have access to the district. Public education is one of the most important forms of local service provision. School quality affects the future economic outcomes of students and access to social capital for parents. School quality is also a major determinant of property values and a resource that homeowners seek to protect.¹⁵ Early adoption of zoning by municipalities correlates with higher expenditure on public education.¹⁶ **Exclusionary zoning perpetuates racial inequality by excluding people by race and class from well-resourced schools districts.**

Cuyahoga County has thirty-two public school districts, many of which overlap part of or all of multiple municipalities. The municipalities of two school districts (Independence Local Schools and Bay Village City School) nearly entirely exclude multifamily housing (less than 1% of land in these districts is zoned for multifamily housing). The municipalities of most outer-ring school districts in Cuyahoga County zoned less than 5% of land for multifamily housing (Brecksville-Broadview Heights City School District, Chagrin Falls Exempted Village Schools, Mayfield City School District, Orange City School District, Richmond Heights Local Schools, Solon City School District, and Strongsville City Schools).

To increase housing choice and access to schools in Cuyahoga County, The Fair Housing Center recommends that municipalities voluntarily repeal their single-family use districts and permit mixed residential uses throughout their jurisdictions.

¹⁴ Michael Lepley & Lenore Mangiarelli, *Exclusionary Zoning in Cuyahoga County*, The Fair Housing Center for Rights & Research (January, 2020), <https://www.thehousingcenter.org/wp-content/uploads/2020/01/Exclusionary-Zoning-in-Cuyahoga-County.pdf>

¹⁵ Fischel, *Zoning Rules!*, 152-155.

¹⁶ Trounstine, *Segregation by Design*, 86-88.

Notes on the Data

The Fair Housing Center analyzed the zoning codes for every municipality in Cuyahoga County (excluding the Village of Linndale, which does not zone) and organized the parcels of each municipality into their respective school districts. The Cuyahoga County Fiscal Office and the Department of Information Technology maintain two GIS files that include municipal zoning codes: a parcel file and a zoning file. The Fair Housing Center relied on both files for the analysis below. Both files are incomplete. The zoning file contains a column titled “MUNI_ZONE,” and for most cities its categories correspond directly with a municipality’s zoning code. When The Fair Housing Center encountered errors with the MUNI_ZONE column, it used the Fiscal Office’s generalized land use categories in column “ZONE_USE” in conjunction with the municipality’s published zoning code. The cities analyzed using the ZONE_USE summary category are noted on their respective pages. The Fair Housing Center reached out to most of the Cuyahoga County municipalities to obtain zoning GIS data, and most do not maintain their own digitized zoning maps. For those that do, their data was not used in this report.

There are hundreds of unique use districts in Cuyahoga County. In the below analysis, the reader will not find an examination of individual use districts for each municipality. Most zoning codes are available online should the reader wish to analyze them.

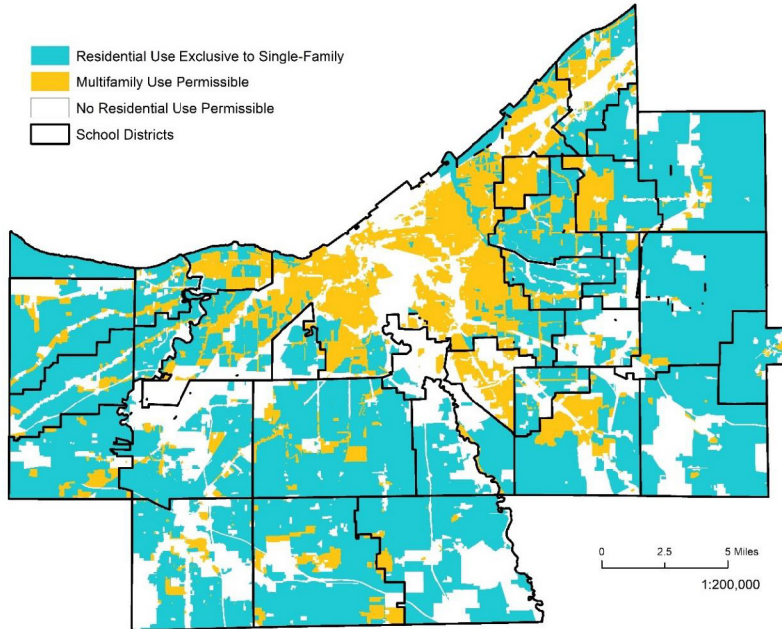
The Fair Housing Center summarized each use district into three categories: “residential use exclusive to single-family,” “multifamily use permissible,” and “no residential use permissible.”

- The **residential use exclusive to single-family** category includes use districts that only permit attached and detached single-family homes as residential structures. In most districts of this type, residential use is the sole use allowed. In some municipalities, nonresidential use is permitted in this type of district, but usually limited to libraries, parks, and schools. In Cuyahoga County, single-family homes are often available for rent, but the purpose of this category is to highlight use districts where the original regulatory intent was to isolate homeowners.
- The **multifamily use permissible** category includes use districts that permit 2-family structures and greater, multistory condominium buildings (The Fair Housing Center finds a significant condo-to-rental market in Greater Cleveland), and mixed commercial and residential structures. These districts often permit single-family homes as well as commercial and light industrial uses. The purpose of this category is to highlight use districts where the original regulatory intent was to allow renters.
- The **no residential use permissible** category includes use districts where current regulations do not allow residential use.

A reader of this report might notice that the real-world use in specific locations does not correspond with summarized regulations depicted in this report. In zoning, grandfathering and exemptions are common and will not be reflected in the below analysis. This report examines land use regulations, not current land use. Typically, regulation and actual use coincide.

In this report, there are several analyses of **single-family lot size distribution**. These analyses include all lots currently occupied by single-family housing in a municipality and are not restricted to the **residential use exclusive to single-family** use districts. These analyses are meant to provide an estimate of zoning’s effect on land consumption and density in comparison to exclusion.

HOW TO READ THIS DOCUMENT



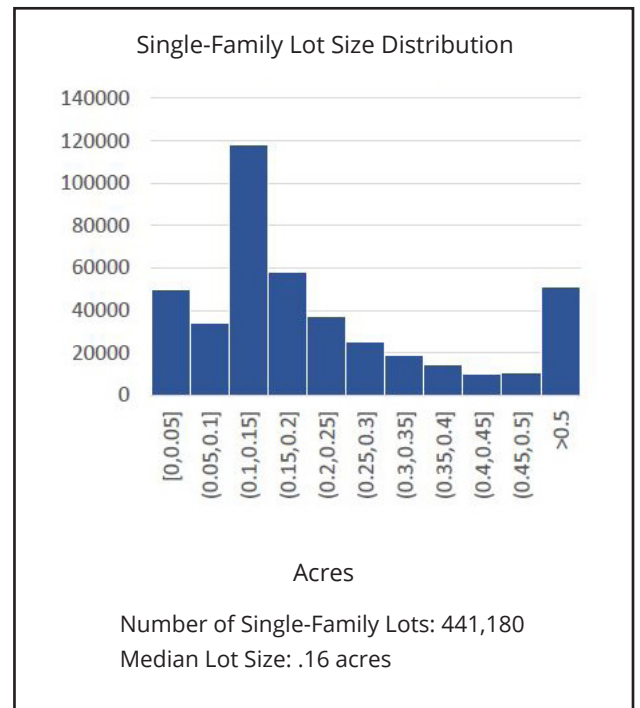
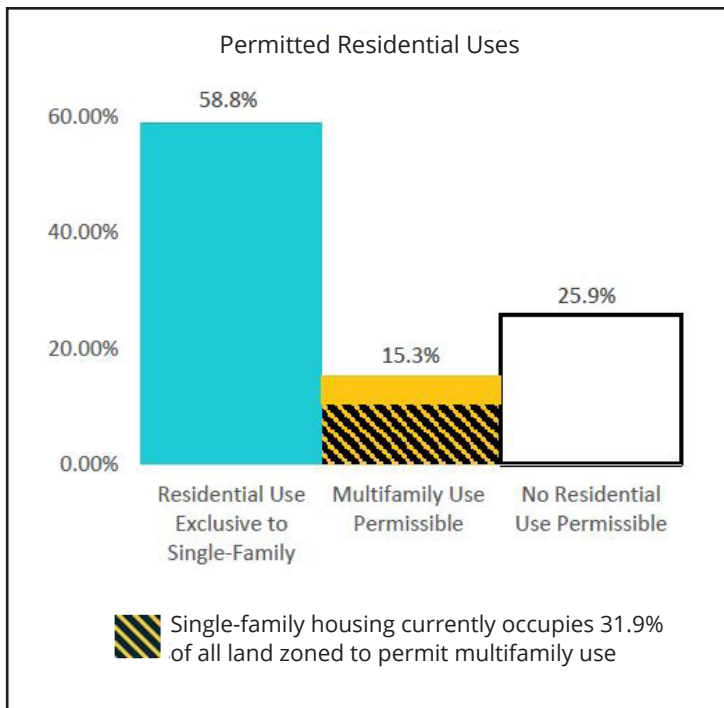
← This map shows how residential use is currently regulated.

Light blue shows zoning use districts where residential use is exclusive to single-family houses, both attached and detached. Light blue shows areas where regulation favors homeownership.

Yellow shows zoning use districts where multifamily use is permissible. Multifamily includes two-family buildings and higher. Yellow shows areas where regulation permits apartments.

White shows zoning use districts that currently do not permit residential use.

↑ This map **does not** show how a space might currently be being used. In zoning exemptions and grandfathering are common.

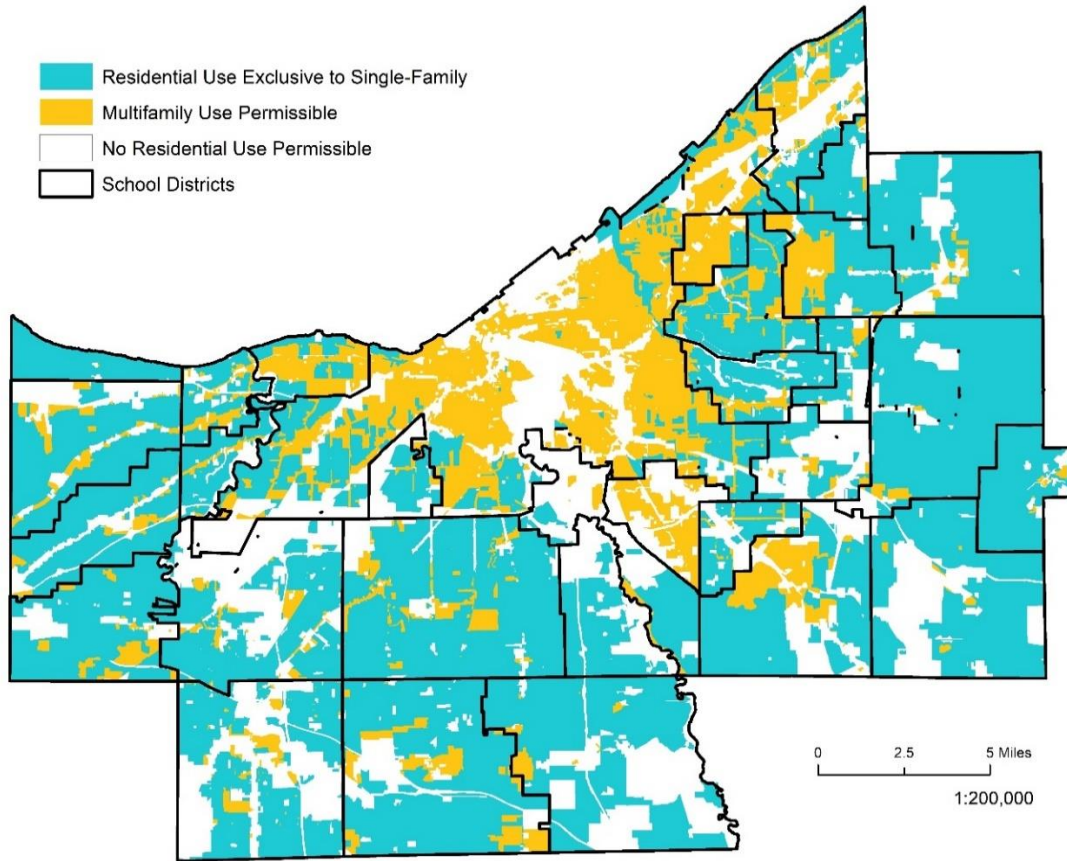


↑ This chart directly corresponds to the map above.

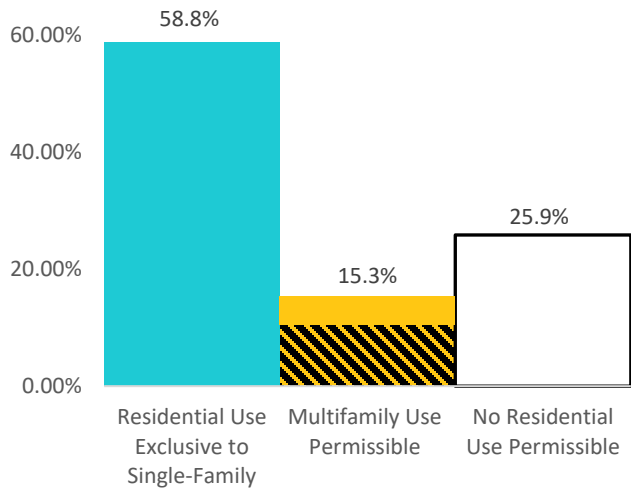
Yellow and dark-blue cross hatching shows how much of the land available for multifamily use (yellow) is currently occupied by single-family houses, further reducing land-availability for multifamily use.


↑ This chart shows the distribution of single-family lot sizes as an estimate of zoning's effect on land use intensity. This chart includes all single family lots, not just those within a district where single-family houses are the exclusive residential use.

Cuyahoga County School Districts

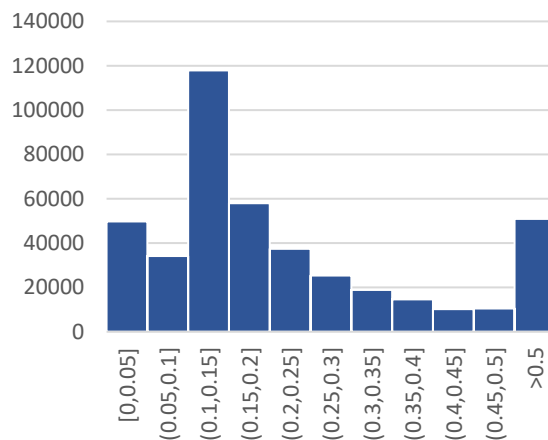


Permitted Residential Uses



 Single-family housing currently occupies 31.9% of all land zoned to permit multifamily use

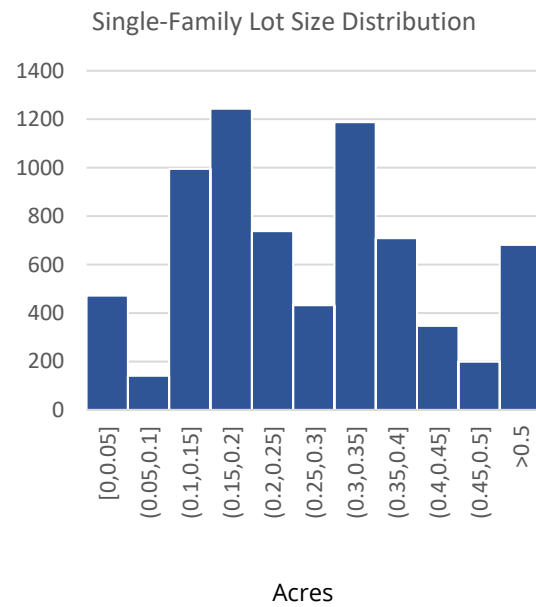
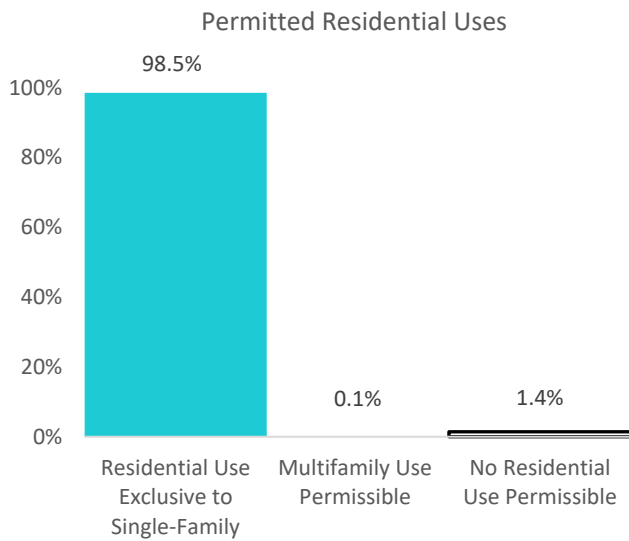
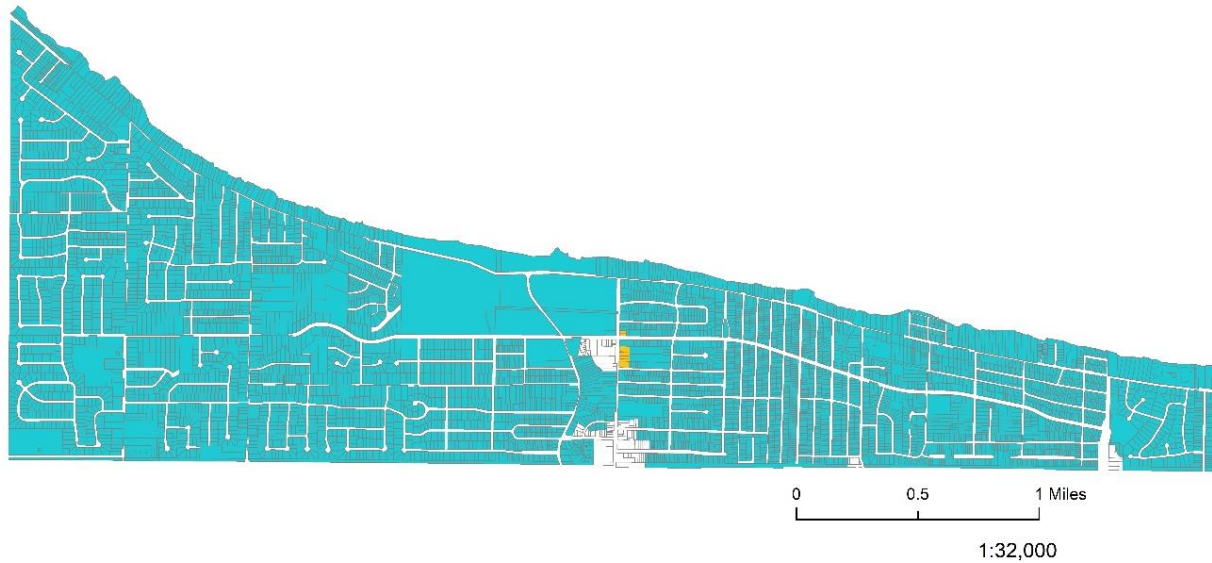
Single-Family Lot Size Distribution



Acres

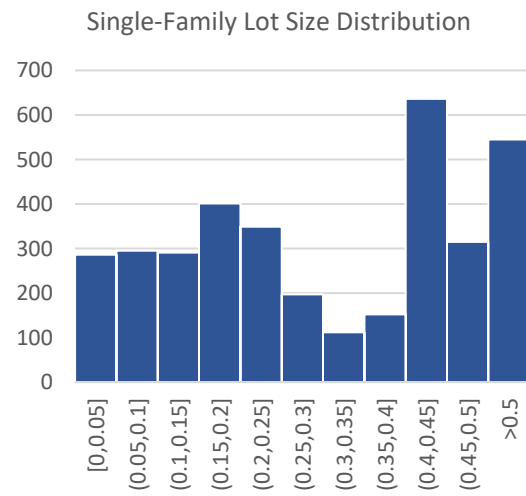
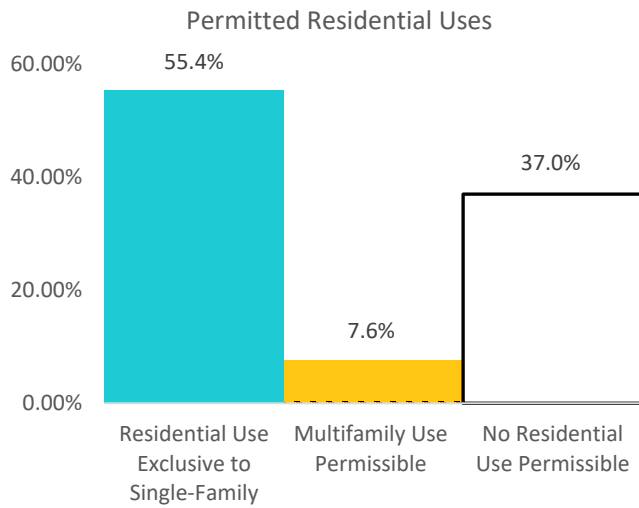
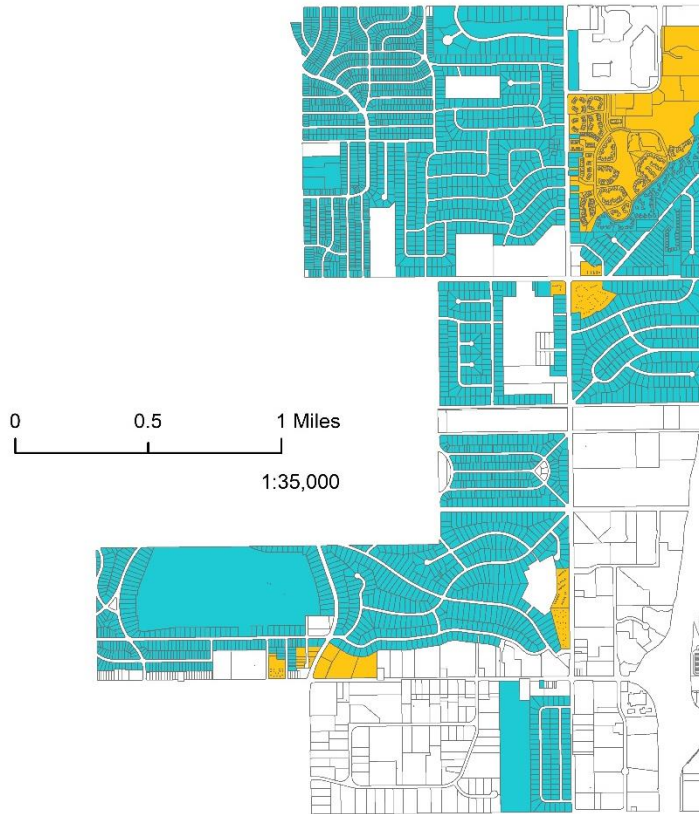
Number of Single-Family Lots: 441180
Median Lot Size: .16 acres


Bay Village City School District



Number of Single-Family Lots: 7145
 Median Lot Size: .25 acres

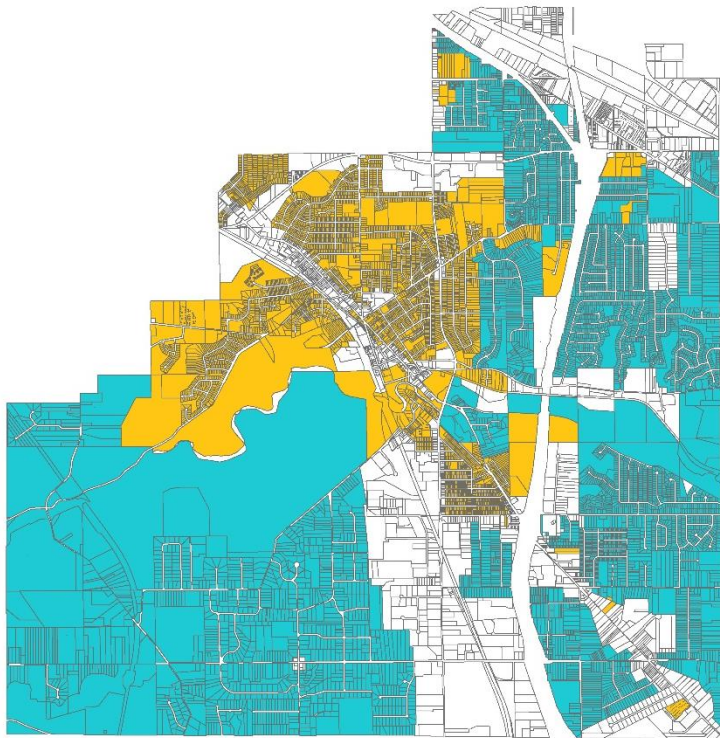
Beachwood City Schools



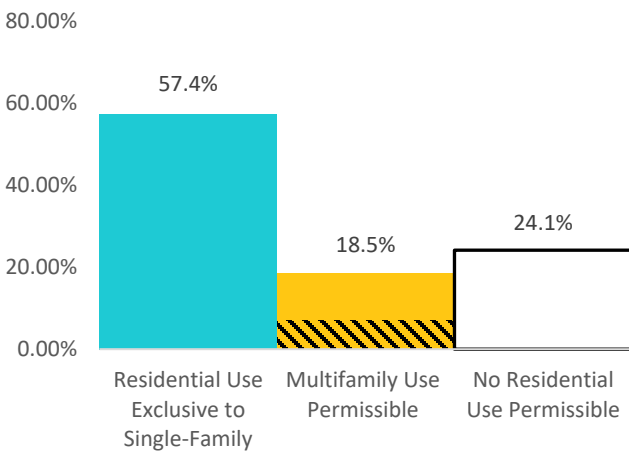
 Single-family housing currently occupies 7.0% of all land zoned to permit multifamily use


Number of Single-Family Lots: 3579
Median Lot Size: .29 acres

Bedford City School District

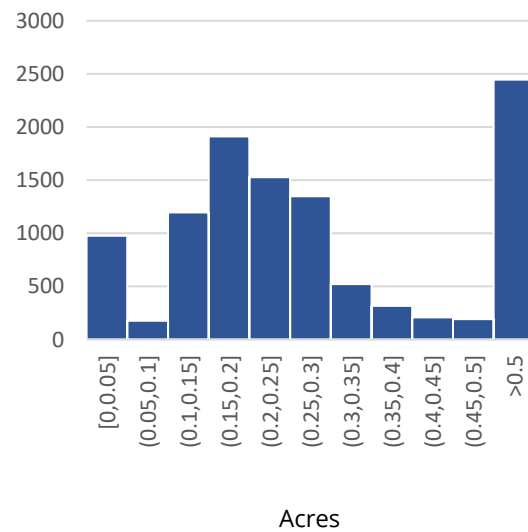


Permitted Residential Uses



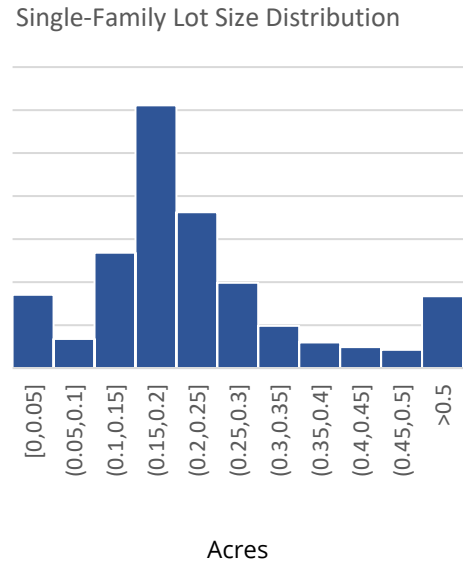
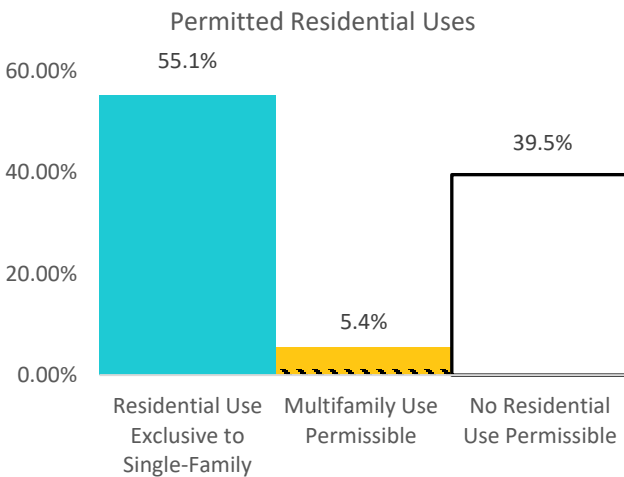
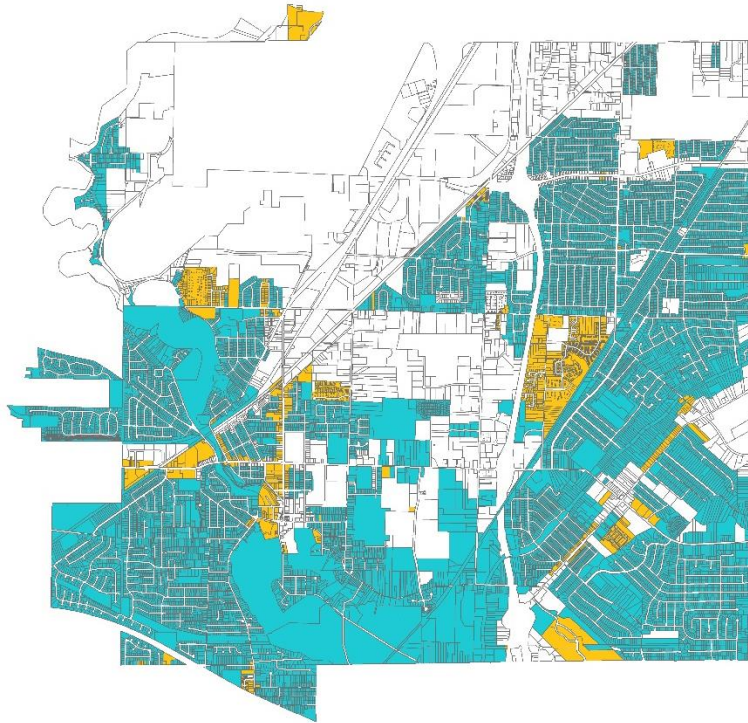
 Single-family housing currently occupies 39.2% of all land zoned to permit multifamily use


Single-Family Lot Size Distribution



Number of Single-Family Lots: 10821
Median Lot Size: .23 acres

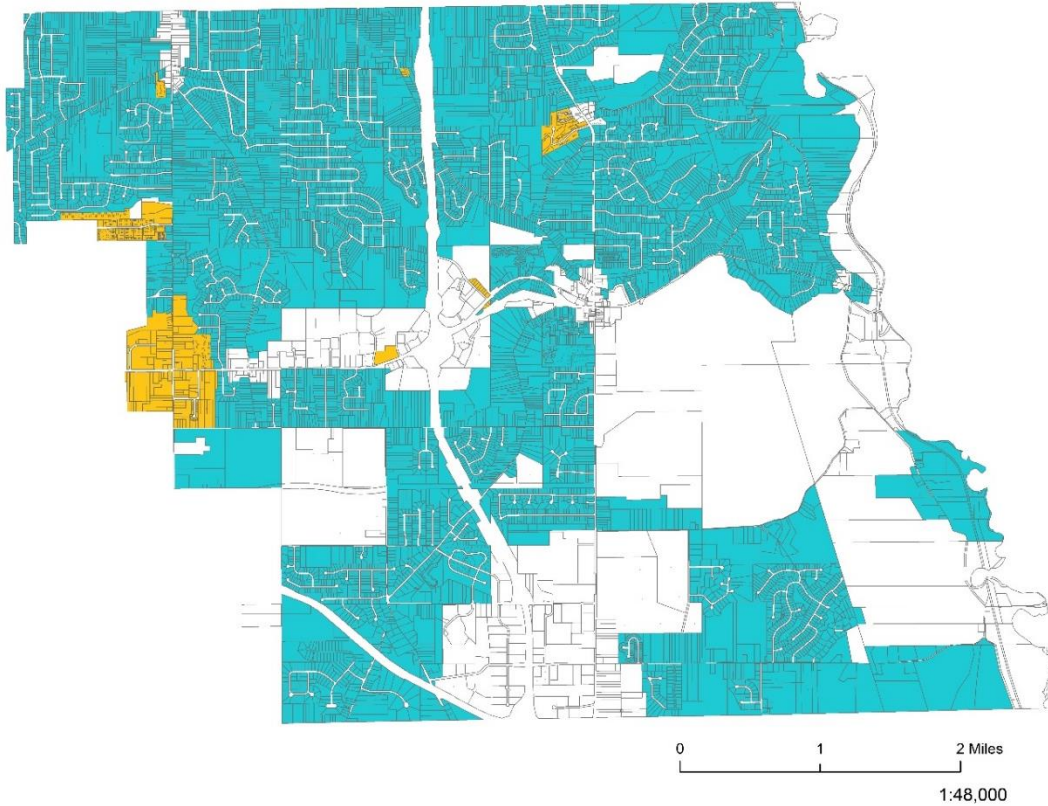
Berea City School District



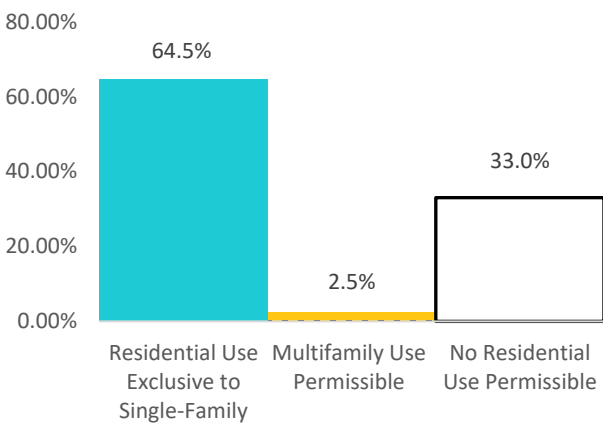
 Single-family housing currently occupies 22.3% of all land zoned to permit multifamily use

Number of Single-Family Lots: 20958
Median Lot Size: .19 acres

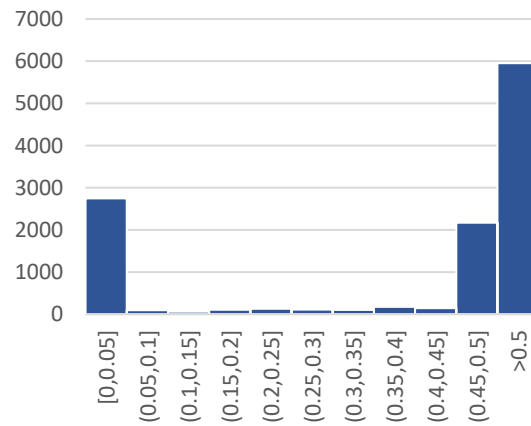
Brecksville-Broadview Heights City School District




Permitted Residential Uses



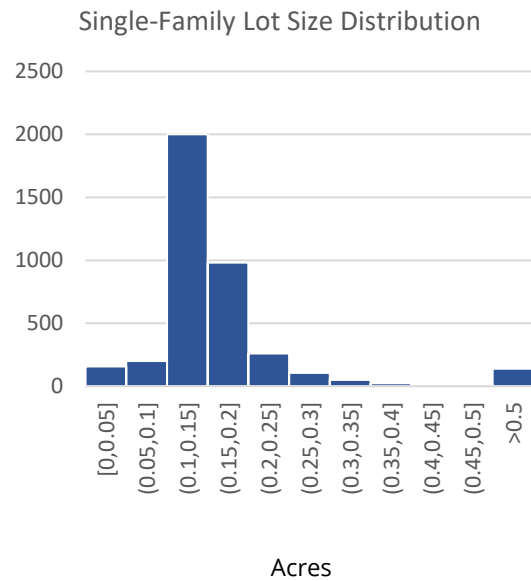
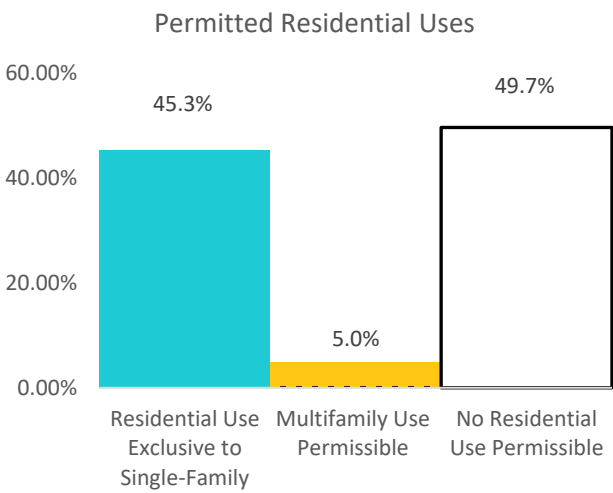
Single-Family Lot Size Distribution




 Single-family housing currently occupies 17.0% of all land zoned to permit multifamily use

Number of Single-Family Lots: 11797
Median Lot Size: .5 acres

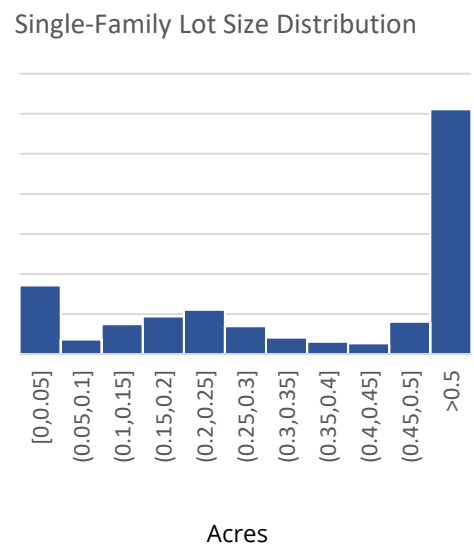
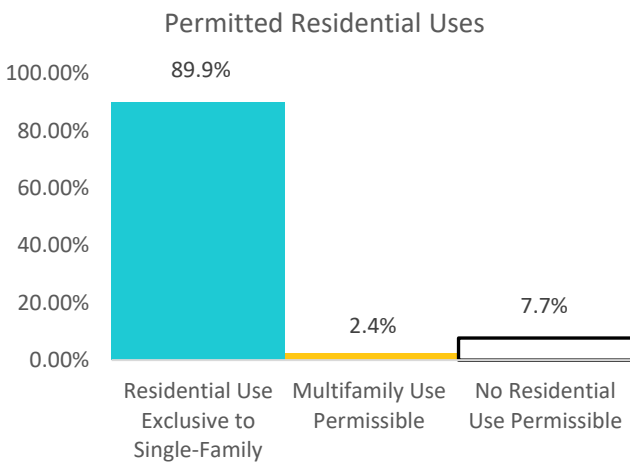
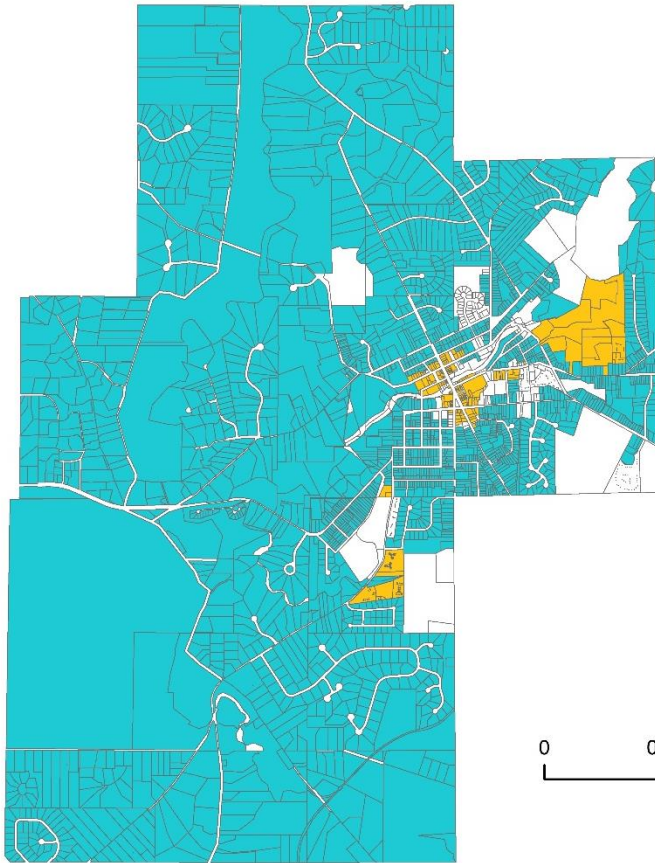
Brooklyn City School District




 Single-family housing currently occupies 8.7% of all land zoned to permit multifamily use

Number of Single-Family Lots: 3942
Median Lot Size: .13 acres

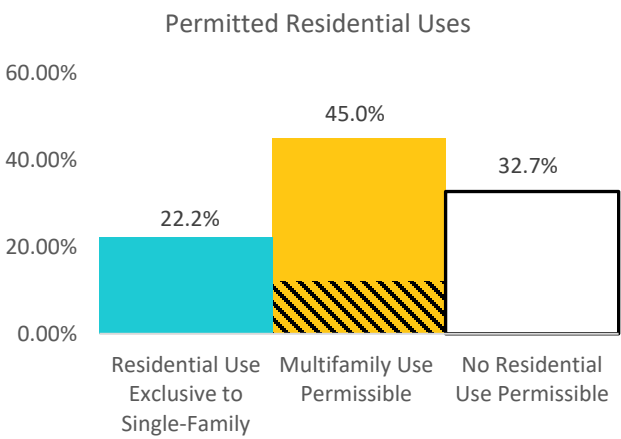
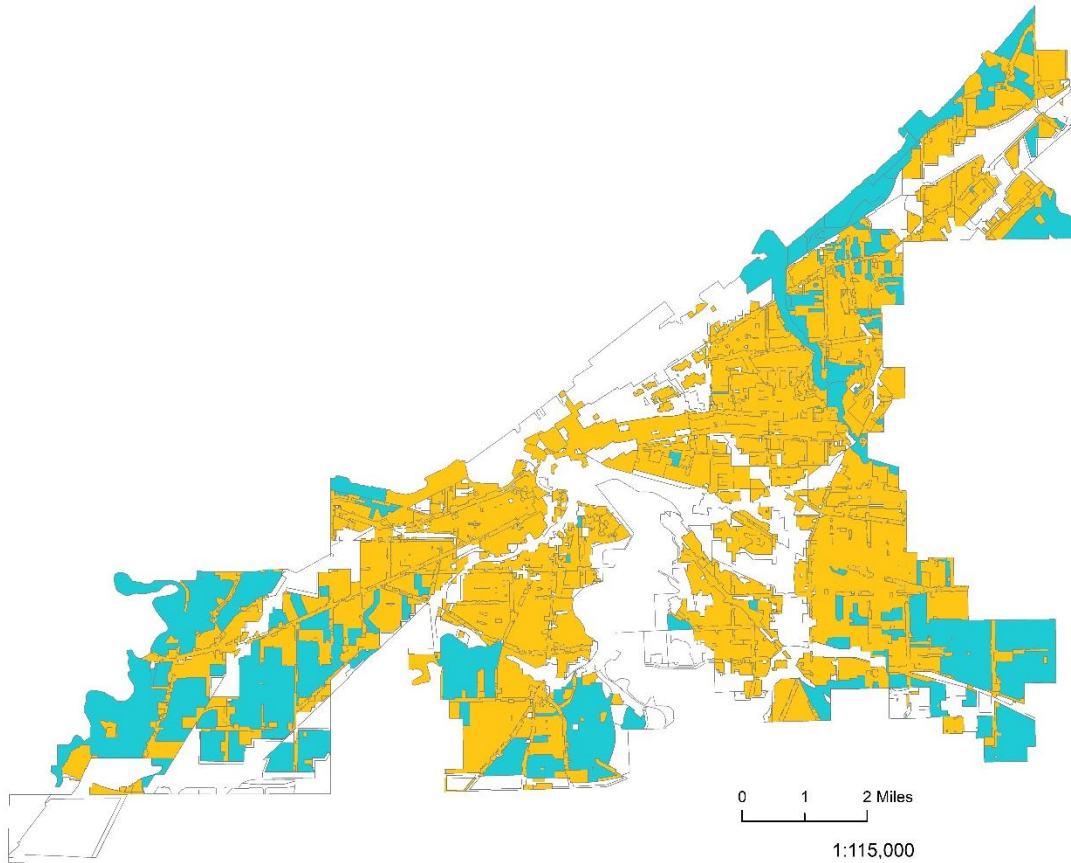
Chagrin Falls Exempted Village Schools




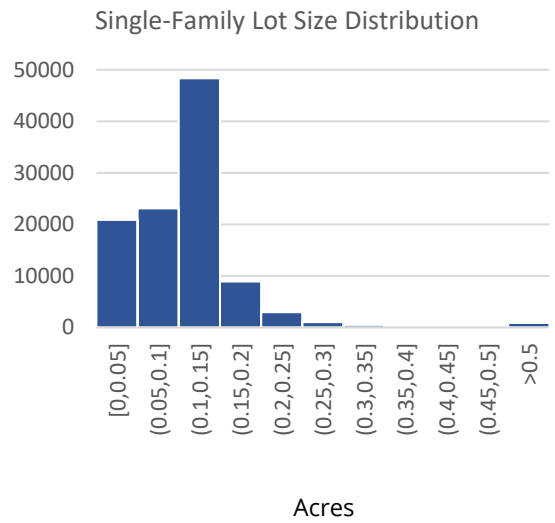
 Single-family housing currently occupies 6.0% of all land zoned to permit multifamily use

Number of Single-Family Lots: 2698
Median Lot Size: .46 acres

Cleveland Metropolitan School District

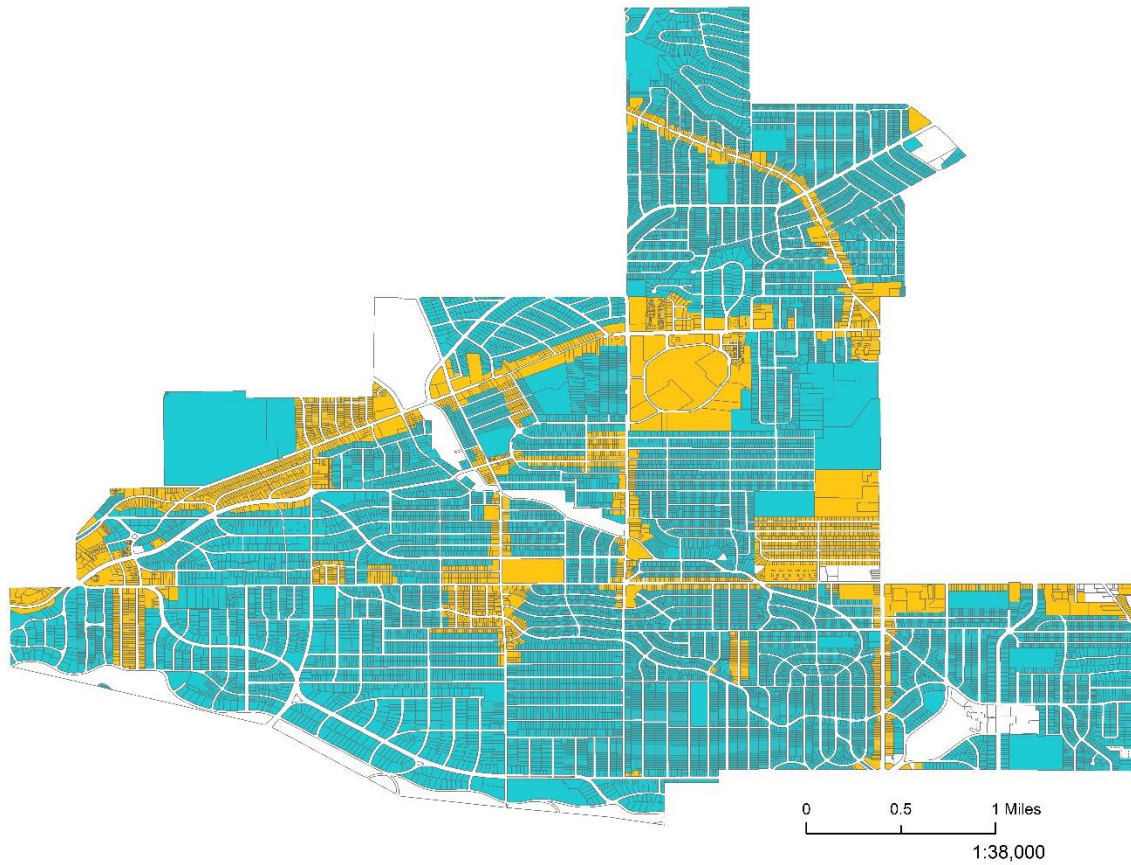


 Single-family housing currently occupies 27.1% of all land zoned to permit multifamily use

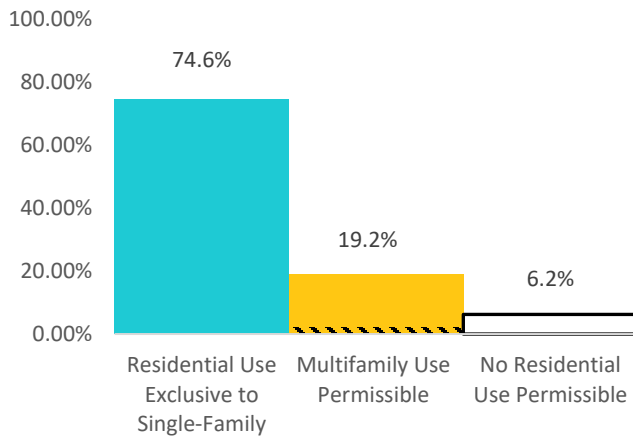



Number of Single-Family Lots: 107138
Median Lot Size: .11 acres

Cleveland Heights-University Heights City School District

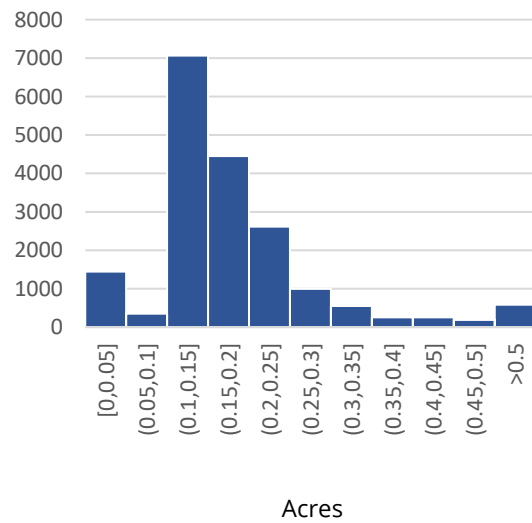


Permitted Residential Uses



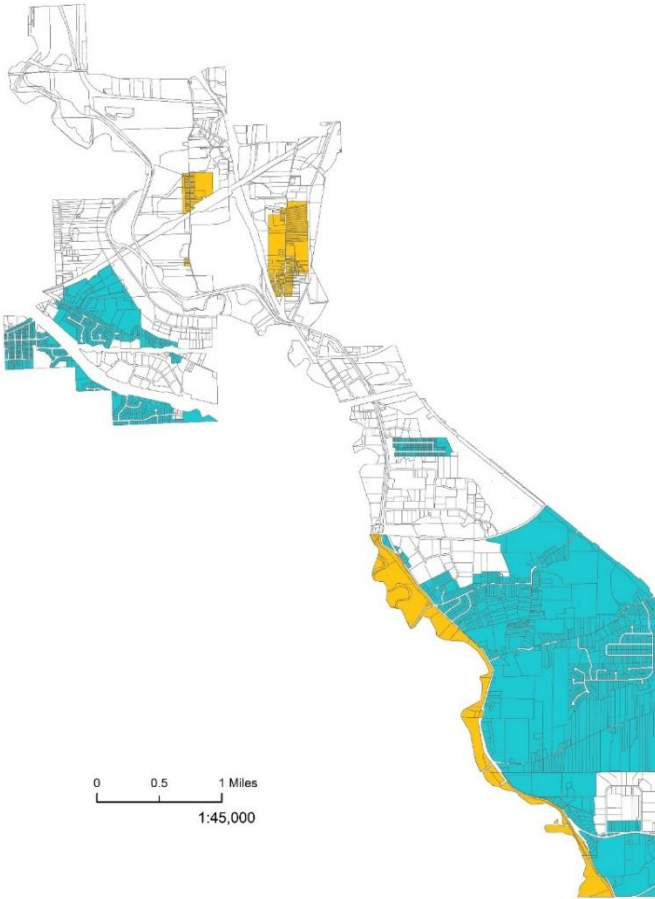
 Single-family housing currently occupies 12.8% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

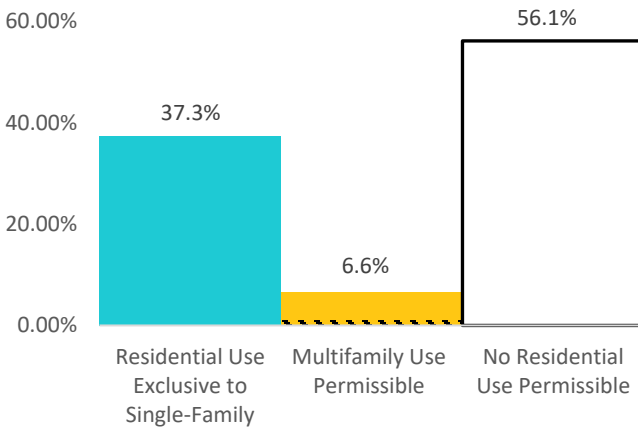



Number of Single-Family Lots: 18764
Median Lot Size: .15 acres

Cuyahoga Heights School District

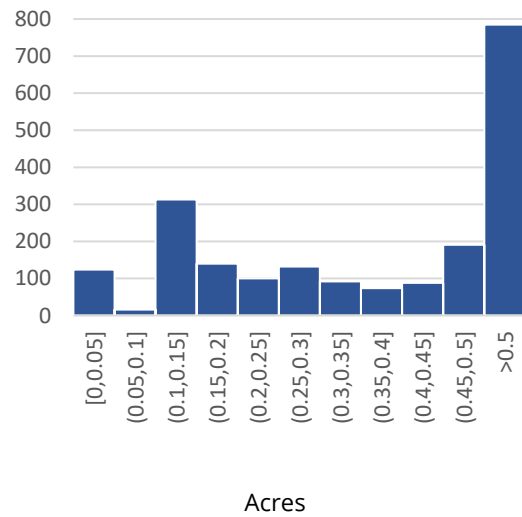


Permitted Residential Uses



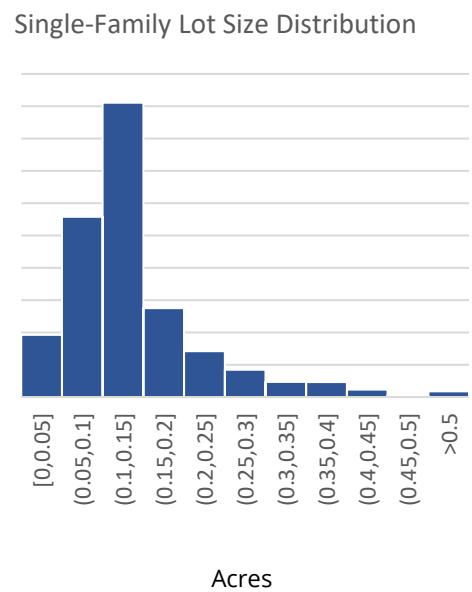
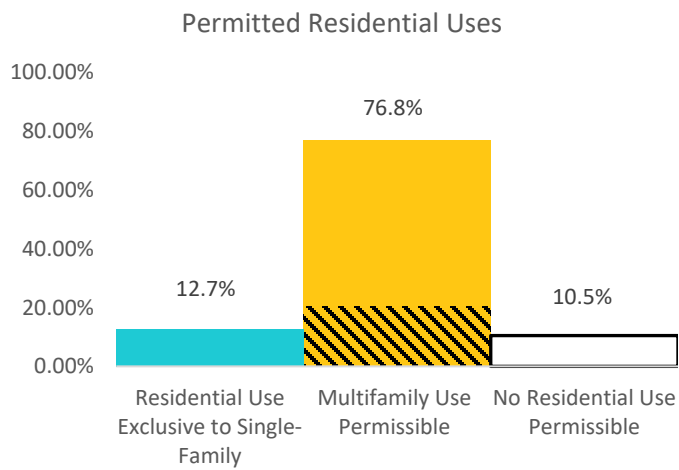
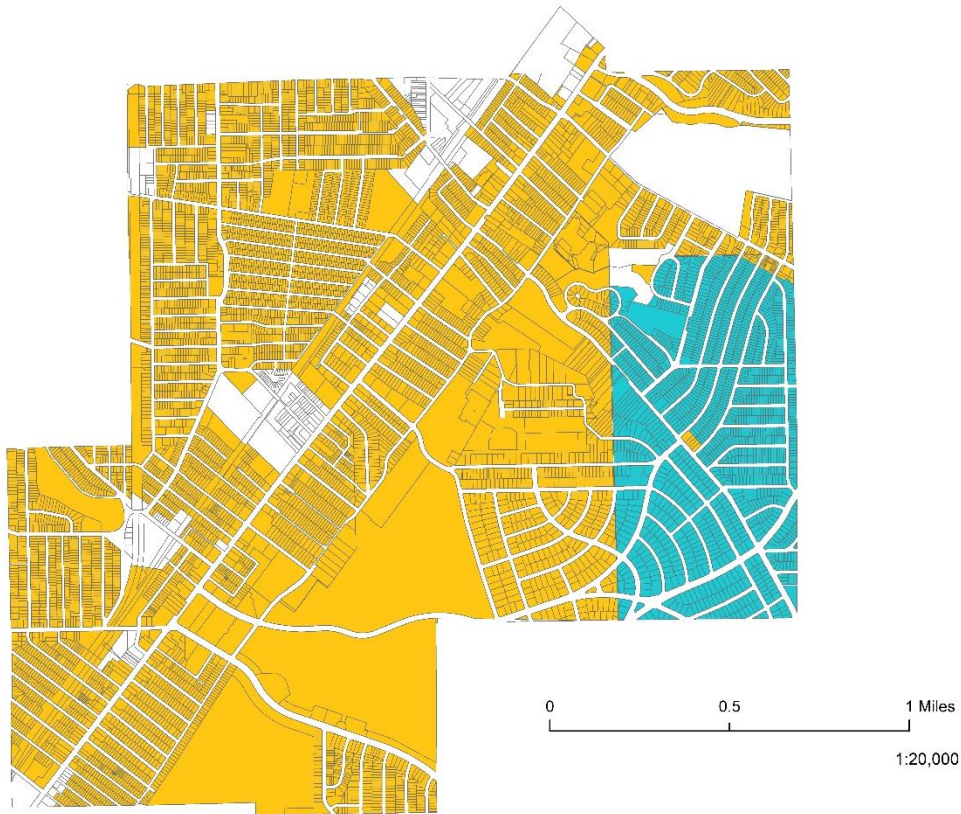
 Single-family housing currently occupies 16.4% of all land zoned to permit multifamily use


Single-Family Lot Size Distribution



Number of Single-Family Lots: 2055
Median Lot Size: .42 acres

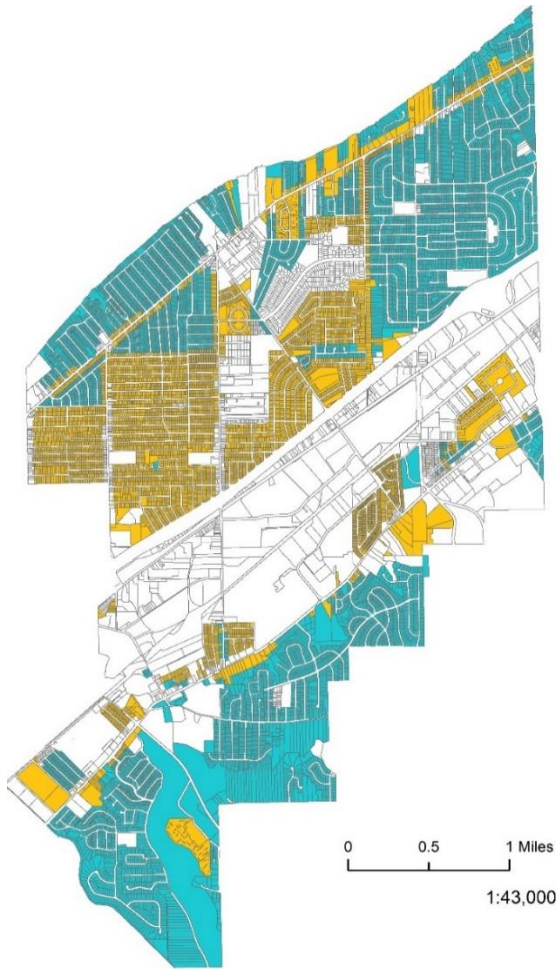
East Cleveland City Schools



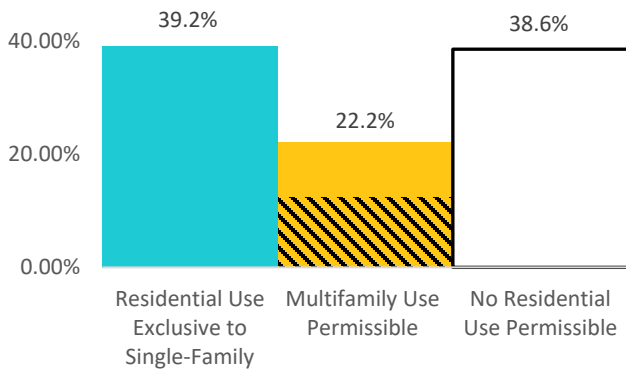
 Single-family housing currently occupies 26.8% of all land zoned to permit multifamily use


Number of Single-Family Lots: 4605
Median Lot Size: .11 acres

Euclid City School District

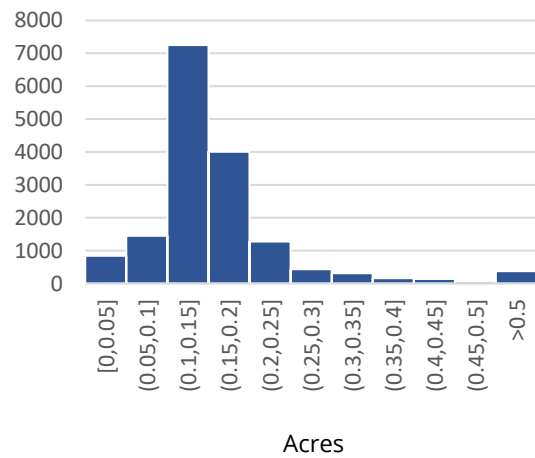


Permitted Residential Uses



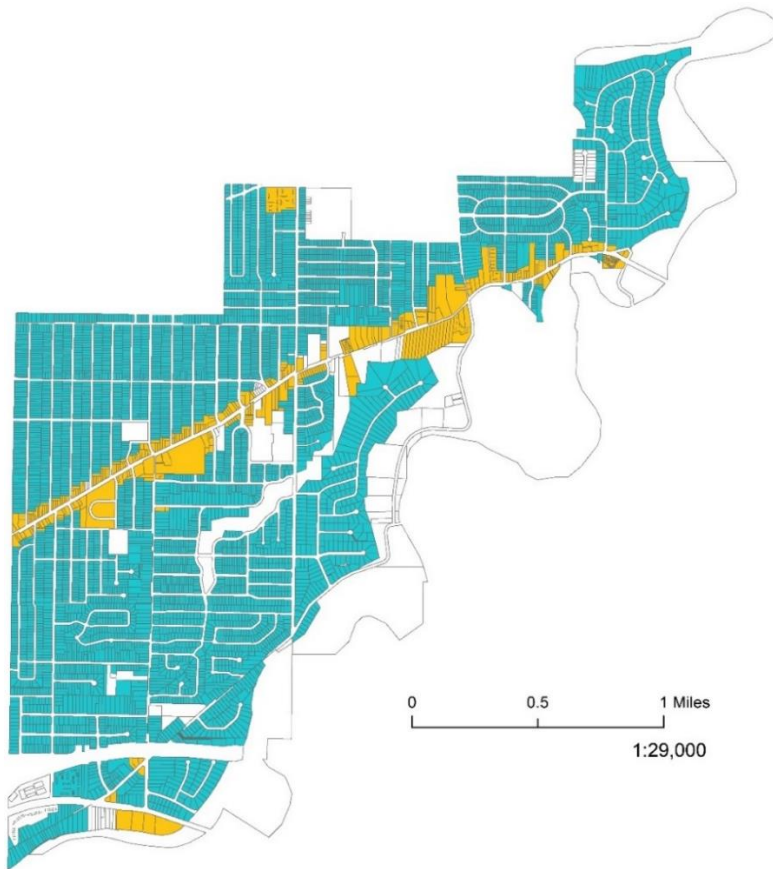
 Single-family housing currently occupies 56.7% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

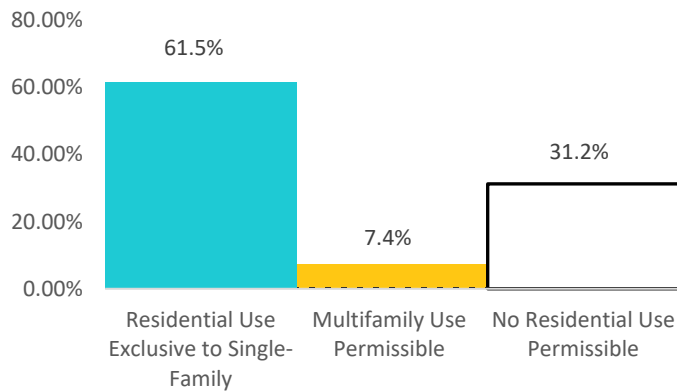


Number of Single-Family Lots: 16319
Median Lot Size: .12 acres

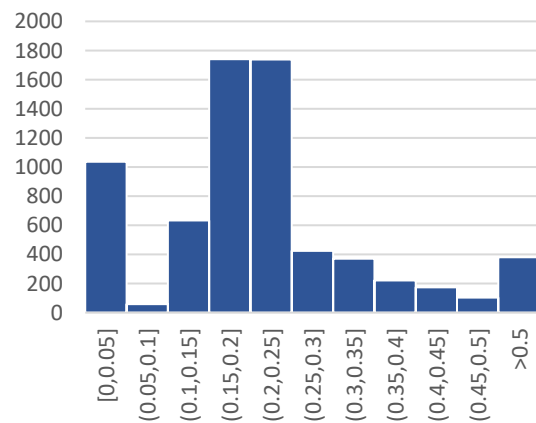
Fairview Park City Schools




Permitted Residential Uses



Single-Family Lot Size Distribution

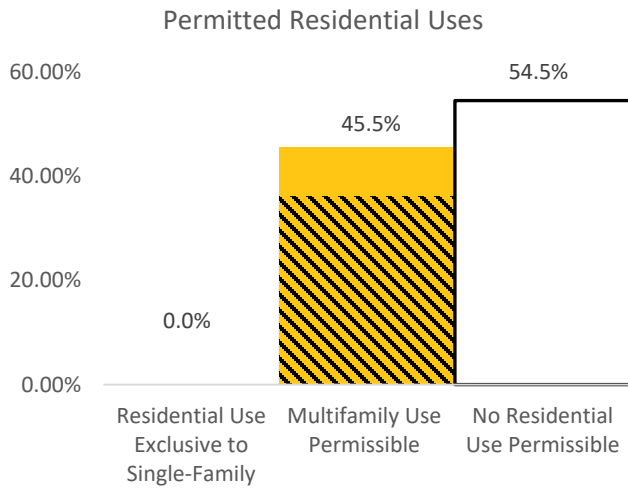
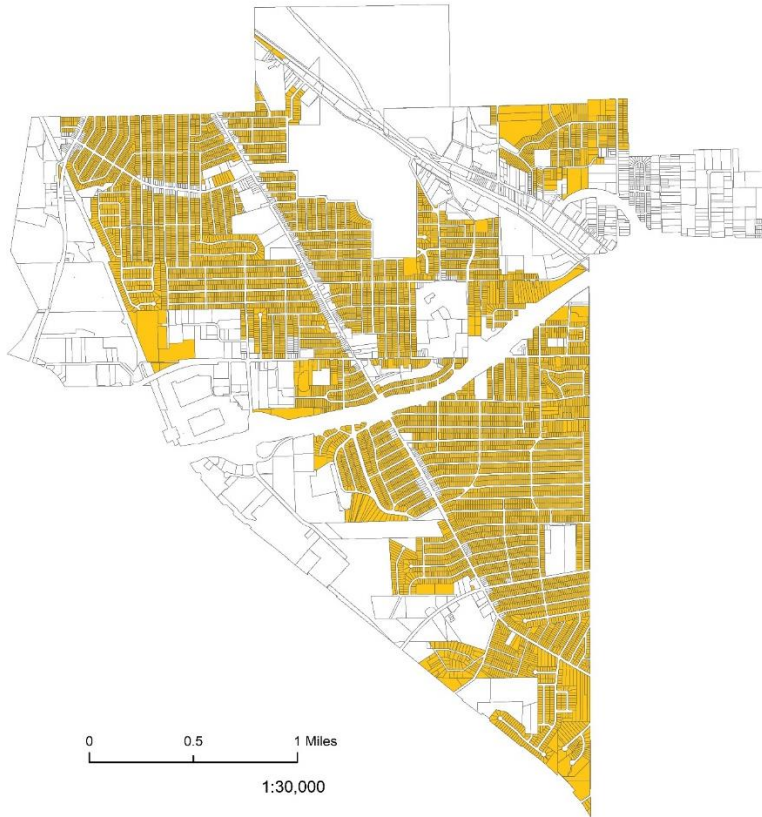



Acres

 Single-family housing currently occupies 7.6% of all land zoned to permit multifamily use

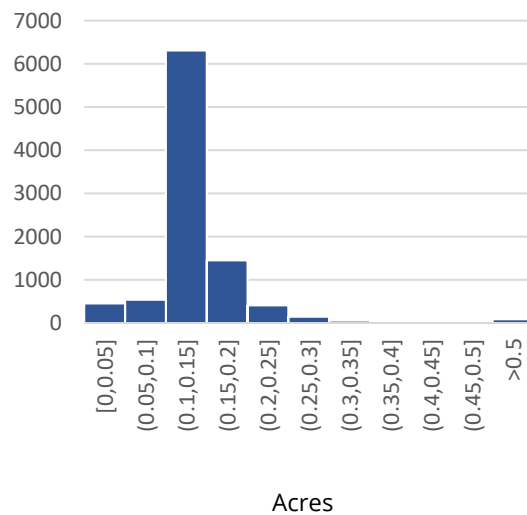
Number of Single-Family Lots: 6878
Median Lot Size: .20 acres

Garfield Heights City Schools



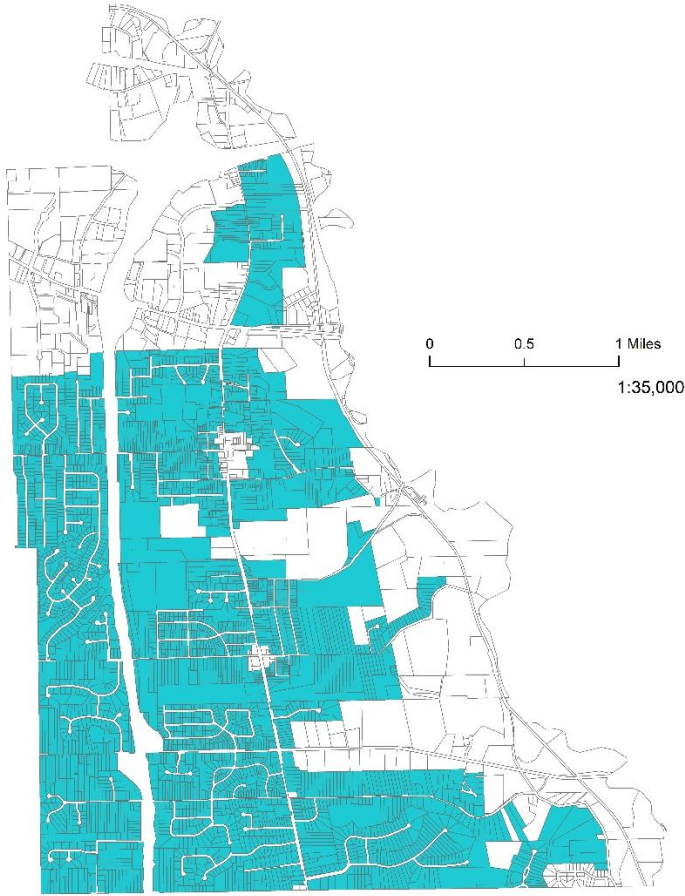
 Single-family housing currently occupies 79.6% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

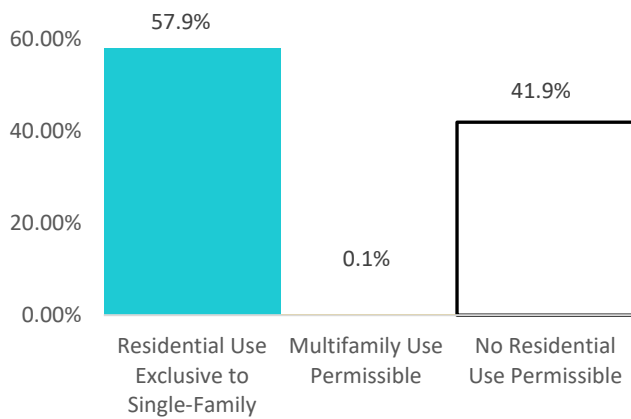


Number of Single-Family Lots: 9540
Median Lot Size: .13 acres

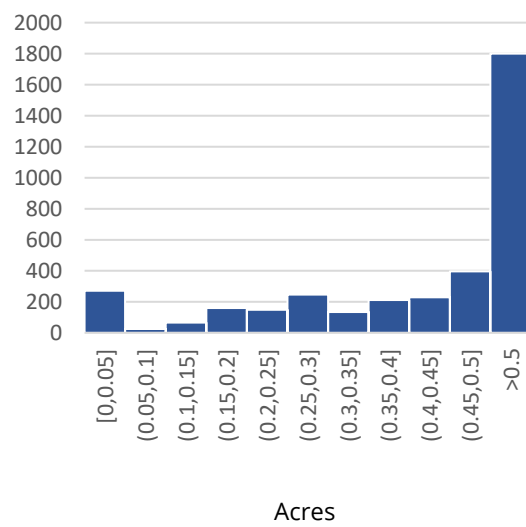
Independence Local Schools



Permitted Residential Uses

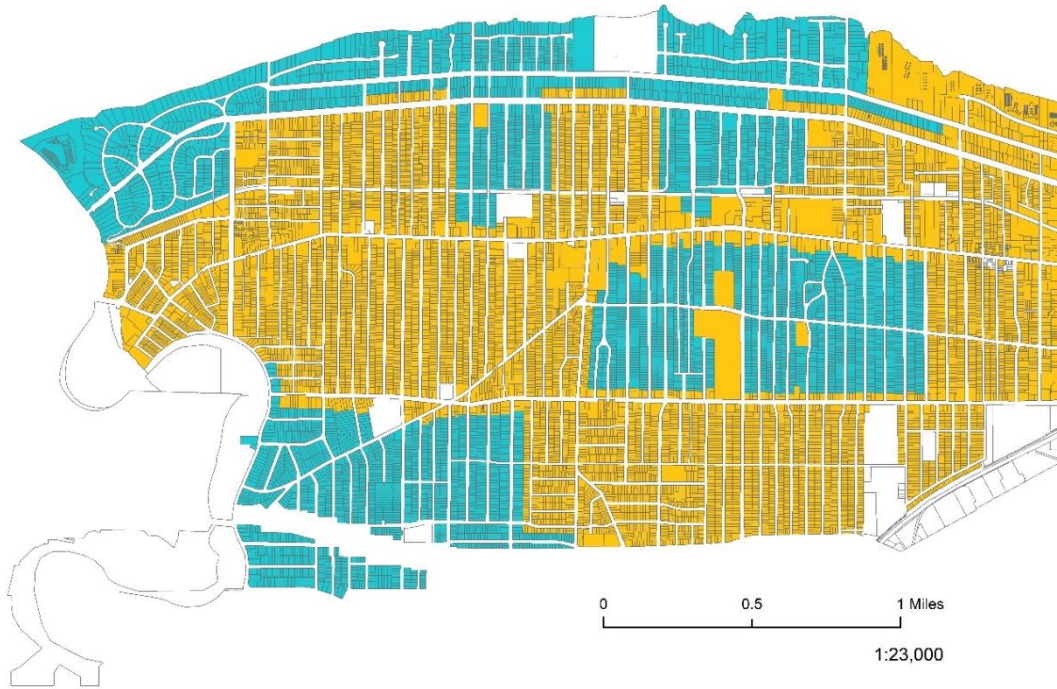


Single-Family Lot Size Distribution

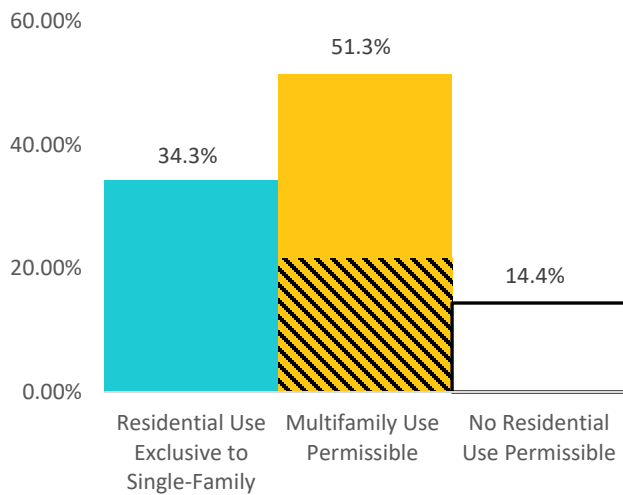



Number of Single-Family Lots: 3690
 Median Lot Size: .48 acres

Lakewood City School District

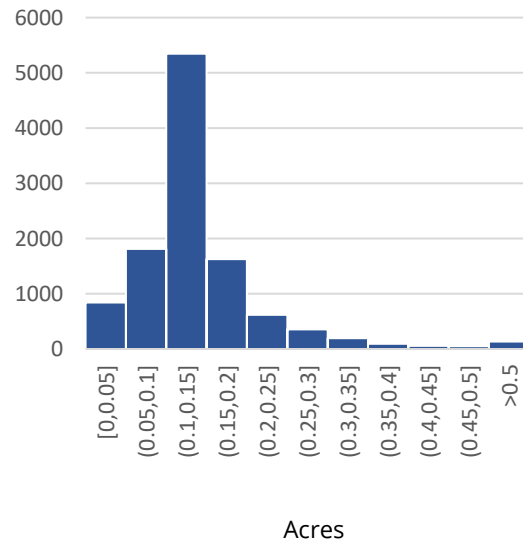


Permitted Residential Uses



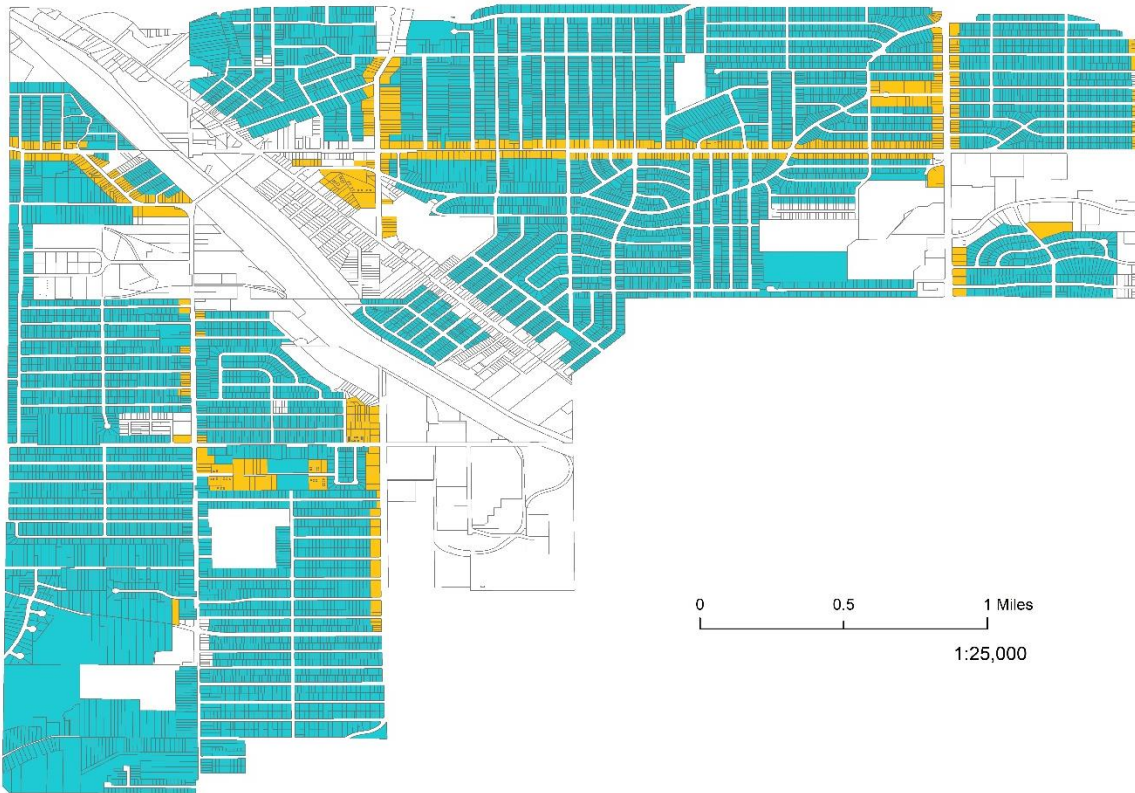
 Single-family housing currently occupies 42.1% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

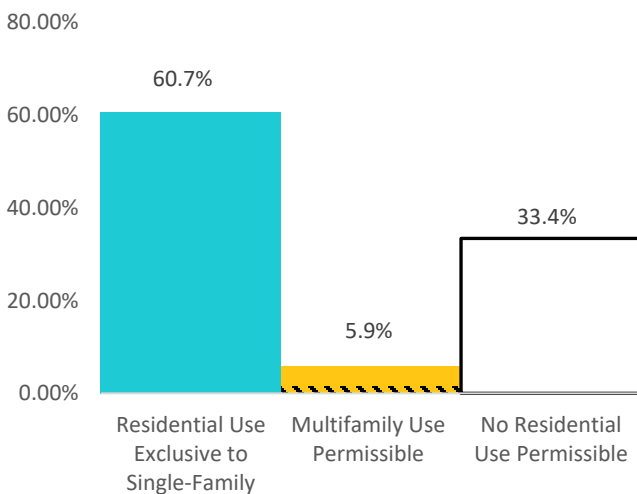



Number of Single-Family Lots: 11134
Median Lot Size: .12 acres

Maple Heights City School District

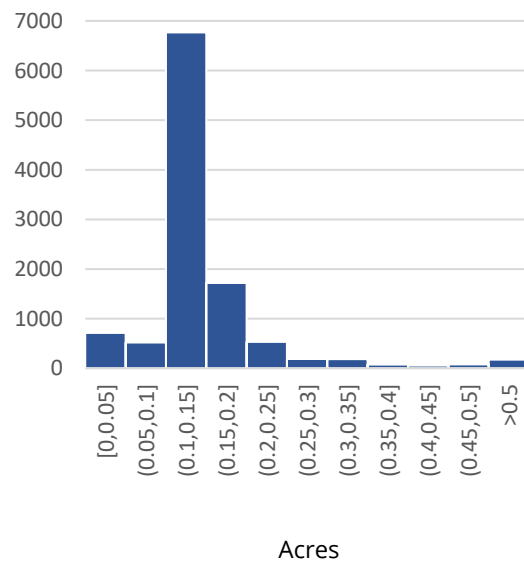


Permitted Residential Uses



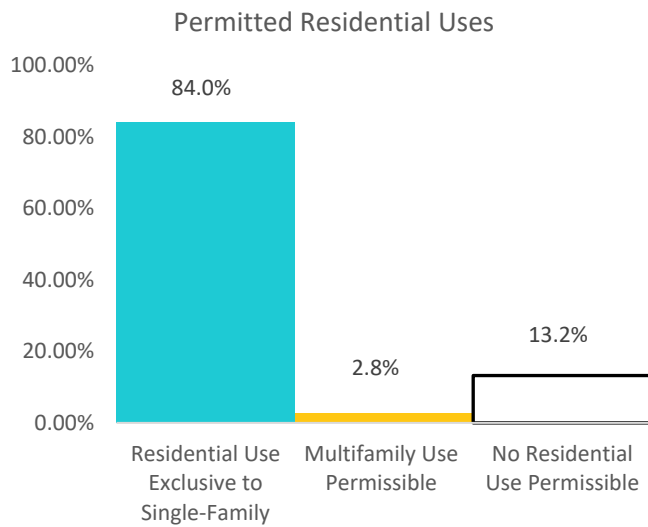
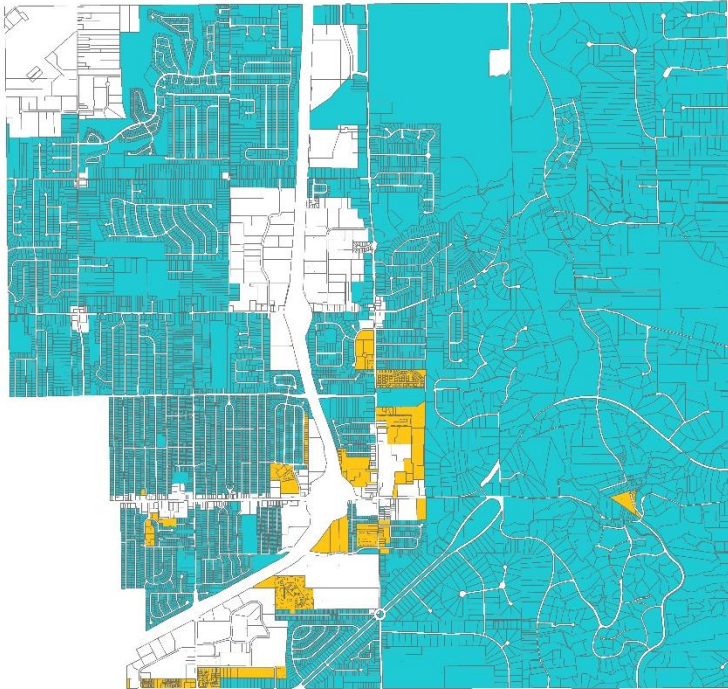
 Single-family housing currently occupies 28.9% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

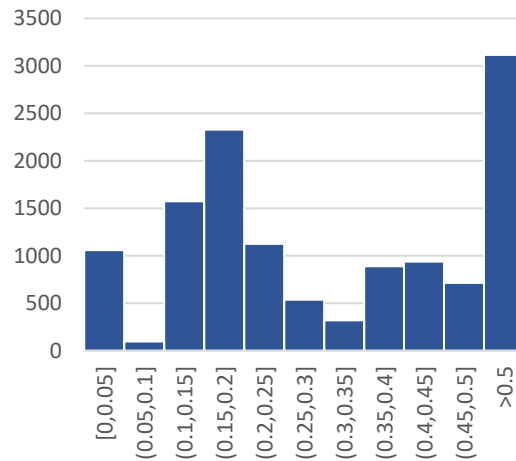



Number of Single-Family Lots: 11012
Median Lot Size: .13 acres

Mayfield City School District



Single-Family Lot Size Distribution

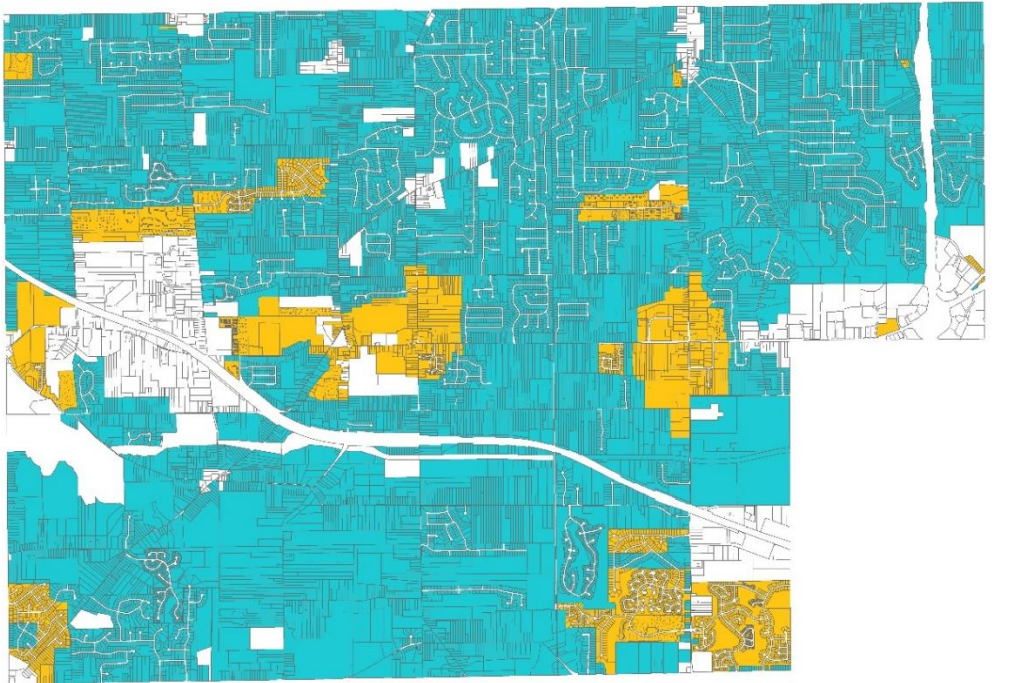


 Single-family housing currently occupies 10.4% of all land zoned to permit multifamily use

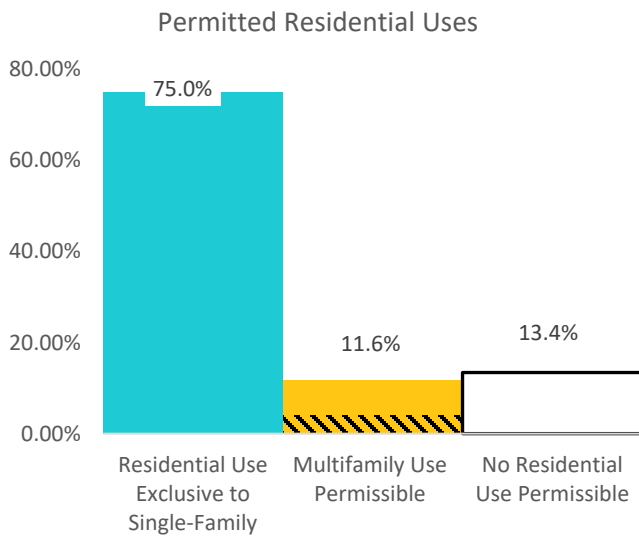
Acres


Number of Single-Family Lots: 12702
Median Lot Size: .26 acres

North Royalton City Schools

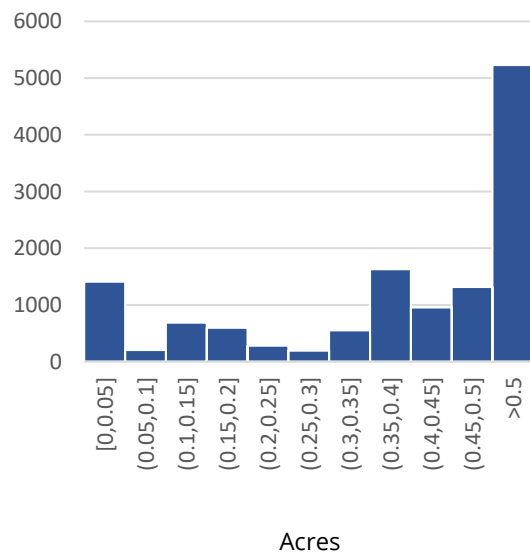


0 1 2 Miles
1:52,000



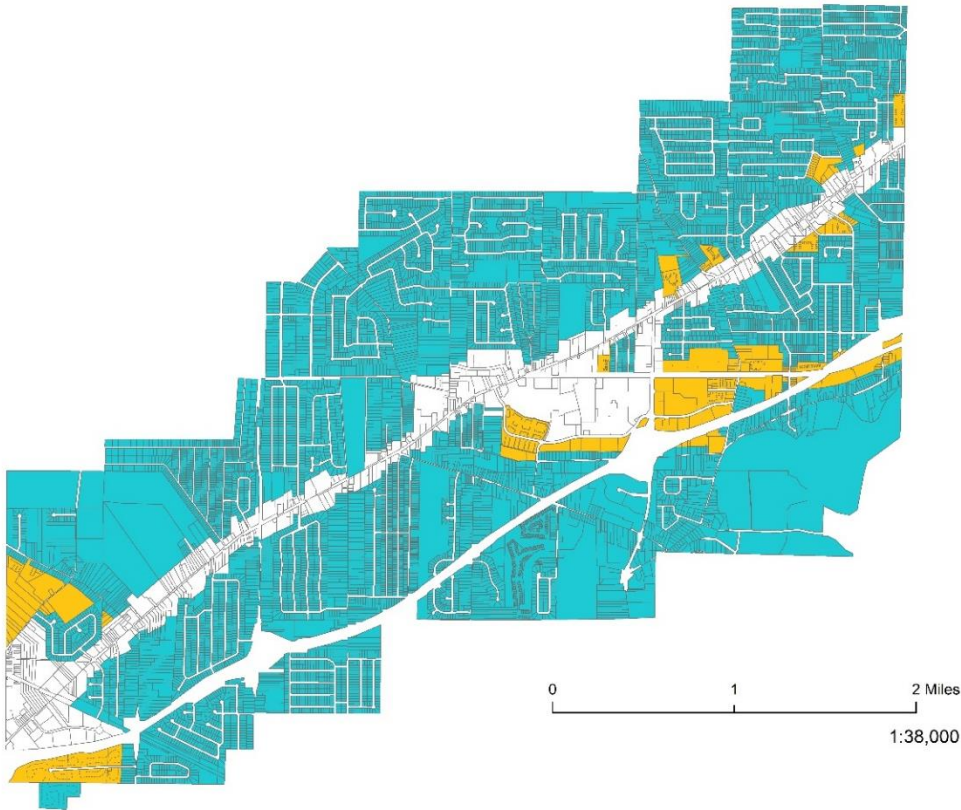
 Single-family housing currently occupies 34.9% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

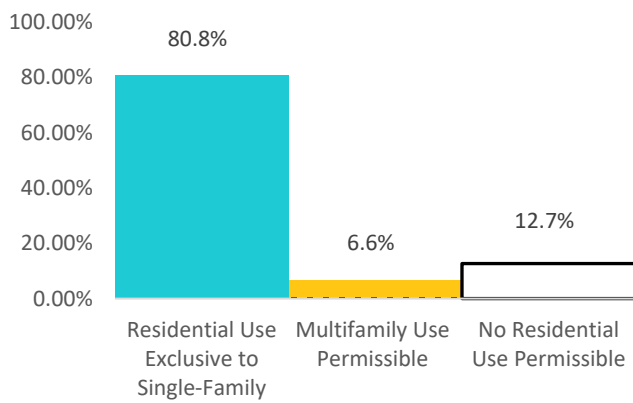


Number of Single-Family Lots: 13041
Median Lot Size: .45 acres

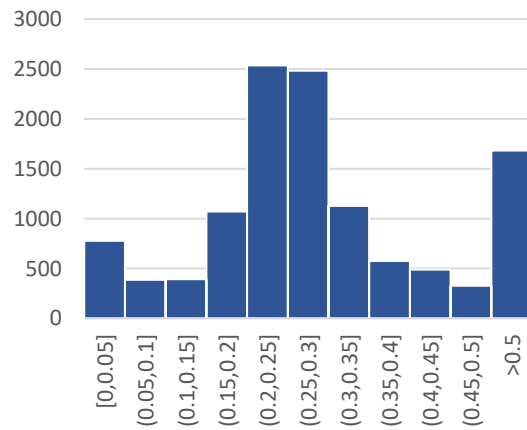
North Olmsted City Schools




Permitted Residential Uses



Single-Family Lot Size Distribution

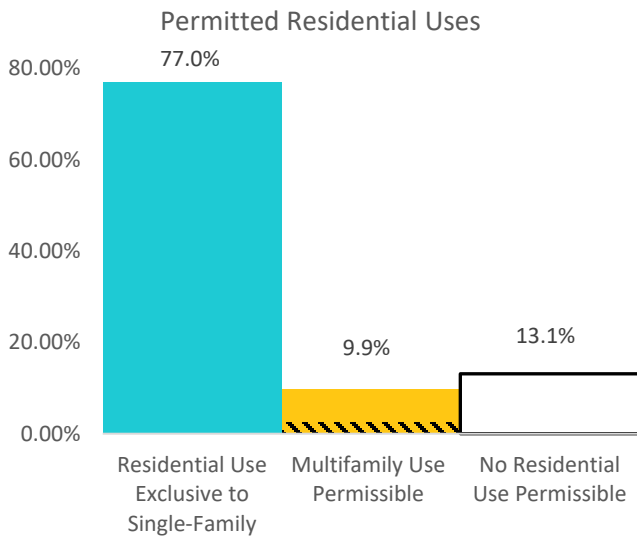
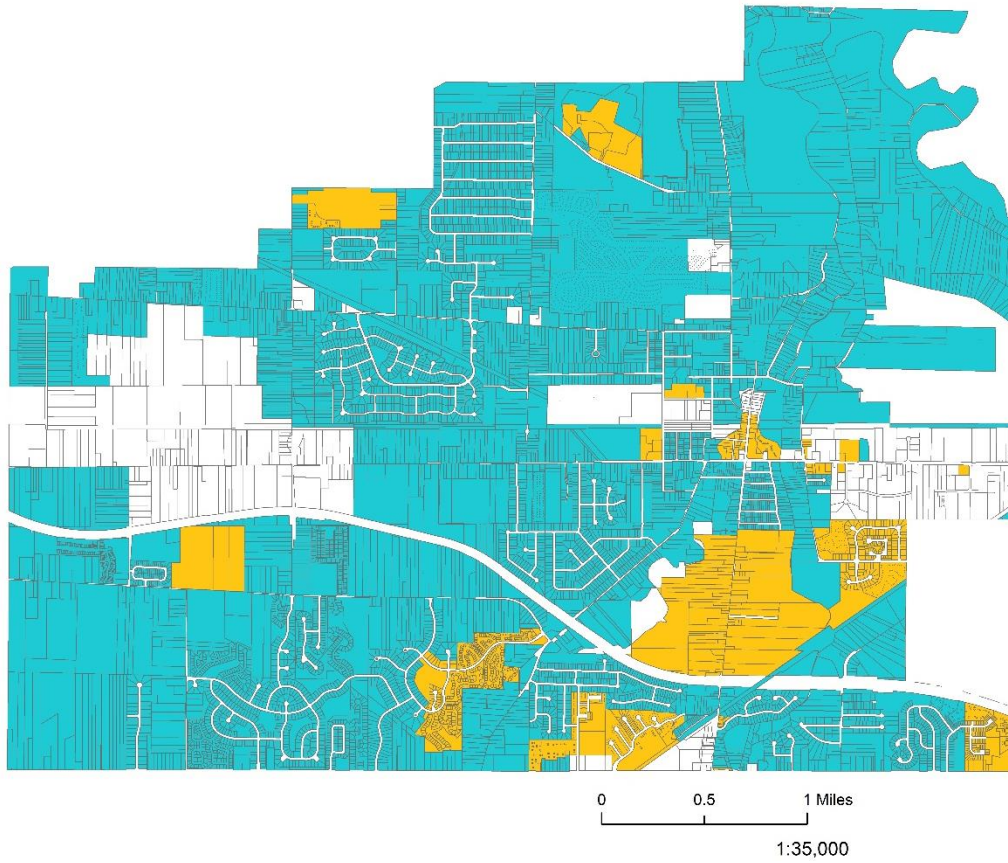



Acres

 Single-family housing currently occupies 8.7% of all land zoned to permit multifamily use

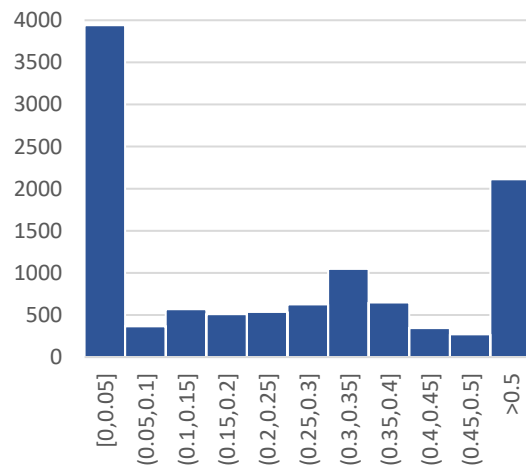
Number of Single-Family Lots: 11850
Median Lot Size: .26 acres

Olmsted Falls City School District



 Single-family housing currently occupies 27.2% of all land zoned to permit multifamily use

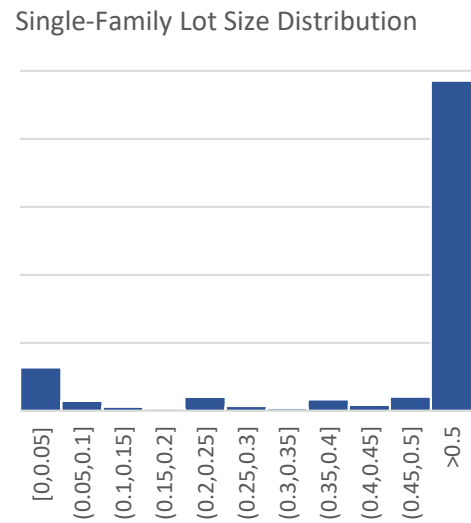
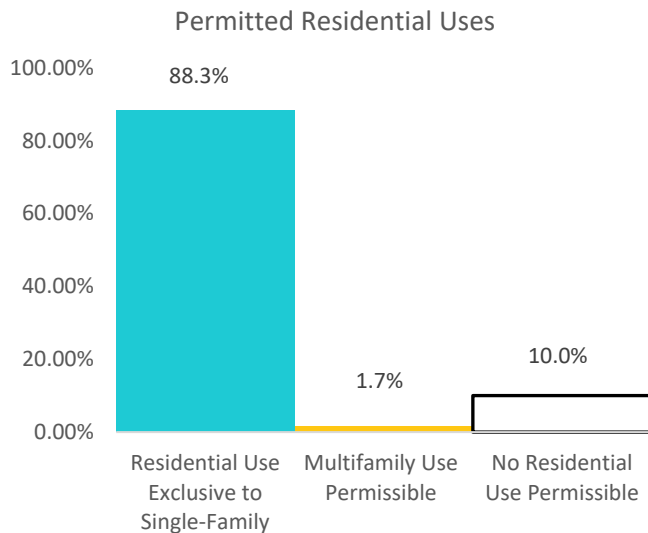
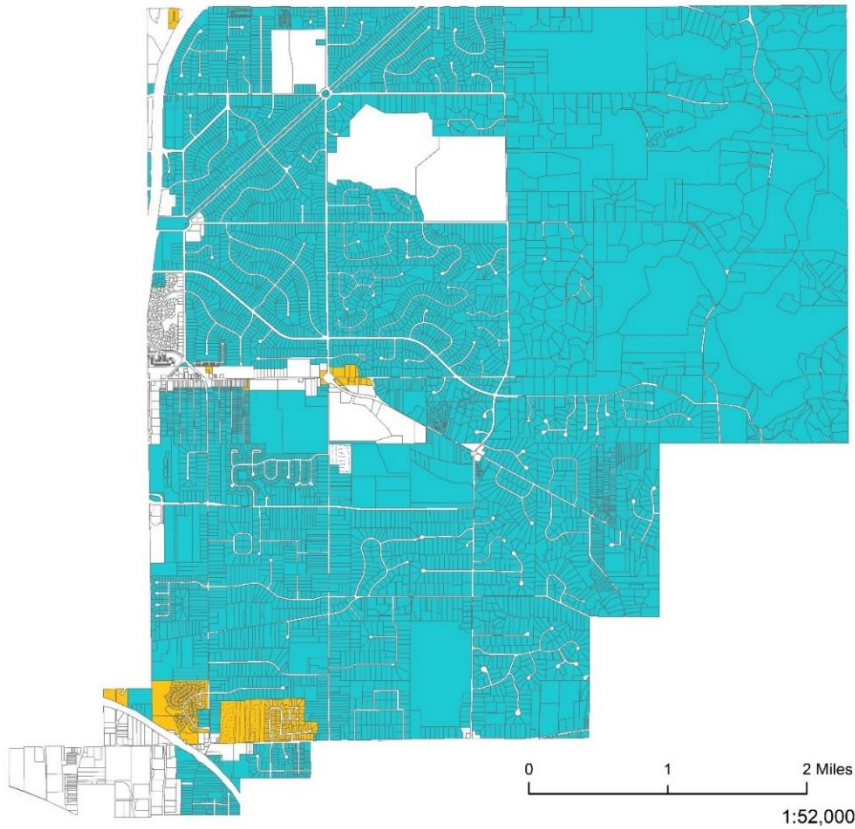
Single-Family Lot Size Distribution




Acres

Number of Single-Family Lots: 10970
Median Lot Size: .21 acres

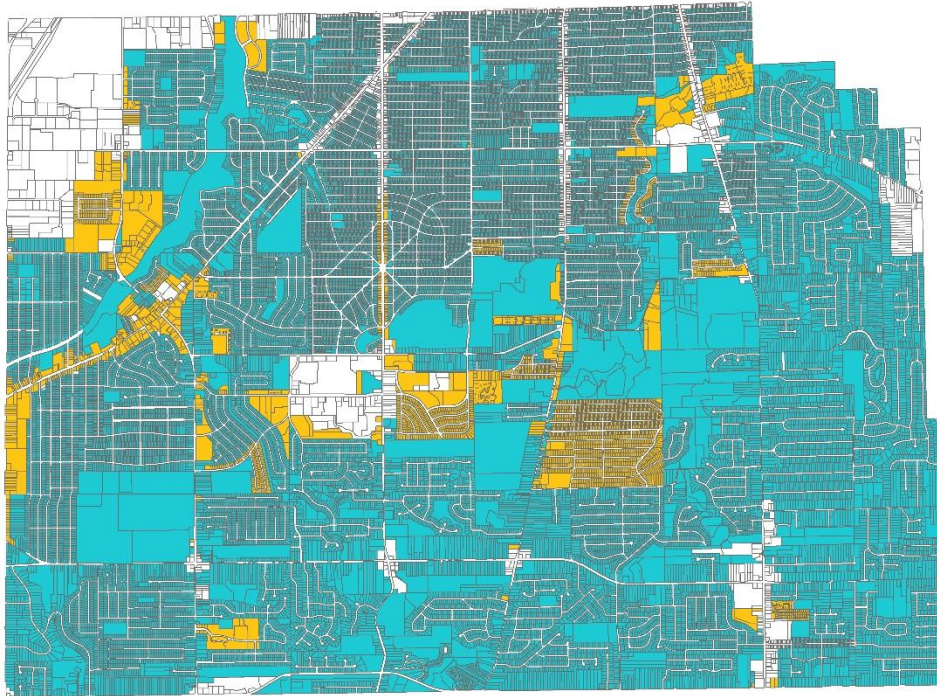
Orange City School District



 Single-family housing currently occupies 4.4% of all land zoned to permit multifamily use

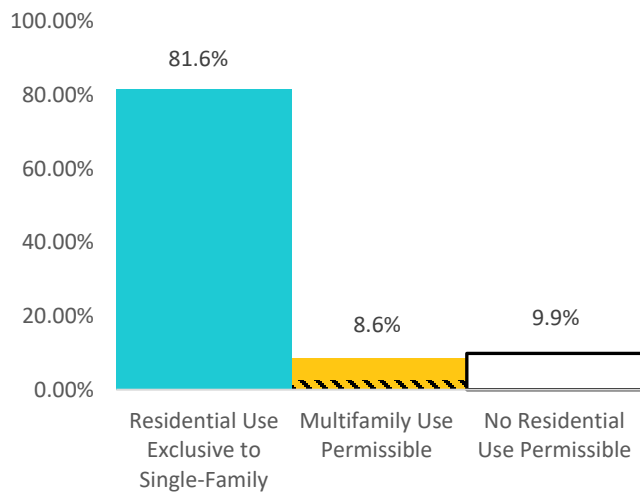
Acres
Number of Single-Family Lots: 6493
Median Lot Size: 1.07 acres


Parma City School District



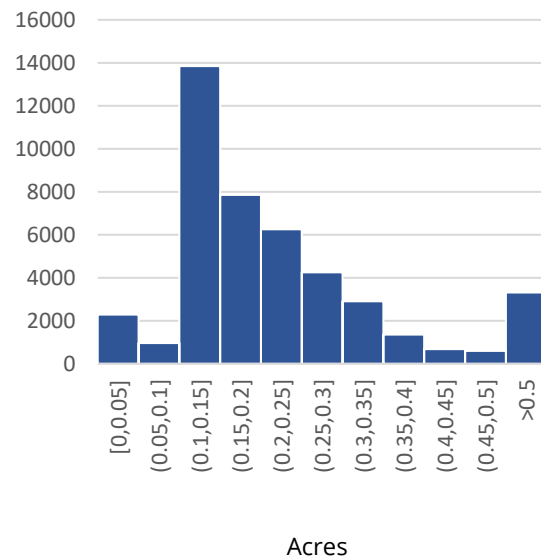
0 1 2 Miles
1:64,000

Permitted Residential Uses



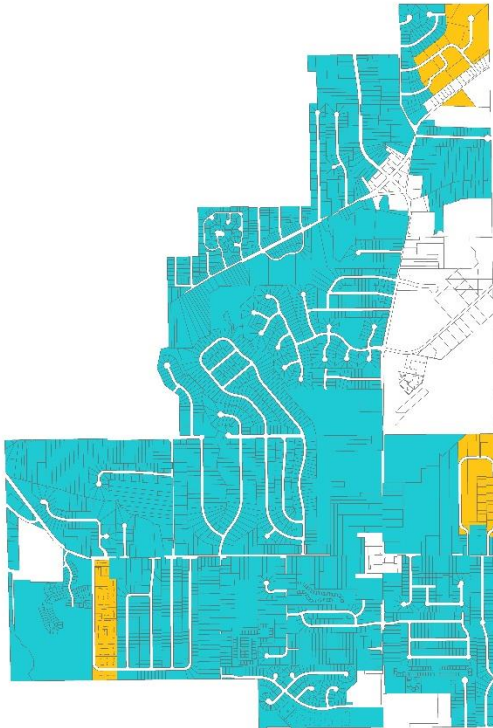
 Single-family housing currently occupies 33.5% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

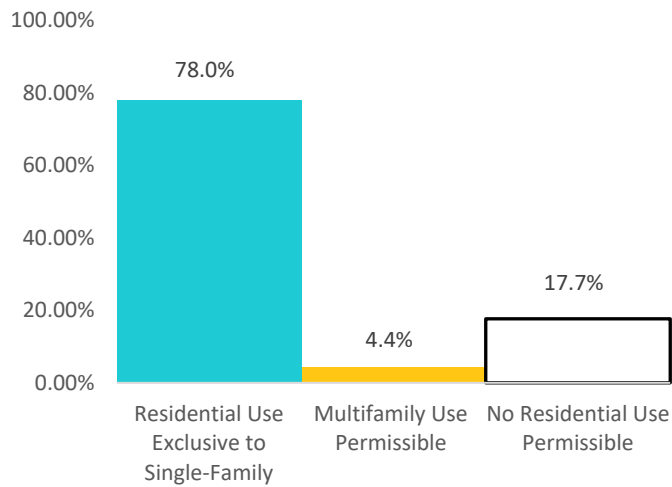


Number of Single-Family Lots: 44333
Median Lot Size: .18 acres

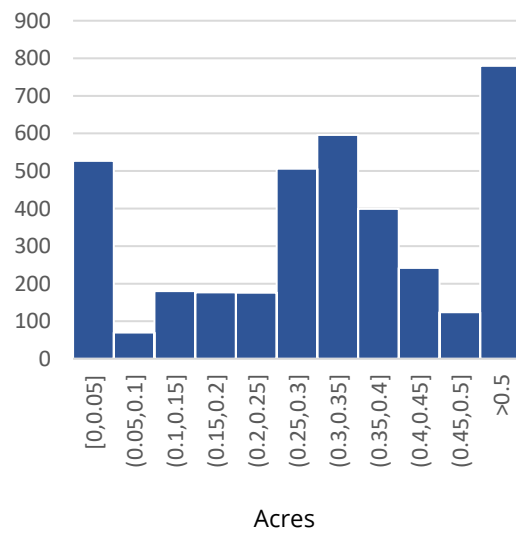
Richmond Heights Local Schools



Permitted Residential Uses

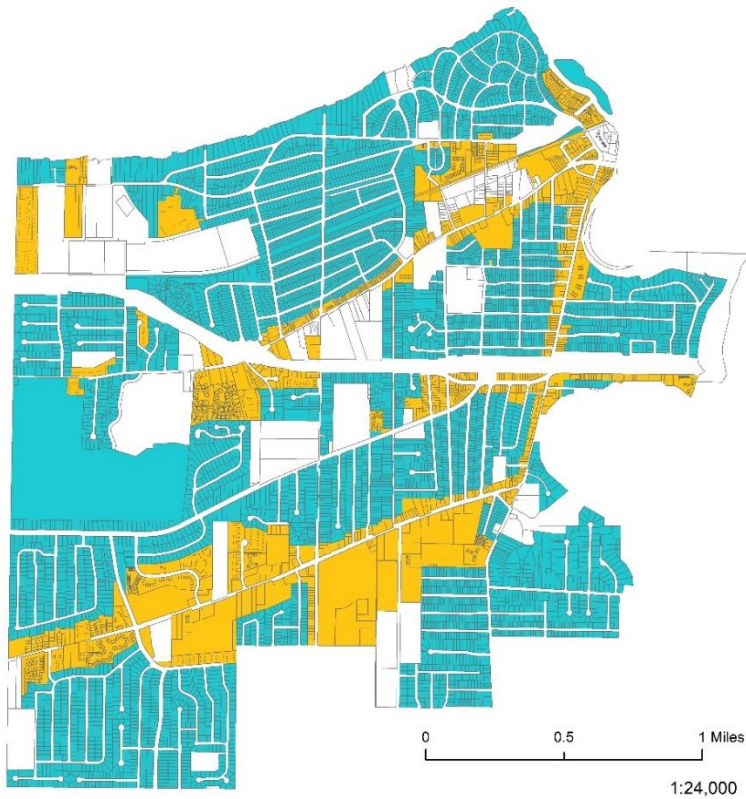


Single-Family Lot Size Distribution

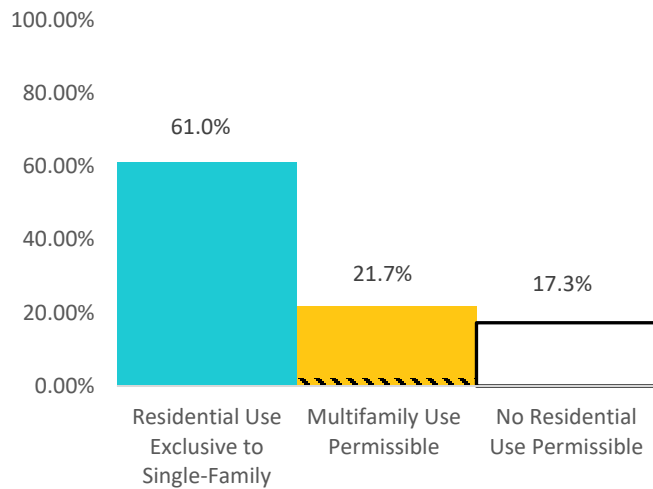



Number of Single-Family Lots: 3777
 Median Lot Size: .34 acres

Rocky River Local School District

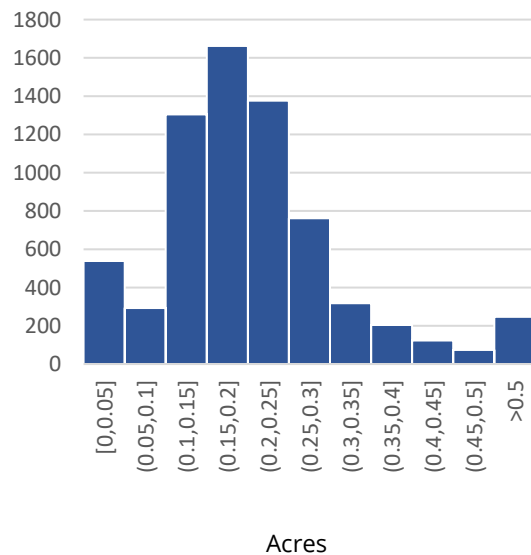


Permitted Residential Uses



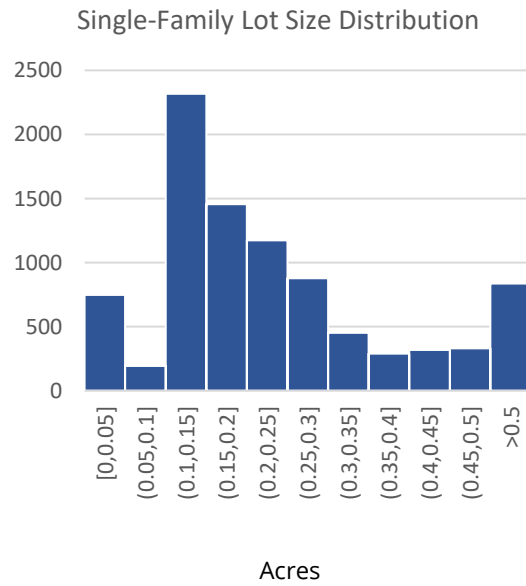
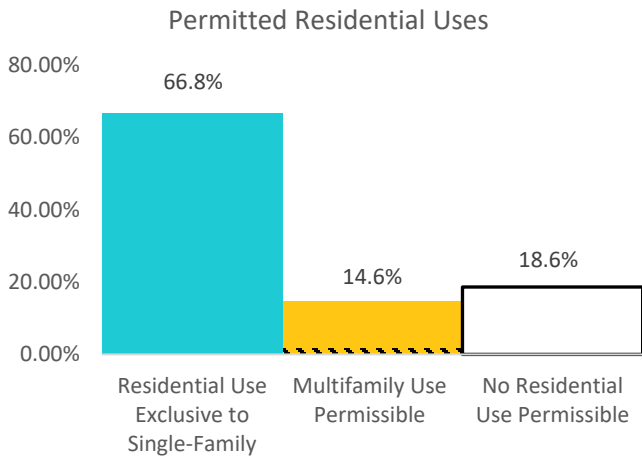
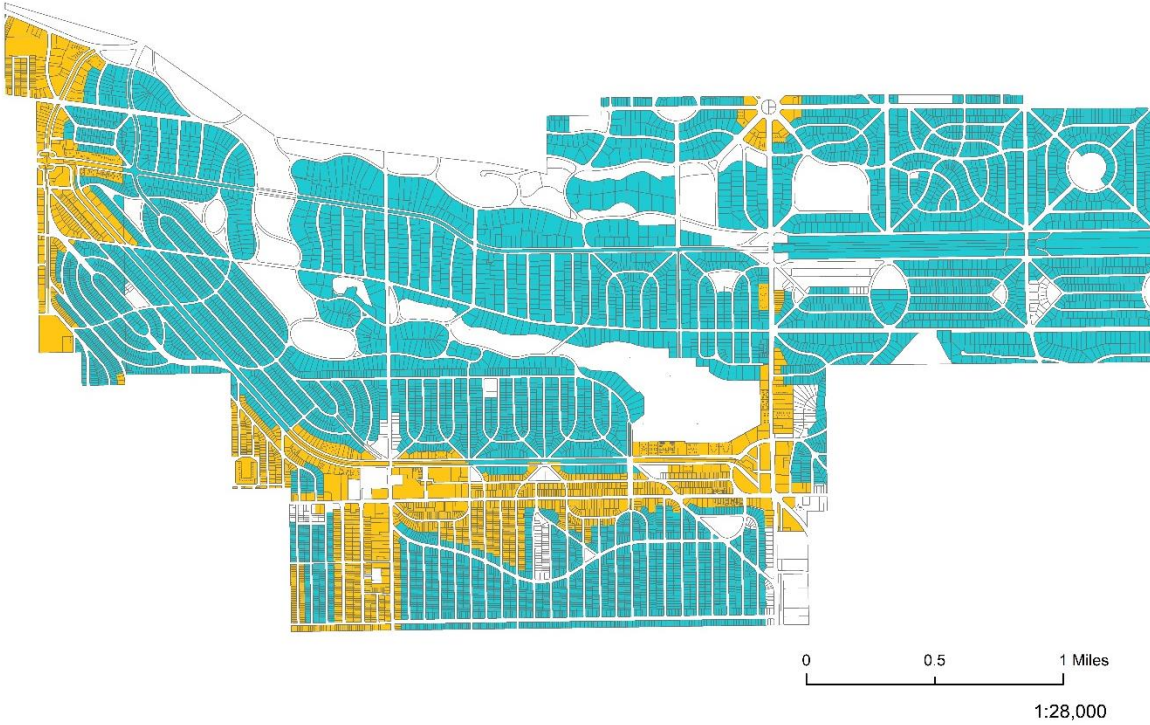
 Single-family housing currently occupies 9.6% of all land zoned to permit multifamily use


Single-Family Lot Size Distribution



Number of Single-Family Lots: 6902
Median Lot Size: .19 acres

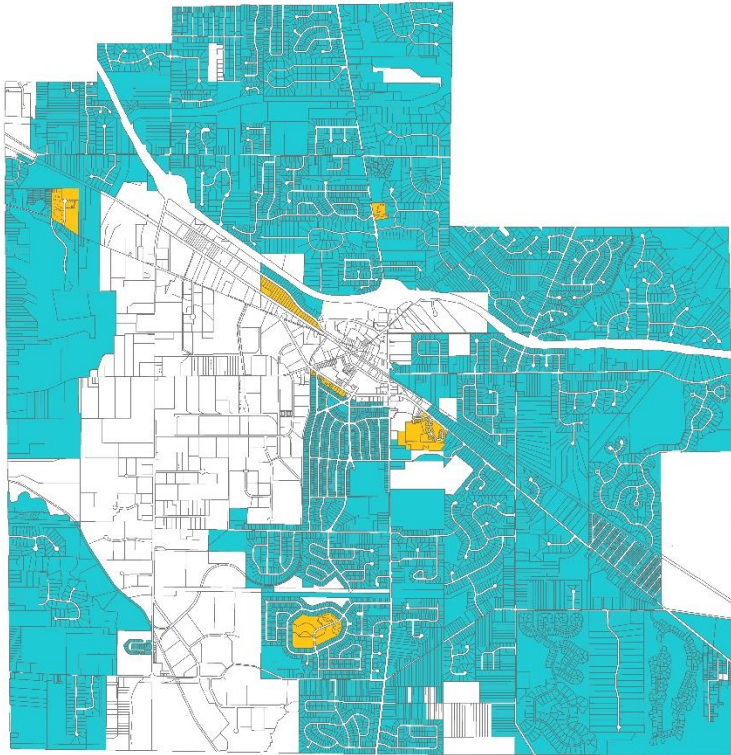
Shaker Heights City School District



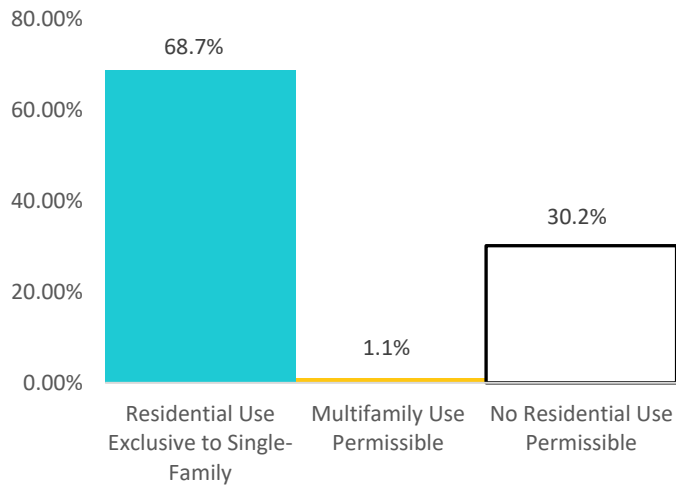
 Single-family housing currently occupies 12.0% of all land zoned to permit multifamily use

Number of Single-Family Lots: 8993
Median Lot Size: .19 acres

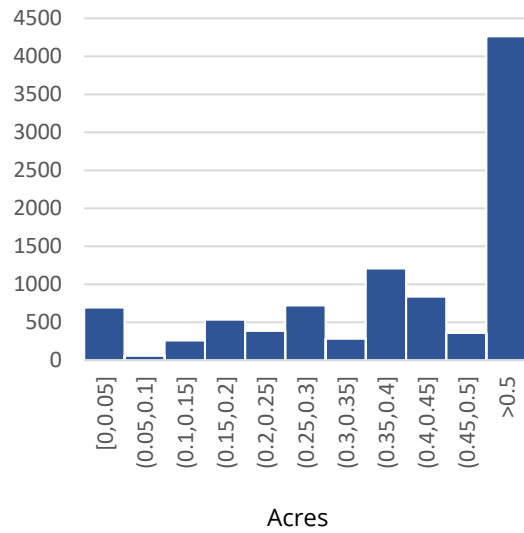
Solon City School District




Permitted Residential Uses



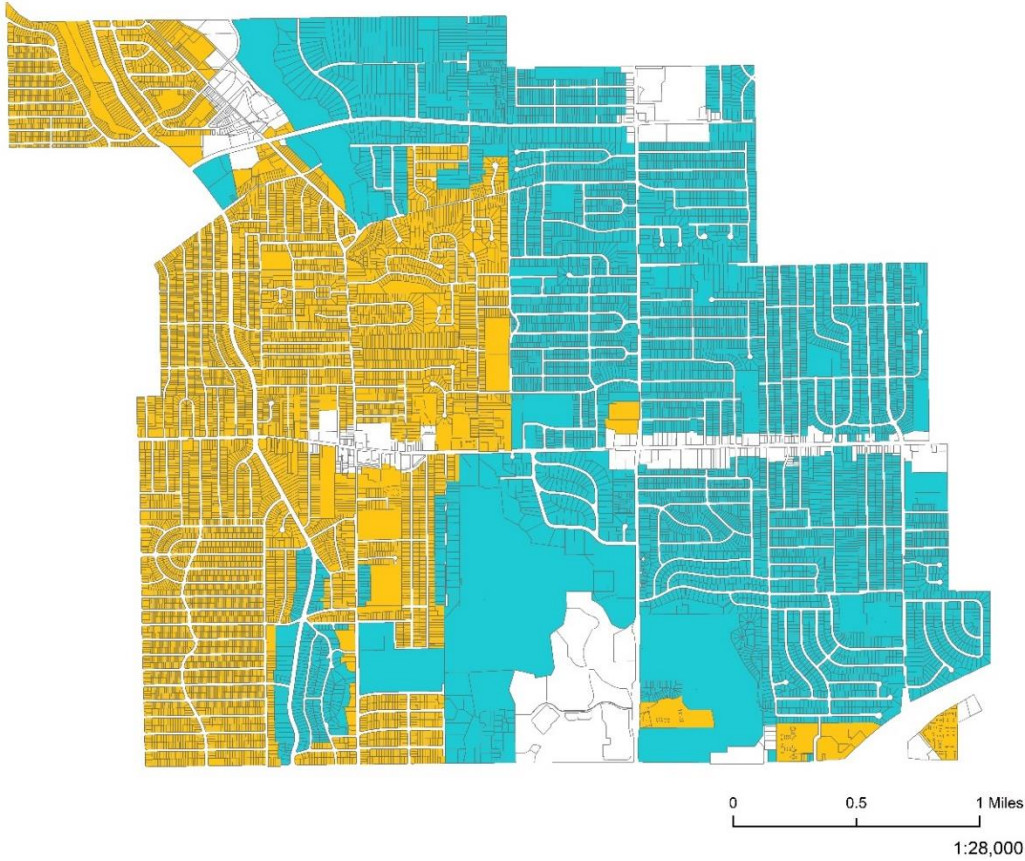
Single-Family Lot Size Distribution



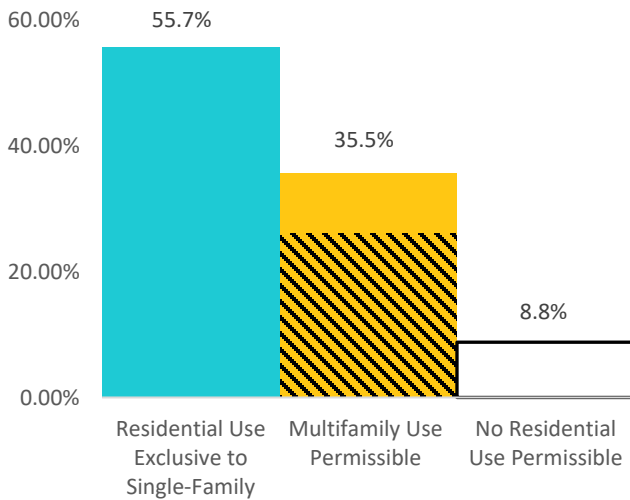
 Single-family housing currently occupies 1.2% of all land zoned to permit multifamily use


Number of Single-Family Lots: 9609
Median Lot Size: .43 acres

South Euclid Lyndhurst City School District

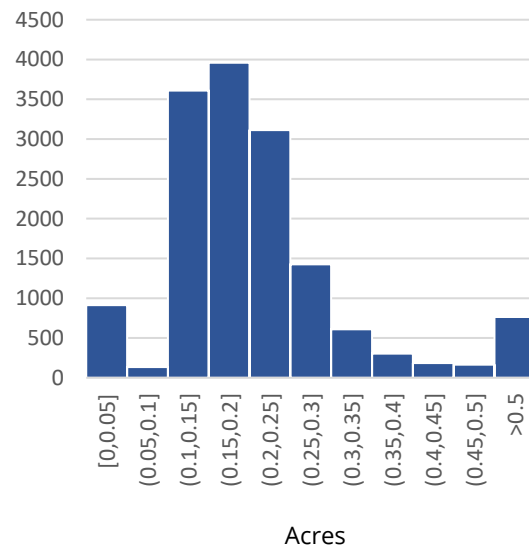


Permitted Residential Uses



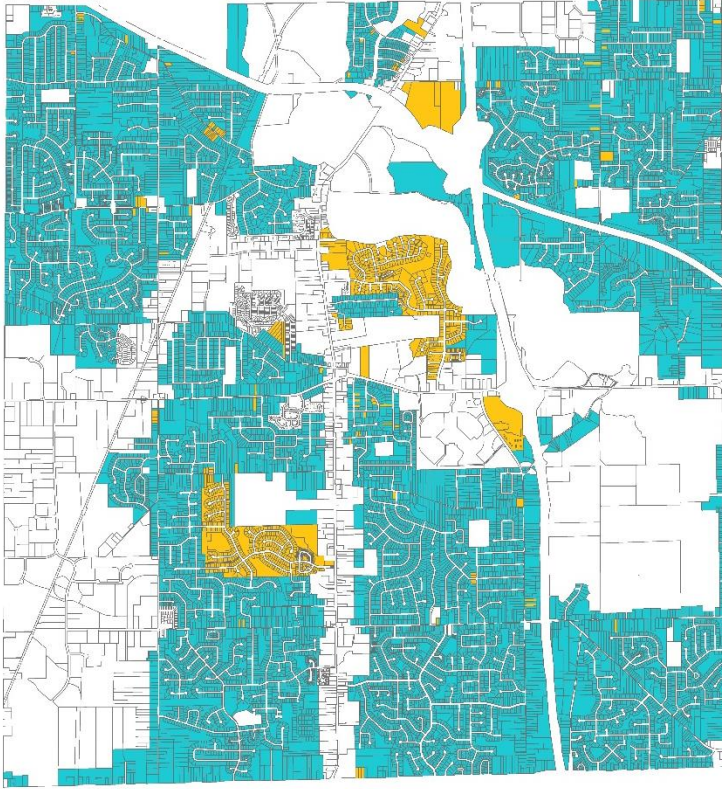
 Single-family housing currently occupies 73.6% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

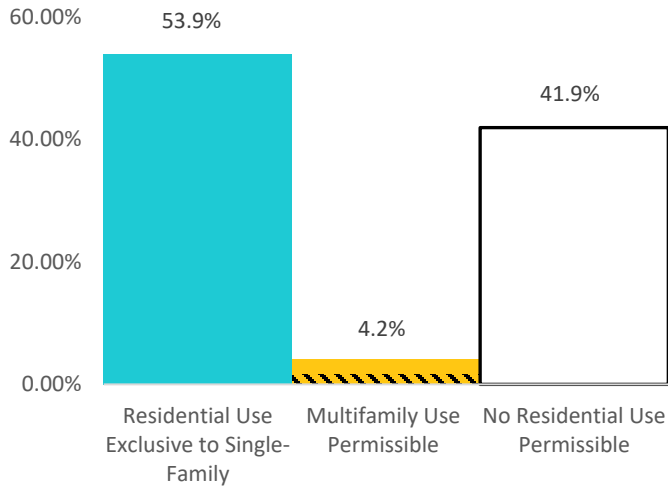



Number of Single-Family Lots: 15184
Median Lot Size: .19 acres

Strongsville City Schools

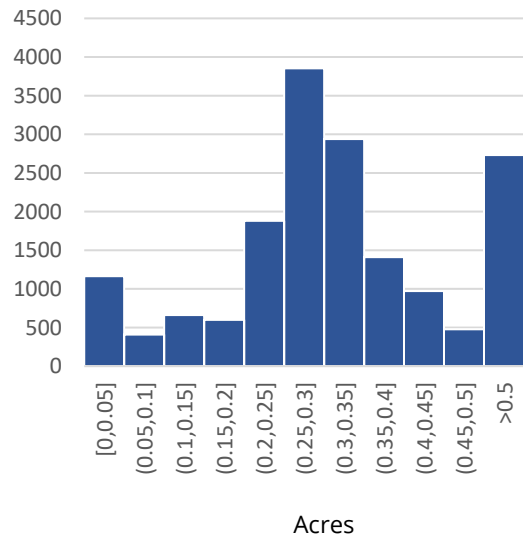


Permitted Residential Uses



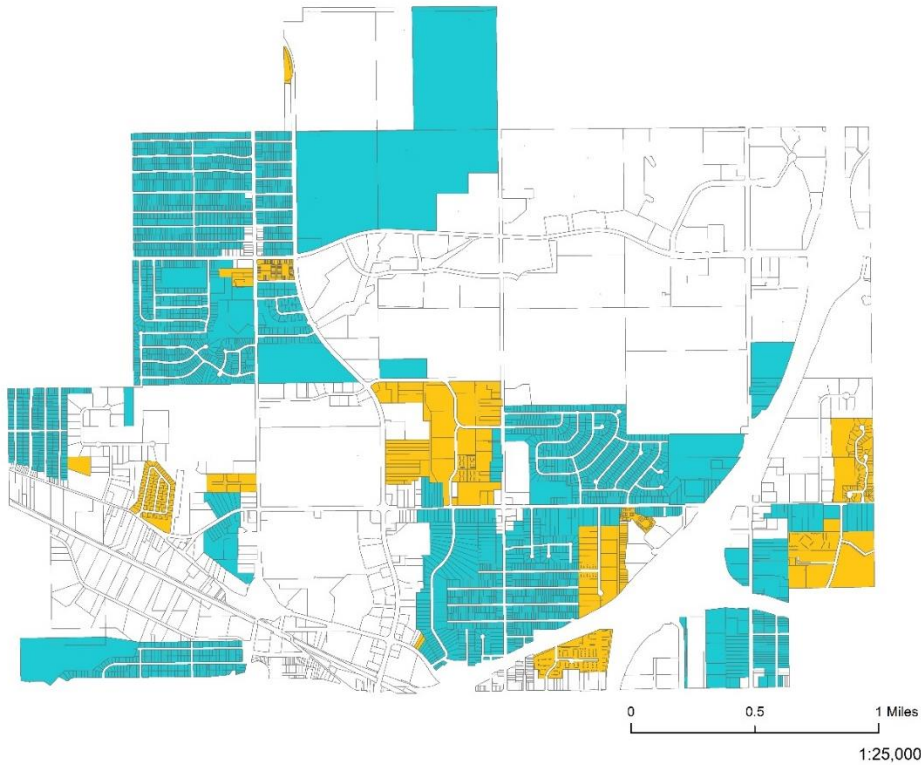
 Single-family housing currently occupies 41.9% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution

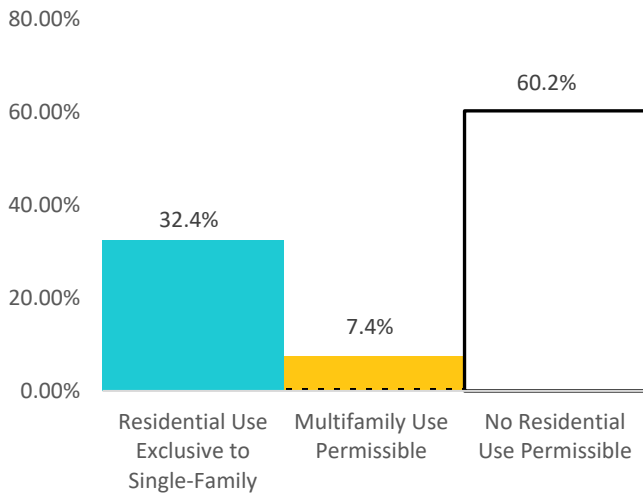


Number of Single-Family Lots: 17095
Median Lot Size: .3 acres

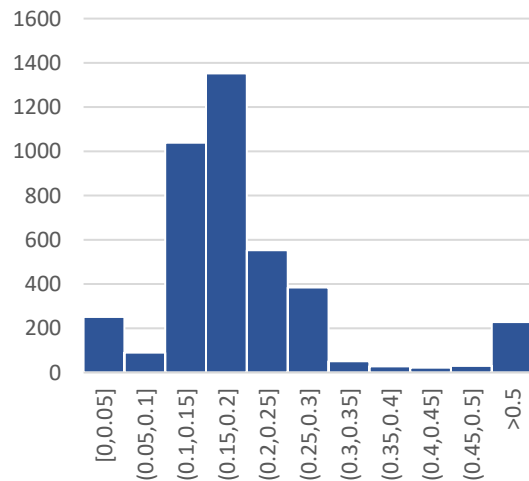
Warrensville Heights City Schools




Permitted Residential Uses



Single-Family Lot Size Distribution

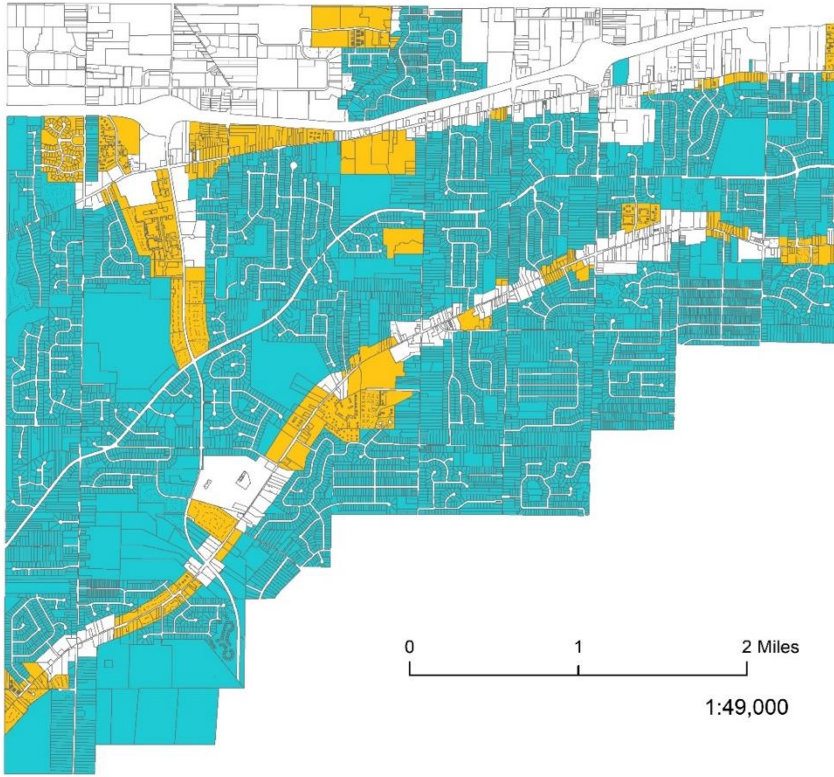


Acres

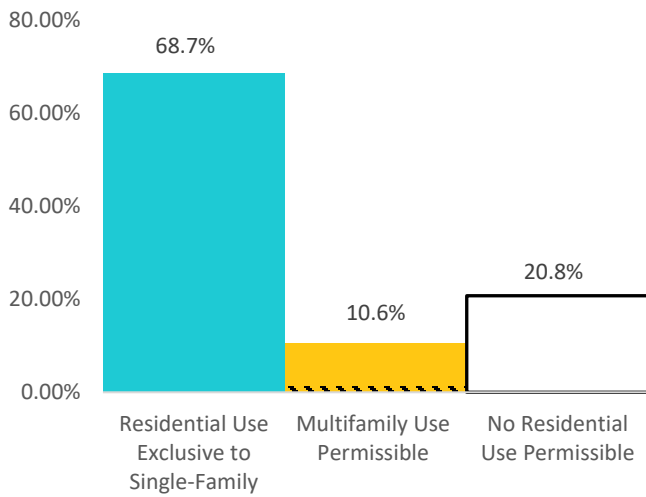
 Single-family housing currently occupies 9.5% of all land zoned to permit multifamily use


Number of Single-Family Lots: 4028
Median Lot Size: .17 acres

Westlake City School District

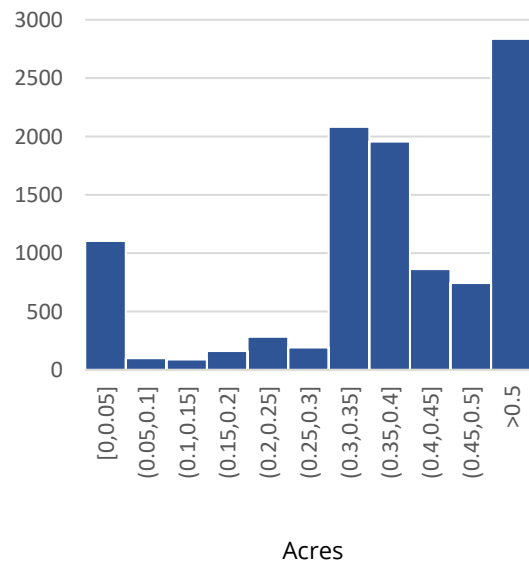


Permitted Residential Uses



 Single-family housing currently occupies 13.4% of all land zoned to permit multifamily use

Single-Family Lot Size Distribution



Number of Single-Family Lots: 10412
Median Lot Size: .37 acres

Group Home Density Restrictions

Some people with disabilities choose to live in group homes. For the purposes of this analysis, “group home refers to housing occupied by groups of unrelated individuals with disabilities.”¹⁷ Zoning codes that treat groups of unrelated people with disabilities differently than groups of related people could violate fair housing laws. According to a jointly-written report from the Department of Justice (DOJ) and HUD: “A local government may restrict groups of unrelated persons from living together if the restrictions are imposed on all such groups.” Because reasonable accommodations are allowed, groups of unrelated people with disabilities must be “given the opportunity to seek an exception or waiver.”¹⁸ Zoning codes that do not provide for such procedures potentially inhibit the rights of people with disabilities.

In a joint statement from the DOJ and HUD, both agencies stated that in general, minimum distance requirements for group homes in zoning codes are inconsistent with the federal Fair Housing Act, and distance requirements will only be upheld on a case-by-case basis where group home over-concentration can be shown.¹⁹ States and municipalities often argue that minimum distance requirements are necessary for integrating residents of group homes into the general community (terms used often include “clustering,” “institutionalization,” and “ghettoization”) and maintaining the residential character of neighborhoods.

Federal courts have offered contradictory rulings on minimum distance requirements for group homes, making it difficult to turn to case law for guidance on the issue, but in most cases, minimum distance requirements have been found to violate the Fair Housing Act and the Fair Housing Amendments Act (FHAA). Though state and local governments often enact minimum distance requirements citing the goals of integration (or preventing “clustering”) and deinstitutionalization for residents with disabilities, some courts have found that discrimination through minimum distance requirements is not an acceptable means to integration or that it is contrary to the goal itself. Density thresholds for group home concentration have not been established and, in many cases, would stand in conflict with several federal court decisions. The anti-clustering justification has been rejected repeatedly in federal courts. In *Larkin v. the State of Michigan Department of Social Services*, the Sixth Circuit Court of Appeals found that the State of Michigan’s 1,500-foot minimum distance requirement for licensing residential facilities violated the FHAA.²⁰ The State argued that it wished to prevent clustering of group homes, or “ghettoization,” and achieve deinstitutionalization for residents. The court found no evidence that clustering would occur in the absence of restrictions. If it did, it would be under the free choice of the person with a disability to live near other individuals with disabilities. The ruling described the minimum distance requirement as “paternalistic” and a policy of “forced integration.” The ruling also stated, “Two . . . facilities 500 feet apart would violate the statute without remotely threatening to recreate an institutional setting in the community.”²¹

Some courts have ruled that the separation of people with disabilities to achieve integration is not a legitimate government interest. In *ARC of New Jersey v. New Jersey* (1996) and *Horizon House Developmental Services, Inc. v. Township of Upper Southampton* (1992), federal courts stated that integration of group home residents was not adequate justification for discriminatory, minimum distance requirements under the FHAA. The *Horizon House* decision noted the following testimony: “Meaningful integration’ is a deep and complex notion; it involves a variety of circumstances, not the least of which is the relationship between individuals and their community. The first step, however, is to be ‘physically included’ and to have choices about where to live.”²²

¹⁷ Joint Statement of the Department of Justice and the Department of Housing and Urban Development, “Group Homes, Local Land Use, and the Fair Housing Act,” (August 18, 1999).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Additional cases where courts rejected the clustering argument include: *Advocacy Center for Persons with Disabilities v. Woodlands Estates*, *ARC of New Jersey v. New Jersey*, *Children’s Alliance v. City of Bellevue*, *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, and *Nevada Fair Housing Inc. v. Clark County*.

²¹ *Larkin v. State of Michigan Department of Social Services*, 89 F.3d 285 (6th Cir. 1996).

²² *ARC of New Jersey, Inc. v. New Jersey*, 950 F. Supp. 637 (D. New Jersey 1996).

Horizon House v. Township of Upper Southampton, 804 F. Supp. 683 (E.D. Pennsylvania 1992).

Daniel R. Mandelker, “Housing Quotas for People with Disabilities: Legislating Exclusion,” *The Urban Lawyer* vol. 43

In some cases, courts found that a municipality's refusal to grant a reasonable accommodation by waiving a minimum distance requirement violated the FHAA. In *Oconomowoc Residential Programs Incorporated v. City of Milwaukee* (2002), the Seventh Circuit Court declined to decide if the City's minimum distance requirement itself violated the FHAA.²³ The Court did decide that the City failed to provide a reasonable accommodation, when requested, to residents with disabilities choosing to live in group homes, thus violating their right to enjoy an equal opportunity to housing by enforcing its minimum distance requirement under FHAA.²⁴ Confusing the matter somewhat, the Court of the Western District of Washington, in *Children's Alliance v. City of Bellevue* (1997), found that even the offer of reasonable accommodation does not validate a minimum distance requirement under the Fair Housing Act.²⁵

In fewer cases, minimum distance requirements have been upheld under the Fair Housing Act by federal courts. In the *Family style of St. Paul Inc. v. City of St. Paul* (1991), the Eighth Circuit Court found that the State of Minnesota's dispersal requirement for group homes was not intended to discriminate against people with disabilities and that deinstitutionalization of people with disabilities was a legitimate goal of the City and State.²⁶ In *Harding v. City of Toledo* (2007), the Court for the Northern District of Ohio upheld the City's 500-foot minimum distance requirement noting that Toledo's minimum distance was substantially smaller than that of the *Larkin* case.²⁷ In two cases, minimum distance requirements were upheld because cities offered reasonable accommodations on a case-by-case basis or offered special permits waving the distance requirement.²⁸

no. 4 (2011), 936-939.

²³ Additional cases cities violated the FHAA by failing to make a reasonable accommodation by waiving minimum distance requirements include: *New Hope Fellowship v. City of Omaha* and *United States v. the City of Chicago Heights*.

²⁴ *Oconomowoc Residential Programs Incorporated v. City of Milwaukee*, 300 F.3d 775 (7th Cir. 2002). Daniel R. Mandelker, "Housing Quotas for People with Disabilities: Legislating Exclusion," 939.

²⁵ *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491 (W.D. Washington 1997).

²⁶ *Familystyle of St. Paul Inc. v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991).

²⁷ *Moretha Harding, et al. v. City of Toledo*, 433 F. Supp. 2d 867 (N.D. Ohio 2007).

²⁸ *Elderhaven Inc. v. City of Lubbock*, 98 F.3d 175 (5th Cir. 1996).

Mandelker, "Housing Quotas for People with Disabilities: Legislating Exclusion," 939-940.

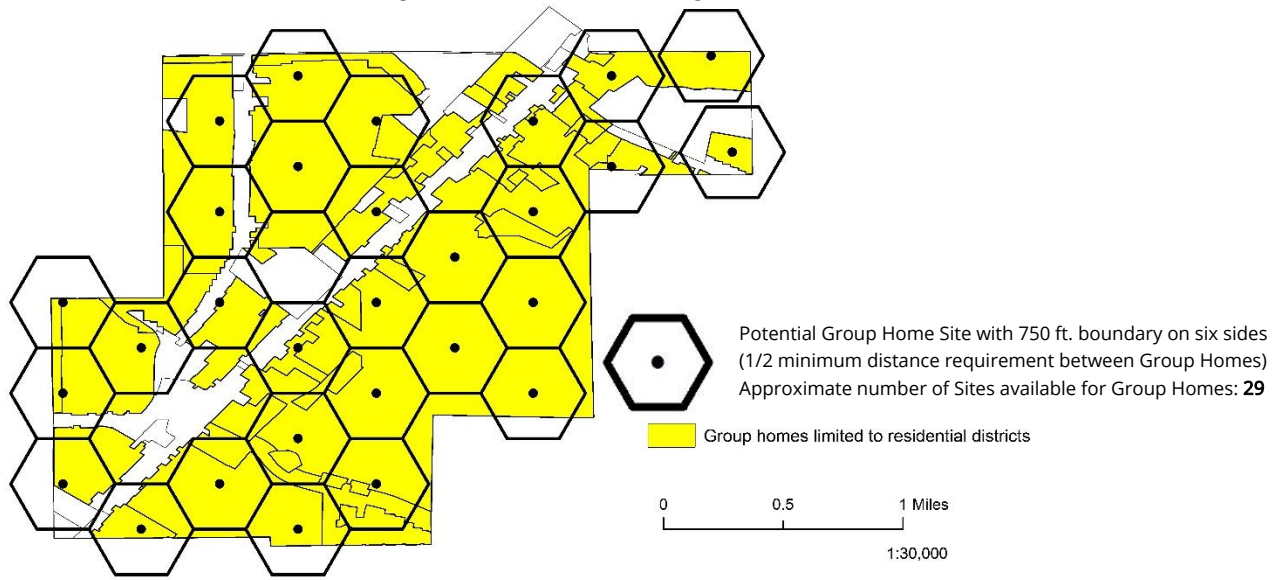
Fourteen municipalities in Cuyahoga County restrict group home density by setting minimum distance requirements between group homes or excluding group homes from certain residential districts:

- East Cleveland – 1500 feet
- Euclid – Low-density group homes are permitted uses throughout most residential districts. 500 feet for high-density group homes in districts where they are conditional uses.
- Fairview Park – 1,000 feet and limited to multifamily districts
- Garfield Heights – 2,640 feet
- Lakewood – 1,000 feet in residential districts. Permitted in some commercial districts.
- Lyndhurst – 1,000 feet
- Maple Heights – Excludes group homes from all single-family and two-family districts. Permits group homes in multifamily districts
- Olmsted Falls – 1,500 feet in single-family districts and 2,000 feet in multifamily districts
- Olmsted Township – 600 feet
- Parma Heights – 1,320 feet
- Rocky River – 1,000 feet
- Shaker Heights – 500 feet
- South Euclid – 600 feet
- University Heights – 2,000 feet

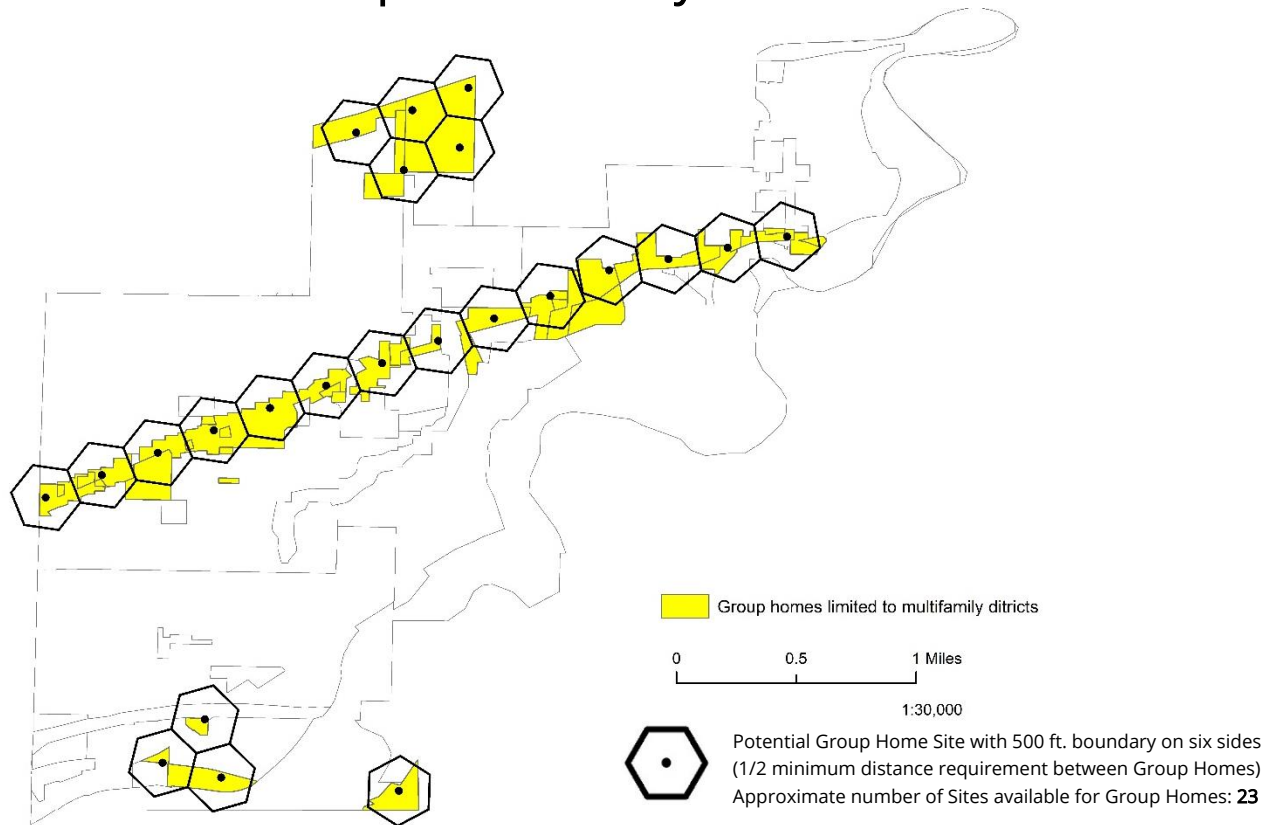
The following is a spatial analysis of these restrictions (except the City of Euclid, which despite a having a minimum distance requirement for high-density group homes, is more permissive for low-density group homes) showing that group home density requirements can severely limit the number of parcels available for group home residences. Many barriers exist to group-home site-selection making it that likely that even fewer than estimated available parcels are available. Inefficient site selection; e.g. siting two group homes more than the minimum distance feet apart; further reduces the overall availability of compliant sites by extending the boundaries of group home exclusion. Low vacancy rate and lack of undeveloped land make inefficient site selection more probable. Other barriers potentially include lack of suitable structures, rising property values, and community opposition to group homes.

To increase housing choice for people with disabilities, The Fair Housing Center recommends that municipalities remove their density regulations for group homes.

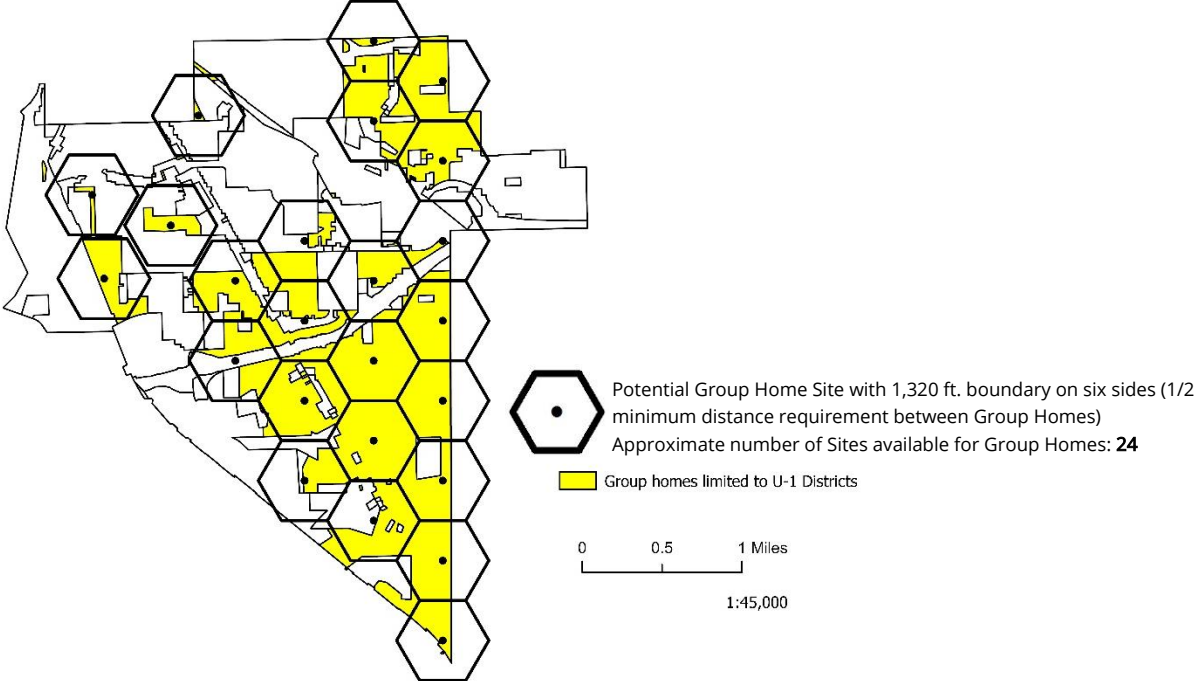
East Cleveland Group Home Density Restrictions



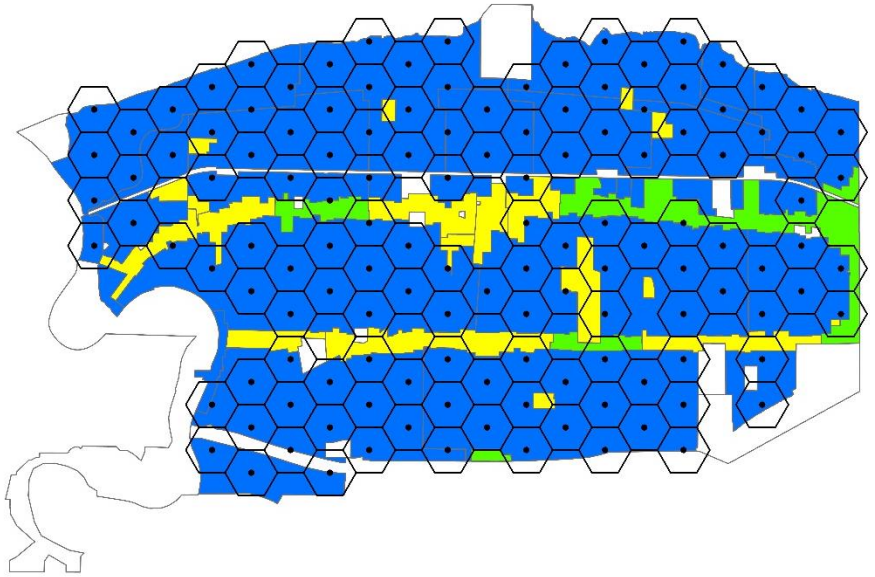
Fairview Park Group Home Density Restrictions



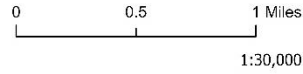
Garfield Heights Group Home Density Restrictions



Lakewood Group Home Density Restrictions

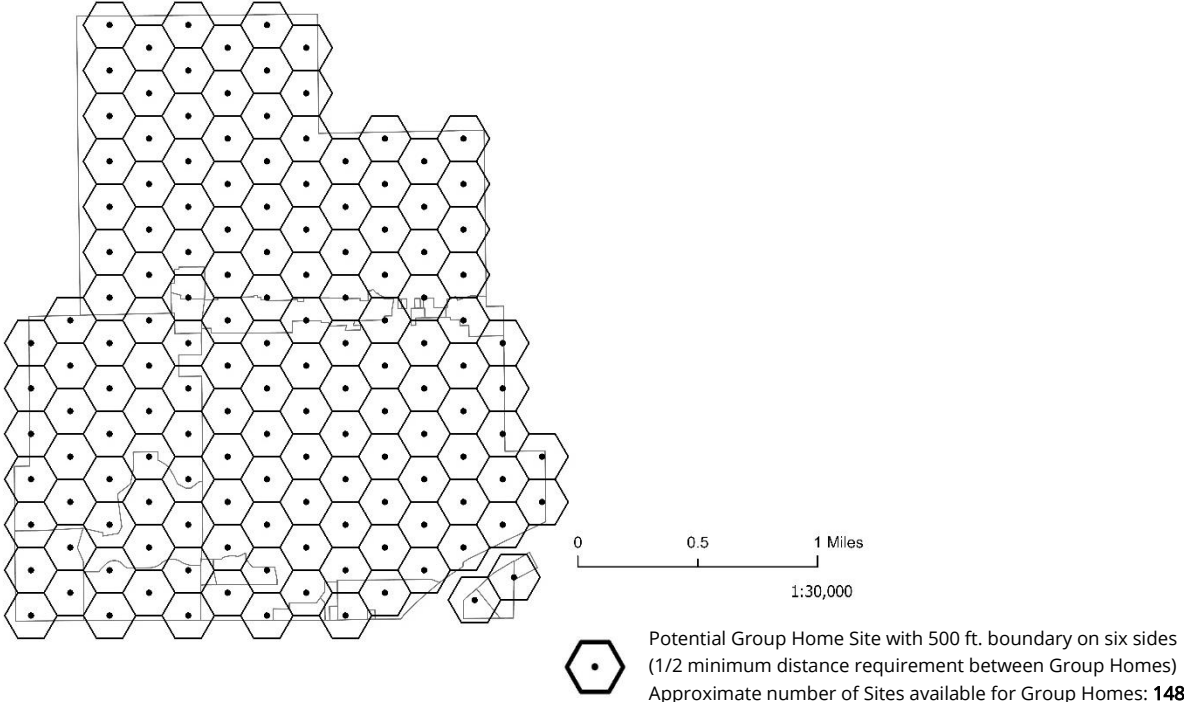


- Residential districts with group home density restriction
- Commercial districts where group homes are a permitted use
- Commercial districts where group homes are a conditional use

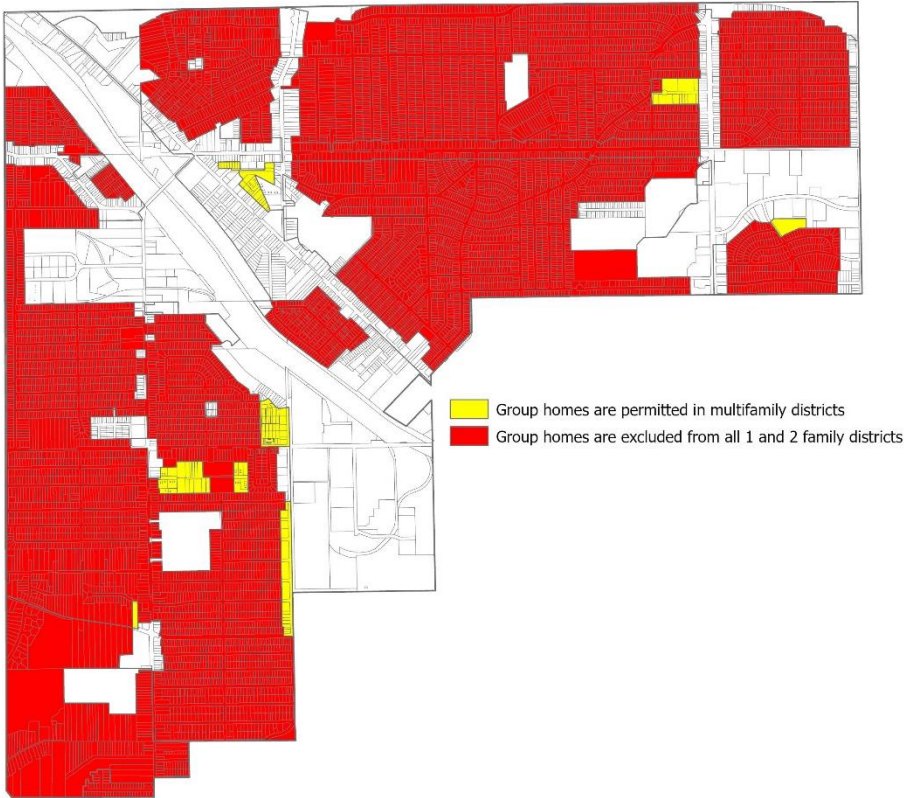


Potential Group Home Site with 500 ft. boundary on six sides
(1/2 minimum distance requirement between Group Homes)
Approximate number of Sites available for Group Homes in residential districts: **132**

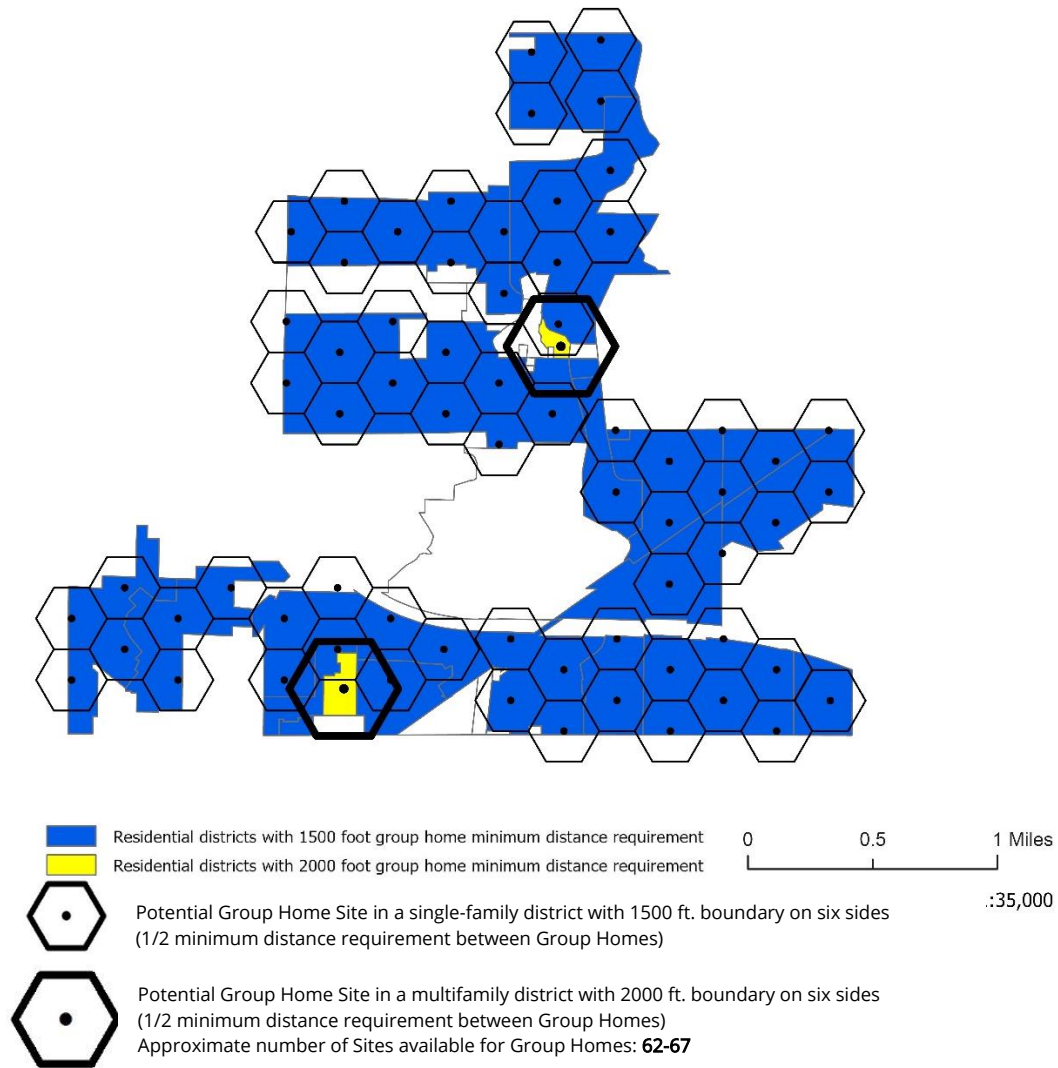
Lyndhurst Group Home Density Restrictions



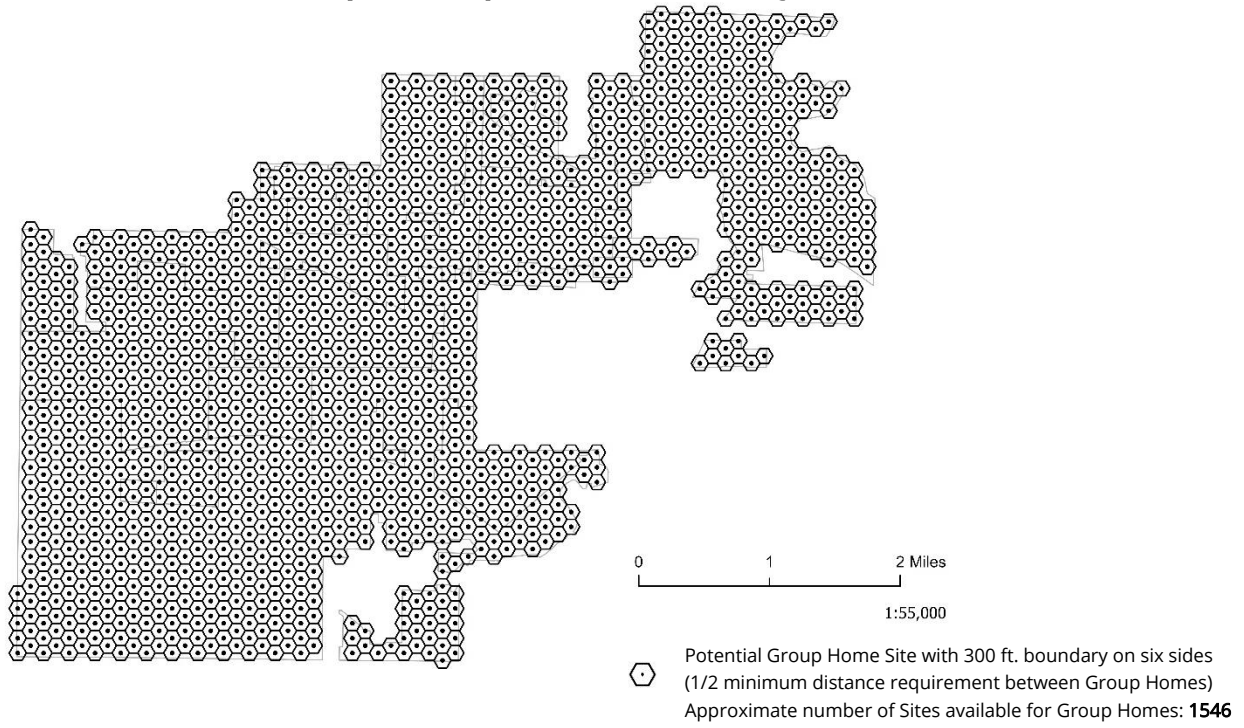
Maple Heights Group Home Density Restrictions



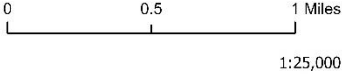
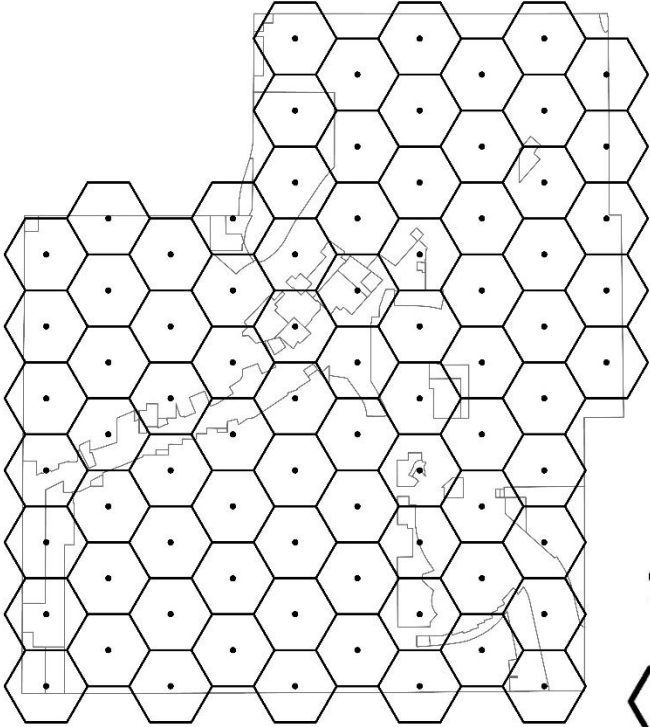
Olmsted Falls Group Home Density Restrictions



Olmsted Township Group Home Density Restrictions

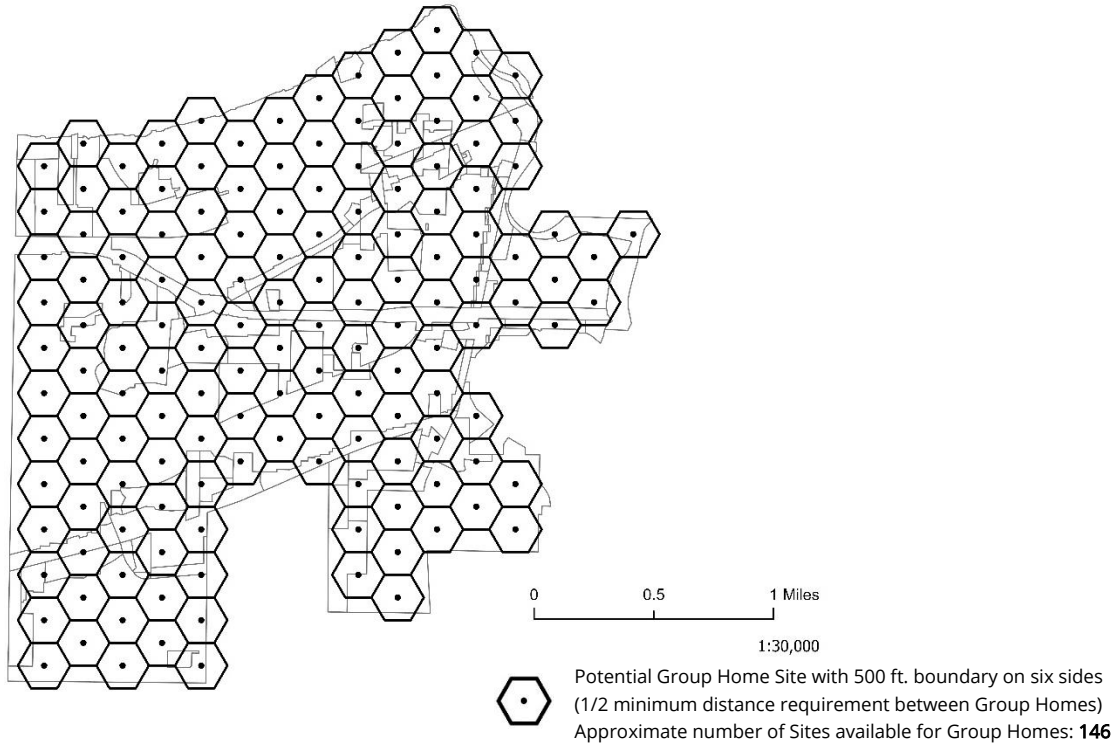


Parma Heights Group Home Density Restrictions

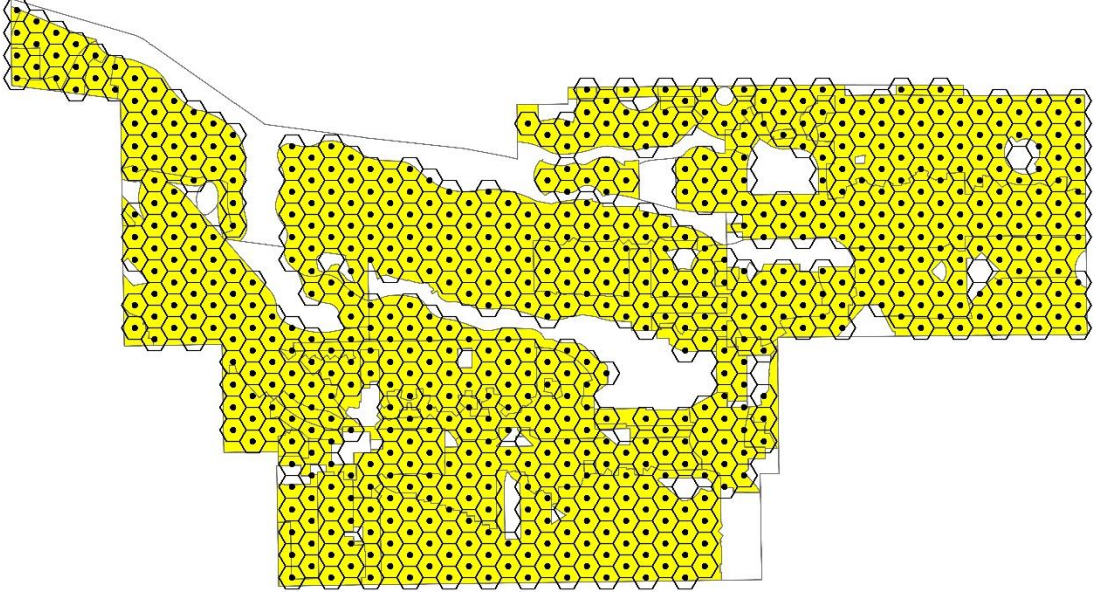


Potential Group Home Site with 660 ft. boundary on six sides
(1/2 minimum distance requirement between Group Homes)
Approximate number of Sites available for Group Homes: **81**

Rocky River Group Home Density Restrictions



Shaker Heights Group Home Density Restrictions



Group homes limited to residential districts

0 0.5 1 Miles

1:30,000

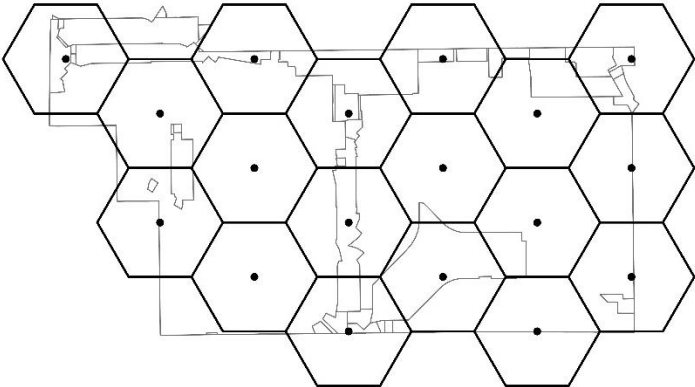


Potential Group Home Site with 250 ft. boundary on six sides
(1/2 minimum distance requirement between Group Homes)
Approximate number of Sites available for Group Homes: **662**

South Euclid Group Home Density Restrictions



University Heights Group Home Density Restrictions



0 0.5 1 Miles

1:25,000



Potential Group Home Site with 1000 ft. boundary on six sides
(1/2 minimum distance requirement between Group Homes)
Approximate number of Sites available for Group Homes: **17**

Fair Housing Center for Rights & Research is a not-for-profit agency whose mission is to protect and expand fair housing rights, eliminate housing discrimination, and promote integrated communities.

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