

Eliminating Regulatory Barriers to Affordable Housing:

Section 5: State, Local, And Tribal Opportunities

January 2021



PD&R



SECTION 5. STATE, LOCAL, AND TRIBAL OPPORTUNITIES

Increasingly strict local and state government regulations have driven up the cost of building new homes and prevented housing supply from keeping up with demand.¹¹² Regulatory barriers are particularly costly in large metro areas along both East and West Coasts, including some of the strongest labor markets. However, some forms of regulatory barriers, such as restrictions on apartments, manufactured housing, and other low-cost housing types, are nearly universal across the country.

Local land use regulations affect all housing development, including federally-assisted housing. The term “land use regulations” is used to refer to the wide range of ordinances and procedures local jurisdictions adopt to govern development within their boundaries, including zoning laws, subdivision rules, and adequate public facility ordinances. While one often thinks of restrictive land use regulations in the context of highly regulated markets with high priced housing, many communities throughout the country limit the production of the “missing middle” housing, that set of diverse, unsubsidized housing options that blend into single family neighborhoods, ranging from bungalow courts, townhouses, duplexes to fourplexes, and courtyard apartments, which is necessary to meet the spectrum of housing needs.

Local jurisdictions’ authority to enact land use regulations is governed by the states. Ultimately, each state determines the amount of authority it will provide local governments to govern development. States also impact housing through a range of regulations, including building codes, environmental policies, tax structure, and many others. Thus, states have an important role to play in increasing housing supply. The Federal Government can support and encourage state and local efforts to revise their land use regulations to increase housing supply, reduce price pressures, and increase affordability with strategies that meet the unique conditions of local housing markets and residents’ needs.

This is a critical time to take action to increase housing production. As the COVID-19 response has reminded communities of the importance of nurses, teachers, first responders, grocery clerks, skilled laborers, factory workers, and janitors as neighbors, housing these essential front-line workers continues to be a challenge in much of the country. Starter homes, garden apartments, and other components of the “missing middle” housing are not being produced to satisfy demand. Allowing more building opportunities can serve as a stimulus for the construction industry. It would “get workers back to work, provide safe and affordable living for those hard hit by this pandemic and get property taxes

¹¹² Joseph Gyourko and Raven Molloy, *Regulation and Housing Supply* (Philadelphia, PA: The Wharton School of the University of Pennsylvania, 2015), <https://faculty.wharton.upenn.edu/wp-content/uploads/2017/05/Regulation-and-Housing-Supply-1.pdf>; Chang-Tai Hsieh and Enrico Moretti, “Housing Constraints and Spatial Misallocation,” *American Economic Journal* 11, no. 2 (2019): 1–39, <http://eml.berkeley.edu/~moretti/growth.pdf>

and other revenue flowing.”¹¹³ A research brief notes continued supply constraints will result in low-price home and rental prices continuing to increase faster than prices for high-price homes, widening residual income inequality between low- and high-income households and hurting the ability of low-income households to build financial resources to protect them from future economic shocks.¹¹⁴ Yet, in the wake of the COVID-19 pandemic, many longstanding patterns may change in response to different housing preferences, greater acceptance of teleworking, and new social practices. Local jurisdictions may want to avoid making sweeping changes before the nature and scope of those permanent changes (if any) are better known.

This section discusses actions governments are taking to increase housing supply. The report does not identify “best practices,” because the effectiveness of a specific policy depends on the local context, including the housing market.

State actions

State governments have a wide range of legal and financial tools that can be deployed to influence local governments’ decisions on land use regulations. This section briefly outlines some of the tools states can use and gives some examples of current policies.

State and local tax policy

Tax policies can encourage or discourage the development and density of housing. For example, California’s Proposition 13, which limits property tax increases, is considered to have motivated jurisdictions to favor retail, office, and industrial properties over residential properties to compensate for a lack of property tax revenues with increased sales and business taxes, and high-end residential over other housing.¹¹⁵ States’ officials may want to consider reviewing their property tax system to ensure it does not create disincentives to behavior the state wants to encourage. Implementing a land value tax, which charges a higher tax rate on land and a lower rate on structures, could encourage owners of expensive land to build more speedily and intensively. Pennsylvania authorized its cities to implement a split rate tax in 1913, charging a higher rate for land than buildings, and more than a dozen

¹¹³ Carol Galante, “Now Is the Time to Embrace Density,” *The New York Times*, May 12, 2020
<https://www.nytimes.com/2020/05/12/opinion/sunday/urban-density-inequality-coronavirus.html>.

¹¹⁴ Jung Hyun Choi, John Walsh, and Laurie Goodman, *Why the Most Affordable Homes Increased the Most in Price between 2000 and 2019* (Washington, DC: The Urban Institute, 2020)
<https://www.urban.org/research/publication/why-most-affordable-homes-increased-most-price-between-2000-and-2019>.

¹¹⁵ Bill Fulton, “How to Fix Proposition 13,” *The Planning Report*, July 18, 2018,
<https://www.planningreport.com/2018/07/18/bill-fulton-how-fix-proposition-13>

cities have chosen to do so.¹¹⁶ Connecticut recently authorized a pilot program to explore land value taxation, but results are not yet available.¹¹⁷

Local jurisdictions also have opportunities to influence development through tax policy. For example, Akron, Ohio, implemented a tax policy designed for a city fighting decline. Its Residential Property Tax Abatement is a 15-year tax abatement on residential investments and construction. If a resident were to invest \$10,000 to replace heating and cooling systems in her home, for example, the taxable assessment would not rise to reflect the new investment for 15 years.¹¹⁸ Tax increment financing is another tool available to jurisdictions to provide an incentive for housing development.¹¹⁹

Incentives

Another financial tool available to states is using funding to encourage localities to undertake regulatory reforms.

- Utah recently updated its General Plan requirements for counties and municipalities to include a moderate-income housing plan element to meet the needs of people of various income levels living, working, or desiring to live or work in the community by, among other things, adopting at least 3 of 23 recommended strategies.¹²⁰ Each jurisdiction must submit an annual report to the state to indicate its progress, including the number of housing units affordable at various income levels. Failure to adopt or implement the plan will limit the jurisdiction's ability to access Utah's Transportation Investment Fund.
- In 2004, Massachusetts adopted a statewide Smart Growth Overlay District (also known as Chapter 40R), which offers local governments financial incentives to increase allowable density near transit stations. The assistance is intended to offset increased demand for local public services, including schools, that accompanies new housing. Cities have a further incentive, as units adopted under the Chapter 40R program satisfy certain requirements under Massachusetts' Chapter 40B, which provides for by-right housing approvals in cities that do not allow sufficient affordable housing to be constructed.¹²¹ Relatively few jurisdictions have chosen

¹¹⁶ Joshua Vincent, "Non-Glamorous Gains: The Pennsylvania Land Tax Experiment," *Strong Towns*, March 6, 2019, <https://www.strongtowns.org/journal/2019/3/6/non-glamorous-gains-the-pennsylvania-land-tax-experiment>.

¹¹⁷ State of Connecticut Office of Policy and Management, *Land Value Taxation Pilot Program* (n.d.), <https://portal.ct.gov/OPM/IGPP-MAIN/Services/Land-Value-Taxation-Pilot-Program>.

¹¹⁸ Joshua Drucker, Geon Kim, and Rachel Weber, "Did Incentives Help Municipalities Recover from the Great Recession? Evidence from Midwestern Cities," *Growth and Change* 50, no. 3 (2019): 894–925. See also City Of Akron, *Residential Tax Abatement Community Reinvestment Area*, <https://www.akronohio.gov/cms/ResidentialTaxAbatement/index.html>.

¹¹⁹ See, for example, Anita Yadavali, Brenna Rivett, James Brooks, and Christiana McFarland, 2020. (A Comprehensive Look at Housing Market Conditions Across America's Cities," *Cityscape* 22, no. 2: 111–131..

¹²⁰ Utah State Legislature, "Affordable Housing Modifications" (SB-1069) (bill text), <https://le.utah.gov/~2019/bills/static/SB0034.html>.

¹²¹ Ann Verrilli and Jennifer Raitt, *The Use of Chapter 40R in Massachusetts* (MAPC, 2009). http://www.mapc.org/wp-content/uploads/2017/09/Chapter_40R_Report.pdf

to adopt a smart growth overlay, likely because state law requires a two-thirds vote, making the effectiveness of Chapter 40R difficult to analyze.

- States allocate Low-Income Housing Tax Credits through a Qualified Allocation Plan (QAP), in which the state identifies priorities. These choices influence what gets built and where.¹²² States could adjust their QAPs to support projects in development-friendly jurisdictions. Mississippi revised its QAP to encourage development in Opportunity Zones.¹²³

State pre-emption for rent control and inclusionary zoning

Because local governments' authority to regulate land use is granted by state governments, states have the legal authority to limit local jurisdictions from adopting certain policies and practices. That is, state governments can pre-empt local regulations.¹²⁴ While pre-emption is not a new concept,¹²⁵ several states have begun using it more intentionally to limit rent control and inclusionary zoning.

- The majority of states pre-empt rent control.¹²⁶
- Several states, including Arizona, Tennessee, Texas, and Virginia, pre-empt local governments from adopting mandatory inclusionary zoning programs. Inclusionary zoning programs require developers to set aside some below-market rate units when building unsubsidized housing developments, which often increases the price of the other units.¹²⁷ Local governments in these states can create voluntary inclusionary zoning programs, offering density bonuses or other financial incentives to developers who choose to designate some units for below-market rate rents.

Housing targets

States that want to encourage or require local governments to produce more housing can set numeric targets for each local government, while allowing local jurisdictions flexibility in deciding how to reach

¹²² Ingrid Gould Ellen, Keren Horn, Yiwen Kuai, Roman Pazuniak, and Michael David Williams, *Effect of QAP Incentives on the Location of LIHTC Properties*, Multi-Disciplinary Research Team Report (Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 2015), https://www.novoco.com/sites/default/files/atoms/files/pdr_qap_incentive_location_lihtc_properties_050615.pdf.

¹²³ Mississippi Home Corporation, *Mississippi Home Corporation (MHC) Housing Tax Credit Program*, Program Bulletin #19-001 (Jackson, MS: MHC, January 9, 2019), https://www.novoco.com/sites/default/files/atoms/files/mississippi_memo_2019-2020_oz_allocation_010919.pdf.

¹²⁴ John Infranca, "The New State Zoning: Land Use Preemption Amid a Housing Crisis," *Boston College Law Review* (March 28, 2019), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3756&context=bclr>.

¹²⁵ Anika S. Lemar, "The Role of States in Liberalizing Land Use Regulations," *North Carolina Law Review* 97, no. 1 (2019): rev. 293, <https://scholarship.law.unc.edu/nclr/vol97/iss2/2>.

¹²⁶ National Multifamily Housing Council, *Rent Control Laws by State* (2019), <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state/>.

¹²⁷ Infranca, "The New State Zoning."

the target.¹²⁸ For instance, some communities might decide to concentrate new development along transit corridors or near job centers, while others choose to allow “gentle density” throughout all residential neighborhoods.

- Illinois, Connecticut, Rhode Island, and New Jersey, have implemented systems by which they periodically determine regional needs and then designate jurisdictional “fair shares” for developing housing at below market rents.¹²⁹ Enforcement is in part through a “builder’s remedy,” which allows developers to proceed with a project if the local government has failed to meet its target or submit a required plan to meet the need. These systems focus on providing housing for low-income households.
- California, Oregon, and Washington have adopted allocation systems that require local jurisdictions to plan for enough housing across all income levels to accommodate the projected population, submit their plans for review, and make local decisions in conformance with the plan.¹³⁰

Reduce costs

States and localities can support greater development by identifying ways in which regulations slow down development and increase costs. In places where land is expensive, allowing more housing units to be built per acre of land could be beneficial. In parts of the country where land is more affordable, reducing barriers that drive up design, materials, and soft costs could generate substantial savings.¹³¹

Zoning rules limit how much housing can be constructed on a given site in numerous ways; which specific rule is the binding constraint varies across locations. Even on land parcels zoned to allow multifamily housing, dimensional requirements such as maximum floor-to-area ratio, lot width, or setbacks may make a particular lot unusable or financially infeasible. Relaxing these requirements could allow developers to make more efficient use of vacant parcels. For instance, Philadelphia allows multifamily buildings on “skinny” lots (as narrow as 11 feet, compared with the typical 16-foot width) to support more infill development.¹³² North Carolina eliminated a minimum unit size for one- and two-unit dwellings.¹³³

¹²⁸ Roderick M. Hills, Jr., and David N. Schleicher, “Balancing the ‘Zoning Budget,’” *Case Western Reserve Law Review*, 62, no. 1 (2011): 81–133

https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5965&context=fss_papers.

¹²⁹ Christopher S. Elmendorf, “Beyond the Double Veto: Housing Plans as Preemptive Intergovernmental Compacts,” *Hastings Law Journal*, 71 (2019): 79-150.

¹³⁰ Elmendorf, “Beyond the Double Veto.”

¹³¹ Hannah Hoyt, *More for Less? An Inquiry into Design and Construction Strategies for Addressing Multifamily Housing Costs* (working paper, Harvard University Joint Center for Housing Studies, Cambridge, MA, 2020), <https://www.jchs.harvard.edu/research-areas/working-papers/more-less-inquiry-design-and-construction-strategies-addressing>

¹³² Philadelphia City Planning Commission, *Philadelphia Zoning Code Information Manual: Quick Guide* (2016), <https://www.phila.gov/media/20190305124635/Philadelphia-Zoning-Code-Quick-Reference-Manual.pdf>.

¹³³ General Assembly of North Carolina, “2019 Building Code Regulatory Reform” (HB-675) (bill text), <https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H675v4.pdf>.

In places where land is expensive, allowing more housing units to be built per acre of land is beneficial. In parts of the country where land is relatively cheap, reducing costs of design, materials, and soft costs could generate substantial savings.

Support development

Many models are available that make housing development easier or less expensive. These range from reducing discretionary processes, to supporting conversion of vacant commercial properties to residential units, to supporting community land trusts to promote long term affordability. Jurisdictions may want to review their current land use regulations and zoning ordinances to identify opportunities to better align the regulations with their housing needs.¹³⁴

Federal agencies can support local efforts through sharing strategies, engaging with jurisdictions that want to make improvements, and supporting innovation in areas such as regulation, construction, and community engagement. This report highlights an array of methods, techniques, and approaches adopted throughout the country aimed at increasing the supply of affordable housing. However, what might work in one part of the country might not work in another. Thus, states have an important role in giving localities flexibility to increase housing supply and meet their own diverse community needs.

By-right development. Allowing by-right development can decrease housing production costs because it eliminates the cost and delay of a discretionary approval process and reduces the price of land per unit. The American Enterprise Institute (AEI) considers this strategy an effective “market-based solution that would substantially ameliorate the current supply-demand imbalance.”¹³⁵ Several stakeholders emphasized the desire for market-driven solutions. Many statutes that allow up to four-unit buildings by right as a positive step, giving owners more choices for developing their land. Other strategies that support market activity should be reviewed and shared: “removing existing hurdles and preventing localities from developing new ones” was suggested as a good template.¹³⁶

Several states have taken action to increase local landowners’ ability to build “gentle density” options by-right.¹³⁷ A number of local jurisdictions have revised their zoning to increase density in strategic locations, for instance, around new transportation infrastructure or in mixed residential-commercial

¹³⁴ Community Builders developed a toolkit for Wyoming jurisdictions to help them align their zoning codes with their housing goals, available at: <https://communitybuilders.org/project/breaking-the-code-toolkit/>

¹³⁵ Edward J. Pinto and Tobias Peter, AEI comment letter, <https://www.regulations.gov/document?D=HUD-2019-0092-0305>

¹³⁶ Edward J. Pinto and Tobias Peter, AEI comment letter.

¹³⁷ Michael Andersen, “Here’s Oregon’s New Bill to Re-Legalize ‘Missing Middle’ Homes Statewide,” *Sightline*, January 10, 2019, <https://www.sightline.org/2019/01/10/oregon-missing-middle-homes-hb-2001/>.

areas.¹³⁸ Denver, CO adopted a hybrid form-based and context-based zoning code in 2010, which a roundtable participant noted has provided more options for landowners. As with most land use regulations, the appropriate strategy depends on the local context.

Form-based codes. Form-based codes reflect a particular type of “place” or built environment based on a collective or shared vision of the kind of community resident’s desire, with accepted cultural norms and social habits. The goal is to establish guidelines for the design of streets, open space, and other physical features of the built environment rather than on the separation of building types or uses typical of traditional zoning. Ideally, the form-based code reflects a mix of uses, serving as a land development plan that allows most daily needs to be located in close proximity to where people live, work, and play. Its focus should be on regulating the form of the built environment, promoting interconnected streets that center the pedestrian, and paying particular attention to neighborhood characteristics that reflect resident desires—whether those desires include increasing or reducing density.

HUD’s Regulatory Barriers Clearinghouse has compiled examples of form-based code adoptions across the country. These include:

- Addison, Texas used a form-based code to create mixed-use housing development and commercial building types in its inner-ring suburban community that incorporate multi-modal transportation options for its residents.¹³⁹
- Billings, Montana adopted a long-range development plan focused on creating opportunities for walking and biking and transit-oriented development, with a range of commercial and cultural attractions specifically requested by community residents.¹⁴⁰
- Dover, New Hampshire adopted a “Context Sensitive Zoning” plan while implementing a streamlined application and review process to reduce delays and complexity.¹⁴¹
- Cleveland, OH is currently exploring a form-based code, beginning with a few pilot neighborhoods.¹⁴²

The Richard H. Driehaus Form-Based Codes Award, sponsored by the Form-Based Code Institute (FBCI), recognizes communities that adopt exemplary form-based codes that are models for other

¹³⁸ See New York City: <https://www.politico.com/states/new-york/city-hall/story/2014/02/the-quiet-massive-rezoning-of-new-york-078398>; and Arlington, VA: <https://projects.arlingtonva.us/planning/smart-growth/rosslyn-ballston-corridor/>

¹³⁹ See a brief description of the plan at http://townscape.com/projects/addison_fbc/summary.html

¹⁴⁰ The East Billings form-based code targets designated industrial zones for revitalization efforts, creating viable spaces for commercial and residential development, mixed-use building types that incorporate spaces for retail, cultural events, and recreation. See the Billings Industrial Revitalization District (BIRD) website at <http://www.billingsbird.com/revitalizing-east-billings/>.

¹⁴¹ This website describes the CSZ: <https://www.dover.nh.gov/Assets/government/city-operations/2document/planning/outreach/FBC.pdf>.

¹⁴² The Code Studio site describes the City of Cleveland’s form-based code: <https://www.code-studio.com/cleveland-ohio/>.

jurisdictions.¹⁴³ Driehaus winners include Hartford, Connecticut (2016), which eliminated parking requirements, expanded affordable housing options for its residents, and updated recreational spaces for a bike and walking trail. Planners replaced the 50-year-old zoning code with the new form-based code that consists of three pages of tables and illustrations, with easy-to-read graphics that guide the reader through the standards that apply to their project. The Buffalo Green Code (2017) focuses on streamlining the building permitting process to reduce delays and the costs of environmental review.

Allow and encourage manufactured housing. Manufactured housing is an important source of affordable units, but it is often prohibited or restricted by local zoning ordinances. Revising zoning ordinances to enable families to acquire manufactured housing more widely in the jurisdiction can support an increased supply of affordable homes. Manufactured and other factory-built housing may also be an efficient way for homeowners to acquire accessory dwelling units.

- Oakland, CA has permitted manufactured homes on permanent foundations in all residential areas since 1980. Developers and nonprofit housing providers have turned to manufactured housing to deliver low-cost urban housing solutions. Oakland Community Housing Incorporated uses manufactured housing to provide affordable housing. In its Linden Terrace development, the non-profit placed eight two-story manufactured homes atop ground-level garages that were then sold to low- and moderate-income households.¹⁴⁴
- Washington State requires all manufactured homes on a secure foundation be considered real property for local titling and taxation purposes and requires local land-use regulations to treat HUD Code-compliant manufactured housing the same as traditional site-built housing. The state adopted a law prohibiting discrimination against manufactured housing in 2005. The law spurred local regulatory reform, a deal with a regional power company to subsidize energy efficiency upgrades in manufactured homes, and several model manufactured home communities that attracted national media attention for their innovative designs.¹⁴⁵

Support land banks and land trusts. Other structures are available for reducing housing costs for individuals, such as land banks and community land trusts (CLTs), both of which involve non-profit land ownership. Although frequently grouped together, they offer advantages in different market contexts. CLTs are a form of shared-equity homeownership, in which a non-profit organization (or potentially public agency) retains ownership of a land parcel while homes built on that parcel are purchased by income-eligible households. CLTs generally cap the amount of capital gains homeowners can realize

¹⁴³ Discussion of the Driehaus Form-Based Codes Award can be found at <https://formbasedcodes.org/driehaus-form-based-codes-award/>.

¹⁴⁴ Casey J. Dawkins, C. Theodore Koebel, Marilyn Cavell, Steve Hullibarger, David B. Hattis, and Howard Weissman, *Regulatory Barriers to Manufactured Housing Placement in Urban Communities*, report prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research by the Center for Housing Research, Virginia Tech (Washington, DC: HUD, 2011), https://www.huduser.gov/portal/publications/mfghsg_HUD_2011.pdf.

¹⁴⁵ Dawkins et al., *Regulatory Barriers to Manufactured Housing Placement in Urban Communities*.

when they sell their homes (similar to inclusionary zoning homeownership programs).¹⁴⁶ These two mechanisms – separating the cost of the land from the cost of the structure and capping appreciation when the property changes hands – allow CLTs to maintain long-term affordability, even in rapidly appreciating housing markets.¹⁴⁷ Some CLTs act as developers, producing new housing on land in the trust, while others primarily acquire existing structures.

Land banks are public or non-profit entities that acquire vacant, abandoned, or financially delinquent parcels, such as properties that have undergone tax foreclosure. In the wake of the Great Recession, land banks in cities such as Cleveland and Baltimore played an important role in acquiring foreclosed homes and demolishing vacant structures to mitigate blight in hard-hit neighborhoods. A land bank is an important tool in achieving and sustaining vibrant, healthy, and secure neighborhoods, and its success requires that the land bank’s policies, priorities, and activities complement other community strategies and activities—such as strategic code enforcement, effective tax collection and enforcement, data collection and analysis, and smart planning and community development.¹⁴⁸ Whereas CLTs may act as developers and co-owners of affordable housing, land banks serve an intermediary role, generally focusing on transferring empty parcels to developers or long-term owners.¹⁴⁹ Their ability to convey properties at below market cost provides the opportunity to reduce the cost of obtaining housing.

Eliminate urban containment policies. Urban containment policies have a long history in the United States, beginning with Lexington, KY’s adoption of an urban growth boundary in 1958 to protect its bluegrass and horse farms by requiring most development to take place within the boundary and severely limiting development outside the boundary.¹⁵⁰ Urban containment broadly encompasses a range of regulations that limit or prohibit housing development beyond a specified boundary, including greenbelts, urban service areas, and urban growth boundaries. They are a subset of “growth management” tools.¹⁵¹ Urban containment planning has two basic purposes: (1) to promote compact, contiguous, and accessible development with efficient infrastructure; and (2) to preserve open space, agricultural land, and environmentally sensitive areas.¹⁵²

¹⁴⁶Miriam Axel-Lute, “New Program Aims to Help Community Land Trusts Get to Scale,” *Shelterforce*, April 27, 2018, <https://shelterforce.org/2018/04/27/new-program-aims-to-help-community-land-trusts-get-to-scale/>.

¹⁴⁷ Kenneth Temkin, Brett Theodos, and David Price, *Balancing Affordability and Opportunity: An Evaluation of Affordable Homeownership Programs with Long-Term Affordability Controls: Cross-Site Report* (Washington, DC: Urban Institute, 2010), https://groundedsolutions.org/sites/default/files/2018-11/15%202010-Balancing-Affordability-and-Opportunity_0.pdf.

¹⁴⁸ Payton A. Heins and Tarik Abdelazim, *Take It to the Bank: How Land Banks Are Strengthening America’s Neighborhoods* (Flint, MI: Center for Community Progress, 2014), 12.

¹⁴⁹ Thomas Fitzpatrick, “Ohio’s Land Bank Legislation: Modernizing an Aged Model,” *Journal of Affordable Housing* 19, no. 2 (Winter 2010), 127–146.

¹⁵⁰ <https://blockandlothomes.blog/2020/01/15/urban-service-area/>

¹⁵¹ Rolf Pendall, Jonathan Martin, and William Fulton, *Holding the Line: Urban Containment in the United States*. (Washington, DC: The Brookings Institution, 2002), <https://www.brookings.edu/wp-content/uploads/2016/06/pendallfultoncontainment.pdf>.

¹⁵² Arthur C. Nelson, “Effects of Urban Containment on Housing Prices and Landowner Behavior,” *Land Lines*, 2000, <https://www.lincolnst.edu/publications/articles/effects-urban-containment-housing-prices-landowner-behavior>

Arthur Nelson, who has researched and written extensively on smart growth, identifies the challenges of urban containment policies: “On the one hand, measures aimed at reducing traffic congestion or infrastructure costs, or improving the aesthetic quality of urban areas, are appealing. On the other hand, measures that are seen to limit land supply and potentially cause housing prices to increase are unappealing, particularly to those seeking to expand the stock of affordable housing.”¹⁵³

Reuse of existing properties

An important resource for increasing housing supply is existing properties. New construction is typically more expensive than renovation or rehabilitation. A variety of models are available by which new housing units are created, such as by converting buildings with a non-residential use to housing, rehabilitating existing housing, or enabling more units to be created from existing stock.

An important resource for increasing housing supply is existing properties. New construction is typically more expensive than renovation or rehabilitation. A variety of models are available by which new housing units are created, by converting a non-residential use to housing, rehabilitating existing housing, or enabling more units to be created from existing stock.

Conversion of commercial properties. One strategy that can increase housing supply is converting commercial properties to housing or mixed-use (residential and commercial). While this practice is becoming more common in urban centers, as technology, telecommuting, and preferences have resulted in increasing commercial vacancies, it can also be implemented for vacant suburban strip-malls.¹⁵⁴ This strategy is particularly pertinent as the commercial real estate industry adjusts to the disruption caused by the COVID-19 pandemic. Reusing buildings has been found to generate savings of 10 to 12 percent over new construction. In addition, federal, state, and local incentives, such as New Markets Tax Credits and historic tax credits can further reduce redevelopment costs.¹⁵⁵ Two of FHA’s multifamily mortgage insurance programs, Section 220 and Section 221(d)(4), have been used to insure loans for projects converting buildings, such as commercial buildings, office towers, schools, and hospitals, to residential or mixed use. Jurisdictions may want to review their land use regulations to ensure they do not impose barriers or unnecessary costs to converting commercial properties to residential and mixed uses.

¹⁵³ Nelson, “Effects of Urban Containment on Housing Prices and Landowner Behavior.”

¹⁵⁴ Stockton Williams, “Solving Two Problems: Converting Unused Office Space to Residential,” *Urban Land*, July 22, 2016, <https://urbanland.uli.org/industry-sectors/residential/solving-two-problems-converting-unused/>.

¹⁵⁵ Marianne Eppig and Lavea Brachman, *Redeveloping Commercial Vacant Properties in Legacy Cities: A Guidebook to Linking Property Reuse and Economic Revitalization* (Columbus, OH: Greater Ohio Policy Center, May 2014), https://www.mml.org/resources/sample_docs/ordinances/blight/toolkits-and-reports/redeveloping%20commercial%20vacant%20prop-may14.pdf.

- In 1999, the City of Los Angeles adopted an Adaptive Reuse Ordinance to encourage conversion of vacant commercial buildings in Downtown Los Angeles into housing.¹⁵⁶ LA's City Planning Department estimates several thousand housing units have been created since the ordinance went into effect.¹⁵⁷ The suburban Washington, DC office market has also seen a number of conversions of vacant office buildings.¹⁵⁸ Large commercial parcels such as Big Box stores, shopping centers, or even industrial parks that are not financially feasible for conversion to residential use may be suitable for reuse as community centers, schools, or other anchor institutions that are complementary to residential neighborhoods.¹⁵⁹

Adaptive reuse of historic properties. Historic buildings, such as banks, stores, and schools, offer innovative examples of adaptive reuse. If the historic building will be used for affordable housing, it may qualify for the Federal Historic Tax Credit, which allows a 20 percent tax credit for the rehabilitation of income producing historic properties and provides capital for rehabilitation of historic housing stock or the adaptation of other historic buildings for residential use. The Federal Historic Tax Credit often is combined with the Low-Income Housing Tax Credit, and 37 states have state historic tax credits that can be used with it.¹⁶⁰ Examples of historic commercial properties being preserved and transformed into housing include the following:

- The Boston Store Place, originally home to the Erie Dry Goods Store, was constructed in 1931 in Meadville, Pennsylvania. When The Boston Store closed in 1979, the building sat vacant until it was renovated in 1996 for apartments. In 2019, Housing and Neighborhood Development Service (HANDS) purchased the building, which has 92 affordable housing units, financed through \$825,000 of Low-Income Housing Tax Credits, and 33 market-rate units.¹⁶¹ A brewery and radio stations occupy the commercial space. HANDS is upgrading the property through funding from the Pennsylvania Housing Finance Agency's Revised Community Leveraging Assistance Initiative Mortgage (ReCLAIM) program, a pilot program designed to identify buildings suitable for adaptive reuse incorporating housing and commercial space that support neighborhood revitalization. The ReCLAIM program is also supporting the redevelopment of the

¹⁵⁶ Los Angeles City Planning, "Preservation Incentives," <https://planning.lacity.org/preservation-design/historic-resources/incentives-resources>.

¹⁵⁷ Jenny Schuetz, Genevieve Giuliano, and Eun Jin Shin, "Does Zoning Help or Hinder Transit-Oriented (Re)Development?" *Urban Studies* 5, no. 8 (2017): 1672–1689.

¹⁵⁸ Kathy Orton, "A Man Worked at the IRS for 10 Years. Then He Came Back To Live Where His Cubicle Was." *Washington Post*, October 16, 2019, https://www.washingtonpost.com/realestate/what-once-was-your-cubicle-can-now-be-your-home/2019/10/16/6f12cafe-f01a-11e9-8693-f487e46784aa_story.html.

¹⁵⁹ Ellen Dunham-Jones and June Williamson, *Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs* (Hoboken, NJ: John Wiley and Sons Inc., 2011).

¹⁶⁰ National Park Service, *Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2019* (Washington, DC: NPS, 2020).

¹⁶¹ Ennis Davis, Revitalization: Affordable Housing and Adaptive Reuse," *Modern Cities*, August 22, 2019, <https://www.moderncities.com/article/2019-aug-revitalization-affordable-housing-and-adaptive-reuse-page-2>.

not historic James T. Givner Building in Pittsburgh, PA, from a commercial building into a mixed-use building with six affordable rental units, a restaurant, and a bakery.¹⁶²

- The historic Lima Trust Company Building, built in 1926 in Lima, Ohio, has been converted into a mixed-income residential building.¹⁶³ It contains 37 apartments affordable for families, seniors, and individuals earning up to 60 percent of the area median income and 10 market-rate units. Seven units include ADA features for persons with disabilities, and two have features for persons with sight or hearing impairments. The \$16.8 million development was financed through Low-Income Housing Tax Credits allocated by the Ohio Housing Finance Agency, Federal Historic Tax Credits through the National Park Service, and state historic tax credits allocated by the Ohio Development Services Agency and State Historic Preservation Office. Additional funding includes HOME funds, a 12-year tax abatement from the city of Lima, a permanent bank loan, and a bridge loan.
- In North Carolina, at least 19 historic buildings have been adaptively reused for low-income senior housing since 2000, particularly schools and hospitals.¹⁶⁴ The Paul Braxton School, in Siler City, is one example. Built in 1922, the Art Deco style building was vacant for nearly 25 years until Community Housing Partners converted the 32 classrooms into income-restricted apartments in 1999, using Low-Income Housing Tax Credits and Federal Historic Tax Credits.

Encourage reuse of existing housing stock. A jurisdiction can increase its housing supply by encouraging rehabilitation or reuse of existing stock, which reduces expenses on site preparation, foundation, and building exteriors, even if the interior space requires substantial rehabilitation. This strategy has been successfully used to create affordable housing across U.S. cities.¹⁶⁵

Many stakeholders emphasized rehabilitation of existing housing is typically less expensive than new construction and, while some jurisdictions need new units, others would benefit most by improving existing stock. State and local officials attending a White House roundtable noted the need to rebuild housing stock that was more than 50 years old, including manufactured housing, stressing the need for willing builders as well as financing options.

¹⁶² Pennsylvania Housing Finance Agency, "PHFA Announces Funding To Redevelop Mixed-Use Building in Homewood," *PR Newswire*, July 11, 2019, <https://www.prnewswire.com/news-releases/phfa-announces-funding-to-redevelop-mixed-use-building-in-homewood-300883619.html>.

¹⁶³ Christine Serlin, "Historic Bank Transformed into Mixed-Income Housing," *Multifamily Executive*, July 12, 2019. <https://www.multifamilyexecutive.com/design-development/historic-bank-transformed-into-mixed-income-housing>.

¹⁶⁴ Community and Economic Development Program Interns and Students, *Historic Building Reuse for Affordable Senior Housing* (Chapel Hill, NC: UNC School of Government, November 21, 2013), <https://ced.sog.unc.edu/historic-building-reuse-for-affordable-senior-housing/>.

¹⁶⁵ See, for example, the following: Monica C. Joe, "Adaptive Reuse and Rehabilitation: Connecting Historic Preservation and Affordable Housing Developments in Seattle, Washington," (master's thesis, University of Washington, 2015), <https://digital.lib.washington.edu/researchworks/handle/1773/34199>; and Tris Kee, "Adaptive Reuse of Industrial Buildings for Affordable Housing in Hong Kong," *Journal of Design and Built Environment* 14, no. 1 (2014), <http://jumec.um.edu.my/index.php/jdbe/article/view/5343>

- San Antonio, TX provides incentives for landlords and homeowners for minor and substantial rehab. For example, following substantial rehabilitation of residential properties in local historic districts, city property taxes are frozen at the assessed value before rehab for up to 10 years.¹⁶⁶ San Antonio also offers a deferred, forgivable loan for qualified low- to moderate-income homeowners to rehabilitate substandard and non-code compliant single-family homes to cover the cost of the needed repairs. These repairs focus on health and safety, accessibility, and major system concerns, as well as weatherization and energy savings.¹⁶⁷
- Racine, WI offers loans for structural repairs for homeowners and landlords who lease to low-income residents in buildings with four or fewer units.¹⁶⁸
- Oregon has introduced a program to rehab manufactured housing, funding its Manufactured Home Preservation Fund with \$2.5 million to provide loans of up to \$35,000 per individual homeowner to replace older, inefficient manufactured homes with energy-efficient ones that meet state standards. A regional partnership launched a pilot program to retire aging manufactured homes and replace them with new, energy-efficient manufactured homes that exceed code requirements. Evaluation activities will help the state understand the benefits achieved from the replacement homes, needed financial resources, and challenges of replacing the homes.¹⁶⁹

Creating a housing unit within an existing home, often a form of accessory dwelling units, is another way existing housing can be reused to serve more households. Programs that support homeowners in designing, financing, and managing these units, such as the Alley Flat Initiative in Austin, TX,¹⁷⁰ provide an essential resource to enable more units to be created and more households to benefit, while protecting homeowners from potential predatory actors.¹⁷¹

Support shared housing. Shared housing, a living arrangement in which two or more unrelated people share a house or apartment, ranges from home sharing, where a homeowner rents a room in his home to a person seeking affordable housing, to co-living, in which an individual rents a private room and shares common areas with other tenants. Safe shared housing provides greater flexibility for existing

¹⁶⁶ City of San Antonio, *Local Tax Exemption for Substantial Rehabilitation*, <https://www.sanantonio.gov/historic/About-Us/WhyPreserve/incentives>.

¹⁶⁷ City of San Antonio, *Home Repair Programs—Citywide*, <https://www.sanantonio.gov/NHSD/Programs/Repair>

¹⁶⁸ City of Racine Housing Repair Program, <https://www.racinehousingloans.com/for-landlords/>

¹⁶⁹ ¹⁶⁹ Jagruti Rekhi, Michael Blanford, and Sage Computing staff. “Programs Support Energy-Efficient Modular and Manufactured Housing,” *Evidence Matters* (Winter/Spring 2020), <https://www.huduser.gov/portal/periodicals/em/WinterSpring20/highlight3.html>.

¹⁷⁰ <https://thealleyflatinitiative.org/>

¹⁷¹ The Alley Flat Initiative Proposes a New Sustainable, Green, Affordable Housing Alternative for Austin (Austin, TX: Austin Community Design & Development Center, 2020), <https://thealleyflatinitiative.org/>.

¹⁷¹ See, for example, Karen Chapple, David Garcia, Eric Valchuis, and Julian Tucker, *Reaching California’s ADU Potential: Progress to Date and the Need for ADU Finance* (Berkeley, CA: UC Berkeley, Turner Center and Center for Community Innovation Report, August 2020), http://turnercenter.berkeley.edu/uploads/Reaching_Californias_ADU_Potential_2020_1.pdf.

housing stock to meet current market demands by housing more individuals in a single housing unit. Supporting these efforts may require revising local regulations, such as occupancy limits and density requirements. Resources to help people convert underutilized spaces in their home, safely identify housemates, and learn their rights and responsibilities are needed to support these opportunities.¹⁷²

- Boston created the Intergenerational Homeshare Pilot, a collaboration between the City’s Age Strong Commission, the City’s Housing Innovation Lab, and Nesterly, a shared housing entity specializing in intergenerational housing in the Boston area.¹⁷³ The program matched elderly homeowners who had a spare bedroom with students in search of affordable housing.
- In New York City, the Department of Housing Preservation and Development (HPD) began the ShareNYC initiative in 2018, a pilot program to create or preserve 300 affordable housing units.¹⁷⁴ Co-living corporations partnered with developers and submitted proposals for co-living developments. Under the initiative, Cypress Hills Local Development Corporation and PadSplit are rehabilitating a two-story single room occupancy building to create 11 fully furnished units for low-income tenants.

Infrastructure costs

Many developers identify impact fees assessed by jurisdictions as a significant cost in providing housing. Stakeholders at the roundtables mentioned fees of \$14,000 per unit in Florida, \$50,000 in Montgomery County, MD, \$75,000 in Des Moines, IA, and \$100,000 in Oakland, CA. The fees they mention, while often quite large, may reflect a combination of costs they are asked to bear, only a portion of which is an “impact fee.”¹⁷⁵ Impact fees are common, in part because they enable local governments, which receive little financing from the federal or state government for infrastructure and face financing constraints, to provide the facilities needed for new development without raising taxes.¹⁷⁶ A guide on impact fees explains, “While in theory there are many better ways to finance infrastructure, in practice impact fees often become the path of least political and legal resistance.”¹⁷⁷

Building new housing in a community increases the demand for local public services, such as schools, roads, and parks, all of which fall under the general definition of “infrastructure.” Communities have to

¹⁷² See case study at <https://www.huduser.gov/portal/casestudies/study-09282016-1.html>

¹⁷³ City of Boston, *City Launches Intergenerational Homeshare Pilot Program*, September 2017, <https://www.boston.gov/news/city-launches-intergenerational-homeshare-pilot-program>.

¹⁷⁴ New York City Department of Housing Preservation and Development, “City Reveals Selected Shared Housing Development Proposals,” press release, October 8, 2019, <https://www1.nyc.gov/site/hpd/news/092-19/city-reveals-selected-shared-housing-development-proposals#/0>.

¹⁷⁵ Jurisdictions must comply with specific legal requirements to impose impact fees. . See, for example, *National Housing Conference, Debate and Legal Issues Surrounding Impact Fees*, <https://nhc.org/policy-guide/impact-fees-the-basics/debate-and-legal-issues-surrounding-impact-fees/>.

¹⁷⁶ Newport Partners and Virginia Polytechnic Institute, *Impact Fees and Housing Affordability: A Guide for Practitioners*, report prepared for the U.S. Department of Housing and Urban Development (Washington, DC: HUD, 2008), <https://www.huduser.gov/portal/publications/impactfees.pdf>.

¹⁷⁷ Newport Partners and Virginia Polytechnic Institute, *Impact Fees and Housing Affordability*, 1.

find ways to pay for those services – or accept declines in service quality. Broadly speaking, local governments have two decisions to make about how they pay for infrastructure: (1) whether to pay upfront or spread the costs over a longer time frame, and (2) how broadly to diffuse the costs across different segments of their tax base (businesses versus residents, new residents versus existing residents).

State fiscal environments set the stage for local decisions on infrastructure funding. Local governments have a more limited set of fiscal tools than states or the Federal Government. Localities are not permitted to run deficits.¹⁷⁸ Each state defines how its local governments may raise revenues. Most localities are not allowed to impose local income taxes, for instance, and most states have caps on property taxes, the largest single source of local revenues for most localities, through rate limits, levy limits, and/or assessment limits.¹⁷⁹ States also decide how much to share state-level resources with localities for public services, by passing through federal funds such as CDBG to smaller jurisdictions or redistributing state revenues across localities (for example, California has high levels of redistribution for school funding but has severe limits on property taxes).

Within that context, local governments generally choose to pay for infrastructure through some combination of property taxes, impact fees, special taxing districts, and municipal bonds (debt). How much new housing increases demand for public services – the true “cost” of new housing to the local government – varies considerably by project type. Greenfields development (i.e., on previously undeveloped land) imposes greater needs for roads, sidewalks, water and sewer systems than infill development that can use existing infrastructure.

Restrictions on density and mixes of uses are likely to lead to higher infrastructure costs per capita to serve more dispersed development patterns and handle additional automobile transportation needs that accrue from separated land uses. In addition, land use restrictions near mass transportation facilities make those systems less financially viable, requiring more public subsidies for their operations by lowering fare revenues and farebox recovery ratios.¹⁸⁰

Given the complexity of infrastructure funding, no set of overall “best practices” would apply across the United States. Solutions may vary based on current state policies. The key is to recognize the need to fund local infrastructure and determine an equitable way to apportion the costs.

¹⁷⁸ Jonathan Gruber, *Public Finance and Public Policy*, 5th ed. (New York: MacMillan, 2016).

¹⁷⁹ Bethany P. Paquin, “Chronicle of the 161-Year History of State-Imposed Property Tax Limitations” (working paper WP15BP1, Lincoln Institute of Land Policy, Cambridge, MA, 2015), <https://www.lincolnst.edu/sites/default/files/pubfiles/paquin-wp15bp1.pdf>.

¹⁸⁰ Erick Guerra and Robert Cervero, *Mass Transit & Mass: Densities Needed to Make Transit Investments Pay Off* (UCTC Policy Brief 2011-02, 2011), <https://todresources.org/app/uploads/sites/2/2016/06/mass-transit-and-mass.pdf>.

The key is to recognize the need to fund local infrastructure and determine an equitable way to apportion the costs.

A few general principles have been identified to reduce the burden of impact fees:

- *Certainty and transparency are beneficial.* Fees should be consistently assessed across similar projects, rather than negotiated on an ad hoc basis. Fee schedules should be transparent and readily observable to developers, for instance, posted on the jurisdiction's website. Fees agreed to at the beginning of the project should not be changed during the development process.¹⁸¹ Florida recently enacted a bill that requires counties and municipalities to include data on their impact fees in their annual financial reports, including the purpose and amount of each fee.¹⁸²
- *The timing of when the fee is determined and when it is collected matters.* The cost per unit for schools or transportation may increase significantly during the years the project is in the approval process, according to some developers. Whether payment is due when the permit is issued or when the certificate of occupancy is issued is significant. Developers noted that, when possible, payments for infrastructure should not be frontloaded since expenses will not be recouped until the units are sold or occupied. One recommendation was to have the jurisdiction issue infrastructure bonds that could be funded from impact fees paid over the course of development, giving the jurisdiction access to funds for necessary infrastructure immediately but delaying the imposition of the cost on the developers before they have produced units.
- *The basis on which the fee is imposed (e.g., unit size, unit type, infill/greenfield) influences development, particularly affordable units.* If a locality wishes to encourage density, one comment recommended charging impact fees on a gross land or square footage basis rather than per unit.

Other mechanisms for funding infrastructure may better encourage development. A report by the National Association of Home Builders identified several limitations of impact fees: they cannot be used to pay for maintaining existing infrastructure; they are an unreliable source of revenue, relying on the construction cycle; and they drive up housing costs, among other issues.¹⁸³ The report presents a number of alternatives as possible solutions, including: tax increment financing, community development districts, and state infrastructure banks. State and local governments may want to explore the range of options to find the best way to fund infrastructure in their communities while supporting housing development.

¹⁸¹ Turner Center, *Residential Impact Fees in California* (August 5, 2019), http://turnercenter.berkeley.edu/uploads/Residential_Impact_Fees_in_California_August_2019.pdf.

¹⁸² Florida House of Representatives, CS/CS/CS/HB 1339, Engrossed 3, bill text, <https://www.flsenate.gov/Session/Bill/2020/1339/BillText/er/PDF>.

¹⁸³ National Association of Home Builders, 2007. *Infrastructure Solutions: Best Practices from Results-Oriented States*, <https://www.nahb.org/-/media/NAHB/advocacy/docs/industry-issues/land-use-101/infrastructure/infrastructure-solutions-best-practices.pdf>.

Improve the development and permitting process

A consistent finding in the research was reinforced by stakeholders: a lengthy, unpredictable development process is one of the biggest regulatory burdens to housing development. A roundtable participant from Texas noted, “it’s not about reducing regulations but implementing them in an expeditious manner. Time costs more than the regulations.” A local official in California explained how “builders lost confidence in the town,” when the approval process added considerable uncertainty to a project. A recent article outlines how a local development process affected a development, resulting in a proposed 18-unit affordable building costing \$414,000 per unit being approved more than 10 years later as a 10-unit building, with each unit cost more than \$1 million.¹⁸⁴ States and local jurisdictions have many tools at their disposal to improve the development process. One of the first steps is understanding how many agencies are involved in the review and how many steps the approval requires (e.g., community meetings, preliminary plan, project plan, site plan, forestry plan). Mapping the process can help identify opportunities to remove inefficiencies.

Transparency and data quality

The lack of clear, consistent, transparent information about local development rules is a substantial hurdle to policymakers and developers. Developers have expressed that they cannot assess the potential costs and profits of building housing in the absence of full information on fee schedules, for instance. State policymakers who want to create financial incentives tied to reducing regulatory barriers are hampered by data gaps on what current rules are. States can use several approaches to improve transparency and data quality.

- Require local governments to post up-to-date versions of zoning laws, zoning maps, impact fee schedules, and other development-related regulations on their websites. Recent research finds that California’s cities and counties often do not publish clear, consistent schedules of impact fees, making it hard for developers to assess the financial feasibility of proposed projects.¹⁸⁵
- Post PDF versions of zoning maps or the underlying GIS shape files to enable state policymakers and researchers to accurately determine how land is zoned¹⁸⁶ Improving the data helps to set benchmarks and track changes.

¹⁸⁴ Liam Dillon, Ben Poston, and Julia Barajas, 2020. “Affordable Housing Can Cost \$1 Million per Apartment in California. Coronavirus Could Make It Worse,” *Los Angeles Times*, April 9, 2020, <https://www.latimes.com/homeless-housing/story/2020-04-09/california-low-income-housing-expensive-apartment-coronavirus>.

¹⁸⁵ Sarah Mawhorter, David Garcia, and Hayley Raetz, “It All Adds Up: The Cost of Housing Development Fees in Seven California Cities” (Berkeley, CA: UC Berkeley, Terner Center for Housing and Innovation, 2018), http://turnercenter.berkeley.edu/uploads/Development_Fees_Slide_Deck_Final_1.pdf.

¹⁸⁶ Alfred Twu, “here’s what I’m making with this: a summary zoning map of silicon valley. 6 cities down, about 24 to go,” Twitter, February 29, 2020, https://twitter.com/alfred_twu/status/1233687467691167745.

“Shot clocks” for approvals

The time needed to obtain all required approvals for development can substantially increase the cost of new housing. Some states are granting automatic approval to projects if local governments do not review and decide on applications within a set time period.

- North Carolina requires localities to make decisions on permit applications for one- and two-family structures within 15 days.¹⁸⁷
- Texas requires all cities and counties to respond to a subdivision application within 30 days and to subsequent submissions within 15 days. Otherwise, the plat or plan will be considered approved. A conditional approval or disapproval must be directly related to statutory requirements or ordinances and may not be arbitrary.¹⁸⁸ Dallas created a “gold card” plan that reduced permit approval times for smaller projects to just 45 minutes by giving by-right approvals to developers who have completed mandatory training and consistently submit quality requests.¹⁸⁹
- Florida requires municipalities complete permit reviews within 30 days of application if they have enacted inclusionary zoning programs, providing an additional incentive to developers.¹⁹⁰

Other strategies have been implemented to reduce permitting times, such as one-stop permitting and online submissions and tracking. Goodyear, AZ established a one-stop permit shop for its Planning, Building Safety, Development Services, Economic Development and Engineering departments, a permit by email system, and online permit tracking, and implemented electronic plan review in 2015.¹⁹¹ Jurisdictions have assigned “case managers” to track individual applications through the review process to ensure all local agencies meet required timelines.

Coordination among local agencies

Coordinating among the different local agencies can be a challenge for a developer. For example, the street in front of the development has to be designed to address stormwater management, emergency services, pedestrian and bike usage, among other needs. Creating a collaborative environment and

¹⁸⁷ General Assembly of North Carolina, “An Act to Make Various Changes And Clarifications to the Statutes Governing the Creation and Enforcement of Building Codes,” (bill text), Session Law 2019-174, House Bill 675, <https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H675v7.pdf>.

¹⁸⁸ Legislature of the State of Texas, “An Act Relating to County and Municipal Approval Procedure for Land Development Applications” (bill text), H.B. No. A3167, <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB03167F.pdf#navpanes=0>.

¹⁸⁹ City of Dallas, “Gold Card Announcement 2019–2020,” <https://drive.google.com/file/d/1ZaZ-wBdZQ8iNzKxZ44hNPFgnUoKYQoR-/view>.

¹⁹⁰ Florida House of Representatives, “An Act Relating to Community Development and Housing; Amending S. 125.01055,” CS/CS/HB 7103, (bill text), <https://www.flsenate.gov/Session/Bill/2019/7103/BillText/er/PDF>

¹⁹¹ Kimberly Burnett and Tyler Morrill, *Development Process Efficiency: Cutting Through the Red Tape* (Washington, DC: National Association of Home Builders, 2015), <https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/housing-affordability/development-process-efficiency.pdf>.

having a system to resolve internal government conflicts can reduce costs and delays and provide a more welcoming environment for development.

- Leesburg, VA, recognized for its one-stop permitting system, has extended its integration beyond the paperwork submission phase to reduce silos. In the past, for example, an applicant could receive comment letters from the Departments of Planning, Zoning, and Development, Utilities, and Public Works at different times with conflicting requests. Now, a single project manager is assigned to the application and responsible for consolidating all town and county agency comments to provide a single letter conveying clear and consistent direction to the project engineer and owner.¹⁹²
- Sonoma County, CA created an ombudsman position within its Permit and Resource Management Department to have a single point of contact who provides customer service on individual projects and facilitates process improvements by working within and across divisions to create a more efficient and friendly process for customers and staff.¹⁹³
- The Washington State Legislature established the Governor’s Office for Regulatory Innovation and Assistance in 2007 to work with local governments and applicants to help improve development permitting processes. The Office identified a number of best practices for processing permits, such as pre-submittal discussions and consolidated comment letters, which have been implemented by local governments. In 2012, Washington State created a Local Government Performance Center, an initiative of the State Auditor’s Office, to foster more efficient and effective local government. The Center offers trainings and resources to local government entities, including a Lean Academy to increase process efficiency in local permitting departments. Participating jurisdictions’ processing times have significantly decreased and greater partnership has occurred between the permitting agencies and applicants.¹⁹⁴

As noted above, what works in one jurisdiction may not be effective in another. A roundtable participant lamented that, “We removed barriers, we have all our departments in a room conducting the review at once, yet we still can’t get developers to build mid-range housing.” Other tools may be necessary to support housing production in a specific community.

Construction

Construction costs are affected by land use regulation and associated approval processes, such as a subdivision ordinance’s design features, minimum setbacks, or on-site parking requirements. However, residential construction involves more than land use regulations; it includes environmental regulations, building codes, and a host of other rules.

¹⁹² Burnett and Morrill, *Development Process Efficiency*.

¹⁹³ Burnett and Morrill, *Development Process Efficiency*.

¹⁹⁴ Burnett and Morrill, *Development Process Efficiency*, 20-22.

By the end of 2019, housing production in the United States had increased to more than 1.25 million units from a low of 584,000 units in 2011.¹⁹⁵ COVID-19 was expected to reduce construction in 2020 as a result of government office closures, supply chain disruptions, and efforts to limit worker risks.¹⁹⁶ While many states classified residential construction as essential work, some states and cities did not, halting construction in places like New York State and Boston, MA. In many jurisdictions, local government offices closed, delaying permitting, reviews, and inspections, particularly where online systems were not in place. The National Multifamily Housing Council’s construction survey found about one-half the responding firms experienced construction delays, driven primarily by permitting delays.¹⁹⁷ These challenges may have slowed construction initially, but housing starts increased significantly in July.¹⁹⁸

Reduce construction costs

Changes to zoning and building codes, which strongly influence building size, design, materials and construction techniques, and related regulations such as utility hook-ups, could reduce the “hard” costs of construction, labor, and materials.

Limit local design standards. Local regulations may dictate that new housing meets certain design features or uses specific construction materials, especially on building exteriors. Design standards can be an important component of preserving a neighborhood’s identity and ensuring architectural integrity and diversity. Discretionary approval processes allow existing neighbors the opportunity to weigh in on design features, effectively giving them veto power based on their aesthetic preferences. This can push developers to use more costly materials or incorporate expensive design features.¹⁹⁹ Several states are considering regulatory changes that would allow greater flexibility on design standards.

- Texas has limited cities’ ability to reject building materials if they are accepted by international building codes.²⁰⁰

¹⁹⁵ United States Census Bureau, Survey of New Residential Construction, <https://www.census.gov/construction/nrc/index.html>.

¹⁹⁶ Whitney Airgood-Obrycki, *COVID-19 Will Delay Housing Construction, But For How Long?* (Cambridge, MA: Joint Center for Housing Studies, 2020), <https://www.jchs.harvard.edu/blog/covid-19-will-delay-housing-construction-but-for-how-long/>.

¹⁹⁷ National Multifamily Housing Council, 2020 NMHC Construction Survey (Round 4), July 2020, <https://www.nmhc.org/research-insight/2020-nmhc-construction-survey/2020-nmhc-construction-survey-round-4/>.

¹⁹⁸ U.S. Census Bureau, *Monthly New Residential Construction*, <https://www.census.gov/construction/nrc/pdf/newresconst.pdf>.

¹⁹⁹ Hannah Hoyt, “More for Less? An Inquiry into Design and Construction Strategies for Addressing Multifamily Housing Costs” (working paper, Harvard University Joint Center for Housing Studies, Cambridge, MA, 2020), <https://www.jchs.harvard.edu/research-areas/working-papers/more-less-inquiry-design-and-construction-strategies-addressing>.

²⁰⁰ Brandon Morris, *Cities in Texas May No Longer Restrict Building Materials Approved in International Codes* (Randle Law Office, Houston, TX, July 29, 2019), <http://www.igradyrandlepc.com/local-governmental-entities/cities-texas-building-materials-international-codes/>.

- Arkansas prohibits counties from regulating residential building design elements, which include exterior building color; type or style of exterior cladding material; style or materials of roof structures, roof pitches, or porches; the minimum square footage of a structure; and other architectural components.²⁰¹
- Indiana is considering state pre-emption of design requirements imposed by local governments.²⁰²

Reduce off-street parking requirements. Zoning laws in most jurisdictions require new housing units to include a minimum number of off-street parking spaces, with more spaces required for larger units. The construction costs associated with structured parking in two jurisdictions were typically \$50,000 per space.²⁰³ Costs increase significantly when parking is underground or multilevel because of the costs of digging deeper and the demands parking places on building structure. A requirement of two parking spaces for a two-bedroom unit therefore adds at least \$100,000 to each apartment’s cost in those jurisdictions. Developers may choose to build off-street parking in locations that lack reliable public transportation, because consumers are reluctant to buy or rent homes without dedicated parking spaces.

The challenge is to determine the “right amount” of parking: “Good parking systems are carefully balanced to be specific to their settings and are adaptable to changes over time.”²⁰⁴ This requires consideration of a jurisdiction’s transportation and land use policies. For example, minimum parking requirements in locations well-served by public transit may add costs with less value to consumers.²⁰⁵ In a survey of multifamily housing in the Boston metro area, only 74 percent of multifamily residential parking spots were used.²⁰⁶ A range of policy options are available for jurisdictions interested in reducing parking and the associated costs.²⁰⁷

²⁰¹ Arkansas State Legislature, “Concerning County and Municipal Regulation of Residential Building Design Elements,” Arkansas SB170: 2019: 92nd General Assembly, <https://legiscan.com/AR/drafts/SB170/2019>.

²⁰² General Assembly of the State of Indiana, “Regulation of Building Materials” (bill text), HB 1060—LS 6532/DI 132, <http://iga.in.gov/static-documents/d/c/9/f/dc9f4492/HB1060.02.COMH.pdf>.

²⁰³ United States Government Accountability Office, *Low-Income Housing Tax Credit: Improved Data and Oversight Would Strengthen Cost Assessment and Fraud Risk Management*, September 2018, <https://www.gao.gov/assets/700/694541.pdf>

²⁰⁴ U.S. Environmental Protection Agency, *Essential Smart Growth Fixes for Urban and Suburban Zoning Codes*, EPA 231-k-09-003 (2009), 14.

²⁰⁵ W. Bowman Cutter and Sofia F. Franco. 2010. “Do Parking Requirements Significantly Increase the Area Devoted to Parking? A Test of the Effect of Parking Requirements Values in Los Angeles County,” *Transportation Research Part A: Policy and Practice* 46, no. 6: 901–925; Donald C. Shoup, “The Trouble with Minimum Parking Requirements,” *Transportation Research Part A: Policy and Practice* 33 (1999): 549–574.

²⁰⁶ Metropolitan Area Planning Council, *Metro Boston Perfect Fit Parking Initiative: Phase 1 Report: New Metrics and Models for Parking Supply and Demand* (February 2017), 8.

²⁰⁷ SPUR, *Reducing Housing Costs by Rethinking Parking Requirements*, June 1, 2006, <https://www.spur.org/publications/spur-report/2006-06-01/reducing-housing-costs-rethinking-parking-requirements>.

- Buffalo, NY eliminated all parking minimums in 2016 when the adopted a Unified Development Ordinance.²⁰⁸
- In 2013, Portland, OR reduced minimum parking requirements in exchange for meeting other policy priorities, such as including affordable housing units, providing bicycle parking, or preserving trees.²⁰⁹
- Minneapolis, MN reduced its one-spot per unit parking requirement for new developments near high frequency transit in 2015, implementing a 50 percent reduction for buildings with more than 50 units and eliminating all requirements for smaller buildings. While developers may continue to provide parking to meet lender requirements or market preferences, the greater flexibility may reduce costs.²¹⁰
- Coral Gables, FL adopted a shared parking ordinance in 2016.²¹¹ Shared parking optimizes parking capacity by calculating how different users can share the same parking spaces. This is particularly useful with mixed-use developments, as residents and businesses often need parking at different times.
- Developers also offer innovative solutions. A roundtable participant described a project in which the developer built structured parking that could be transitioned into housing units. The design required an investment of upfront costs but provided future flexibility.

Develop local skills. The San Felipe Pueblo developed 150 homes on land donated from the Tribe after 40 years with no new housing in the community.²¹² The San Felipe Pueblo Housing Authority (SFPHA) used an innovative mix of HUD Title VI and Section 184 loan guarantees and private loans to fund the project. The first 28 units were constructed by a general contractor. The company set up a temporary modular construction unit on-location to save transportation costs and employed some members of the Pueblo. SFPHA realized having a force account crew could lower costs and create sustained employment opportunities so completed the process required under Indian Community Development Block Grant of certifying as a force account crew. The crew of about 40 members built the remaining units, including some of the site development work, enabling SFPHA to employ more Tribal members and control quality and cost. Furthermore, SFPHA has created capacity in areas including construction, management, housing counseling, housing design, and loan processing, which will benefit the Tribe long-term.

²⁰⁸ City of Buffalo, *Buffalo Green Code: Unified Development Ordinance*, <https://www.buffalony.gov/DocumentCenter/View/1785/Buffalo-Green-Code---Unified-Development-Ordinance-PDF?bidId=>.

²⁰⁹ City of Portland Bureau of Transportation, *Off-Street Parking: Management and Guiding Policies*, <https://www.portlandoregon.gov/transportation/article/547704>.

²¹⁰ Eric Roper, "Mpls. relaxes parking requirements to reduce housing costs (blog, MPLS), *Star Tribune*, July 10, 2015, <https://www.startribune.com/mpls-relaxes-parking-requirements-to-reduce-housing-costs/313286521/>.

²¹¹ City Commission of Coral Gables, Florida, "Shared Parking Reduction Standards," (bill text), 2016-23, March 29, 2016, <https://coralgables.legistar.com/LegislationDetail.aspx?ID=2601296&GUID=F9051102-263D-4F78-B144-277D07B08CA9>.

²¹² U.S. Department of Housing and Urban Development, *Office Of Native American Programs Best Practices*, Washington, DC: HUD, https://www.hud.gov/sites/dfiles/PIH/documents/San_Felipe_Pueblo_One-Pager%204-25-2019.pdf.

Building codes

Building codes were created in the early 1900s to minimize risks to property and occupants, with the first code in the United States created by the National Board of Fire Underwriters, an insurance group. Building codes serve an important purpose by assuring residents of the safety of the dwelling units they want to occupy and addressing the quality of the home as collateral for financing. Different codes were developed by different organizations over time. The International Code Council (ICC), established in 1994, brought together three organizations that had developed separate sets of model codes.

The ICC published its first set of “I-codes” in 2000; these include the International Building Code, International Residential Code, International Energy Conservation Code, and mechanical, plumbing, fire and other codes. The ICC provides 15 codes, and each code is amended on a 3-year cycle.²¹³ By 2007, I-codes had been adopted in all 50 states and the District of Columbia.²¹⁴ The codes are typically adopted by jurisdictions on widely varying schedules, with adaptations or omissions by state and local governments creating inconsistencies. The different building codes among municipalities add to the complexity and cost of building homes.²¹⁵

Four areas were identified in which building codes may be barriers to housing production:

- Expanding beyond health and safety. Some were concerned the code required higher cost materials for aesthetic reasons, raising home prices. Several commenters noted the codes benefit specific manufacturers by adopting certain products in the code. Others were concerned the code was integrating aspirational goals (such as energy efficiency), rather than focusing on health and safety. One recommendation was for the ICC to distinguish between “required” and “recommended” or “smart investment” and let jurisdictions consider voluntary incentives for aspirational elements.
 - The LEED and NGBS rating systems are examples of voluntary standards, as is the DOE/EPA EnergyStar program.
 - Maine amended its Uniform Building and Energy Code in 2019 (S.P. 480) to establish an optional energy efficiency code that exceeds the state’s energy code requirements for local government adoption.²¹⁶ The state will maintain a public list of municipalities that

²¹³ International Code Council, “About the International Code Council,” <https://www.iccsafe.org/about/who-we-are/>.

²¹⁴ Federal energy legislation requires each State, within 2 years of the Secretary of DOE’s determination that the most recent energy code would improve energy efficiency, must make a determination whether it is appropriate to revise its code to meet or exceed the successor code. See 42 U.S.C. 6833(a)(5)(B).

²¹⁵ Burnett and Morrill, *Development Process Efficiency*.

²¹⁶ State of Maine, “An Act To Amend the Maine Uniform Building and Energy Code,” S.P. 480 - L.D. 1543 (bill text), 2019, <https://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0480&item=3&snum=129>.

adopt the voluntary appendix. Texas created an optional energy efficiency code for industrialized housing (HB 2456).²¹⁷

- Diminishing returns of ongoing revisions. Each time a new code is adopted, all parties involved in the building and inspection process must purchase the new code book and then learn the changes through a class or self-instruction, imposing significant costs and creating a burden for the jurisdiction's staff as well as builders and engineers. Increased costs from changes to building codes over the past 10 years was identified as the government regulation that was the highest share of multifamily development costs in a 2017 survey, with an average cost of 7 percent of total development costs.²¹⁸ Increasing technical assistance, similar to DOE's help desk for energy efficiency code questions, and transitioning to online materials could be beneficial.
- Application to existing residential buildings. Some commented the codes are designed for new suburban construction, making renovation of older buildings cost-prohibitive by requiring modern standards rather than requiring the building to be safe. Building codes can address that issue by distinguishing between new and legacy elements when existing buildings are renovated. HUD studied the use of Nationally Applicable Renovation Rehabilitation Provisions, which provide a framework to encourage this hybrid approach,²¹⁹ and has funded research on best practices for rehabilitating affordable housing.²²⁰
- Preventing innovation. Building codes have been identified as barriers to innovation that could reduce housing production costs.²²¹ This was noted, for example, in creating "tiny homes," developing housing units in small scale commercial buildings, and other strategies for crafting affordable housing options. One recommendation was to consider code categories based on building size to improve affordability. Stakeholders suggested ways to enable builders to use alternative materials, designs, or methods of construction if supported by valid and appropriately certified research as an alternative to the ICC's evaluation service process. It is not always the building code that hinders innovation; a local inspector or permit reviewer may interpret the code in a way that creates a barrier. More training and better communication may be important components to supporting innovation.

Additional stakeholder recommendations on building codes included the following:

²¹⁷ Legislature of the State of Texas, "An act relating to the energy efficiency performance standards for construction of certain industrialized housing," H.B. No. 2546 (bill text), <https://capitol.texas.gov/tlodocs/86R/billtext/html/HB02546F.htm>.

²¹⁸ Paul Emrath and Caitlin Walter, *Multifamily Cost of Regulation* (Washington, DC: National Association of Home Builders, National Multifamily Housing Council, 2018), https://www.nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=262391&subContentID=712894&channelID=311.

²¹⁹ NAHB Research Center, Inc., *Nationally Applicable Renovation Rehabilitation Provisions*, report prepared for U.S. Department of Housing and Urban Development, Washington, DC, 1997, <https://www.huduser.gov/Publications/pdf/HUD-7842.pdf>.

²²⁰ David Listokin and Kristen Crossney, *Best Practices for Effecting the Rehabilitation of Affordable Housing, Volume 1: Framework and Findings* (Washington, DC: U.S. Department of Housing and Urban Development, 2006), https://www.huduser.gov/publications/pdf/BarriersVol1_part1.pdf.

²²¹ ²²¹ Gabriel Metcalf, "Sandcastles Before the Tide? Affordable Housing in Expensive Cities," *Journal of Economic Perspectives* 32, no. 1 (2018): 59–80.

- Consider regional differences when designing the building codes, as is done with energy codes, since regions have different challenges, such as hurricanes, earthquakes, cold, and heat. A related recommendation was to consider implementing an earthquake zone map so the building code’s seismic requirements are not applied when properties are not in an earthquake zone.
- Building codes could be subject to an affordability review to ensure the focus is on safety and health issues. One example cited by a commenter was how circuit breakers were replaced by GFI breakers, which have now been replaced by Arc fault protectors, increasing electrical costs significantly while providing greater safety. The affordability lens should consider lifecycle costs, not just initial construction costs.
- Recognize the value of resilience features that improve the structural safety of the home and contribute to health benefits (for example, reducing mold lowers the potential for associated respiratory ailments; greater energy efficiency can help the elderly during a summer heat wave). Resilient design and construction of buildings reduce loss of life and property during and after natural disasters and minimize demands on federal, state and local disaster resources. Resilient features may add to home values and lead to insurance savings. For example, the National Fire Protection Association developed the Firewise program to increase the “ignition resistance” of homes in wild-fire prone areas, and certain insurers are providing discounts on homeowners’ insurance for homes located in Firewise communities.²²² However, resilient elements that are cost-effective based on a life-cycle analysis could create upfront costs that affect the affordability of a home or the rent on an apartment.

Vesting

Land use regulations, including zoning ordinances, are often changing, introducing additional uncertainties into the development process. Vesting, which is the point in time when the landowner can expect to develop under a set of rules that will not change, is determined by state law, often through case law. Once vested, applicants’ rights are no longer contingent or conditional; they know they will be able to develop the property as proposed. Later vesting means a longer period of uncertainty with its associated risks. Those risks are a factor in determining the financial feasibility of the project and can affect financing.²²³

In Washington State, rights vest at the time a land use application is submitted. The state court initially implemented this vesting rule through case law, but the legislature then codified it.²²⁴ By contrast,

²²² National Fire Protection Association, “Firewise USA: Residents Reducing Wildfire Risks,” <https://www.nfpa.org/Public-Education/Fire-causes-and-risks/Wildfire/Firewise-USA>.

²²³ Pamela Blumenthal, “Local Land Use Regulatory Regimes and Residential Development Outcomes: An Analysis of Subdivision Review in Four Counties in the DC Region” (PhD diss., George Washington University, 2014).

²²⁴ “Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance,” RCW 58.17.033, <https://app.leg.wa.gov/rcw/default.aspx?cite=58.17.033>

Maryland is a “late vesting state”; the applicant is vested once the “footers are in the ground,”²²⁵ when construction has begun. To address this difficulty, legislation was enacted permitting jurisdictions to enter into Developers Rights and Responsibilities Agreements (DRRAs), which enable owners to vest certain rights to develop property under the regulations in place at the time the DRRA is executed in return for accepting certain obligations relating to development of the property.²²⁶ The jurisdiction may then bargain for additional public benefits in exchange for the certainty.

Vesting is an example of the ways various laws and practices can impede housing production and increase costs, often without any intent to do so. Conducting regulatory reviews, working with developers, and learning from peers are among the steps state and local governments can take to reduce barriers and better meet their residents’ housing needs.

Environmental regulations

Stormwater management

Many stakeholders identified stormwater management as a regulation that is often applied by state and local governments in a way that creates unnecessary burdens. This provides opportunities for potential improvements.

- In Wichita, KS, the city revised requirements for water quality management on development sites based on input from the city’s stormwater advisory group. As an alternative to onsite water quality, developers can pay a fee into an enterprise fund used to prevent water pollution elsewhere. The fund typically makes improvements on agricultural land at a lower cost and at greater environmental benefit than water treatment specifically targeted to a development site. The alternative is particularly important for infill development, where smaller lots and high levels of impermeable surfaces make water treatment more difficult and costly. It encourages reuse of urban lots and increases density, reducing demand for greenfield development.²²⁷ This approach, amending stormwater management regulations and development codes to allow off-site stormwater management, especially for infill and redevelopment areas, has been supported by EPA.²²⁸
- A stakeholder described how a multi-agency, multi-level approval process results in numerous revisions to the water management plans. Using Wisconsin as an example, the stakeholder recommended having a single state-designated entity manage those federal water rules

²²⁵ This standard is based on Maryland case law; see J. J. Delaney, “Vesting Verities and the Development Chronology: A Gaping Disconnect?” *Washington University Journal of Law & Policy* 3 (2000): 603–617. Maryland courts have not recognized zoning estoppels, although the Maryland Court of Appeals has indicated it may consider estoppel in future cases.

²²⁶ Maryland Art. 66B §13.01 authorizes DRRAs.

²²⁷ Burnett and Morrill, *Development Process Efficiency*.

²²⁸ U.S. Environmental Protection Agency, “Essential Smart Growth Fixes for Urban and Suburban Zoning Codes,” 2009, https://www.epa.gov/sites/production/files/2014-01/documents/2009_essential_fixes_0.pdf.

administered by state and local governments. Such an approach, he estimated, could save \$3,000 per home if it were applied in Minnesota.

Environmental reviews

In the 1970s, as the Federal Government enacted the Federal Clean Water Act, Clean Air Act, and other environmental legislation, many states passed their own environmental protection laws to protect open spaces and curtail urban sprawl.²²⁹ These laws, although well-intentioned, have become a significant impediment to housing development, including the construction of infill housing in high demand urban neighborhoods, where housing would enhance environmental quality. States could reduce housing costs by amending these statutes and regulations to make them less burdensome.

One example of such laws and the burdens they impose is the California Environmental Quality Act (CEQA). CEQA is often described as a tool individuals and organizations use to delay projects, create uneconomic approval conditions, or reject multi-family infill developments. As one study explains:

Anti-housing communities can and do use CEQA to indefinitely delay, decrease, or derail new housing. Courts have uniformly declined to enforce any deadline whatsoever for completing the CEQA process, thereby empowering unelected staff as well as local elected officials to take years – sometimes many years and millions of dollars in studies – before approving General Plans and zoning that allows more housing, and as a tool to deny . . . approvals even to housing that complies with these local requirements. The CEQA process can also easily be “slow-walked” and manipulated to quite end it all for politically unpopular housing plans.²³⁰

Over the years, a number of provisions have been added to CEQA to provide exemptions from completing a full Environmental Impact Report for certain types of housing, such as infill development or affordable units, but such exemptions “are narrow and themselves riddled with exceptions. . . . [A] developer hoping to qualify for the Infill Housing in Urbanized Areas near Transit exemption must satisfy no fewer than 27 distinct conditions.”²³¹ A California State Senate report found 42 percent of development across California’s cities and counties received some form of streamlining or exemption through CEQA.²³² When an exemption is granted, it is frequently appealed in court, increasing the

²²⁹ For an example of the range of state laws, see John Randolph, Arthur C. Nelson, Joseph M. Schilling, and Jonathan Logan, *Effects of Environmental Regulatory Systems on Housing Affordability* (Washington, DC: U.S. Department of Housing and Urban Development, 2007), <https://www.huduser.gov/portal/publications/pdf/HUEnvReptFinal.pdf>.

²³⁰ Jennifer Hernandez, *California Getting in Its Own Way: In 2018, Housing Was Targeted in 60% of Anti-Development Lawsuits* (Orange, CA: Chapman University Press, 2018), 10, <https://www.chapman.edu/communication/files/ca-getting-in-its-own-way.pdf>.

²³¹ Christopher Elmendorf. CEQA and Housing: Raising the Baseline (2020), <https://carlaef.org/2020/05/18/ceqa-and-housing/>

²³² Janet Smith-Heimer and Jessica Hitchcock, CEQA and Housing Production: 2018 Survey of California Cities and Counties,” https://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/ceqa_and_housing_production_report.pdf.

development costs and resulting in higher prices and rents. Many individuals responding to HUD's request for information identified CEQA as a regulatory barrier to housing development, particularly the ability to file anonymous lawsuits to delay or stop a project. Eliminating duplicative and anonymous CEQA lawsuits is a frequent recommendation.²³³

Washington State enacted its State Environmental Policy Act (SEPA) in 1971 to require governments and companies to consider the potential negative environmental impact of their projects. A SEPA review is required when a developer proposes a new housing project of a certain size or a city government considers a land use change. If city officials decide the potential negative impacts are not significant, the project receives a Determination of Non Significance (DNS) and can proceed. Otherwise, the project must undergo a more comprehensive environmental review that results in an Environmental Impact Statement (EIS) and may require adjusting a policy or project to better mitigate its impacts. Even if a project receives a DNS, the finding can be challenged by anyone who asserts the impacts are significant and merit a full review for the cost of the filing fee. The review and ruling can take six months or more to complete. Individuals also may appeal the final EIS.

As an example, the Seattle city council introduced a proposal to permit backyard cottages in early 2016. The proposal received a determination of non-significance. Opponents filed a successful SEPA appeal, which required the city to complete a full environmental review. The opponents then filed another appeal, alleging the final impact statement failed to offer less impactful alternatives to the city's plan and did not sufficiently consider the unique character of each neighborhood. Although the city won, the lengthy appeals process delayed implementation of the policy for years. Washington has limited SEPA appeals as part of a housing density bill passed in 2019, exempting city actions to increase density from SEPA appeal. The temporary provision is a first step to removing a duplicative and time-consuming barrier.

Other policies

Rent control

Rent control, a common term used to cover a range of rent regulations, is often adopted to maintain apartments at affordable rents without an explicit government subsidy, instead shifting the burden for below-market housing onto private owners. The objective of rent regulation is to protect existing tenants from rent increases, resulting from price gouging or normal market forces, that would make their housing unaffordable. The programs vary significantly, covering issues such as: how broadly the program applies; how annual increases are determined; the circumstances under which landlords can

²³³ Hernandez, *California Getting in Its Own Way*.

increase rents; tenants' rights in regulated units; when, or whether, units can be deregulated; and how rents are tracked and enforced.²³⁴

More commonly, rent regulations have been adopted in jurisdictions with strict land use regulations and complex development processes that limit the supply of new housing, enabling existing landlords to charge higher rents. California, New York, New Jersey, Maryland, Oregon, and the District of Columbia have rent regulation programs. Thirty-six states expressly prohibit or preempt rent control. The other nine states allow it, but none of their jurisdictions have adopted rent regulations.²³⁵

Economic research, going back to Friedman and Stigler in 1946, has examined the consequences of keeping rents below market rates: a cap on rents would lead landlords to sell their rental properties to earn the market price for the property; landlords may not invest in maintenance since they cannot recoup the cost by raising rents; rent control can lead to a "mis-match" between tenants and rental units as a tenant with a rent-controlled apartment may choose not to move in the future, even if his housing needs change; and with below market rents, renters may consume excessive quantities of housing.²³⁶

A study of an expansion of rent controls in San Francisco found that tenants in rent-regulated units enjoyed lower rents and stayed in their homes longer. Rent regulation led some landlords to demolish their units for new construction or convert them to other uses; these actions lead to a reduction in rental supply, a stock serving higher income individuals, and ultimately higher rents.²³⁷ The resulting restricted supply ends up hurting some of the lower-income renters they are intended to help.²³⁸ Existing tenants benefit from the insurance provided by rent control, but the cost of such insurance is high.²³⁹ Rent control's inability to restrain housing prices is not surprising, as it does not address the problem: lack of housing supply. Instead, it further reduces the quantity of available housing by diminishing the profit incentive to build more rental housing.²⁴⁰ If a jurisdiction wants to provide social insurance against rent increases, it may be less distortionary to do so through a government subsidy or tax credit.²⁴¹

²³⁴ Vicki Been, Ingrid Gould Ellen, and Sophia House, "Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws" (working paper, Furman Center, New York, March 18, 2019), https://furmancenter.org/files/IGE_Working_Paper.pdf.

²³⁵ Been, Ellen, and House, "Laboratories of Regulation."

²³⁶ Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?* (Washington, DC: The Brookings Institution, 2018), <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>.

²³⁷ Been, Ellen, and House, "Laboratories of Regulation."

²³⁸ "Impacts of Filtering and Rent Control on Housing Supply," *PD&R Edge* (2020), https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061520.html?WT.mc_id=edge_June2020&WT.tsrc=Email.

²³⁹ Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?*

²⁴⁰ Adam Millsap, *Rent Control Policies Are Ineffective, Unjust* (Arlington, VA: Mercatus Center, 2015), https://www.mercatus.org/expert_commentary/rent-control-policies-are-ineffective-unjust.

²⁴¹ Jenny Schuetz, *Is Rent Control Making a Comeback?* (Washington, DC: The Brookings Institution, 2019), <https://www.brookings.edu/research/is-rent-control-making-a-comeback/>.

The current attention on rent regulations reflects the pressures many cities face as residents experience rising housing costs. Experience and economic theory suggest that rent regulations are not the best answer as they may reduce the quality and quantity of affordable housing. The most effective long-term solution is to reduce barriers to development and build more housing, more quickly and cheaply.

Government deregulation

Members of the Governors' Initiative on Regulatory Innovation, announced by the Administration on October 21, 2019, are working to extend the President's historic regulatory reform to state, local, and tribal governments. This initiative aims to cut regulations and costs, advance occupational licensing reform, and better align local, state and federal regulations. Focusing on "people over paperwork," government leaders are championing deregulatory and smarter regulation activity. One major area of activity involves passing occupational licensure reciprocity across states, eliminating unnecessary licensure and reducing licensure fees to lessen burdens on employers and encourage opportunities for the skilled workforce. These efforts assist military families who have been unable to work while awaiting an occupational license following a permanent change of station to a new state and low-income workers who are unable to earn a living when they cannot transfer their license to a new state or afford the renewal fees.

Along with regulations reforming occupational licensing, elected officials may want to consider amending regulations to expand home-based business opportunities. A policy brief from Mercatus on helping communities recover from the COVID-19 crisis suggests supporting home-based businesses, such as tax preparers, tailors, daycares, as a source of employment and income that can contribute to making housing more affordable for these business owners.²⁴² Models cited by Mercatus include San Diego, which revised its home-based business ordinance to eliminate burdensome rules and costly permits, instead focusing on activities that bother neighbors, and California and Colorado, which have eased rules for daycares and cottage food production.

Another focus of the initiative is removing regulations that have built up over the decades and create costs and barriers but no longer provide benefits. The Governors of Idaho, Arizona, and Ohio are a few of the champions leading their states in implementing comprehensive regulatory reviews with a directive to reduce regulation that is harming businesses and employees. Applying this approach to land use regulations and other regulations that constrain the supply of housing may further benefit states and their residents.

²⁴² Matthew (Nolan) Gray, Salim Furth, and Emily Hamilton, "Policies to Help Communities Recover: Commuting" (policy brief, Mercatus Center, Arlington, VA, 2020), <https://www.mercatus.org/publications/covid-19-economic-recovery/policies-help-communities-recover-commuting>.