



HOUSING SECURITY Fact Sheet

Zoning Reform

Overview

The U.S. severely lacks affordable housing. According to the National Low Income Housing Coalition, there are only 36 affordable rental homes available for every 100 extremely low-income renter households in the country.¹ As the gap between supply of and demand for affordable housing grows, the problem becomes more difficult to solve. Countless government and non-profit sponsored programs aiming to increase the supply of affordable housing have been established around the country (mortgage assistance programs, community land trusts, etc.), but for them to operate effectively, zoning laws must first allow the development of affordable housing units.²

Local zoning laws dictate which areas can be used for housing and what type of housing is allowed in those areas. They might establish minimum lot sizes, set-back requirements (how far a residence must be set back from the street or sidewalk), and parking requirements.³ Although some zoning regulations like these were initially designed to protect public health by preventing extremely high density and unsanitary living conditions, and have made great progress in that regard, some well-intentioned zoning regulations have created new public health problems and exacerbated housing and health inequities. Many cities' zoning codes prohibit single-room apartments and rooming houses, and many suburban areas prohibit multifamily housing.⁴ Multifamily housing, small apartments, and shared housing models such as rooming houses tend to be more affordable than single-family housing because of their smaller size, higher density, and the resulting ability to safely house more people per square foot of land than single-family residences.⁵

Additionally, zoning codes often lump affordable housing models together with unhealthy uses of land (i.e., industrial facilities and liquor and tobacco retail locations), and have been used as a tool for legal racial segregation.⁶ In 1968 when outright racial segregation in housing was outlawed by the Fair Housing Act, some policymakers eagerly adopted zoning regulations that would preserve their all-White neighborhoods by restricting housing to the more expensive single-family residences, while readily allowing cheaper high-density multifamily housing in majority Black neighborhoods.⁷ Today, families with lower incomes still tend to be priced out of the areas zoned primarily for single-family residences - areas that also tend to have higher-performing schools, closer proximity to medical services, more access to green space, and fewer environmental hazards, leading to better overall health and wellbeing of residents. The effect is a form of segregation that exacerbates race-based health disparities.⁸

Because local zoning codes can have clear and pervasive impacts on public health, positive or negative, addressing zoning and other land-use issues has been identified as a "crucial element for achieving health equity in housing."⁹



Local Regulations

Local governments typically have significant autonomy over their zoning codes and drivers of affordability vary between communities. For this reason, zoning code reform is an excellent tool to increase affordable housing availability. Zoning laws have been used both to protect the public health and to exclude racial minorities from some communities.¹⁰

Reevaluate Exclusionary Zoning Policies

To prevent unintended consequences of zoning policies, local governments could start by reevaluating the exclusionary zoning provisions in their communities – considering the reasons why they were initially adopted and whether they are still necessary or appropriate today. For example, if a provision in a locality’s zoning code seemingly serves no public health purpose other than to exclude certain types of people or housing, it should be revised or revoked. If a provision adopted in the early 20th century was designed to decrease density and protect the community from waterborne illnesses resulting from overwhelmed sewage treatment facilities or poor waste-water drainage, it should be reevaluated in the context of today’s more advanced urban design and water treatment capabilities. Local governments can also consider how the needs or character of the community have changed, and how public health goals can be achieved through alternate means that do not negatively impact the availability of affordable housing. Some provisions, such as those prohibiting single-room occupancy apartments and rooming houses that can provide less expensive housing, are not rooted in racism or public health but embody judgments about what constitutes “decent” housing and should also be reevaluated.¹¹

Adopt Inclusionary Zoning Policies

Changing local zoning codes to reduce exclusionary zoning and improve availability of affordable housing is referred to as “inclusionary zoning.” Inclusionary zoning ordinances vary but often include provisions requiring a minimum number of affordable units in a new development. Many times, this minimum affordable unit requirement includes time limits on the affordability requirement to encourage investment, and/or allows payment to the government in lieu of adding affordable units, presenting an opportunity for the government to improve housing affordability in other ways.¹² Inclusionary zoning ordinances can also establish guidelines and provide incentives for voluntary adherence, such as tax credits for meeting higher density thresholds.¹³ Although inclusionary zoning can produce as much affordable housing as the federal Low Income Housing Tax Credits program,¹ which has supported production of over 2 million affordable housing units since 1986, research on inclusionary zoning has not yet pinpointed its most impactful elements.¹⁴ Additionally, different communities and housing markets have different needs, so there is not a “one size fits all” approach to inclusionary zoning.

Address Opposition to Inclusive Zoning

It is also important to recognize that because local governments have so much control over zoning, housing-related decisions are heavily influenced by local politics and opinion.¹⁵ Some communities oppose zoning changes and increased development of affordable housing in their neighborhoods over concerns about decreases in property values and personal wealth, harms to the local economy, or issues related to increased population density. This kind of attitude is commonly referred to as “not in my backyard” (or “NIMBYism”) and is often driven by implicit bias, racism, and/or classism.¹⁶ Unfortunately, NIMBYism and other local opposition to affordable housing has led to prohibition of any housing except single-family detached housing on *three quarters* of all land in most American cities.¹⁷ While widespread and deep-seated opposition to affordable housing can be difficult to overcome, the data shows that when communities do integrate affordable housing, the NIMBY-related economic concerns never come to fruition.¹⁸

Local governments have significant autonomy and authority when it comes to local zoning regulations, and their policy decisions can have substantial impacts, positive or negative, on availability and affordability of housing. However, housing demand and pricing tends to be regional in nature, so local governments might be most effective when they partner with

¹ The Low Income Housing Tax Credits program subsidizes the construction and renovation of affordable housing for low- and moderate-income tenants through federal tax credits for states and territorial governments. States and territorial governments then issue those credits to developers of affordable rental housing to incentivize and fund their developments.



neighboring communities to make necessary changes. For example, land use in Montgomery County, Maryland, is governed at the county level, and the county's inclusionary zoning laws have made it an "affordable housing bright spot."¹⁹ Governing land use at the county level can change the politics of decision-making significantly – the power of NIMBYism decreases when decisions are made by a larger group. In other words, the population of over one million people in Montgomery County is unlikely to collectively decide against allowing affordable housing *anywhere* in the county.²⁰

Consequently, when state governments step in and take statewide action with regard to local zoning, positive impacts can be amplified.

State Regulations

While the power of local governments regarding zoning is significant, that power is a function of state law.²¹ Local intervention is critical in public health, but state law can intervene where localities have failed to act or have enacted ordinances that drive up housing costs, preempt specific forms of exclusionary zoning, require local governments to adopt inclusionary zoning policies, offer assistance and incentives to local governments to improve zoning laws, and more.²² State intervention is an especially important tool when local governments are slow or reluctant to make changes. Several U.S. states have taken the initiative to improve access to affordable housing and have experienced success, including:

- California's Housing Element Law (Cal. Gov't Code §§ 65580 – 65589.11) requires municipalities to create plans addressing affordability and availability of housing. While this law has been successful in increasing affordable housing in the state, it has been unable to meet demand.²³ California also requires local governments to allow homeowners to add accessory dwelling units to their properties to increase affordable rental housing supply in neighborhoods filled predominantly with single family homes. An accessory dwelling unit is a smaller, independent dwelling located on the same lot as a single-family home. This state law has realized some success, although state energy efficiency laws and building codes can make the small units expensive to construct and maintain.²⁴
- Massachusetts and several other states have adopted laws to make building affordable housing easier and cheaper for developers – eliminating the requirement that they secure multiple permits and allowing by-right development.²⁵ By-right development allows developers to have their proposals approved automatically if they comply with zoning and building codes, eliminating the requirement of discretionary approval by local boards. Specifically, Massachusetts's "Comprehensive Permit Act" (Mass. Gen. Laws ch. 40B, §§ 20 - 23) allows developers to seek only one permit instead of applying to multiple local boards, if 20-25% of their proposed units carry long-term affordability restrictions.²⁶ The state also offers financial incentives to local governments that loosen density restrictions near transit stations.²⁷
- Utah requires counties and municipalities to produce and integrate moderate-income housing plans designed to meet the housing needs of people with various income levels by adopting several of the state's recommended strategies.²⁸

In addition to influencing or preempting local laws, states can act directly. One proposed method is consolidating public school districts to operate regionally.²⁹ Public schools are funded by property taxes, so municipalities are incentivized to zone for land uses that will bring in the most tax revenue – typically non-residential industrial uses and low-density single-family housing. However, if a school system were funded by property taxes at the county level, school expenses would be shared between all the municipalities in a county, and municipalities would lose some of the incentive to zone for high-value land uses since the property tax revenue would be placed into a bigger pool and shared. Municipalities might no longer see zoning for multifamily housing development as such a significant burden to school funding.

State Affordable Housing Appeals Systems (SAHAS)

States have the power to give affordable housing developers mechanisms to override local zoning and permit decisions. In addition to following local zoning and building codes, which often include restrictions on multifamily developments that contribute to high housing costs, developers must get their plans approved by local governing bodies.³⁰ This approval can happen automatically with by-right development, but often requires a full discretionary approval process.³¹



State affordable housing appeals systems (SAHAS) enable developers of housing developments that include affordable units to override local zoning board decisions by allowing them to bring expedited appeals to the state.³² The specifics of SAHAS vary between states, but generally include the following:

- The state specifies a goal for the portion of housing in localities that must be affordable.
- Developers of housing projects with a state-set minimum number of affordable units can request expedited state appeals of local government denials and conditional approvals if the locality has not met its affordable housing goal.
- In the appeal, the local government carries the burden of proving that their reasons for denial or conditional approval of the developments are legitimate and not a product of bias or negative attitudes toward affordable housing; the state can override local zoning regulations to allow the development to move forward.

One of the most frequently cited examples of a successful SAHAS is Massachusetts's Chapter 40B Comprehensive Zoning Law.³³ Chapter 40B allows eligible developers to appeal an adverse decision of a local zoning board in communities where less than 10% of their year-round housing or less than 1.5% of their land area is affordable. Communities may request one- to two-year exemptions from the appeals process if they adopt a housing plan and make progress toward those affordability thresholds. A developer is eligible for the appeals process if 20-25% of the units are affordable for households earning 50-80% or less of area median income, and if the developer restricts their profits to 10-20% per year.² On appeal, the state can override the local decision unless the local board can show that their denial was due to serious health or safety concerns that cannot be mitigated without substantial cost. Chapter 40B has encouraged more flexible negotiation between local boards and developers and has motivated communities to increase affordable housing on their own terms to avoid the appeals process.³⁴ Connecticut, Illinois, New York, New Jersey, and Rhode Island have also adopted successful SAHAS legislation.³⁵

State mechanisms to increase availability of affordable housing such as SAHAS and zoning law preemption are generally accepted as effective, though they face significant political barriers in many places where they are most needed.³⁶ Local government entities are often not willing to give up their significant zoning authority, and state governments may be unwilling to get involved. Nonetheless, as state intervention in zoning grows and data showing the successes of the interventions becomes available, more states may acknowledge the health and economic benefits and become more willing to intervene in local zoning decisions.

Conclusion

Zoning law reform is one of the most straightforward and effective ways to improve availability of affordable housing in a community. Reducing density restrictions and permitting multifamily housing will allow private developers and non-profit and public housing programs to build affordable housing units in more areas than they could before, without additional resources or significant burden on local or state government resources. Adopting a SAHAS or preempting local exclusionary zoning prioritizes affordable housing statewide and can encourage local governments to take the lead on improving affordability in their communities. Building more affordable housing while maintaining zoning laws important to protecting health and safety improves public health and increases diversity without harming local economies or neighborhood characteristics.

² Required percentages vary based on whether the relevant units are available as rentals or for sale.



Robert Wood Johnson Foundation

SUPPORTERS

Support for the Network provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.

This document was developed by Brianne Schell, J.D., M.A., for the Network for Public Health Law – Eastern Region Office. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

January 2022

- ¹ Andrew Aurand et al., *The Gap: A Shortage of Affordable Homes*, NAT'L LOW INCOME HOUSING COAL. (March 2020), <https://www.ncsha.org/resource/national-low-income-housing-coalition-report-the-gap-a-shortage-of-affordable-homes-march-2020/>.
- ² Scott Burris et al., *Legal Levers for Health Equity in Housing: Report 4 – Creative People and Places Building Health Equity in Housing*, TEMPLE UNIV. CTR. FOR PUB. HEALTH LAW RESEARCH (Dec. 2019), https://phlr.org/sites/default/files/uploaded_images/HousingHealthEquityLaw-Report4-Dec2019-FINAL.pdf.
- ³ Gabriel Metcalf, *Sand Castles Before the Tide? Affordable Housing in Expensive Cities*, 32 J. OF ECON. PERSPECTIVES 59-80 (2018), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.32.1.59>.
- ⁴ *Id.*
- ⁵ Burris et al., *supra* note 2.
- ⁶ *Id.*
- ⁷ U.S. DEP'T OF HOUS. AND URBAN DEV., *History of Fair Housing* (last visited March 1, 2022), [https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutftheo/history#:~:text=The%201968%20Act%20expanded%20on,Housing%20Act%20\(of%201968\);](https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutftheo/history#:~:text=The%201968%20Act%20expanded%20on,Housing%20Act%20(of%201968);) Michael Lens, *Low-Density Zoning, Health, and Health Equity*, HEALTH AFFAIRS (Sept. 30, 2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210907.22134/full/>.
- ⁸ *Id.*
- ⁹ Burris et al., *supra* note 2 at 12.
- ¹⁰ Burris et al., *supra* note 2.
- ¹¹ Metcalf, *supra* note 3.
- ¹² Scott Burris et al., *Legal Levers for Health Equity in Housing: Report 3 – Health Equity in Housing: Evidence and Evidence Gaps*, TEMPLE UNIV. CTR. FOR PUB. HEALTH LAW RESEARCH (Nov. 2019), https://phlr.org/sites/default/files/uploaded_images/HousingHealthEquityLaw-Report3-Dec2019-FINAL.pdf.
- ¹³ *Id.*
- ¹⁴ *Id.*; TAX POLICY CTR., *Briefing Book: Key Elements of the U.S. Tax System, What is the Low-Income Housing Tax Credit and how does it work?* (last visited March 1, 2022), [https://www.taxpolicycenter.org/briefing-book/what-low-income-housing-tax-credit-and-how-does-it-work#:~:text=The%20Low%2DIncome%20Housing%20Tax%20Credit%20\(LIHTC\)%20subsidizes%20the.%2D%20and%20moderate%2Dincome%20tenants.&text=Once%20the%20housing%20project%20is,over%20a%2010%2Dyear%20period.](https://www.taxpolicycenter.org/briefing-book/what-low-income-housing-tax-credit-and-how-does-it-work#:~:text=The%20Low%2DIncome%20Housing%20Tax%20Credit%20(LIHTC)%20subsidizes%20the.%2D%20and%20moderate%2Dincome%20tenants.&text=Once%20the%20housing%20project%20is,over%20a%2010%2Dyear%20period.)
- ¹⁵ Burris et al., *supra* note 12.
- ¹⁶ Burris et al., *supra* note 2.
- ¹⁷ *Id.*
- ¹⁸ *Id.*

¹⁹ Burris et al., *supra* note 2 at 12.

²⁰ *Id.*

²¹ Burris et al., *supra* note 12.

²² U.S. DEP'T OF HOUS. AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, *Evidence Matters: States Reduce Regulatory Barriers for Affordable Housing* (Spring 2018), <https://www.huduser.gov/portal/periodicals/em/spring18/highlight3.html>; Burris et al., *supra* note 14.

²³ Burris et al., *supra* note 12.

²⁴ U.S. DEP'T OF HOUS. AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, *supra* note 22.

²⁵ *Id.*

²⁶ Burris et al., *supra* note 12.

²⁷ U.S. DEP'T OF HOUS. AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, *Eliminating Regulatory Barriers to Affordable Housing: Federal, State, Local, and Tribal Opportunities* (Jan. 2021), <https://www.huduser.gov/portal/portal/sites/default/files/pdf/eliminating-regulatory-barriers-to-affordable-housing.pdf>.

²⁸ *Id.*

²⁹ Burris et al., *supra* note 12.

³⁰ Nicholas J. Marantz & Huixin Zheng, *State Affordable Housing Appeals Systems and Access to Opportunity: Evidence From the Northeastern United States*, 30 HOUSING POLICY DEBATE 1-26 (2020), https://www.researchgate.net/publication/340103980_State_Affordable_Housing_Appeals_Systems_and_Access_to_Opportunity_Evidence_From_the_Northeastern_United_States.

³¹ Metcalf, *supra* note 3.

³² Nicholas J. Marantz & Huixin Zheng, *supra* note 30.

³³ MASS. GEN. LAWS CH. 40B.

³⁴ Citizens' Housing and Planning Assoc., *Fact Sheet on Chapter 40B The State's Affordable Housing Zoning Law* (Oct. 2011), <https://www.chapa.org/sites/default/files/Fact%20Sheet%20on%20Chapter%2040B%202011%20update.pdf>.

³⁵ Jennifer Devitt, *Illinois; Affordable Housing Planning and Appeal Act: An Indirect Step in the Right Direction – A Survey of Housing Appeals Statutes*, 18 WASH. U. J.L. & POL'Y 267-290 (2005), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1263&context=law_journal_law_policy; PROGRESSIVE STATES NETWORK, *State Policy Options for Promoting Affordable Housing* (last visited March 1, 2022) <https://www.ci.missoula.mt.us/DocumentCenter/View/29041/Progressive-states-policy?bidId=>.

³⁶ Burris et al., *supra* note 12.