

THE STATE OF LOCAL ZONING

**REFORMING
A CENTURY-OLD APPROACH
TO LAND USE**

By Anthony Flint

MAKING THE CASE that antiquated rules governing development in the United States are driving up housing prices amid a growing affordability crisis, advocates for statewide zoning reform are seeking to build on recent successes from California to Connecticut. But statewide mandates are encountering resistance from those defending local control of land use, a system that has prevailed for a century.

While the rule changes being implemented or considered are at a technical level previously only familiar to urban planning professionals, they could have an outsized impact—and not just on the availability of housing. Zoning, its critics say, has also locked in racial segregation and perpetuated environmentally unsustainable land use patterns.

The changes in question include banning single-family-only zoning; allowing multifamily housing in more places, including adjacent to transit stops; reducing or eliminating costly minimum parking requirements; and lifting prohibitions on accessory dwelling units (ADUs).

Efforts to reform zoning have gained momentum in part because the issue is surprisingly bipartisan, attracting supporters ranging from free market conservatives who favor streamlining government regulation to progressives concerned about homelessness and seeking to right racial wrongs.

Not only blue states along the coasts, but others regarded as red, such as Utah, are engaged in some type of zoning reform. In Virginia, Republican Governor Glenn Youngkin has been speaking out against NIMBYism, the “not in my backyard” opposition by established residents to new housing development. To address the rising costs residents face, he said shortly after taking office in 2022, “we must tackle the root causes: unnecessary regulation, overburdensome and inefficient local governments, restrictive zoning policies, and an

ideology of fighting tooth and nail against any new development.”

The biggest driver of reform has been the lack of affordable housing, which is wreaking havoc with local economies. Home prices rose more than 20 percent nationwide from March 2021 to March 2022. In June 2022, Realtor.com reported that rents in the country’s 50 largest metro areas had jumped 26.6 percent since 2019, the latest in a string of record increases. According to the Harvard Joint Center for Housing Studies, 30 percent of all U.S. households had unaffordable rent or mortgage payments in 2020, defined as exceeding 30 percent of monthly household income; a growing number of Americans spend half their income on housing (Harvard 2022). Workers often can’t live near their places of employment; outright homelessness is increasingly visible.

Advocates for statewide zoning reform are seeking to build on recent successes from California to Connecticut. But statewide mandates are encountering resistance from those defending local control of land use, a system that has prevailed for a century.

“Even people who are the beneficiaries of the California housing crisis, maybe folks who bought a home a few decades ago [and have seen their home values appreciate], they’re finding that their adult children can’t live within two or three hours of them. They’re finding that if they want to retire, they probably have to leave the state,” said M. Nolan Gray, author of *Arbitrary Lines: How Zoning Broke the American City and How to Fix It* (Gray 2022). Whether in California or Utah, Gray said, residents are confronting similar “housing affordability issues that are affecting the middle class—and they’re looking for solutions.”

Still, the effort to apply new standards statewide is facing fierce political opposition at the local level, where land use decisions have historically been made, and where the right to set zoning has been heavily guarded since higher levels of government granted that power a century ago. The resistance warns against “imperialistic rezoning from state capitals,” in the words of one critic, framing the mandates aimed at increasing housing supply as inappropriate state preemption.

Responding to those who oppose any change in local regulations for development, state lawmakers have watered down statewide reform efforts by adding opt-outs or removing penalties for noncompliance. In some cases, the stirrings of reform have been shut down entirely. In Nebraska, a bill requiring municipalities with over 5,000 residents to allow fourplexes and other “missing middle” housing was replaced by a measure requiring only evidence that local jurisdictions were working on creating more affordable housing. (See page 28 for a state-by-state guide to recent reforms.)

In Massachusetts, the program known as MBTA Communities—signed by Republican Governor Charlie Baker in 2021—requires cities and towns to allow multifamily housing near transit stations by right, with a minimum density of 15 units per acre. But many communities have challenged that mandate—and have indicated they are prepared to do without the state funding that will be withheld if they don’t comply.

If the key to any public policy reform lies in implementation, that may be especially true with something as entrenched as local control over land use. States intent on reform must convince localities that changing zoning in targeted ways is achievable and will be beneficial. Technical assistance and education, facilitated by state agencies and nonprofit organizations, will help, said Massachusetts-based researcher Amy Dain, who has conducted research for the Lincoln Institute and has documented how suburban

communities around Boston have erected a “paper wall” of bureaucracy that hobbles attempts by developers to build multifamily housing (Dain 2021, Dain 2022).

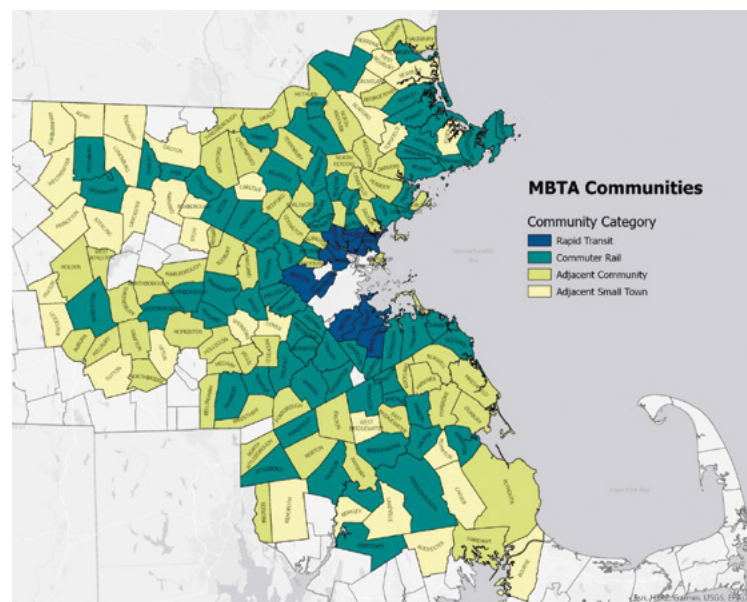
In the case of the MBTA Communities act, she said, “the state is giving cities and towns lots of flexibility in deciding how to draw districts [of greater density] and how to write the requirements. It’s at the local level that the sites for transit-oriented multifamily housing development are selected and the dimensional requirements for new housing are established.”

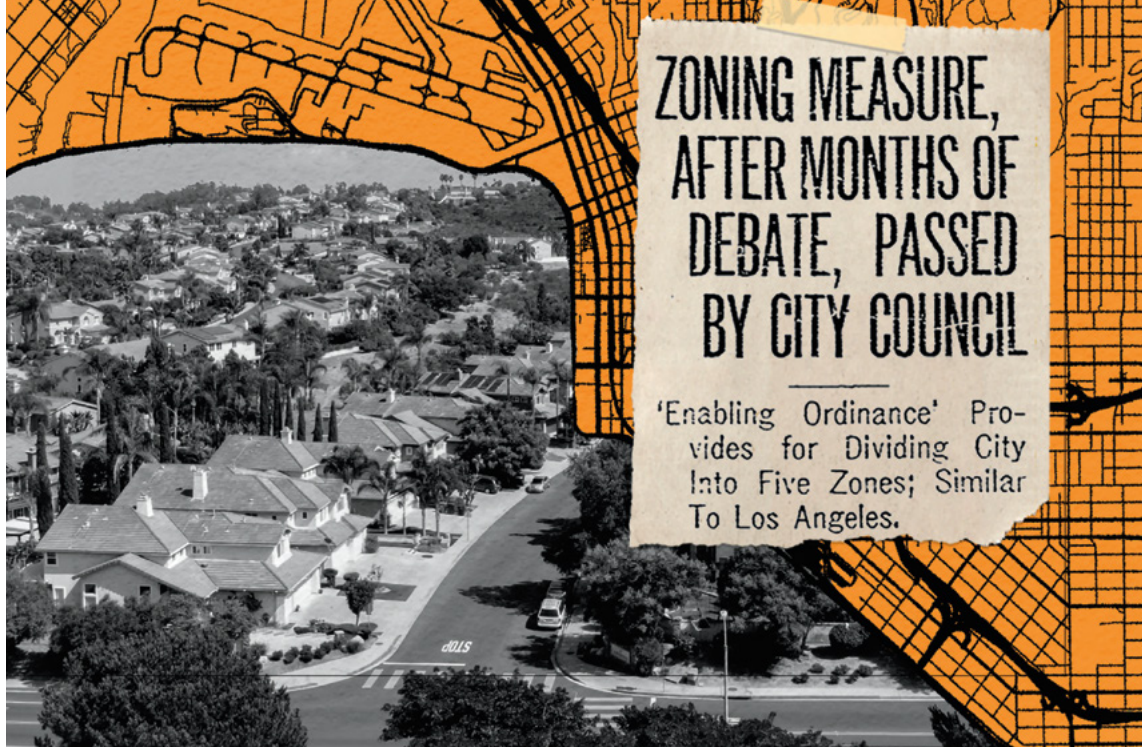
The success of statewide zoning reform in the future may well hinge on the promise of that kind of state-local collaboration.

THOUGH MANY CITIES HAVE BEEN MASTERFULLY planned and designed over the centuries, zoning is a 20th century phenomenon. The need for a framework of rules and regulations emerged as a reaction to explosive growth in U.S. cities after the turn of the century, concurrent with industrialization and the growth of manufacturing; massive immigration; and advances in technology, particularly in the transportation sector, including the streetcar, subway, and automobile.

The call for zoning was part of a progressive campaign to relieve congestion and to improve living conditions and public health—to make sure a tannery was not located right next door to a rooming house, for example. But it was also designed to control where immigrants and people of color could live. The first U.S. cities to

A recently enacted Massachusetts law requires 175 communities to allow multifamily housing near transit. Credit: Commonwealth of Massachusetts.





A headline announces the arrival of zoning in San Diego in 1923. Credit: Illustration courtesy of Voice of San Diego.

create zoning included New York City and Berkeley, California, both circa 1916.

In 1923, the Standard State Zoning Enabling Act provided model legislation states could adapt to grant municipalities the power to dictate land uses. Drafted by a Department of Commerce committee that had been assembled by Herbert Hoover and included Frederick Law Olmsted, the enabling act was adopted by all 50 states. The landmark 1926 Supreme Court case *Euclid vs. Ambler Realty*, which saw a realty company sue for the right to develop land across several newly implemented zoning districts in an Ohio town, affirmed that zoning was a local responsibility, and indeed a police power to reduce conflicts and improve public health.

The result was that more than 30,000 local governments developed their own regulation of land uses and structures, including allowable height, bulk, floor-to-area ratios, lot sizes, and setbacks. A common approach was separating commercial, industrial, and residential uses, designating parcels by category in multicolored zoning maps that are still in use to this day. On the residential side, zones for single-family

homes, often on large lots, were most prevalent; areas set aside for multifamily housing, including even two-family structures, were much smaller, if they existed at all.

Although communities used similar approaches, zoning became a highly decentralized system in which each jurisdiction developed particular rules in complicated formats. “Even for an expert, these zoning codes can be hard to read, and it’s nearly impossible to compare them to each other,” said Cornell University law professor Sara Bronin, who was part of a major zoning reform effort in Connecticut and is now leading the development of the National Zoning Atlas. That crowdsourced project is working to create a user-friendly, interactive zoning map of each state in the country (see sidebar page 33).

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RECENT ZONING REFORMS: STATE BY STATE

Statewide measures to change zoning at the local level have passed or are under consideration in several states. The aim is to allow a range of more affordable housing options and to create more equitable and sustainable communities. Opposition based on the tradition of local control over land use has been building, however.



ARIZONA

State representatives César Chávez (D) and Steve Kaiser (R) introduced a bill in 2022 allowing multifamily housing or increased single-family-home density on land zoned for agriculture or single-family homes. Following fierce opposition, the proposal was rewritten to establish a committee to study housing supply.



CALIFORNIA

In 2022, Governor Gavin Newsom (D) signed a bill eliminating parking requirements near transit and legalizing mixed-income multifamily housing in all commercial areas. That followed the statewide legalization of accessory dwelling units (ADUs) in 2016, and a 2021 measure allowing property owners to split a single-family home or lot into duplexes or fourplexes. Opponents have vowed to reverse that law through a ballot initiative.



CONNECTICUT

A sweeping reform bill passed in 2021 forbids local zoning that caps the number of multifamily housing units or discriminates against lower-income residents, in a state where 90 percent of land is reserved for single-family homes as of right. The package also legalizes ADUs, caps minimum parking requirements, enforces affordable housing targets, and eliminates the terms “character,” “overcrowding of land,” and “undue concentration of population” as the legal basis for zoning regulations.



MAINE

A package introduced in early 2022 would have created a state oversight board with the power to override local decisions about critical housing projects; it also would have eliminated caps on growth instituted by municipalities citing “overcrowding.” Those provisions were removed, leaving a law that allows ADUs on land zoned for single-family homes.



MARYLAND

A 2020 bill to increase housing density in higher-income areas that have a concentration of jobs and access to transit failed to progress, as did another measure requiring municipalities to allow ADUs. Baltimore has considered ending single-family-only zoning on its own.



NORTH CAROLINA

Bipartisan legislation in 2021 called for allowing duplexes, triplexes, fourplexes, and townhomes in any residential zoning district with water and sewer service, and allowing ADUs. That proposal stalled after opposition from local jurisdictions.



MASSACHUSETTS

Under the MBTA Communities law passed in 2021 and signed by Governor Charlie Baker (R), multifamily housing at a density of 15 units per acre must be allowed by right near transit stations, or state funding for infrastructure and other projects will be withheld. Several communities have challenged the policy, and some have indicated willingness to forgo the funding rather than comply.



OREGON

The first state in the country to ban single-family-only zoning, Oregon enacted a law in 2019 that requires most cities with populations over 1,000 to allow duplexes, and requires municipalities of 25,000 or more to allow townhouses, triplexes, and fourplexes.



MONTANA

In late 2022, a housing task force appointed by Governor Greg Gianforte (R) recommended opening areas zoned for single-family homes to duplexes, triplexes, and fourplexes, and overhauling other restrictive local zoning regulations. The head of the organization representing Montana cities and towns called the effort “straight out of California.” The legislature is expected to consider related proposals this year.



UTAH

A measure passed in 2022 leverages state funding for local zoning reform that makes it easier to build middle-income housing and transit-oriented development. In late 2022, the state legislature was also considering withholding state funds for communities that lack a housing master plan, and overriding local zoning and hearings processes to allow landowners to build affordable housing.



VIRGINIA

Governor Glenn Youngkin (R), who has been critical of NIMBYism, released a plan in November that recommends linking state funding to local housing plans and investigating comprehensive zoning reform.



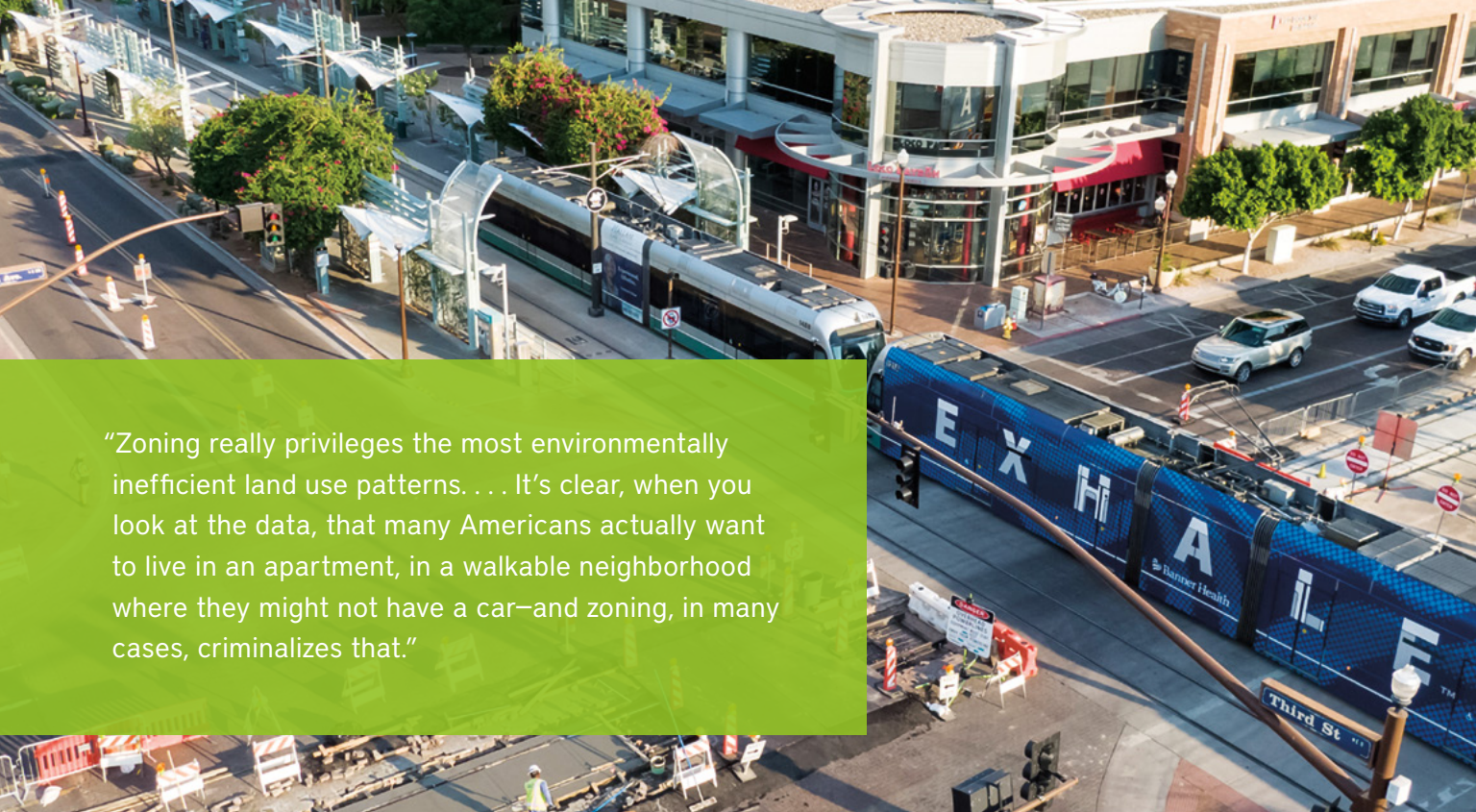
NEBRASKA

A bill introduced in 2020 and intended to ban single-family-only zoning and allow fourplexes was replaced by a measure that requires only that cities and towns show they are working toward affordable housing.



WASHINGTON

Legislation under consideration would allow greater density at transit stations and permit two-, three- and four-family homes in areas now zoned for single-family homes.



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Transit-oriented development in Tempe, Arizona. Credit: Federal Transit Administration.

The intensely local nature of zoning created another attribute that has helped effectively lock the rules in place: significant constituencies of established residents who refer to the rules to block new development. Zoning—as well as environmental regulations and, in some cases, historic preservation restrictions—was used as a shield in separated-use suburbs dominated by single-family zoning and in cities, where residents grew wary of redevelopment in tightly knit neighborhoods. Through the 1960s and 1970s, local neighborhood organizations grew stronger using veto power over a wide variety of redevelopment proposals, said Jacob Anbinder, who is writing a dissertation at Harvard about local control and community organizing.

The combination of complicated rules and staunch defenders made the system seem impenetrable. But some of the first challenges to the notion that zoning was sacrosanct—suggestions that local land use regulations had become calcified and obsolete—began emerging about 25 years ago, primarily on an environmental basis.

The smart growth and New Urbanism movements contended that the separation of uses was fostering environmentally damaging car dependence and had made mixed-use, walkable living arrangements essentially illegal.

“If you look at historical rezoning neighborhoods, the standard would be that you would have life’s daily necessities within walking distance,” said Gray. “You might have a corner grocery, you might have a corner barbershop, you might have a corner medical office, or at least cities could achieve densities such that transit would actually work. There was density high enough to be able to take a bus or even to take a train.

“Zoning makes all of that very difficult,” he said. “It really privileges the most environmentally inefficient land use patterns. It’s clear, when you look at the data, that many Americans actually want to live in an apartment, in a walkable neighborhood where they might not have a car—and zoning, in many cases, criminalizes that.”

In what might be described as an initial and more subtle attempt to get communities to

reassess their zoning, planners promoting alternatives to sprawl introduced the idea of the “form-based code,” which reoriented zoning around the composition and massing of buildings, instead of focusing on the use and activities that go on inside. Others tried to help small and mid-sized cities make incremental adjustments that enabled more urban landscapes.

“Meeting local governments where they are” was the mantra for the Project for Code Reform initiative launched by the Congress for the New Urbanism in 2016, said Lynn Richards, who was president of the organization at the time. “It was not intended as a full audit, but rather identifying the biggest little change a community could make to improve the regulatory environment in that place,” she said, adding that incremental changes were instituted in Michigan, Vermont, New Hampshire, and Wisconsin.

For the most part, however, the status quo remained, even as public awareness of the role of zoning in perpetuating racial segregation grew, adding to concerns about its impact. Historical and demographic research around the country illustrated the damaging and lasting impacts of land use decisions in places from Los Angeles to Manchester, New Hampshire. Local governments that had been handed the responsibility of overseeing land use had failed to ensure equitable and sustainable communities, according to this critique, and were showing no signs of changing their ways.

“A century of decentralized and isolated local control of land produced unacceptable levels of racial and economic segregation, urban sprawl that contributed to the climate crisis, and an almost unassailable housing crisis,” wrote Lincoln Institute President George W. McCarthy in an essay in the October 2022 issue of *Land Lines*. “It is sometimes necessary for higher levels of government to supersede the decisions of lower levels of government to promote general welfare or address negative externalities that are artifacts of uncoordinated actions at lower levels.”

A FEW CITIES, including Minneapolis and Portland, have been in the vanguard, taking steps to ban single-family-only zoning, for example. A framework of incentives and penalties encouraging denser and more inclusive development has also been floated at the federal level under the Obama and Biden administrations.

The rationale for statewide standards, however, has become increasingly clear: to eliminate the patchwork of different policies and regulations within metropolitan regions. Some communities might allow ADUs, for example, while others prohibit them. A more uniform regulatory regime would level the playing field, reflecting actual homebuying and renting aspirations and making it possible to develop a responsive regional approach to issues like the current affordability crisis.

As a first step toward more comprehensive reform, many states have legalized accessory dwelling units (ADUs), allowing homeowners to add a second unit on their property. Credit: Joiedevivre123321 via Wikimedia Commons.



The zoning reform measures that have passed or are under consideration range from relatively small tweaks, such as legalizing ADUs or eliminating minimum parking requirements, to more significant preemptions that allow multifamily housing, whether two-, three-, or four-family townhomes or larger apartment buildings, in areas zoned exclusively for single-family homes.

California has been a leader, first legalizing ADUs statewide, then allowing duplexes and lot splits in single-family zones, and mixed-income multifamily housing in all commercial areas, while also eliminating minimum parking requirements at transit stations. Connecticut is close behind, with requirements that cities and towns “affirmatively further fair housing” in their zoning, promote diverse housing options, legalize ADUs, and cap minimum parking requirements. The state’s newly adopted guidelines also prevent towns from enacting zoning that discriminates by income, caps the amount of multifamily housing in a community, or charges unreasonable or different fees for multifamily affordable housing.

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An additional notable feature in Connecticut is the removal of the terms “character,” “overcrowding of land,” and “undue concentration of population” from state law as legal bases for zoning regulations. In their place, the bill allows towns to consider only the “physical site characteristics” of a district.

Reformers aspire to dig deeper on the issue of process, which has been shown to hinder and discourage new development by making it



Municipal associations, local leaders, and residents have pushed back against statewide zoning reform efforts. Here, a protester in Connecticut urges lawmakers to “keep zoning local.” Credit: Kassi Jackson, *Hartford Courant/Tribune News Service*.

prohibitively costly. Recommendations include a “shot clock” limiting the length of the permitting process, and exemptions from lengthy review for small or mid-sized projects that clearly don’t have a major environmental impact.

OTHER STATES MULLING ZONING REFORM have included elements from the California and Connecticut reforms. But a pattern has emerged in which lawmakers propose tough measures—disallowing single-family-only zoning, for example—and then, in the face of opposition, prescribe milder reforms, such as lifting prohibitions on renting out carriage houses or apartments over garages.

Lawmakers appear to be responding to a predictable backlash against state mandates, which is premised on the basis that jurisdictions should not be subjected to blanket requirements that don’t fully consider local conditions.

Aaron Renn, a conservative urban analyst and contributing editor for *City Journal*, said he is “generally supportive of zoning liberalization as a tool to address housing supply shortages,” but is wary of putting states in control of local land use decisions because of the perceived risk that it will lead to one-size-fits-all policies. He expressed concern that state-level advocates of reform “argue that in most cases the upzoning won’t

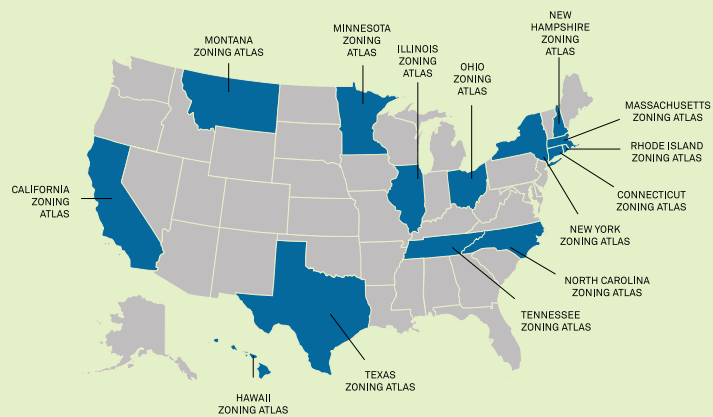
mean wholesale replacement of single-family homes with apartment buildings, but they won't countenance any limits," like putting a cap on the number of fourplexes in a neighborhood, and he worries that terms like "transit corridor" aren't clearly defined.

Kimberly Fiorello, a Republican state representative for the Connecticut towns of Stamford and Greenwich, put it more bluntly, warning against the zoning reform package that was ultimately adopted by the state.

"Handing over local zoning control to 'experts' in Hartford should be an affront to anyone who believes in self-government and the right to private property," she wrote in 2020, when zoning reform efforts led by state officials and the nonprofit coalition Desegregate Connecticut began gaining momentum. Fiorello and other Republicans even called at one point for a state constitutional amendment "to permit municipalities to enact and enforce zoning restrictions without regional or state interference."

Preemption, in this case overriding local government, has been established as precedent in the area of housing and withstood legal challenges. In Massachusetts, Chapter 40B overrides local zoning to fast-track projects if 25 percent of the proposed units are affordable, in communities where the affordable housing stock is less than 10 percent. The landmark Mount Laurel case, first decided by the New Jersey Supreme Court in 1975, similarly required cities and towns to add their "fair share" of affordable housing as a priority that trumps local land use restrictions. In California, municipalities that don't meet affordable housing goals are subject to the "builder's remedy," wherein developers can propose any housing project and it is automatically approved.

States pursuing meaningful reform thus must strike a balance between forcing compliance through penalties and other means, and supporting cities and towns more gently through the implementation process, assuring them they remain in control as they open up to more housing.



ABOUT THE NATIONAL ZONING ATLAS

When Sara Bronin, now a Cornell University professor, first got involved in zoning reform in Connecticut, a clear need emerged: identifying what, exactly, the local land use regulations were in the state's 169 cities and towns. Finding the answer took reviewing 2,622 zoning districts and more than 30,000 pages of text, and using spreadsheets, maps, and geographic information systems to organize everything. That exercise inspired Bronin and her small team of collaborators to launch a more ambitious project: documenting local zoning practices in all 50 states to create a National Zoning Atlas.

The aim of this crowdsourced project is to translate and standardize the country's zoning codes, building an interactive online map that's easy for the public to use and understand. The National Zoning Atlas seeks to help broaden participation in land use decisions, identify opportunities for zoning reform, and narrow an information gap that currently favors land speculators, institutional investors, and homeowners over socioeconomically disadvantaged groups. It will also illuminate regional and statewide trends and provide a resource for national planning efforts related to housing production, transportation infrastructure, and climate change.

A growing collaborative of researchers is currently working in 14 states, from New Hampshire to Hawaii. The team welcomes collaborators from all states. To learn more, visit www.zoningatlas.org.

“Zoning has endured because it is embraced by local communities and local people. Planners should work to hold on to that enthusiasm, to give local communities local control, while supporting the myriad efforts to address the shortcomings of zoning in its current form,” said Harvey M. Jacobs, professor emeritus at the University of Wisconsin–Madison and Radboud University Nijmegen, in the Netherlands.

“Do localities need a nudge? Yes. Will they like it? No,” said Jacobs, who has conducted research with the Lincoln Institute on public policy and property rights. He predicts “somewhat of a cat-and-mouse game, between state-imposed standards and local implementation.”

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IN THE MEANTIME, cities are acting on their own, with or without state mandates. The list of places approving reforms is growing, from community-wide upzoning in Walla Walla, Washington, to the approval of ADUs and elimination of parking requirements in Fayetteville, Arkansas. Cambridge, Massachusetts, recently joined the growing list of communities doing away with parking minimums.

Advocates are hoping to build on that momentum, relying in part on data analysis following implementation. Understandably, since this wave of reform efforts is relatively recent, there are few studies that show changes in zoning directly result in more housing affordability or other desirable outcomes.

An analysis of rents for freshly authorized ADUs by the Southern California Association of Governments showed the small-scale housing in five Los Angeles–area counties was affordable to those earning 80 percent of area median income and lower—although in many cases no rent was

charged at all, as family members moved in to relieve overcrowding. “That’s essentially affordable housing production at scale and at no cost to the taxpayer,” said Gray. “That’s all just because of removing some of these zoning barriers to ADUs.”

Two working papers by the Mercatus Center at George Mason University determined that zoning that allows multifamily housing is associated with substantially larger population shares of Black and Hispanic residents than zoning for single-family housing—a combined nine percent higher in Greater Boston, and 21 percent in the Twin Cities metro area (Resseger 2022, Furth and Webster 2022).

Bronin, who is leading the National Zoning Atlas effort at Cornell, said research she is about to publish found that simply eliminating minimum parking requirements could enable the creation of thousands of additional units of housing in 15 Connecticut cities. The greatest potential was in Bridgeport, the state’s largest city, which eliminated its minimum parking requirements for housing in 2022. “We’re hopeful that will unlock new investment in Bridgeport, which is pretty close to New York City and, like several of the large Connecticut cities, is struggling economically—but that one single reform has a lot of promise for the creation of new housing, which in turn will drive down prices,” Bronin said.

Though there are conflicting studies, some research suggests that increasing housing supply, even at the high end, can ultimately have a downward impact on rents and home prices (Mast 2021). The growing consensus among policy makers and economists is that adding different types of housing across a broad region will be beneficial in the long run.

In that sense, those clamoring for even incremental zoning reform are faced with a challenge akin to climate change, which would continue even if all emissions could be halted tomorrow. Market conditions won’t change quickly, but acting now, the argument goes, will set the stage for a less disastrous lack of affordability in the future.

The case can be made on the basis of that long-term economic viability, said Dain, referring to the Massachusetts mandate for upzoning in areas around transit stations. “This isn’t really a technical change, it’s a major adaptive effort for the whole region—to make sure people will all have homes and that the region grows in a sustainable, resilient way.”

Bronin agrees that modifying rules established long ago can lead to big-picture payoffs—even as that is a complicated message to convey, since zoning has for such a long time remained unseen in the background.

“Zoning is the most significant regulatory power of local government,” she said. “It not only governs where we can put housing and factories and parks and shops—it actually has significant impacts on the economy, and even, I think, the very structure of our society.” Recalling the multiyear reform effort in Connecticut, she noted that “when we started . . . we knew that there was a place in the public conversation for zoning and the time was right to link reform of our outdated zoning laws with much better social and economic outcomes that would be beneficial to Connecticut as a whole.

“I think we surprised people in the traction that it gained and the allies that it gained,” she said, noting that Connecticut is known as “the land of steady habits.” Because that culture ultimately opened up to change, she said, she has hope for the reform attempts underway in other places: “I’m pretty optimistic about these efforts.” □

Anthony Flint is a senior fellow at the Lincoln Institute of Land Policy, host of the *Land Matters* podcast, and a contributing editor of *Land Lines*.

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Listen to the *Land Matters* podcast for a conversation about zoning reform with Sara Bronin and M. Nolan Gray: www.lincolninst.edu/publications/podcasts-videos.

