



September 17, 2019

Lawrence City Commission
Mayor Lisa Larsen
6 E 6th Street
Lawrence, KS 66044

Dear Mayor Larsen and Commissioners,

Thank you for taking a pause at your September 3rd Commission meeting to more fully consider the issues related to Plan 2040's Chapter 3 annexation policies. After reviewing the comments made at that meeting, I believe staff's proposed revisions do not reflect the discussion.

Vice Mayor Jennifer Ananda provided language for Policy 2.2 which was agreeable by the majority of Commissioners. That language is as follows:

"The City may, at its discretion, annex Tier 2 Land. When addressing the annexation of Tier 2 land, the City shall consider the need to accommodate demand, whether a community benefit is provided, community land use inventories, market sector health, residential valuation to income ratio, among other factors, when assessing the need for annexation."

Staff's revision does not include community benefit as *one of the factors* but rather separates it from the list of factors that would be considered and includes it as a *requirement*.

Vice Mayor Ananda also asked that policy 3.8 be consistent with the intent of the language in policy 2.2. Staff did not revise policy 3.8, leaving it in conflict with Vice Mayor Ananda's proposed language in policy 2.2.

Planning Director Scott McCullough advised you that "these policies weren't intended to be the burden of the developer. It was intended to get collaboration from the city and other community partners, the school district, etc. They all have to be a part of building up from the borders. It is meant to collaboratively build neighborhoods and community together and

getting us all to think in that direction.” Given his statement on the intent of the policies, I would suggest the following language revision for policy 3.8:

Annexation requests for Tier 2 and for Tier 3 shall include an assessment with staff to determine if the proposed annexation request can offer a community benefit based on the needs of the community and in the context of what the annexation can support. Partnerships between applicant, governmental entities and community partners are encouraged to promote strength, support and sustainability of the community benefit sought.

This revised language reflects what McCullough has told you the intent of the policy is. It requires consideration of all potential community benefits that the annexation proposal may be able to provide but it also speaks to the importance of partnerships. The current policy 3.8 language says annexation requests “shall” include a community benefit but only says “may” include offsetting incentives. How is this approach collaborative? Would it be collaborative to say annexation requests “may” include a community benefit and the city “shall” include offsetting incentives? Obviously not, for the exact same reasons the currently proposed language is not collaborative.

The revised policies staff has submitted make it very difficult for small subdivisions to receive a positive recommendation. Larger annexation requests will usually have more opportunities for partnerships. But, that won’t always be the case and certainly not for small annexation requests. McCullough stated that, under the proposed Plan 2040 language, any annexation request not donating a community benefit would receive a negative recommendation from staff. Although there is an appeals process, this makes the process more difficult for smaller proposals.

Thank you, again, for taking the additional time to consider this very critical policy.

Sincerely,

A handwritten signature in cursive script that reads "Bobbie Flory".

Bobbie Flory
Executive Director

September 9,

Dear, Lawrence City Commission:

I served as the business representative on the steering committee charged with gathering public input and managing the process of creating a new land-use plan for Lawrence and Douglas County. This process was to take approximately 18 months. It took more than 4 ½ years. The turnover on the committee was extensive with only a few of us actually serving the entire 4 ½ years. Please be aware this very lengthy document was moved out of the steering committee using just a simple motion and vote when it became obvious consensus was not to be found. It was forwarded to the next step WITHOUT unanimous support. One of many reasons Plan 2040 lacked a solid recommendation was the unresolved debate among steering committee members on the policies in the Growth & Development Chapter, specifically the community benefit mandate.

The strongest message we heard throughout the process from the public was a call for more jobs. This was the #1 concern we received from the public input. Plan 2040, being a land use document, lays the framework for encouraging opportunities or, as written today, discouraging new opportunities in our community. Jobs and housing opportunities are inextricably linked. I voiced my opposition for the community benefit mandate because it will serve as a barrier for both jobs and housing. The document as written today sends a message to any new business or family that we do not want new members to join our community.

Please understand at no time in our discussions was there a consensus that a community benefit should be required, let alone a definition of community benefit. This document was to be a land use document and, after more than 4 ½ years, it turned into a social engineering document that lacked support from committee members present thru the entire 4 ½ year process.

Sincerely,

Scott Zaremba

Lawrence Business owner and resident of Douglas County for more than 50 Years.

Steering Committee Member

Plan2040

John A. Gascon
1347 New Hampshire Street
Lawrence, KS 66044
September 13th , 2019

City Commissioners

City of Lawrence
6 East 6th Street
Lawrence, KS 66044

RE: Plan 2040 - Chapter 3

Dear City Commissioners:

As one of only four members of the Comprehensive Planning Committee to serve the entire length of the process (4-½ years), I am writing to express my concerns over the current status of Plan 2040, specifically the issue of Chapter 3 and the debate centered around a Community Benefit. As the representative of neighborhoods, I chose to deny the approval of Plan 2040 and it is particularly important to note that only 2 original members of the Steering Committee voted in favor when considering whether the plan was passed on with consensus.

To provide context, in addition to serving on the Steering Committee for the entirety, I recently attended my final meeting as the Chair of the Board of Zoning Appeals after six years of service. I have a degree in Architecture from the University of Oregon and currently serve as a Financial Advisor living and working in East Lawrence with my family of 6. I spent 10 years working in the City of Seattle in architecture and the arts. During that time I consulted for the Low Income Housing Institute for 5 years working on historic properties, low income housing and projects for homeless services. Since moving to Lawrence in 2012, I have dedicated my time learning about how to help make Lawrence a more sustainable and affordable place to live.

At our first meeting in February 2014, Planning Director, Scott McCoullugh directed us to pursue two very specific charges:

1. Identify the significant issues in the community that the plan was to address
2. Prioritize those issues.

It was my understanding from the appointing Mayor (Dever) that we seek to accomplish these two primary objectives as the result of confusion that is derived from Horizon 2020 from both it's complexity and lack of clarity in determining which goals are most important. This often put the Planning Commission and stakeholders at odds with long-term goals such as housing affordability and historic preservation..

In early meetings, the Committee recognized that Horizon 2020 plan was inaccessible to the public due to its length, complexity, and jargon. A charge of creating a more understandable document (this was later incorporated as a Priority Item) was enacted and I commend the staff for developing a Comprehensive Plan that is far more accessible to the general public.

Regarding our first primary charge of identifying issues, in the interest of brevity, I will defer a detailed report outlining my concerns about this process. However, there were significant missed opportunities to educate the public and to coordinate with outside organizations like KU to help the Steering Committee gather public input and data.

Regarding our second primary charge, I urge you to consider denying approval of Plan 2040 as it fails to clearly prioritize the issues that we identified as being most important to the citizens of Lawrence. The plan, as it is written, implies equal weighting across all 19 issues providing no direction to the Planning Commission on future projects when weighing trade-offs presented to them. In other words, the hard work of clearly identifying priorities was never completed. This means that "Plan for and Provide Arts & Cultural Amenities" can be read as just as important as "Address Quality Housing for All Incomes" depending on a stakeholder groups agenda..

By failing to clearly articulate a hierarchy of issues, all parties involved in negotiations over proposed developments are able to site various parts of the plan to bolster their position, leaving governing bodies no reliable document to fall back on when making hard decisions. The failure of the Committee to create a hierarchy of issues will only serve to continue our broken public input process, where a small minority of voices continue to dominate the conversation in defense of their self interests, regardless of the greater good of the City of Lawrence and all of its Citizens.

Regarding the issue of a “Community Benefit”, I can explicitly say that this policy was not put in the plan at the direction of the Steering Committee. This particular part of the plan is unique in that it is written as a mandate and therefore clear policy, whereas most all of the other sections of the plan are vague, utilizing language such as “shall”, “encourage”, “minimize”, and “maintain”. This is antithetical to the point above where there is no hierarchy given on the issues we identified. Furthermore, staff repeatedly discouraged discussions of specific policy recommendations and preferring to keep the language vague with the promise that the Planning Commission would later input specific policy recommendations.

Although I do not take issue with restricting annexation on the basis of ‘community benefit’ on it’s own, I argued against such specific language at our final meeting, because the plan does not adequately and specifically provide the same clarity of policy to un-restrict in-fill development. The result will undoubtedly be higher administration and development costs which will be passed on to home buyers as future homes come online raising housing costs universally across the city.

As the Chair of the Board of Zoning appeals, I have been extremely intimate with the Zoning Code and in-fill development is extraordinarily difficult in Lawrence relative to most any other community in the country. Our restrictive zoning codes are the primary reason housing costs are so high in Lawrence. If we are to require a community benefit for annexation we must simultaneously adopt policies that will ease the restrictions on building housing within Tier I, specifically in our urban core. These policies are clearly articulated in the attached: *White House Housing Development Toolkit* published by the Obama Administration in 2016. These policies include:

- Establishing by-right development
- Taxing vacant land or donate it to non-profit developers
- Streamlining or shortening permitting processes and timelines
- Eliminate off-street parking requirements
- Allowing accessory dwelling units (*without restrictive covenants*)
- Establishing density bonuses
- Enacting high-density and multifamily zoning
- Employing inclusionary zoning (*A legal challenge in the State of Kansas*)
- Establishing development tax or value capture incentives
- Using property tax abatements

I have continued to follow the development of urban planning policies across the country as communities grapple with the negative impacts of growth, which include rapidly increasing housing prices and the marginalization of our most vulnerable citizens. I have found that use based zoning and the inability to incrementally increase the intensity of our neighborhoods because of single-family zoning are at the root of our affordability and environmental issues.

Although the committee failed to clearly articulate a hierarchy of issues that should take precedence going forward, there are three that rose to the top in our process, and that are consistently brought up in my interactions with the public:

- Economic Growth and the quality jobs that come with it
- Housing Affordability
- Our Natural Environment

The committee regularly discussed the importance of increasing density through similar policies as listed above to address the issues of growth, environment and affordability. However, if you calculate the amount of land designated for Tier II and Tier III against the

projected population growth, Staff has presented a plan that will have a Net-Zero increase in density within the City of Lawrence in the next 20 years. In other words, the plan itself acknowledges that in-fill development will be mathematically insignificant.

In the last five years, countless communities have begun the process of rethinking their policies from the ground up. Hundreds of cities have up-zoned neighborhoods, eliminated parking requirements, unrestricted the development of accessory dwelling units and replaced used based zoning code with form based codes. All of these actions are to prevent further damage to the environment, reduce rapidly rising housing costs and increase the efficiency of existing infrastructure. Plan 2040 does none of these things.

The problem of housing affordability has become such a significant issue, as indicated in the Obama Administration report, State Governments are beginning to step in to void destructive city policies. As examples, the state of Oregon has effectively eliminated single-family zoning and the State of Minnesota has mandated that development approval and building permitting processes must be limited to 60 days. Should you approve Plan 2040 in its current form, I have no doubt it will not live to fruition.

However, as commissioners, you can demand more from planning staff and the Steering Committee. As I see it you have three choices if you are truly invested in the future of Lawrence and care about housing affordability for our citizens:

1. Remove the language about community benefit for annexation and maintain our path of status quo suburban development.
2. Direct staff and the Steering Committee to re-think Chapter 3 and fulfill the charge of prioritizing issues.
3. Recognize that 4-½ years to create a plan is indicative of an ineffective process and direct staff to start over.

I hope that you live up to the reputation Lawrence has built as being a progressive city.

Sincerely,

John A. Gascon



HOUSING DEVELOPMENT TOOLKIT

September 2016



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Executive Summary

Over the past three decades, local barriers to housing development have intensified, particularly in the high-growth metropolitan areas increasingly fueling the national economy. The accumulation of such barriers – including zoning, other land use regulations, and lengthy development approval processes – has reduced the ability of many housing markets to respond to growing demand. The growing severity of undersupplied housing markets is jeopardizing housing affordability for working families, increasing income inequality by reducing less-skilled workers' access to high-wage labor markets, and stifling GDP growth by driving labor migration away from the most productive regions. By modernizing their approaches to housing development regulation, states and localities can restrain unchecked housing cost growth, protect homeowners, and strengthen their economies.

Locally-constructed barriers to new housing development include beneficial environmental protections, but also laws plainly designed to exclude multifamily or affordable housing. Local policies acting as barriers to housing supply include land use restrictions that make developable land much more costly than it is inherently, zoning restrictions, off-street parking requirements, arbitrary or antiquated preservation regulations, residential conversion restrictions, and unnecessarily slow permitting processes. The accumulation of these barriers has reduced the ability of many housing markets to respond to growing demand.

Accumulated barriers to housing development can result in significant costs to households, local economies, and the environment.

- Housing production has not been able to keep up with demand in many localities, impacting construction and other related jobs, limiting the requisite growth in population needed to sustain economic growth, and limiting potential tax revenue gains.
- Barriers to housing development are exacerbating the housing affordability crisis, particularly in regions with high job growth and few rental vacancies.
- Significant barriers to new housing development can cause working families to be pushed out of the job markets with the best opportunities for them, or prevent them from moving to regions with higher-paying jobs and stronger career tracks. Excessive barriers to housing development result in increasing drag on national economic growth and exacerbate income inequality.
- When new housing development is limited region-wide, and particularly precluded in neighborhoods with political capital to implement even stricter local barriers, the new housing that does get built tends to be disproportionately concentrated in low-income communities of color, causing displacement and concerns of gentrification in those neighborhoods. Rising rents region-wide can exacerbate that displacement.
- The long commutes that result from workers seeking out affordable housing far from job centers place a drain on their families, their physical and mental well-being, and negatively impact the environment through increased gas emissions.

- When rental and production costs go up, the cost of each unit of housing with public assistance increases, putting a strain on already-insufficient public resources for affordable housing, and causing existing programs to serve fewer households.

Modernized housing regulation comes with significant benefits.

- Housing regulation that allows supply to respond elastically to demand helps cities protect homeowners and home values while maintaining housing affordability.
- Regions are better able to compete in the modern economy when their housing development is allowed to meet local needs.
- Smart housing regulation optimizes transportation system use, reduces commute times, and increases use of public transit, biking and walking.
- Modern approaches to zoning can also reduce economic and racial segregation, as recent research shows that strict land use regulations drive income segregation of wealthy residents.

Cities and states across the country are interested in revising their often 1970s-era zoning codes and housing permitting processes, and increasingly recognize that updating local land use policies could lead to more new housing construction, better leveraging of limited financial resources, and increased connectivity between housing to transportation, jobs and amenities.

This toolkit highlights actions that states and local jurisdictions have taken to promote healthy, responsive, affordable, high-opportunity housing markets, including:

- Establishing by-right development
- Taxing vacant land or donate it to non-profit developers
- Streamlining or shortening permitting processes and timelines
- Eliminate off-street parking requirements
- Allowing accessory dwelling units
- Establishing density bonuses
- Enacting high-density and multifamily zoning
- Employing inclusionary zoning
- Establishing development tax or value capture incentives
- Using property tax abatements

"We can work together to break down rules that stand in the way of building new housing and that keep families from moving to growing, dynamic cities."
-- President Obama, remarks to the U.S. Conference of Mayors, January 21, 2016

A stable, functioning housing market is vital to our nation's economic strength and resilience. Businesses rely on responsive housing markets to facilitate growth and employee recruitment. Construction workers, contractors, and realtors depend on stable housing markets to fuel their careers. And the availability of quality, affordable housing is foundational for every family – it determines which jobs they can access, which schools their children can attend, and how much time they can spend together at the end of a day's commutes.

Our nation's housing market was in crisis when President Obama took office. In the first quarter of 2009, national home prices had fallen roughly 20 percent since mid-2005, leaving nearly 13 million households underwater. Today, the market nationwide has made tremendous strides, as the recovery helped households regain \$6.3 trillion of the real estate equity lost during the recession and lifted 7.4 million households out of negative equity since 2011, more than cutting in half the number of homeowners underwater.

This national recovery, while central to our broader economic recovery, has occurred during a period of increasing awareness of underlying regional challenges in housing markets. The recovery has been measured in home and property values but new production starts have not kept pace with historic levels we saw before the recession. In a growing number of metropolitan areas, the returning health of the housing market and vibrant job growth haven't led to resurgent construction industries and expanding housing options for working families, due to state and local rules inhibiting new housing development that have proliferated in recent decades. In such regions, these rules have resulted in undersupplied markets, reducing options for working families and causing housing costs to grow much faster than wages and salaries. And as Matthew Desmond recently documented in *Evicted*, families facing extreme rent burden often suffer lasting trauma resulting from their housing insecurity, destabilizing their lives and marring their prospects for upward economic mobility.¹

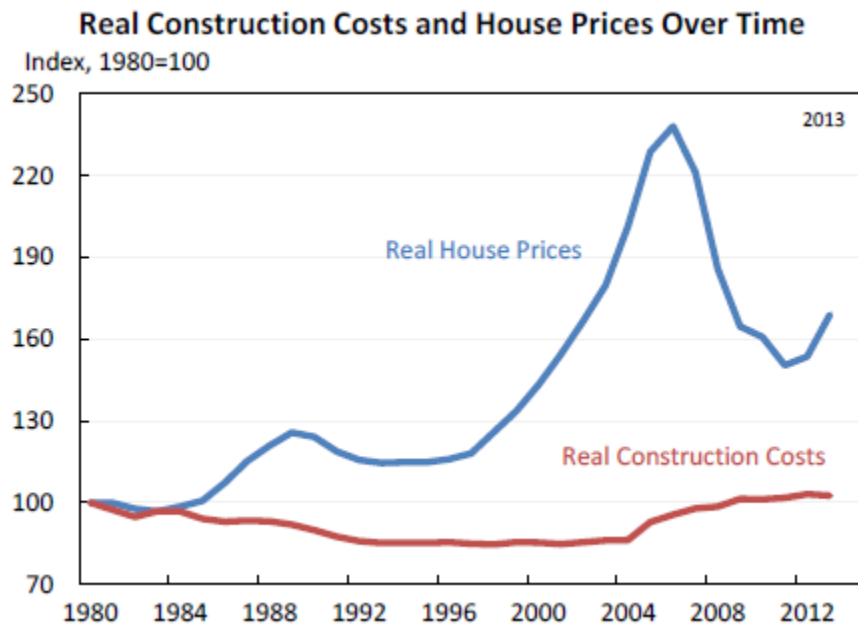
As fewer families have been able to find affordable housing in the regions with the best jobs for them, labor mobility has slowed, exacerbating income inequality and stifling our national economic growth. But this hasn't happened everywhere. In more and more regions across the country, local and neighborhood leaders have said yes, in our backyard, we need to break down the rules that stand in the way of building new housing – because we want new development to replace vacant lots and rundown zombie properties, we want our children to be able to afford their first home, we want hardworking families to be able to take the next job on their ladder of opportunity, and we want our community to be part of the solution in reducing income inequality and growing the economy nationwide.

This toolkit highlights the steps those communities have taken to modernize their housing strategies and expand options and opportunities for hardworking families.

Prevalence of Local Barriers to Housing Development

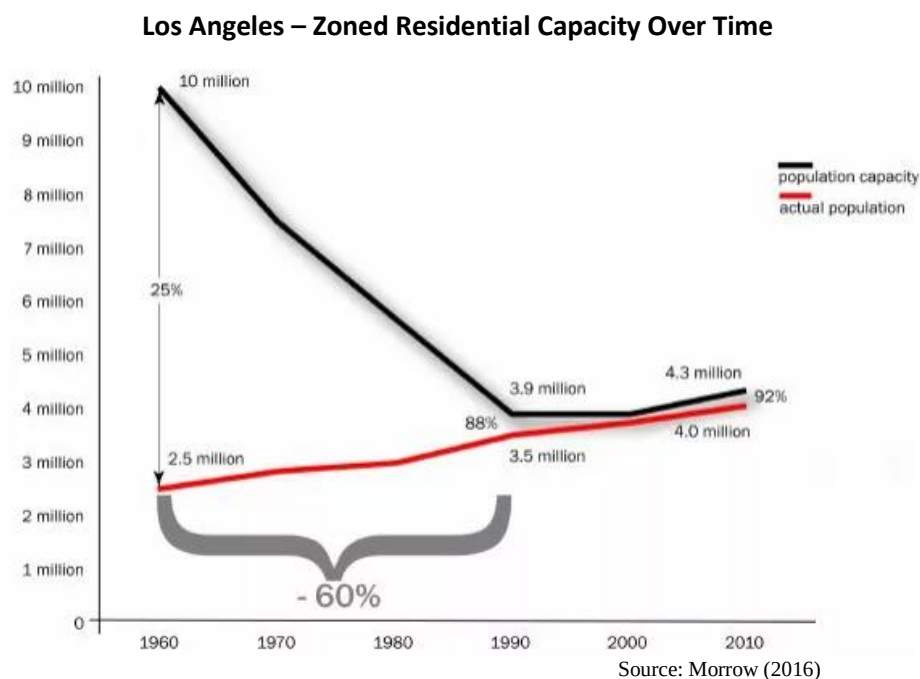
Over the past three decades, local barriers to housing development have intensified, particularly in the high-growth metropolitan areas increasingly fueling the national economy. Locally-constructed barriers to new housing development include beneficial environmental protections or well-intentioned permitting processes or historic preservation rules, but also laws plainly designed to exclude multifamily or affordable housing. Local policies acting as barriers to housing supply include land use restrictions that make developable land much more costly than it is inherently, zoning restrictions, off-street parking requirements, arbitrary or antiquated preservation regulations, residential conversion restrictions, and unnecessarily slow permitting processes.

Though no comprehensive and uniform measure for such barriers exists, given the wide range of local regulations and processes affecting housing development volumes and timelines, several national and local indicators support the observations of housing researchers and practitioners that such barriers have tightened. Researchers examining proxy measures – including the prevalence of zoning and land use cases in state courts, which correlate strongly with static indices of housing barriers and supply constraint surveys – have found that barriers to housing development increased rapidly from 1970 to 1990, and continue to increase through the present day.² Researchers have also documented a sharp increase in the gap between home prices and construction costs, with stringent housing regulations now driving cost increases previously shaped by construction costs and quality improvements.^{3,4} Localized studies have supported these national conclusions – documenting sharp increases in zoning and other land use restrictions in metropolitan Boston,⁵ New York City,⁶ Los Angeles,⁷ and San Francisco.⁸



Source: Gyourko, Malloy (2015)

Barriers to housing development are erected largely at the local level, and vary widely across states and metropolitan areas as a result. But the intensity and impact of such barriers are most evident in the vibrant job-generating regions where fervent demand far outstrips supply. Though popular coverage of these challenges has been most focused on the Bay Area, Seattle, and major East Coast cities, Los Angeles provides a clear illustration of the impact of the primary barrier to development – restrictive zoning. In 1960, Los Angeles was zoned to accommodate 10 million people; after decades of population growth and increased demand, the city is today zoned for only 4.3 million people.⁹ As Los Angeles leaders face a housing affordability and homelessness crisis, Mayor Garcetti and members of the City Council have tackled this problem by endorsing state plans to increase development and pushing for updated city plans and approval processes to facilitate new housing construction, in addition to committing new city funds toward affordable housing.



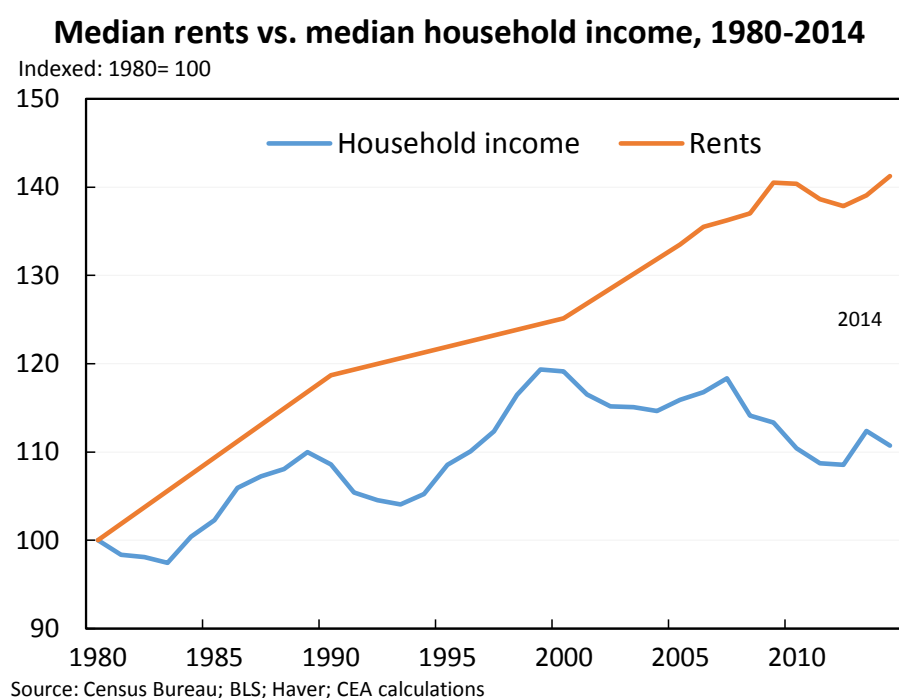
The vast majority of the nation’s largest cities are feeling the crush of sharply increased housing costs outpacing wages, with 9 of the largest 11 cities seeing rising rents and tightening vacancy rates, but this problem is now being felt in smaller cities and non-coastal locations that have historically enjoyed the benefits that come with an adequate supply of housing affordable to low- and moderate-income families. Growing, dynamic cities like Atlanta, Denver, and Nashville used to be able to tout housing affordability as a key asset – but now see rents rising above the reach of many working families.¹⁰ Inland cities have experienced some of the largest increases in rent in recent years, despite lacking the topological space constraints faced by coastal cities.

Effects of Local Barriers to Housing Development

The accumulation of state and local barriers to housing development – including zoning, other land use regulations, and unnecessarily lengthy development approval processes – has reduced the ability of many housing markets to respond to growing demand. The increasing severity of

undersupplied housing markets is jeopardizing housing affordability for working families, exacerbating income inequality by reducing workers' access to higher-wage labor markets, and stifling GDP growth by driving labor migration away from the most productive regions.

These effects are increasingly visible in communities nationwide. In just the last 10 years, the number of very low-income renters paying more than half their income for rent has increased by almost 2.5 million households, to 7.7 million nationwide, in part because barriers to housing development are limiting housing supply.¹¹ Since 1960, the share of renters paying more than 30 percent of their income for rent has more than doubled from 24 percent to 49 percent.¹² And over that time, real household income increased by 18 percent, but inflation adjusted rents rose by 64 percent.



Emerging research has shown that in areas with high-cost housing such as California, zoning and other land-use controls contribute significantly to recent sharp cost increases, reflecting the increasing difficulty of obtaining regulatory approval for building new homes.¹³

Not all barriers to housing development have negative impacts – local land use policies and regulations can increase the supply of well-located affordable housing, address externalities such as environmental impacts associated with development, create better connections between housing options accessible to transit, and support the fiscal health of states and localities. But the accumulation of even well-intentioned land-use policies can restrict housing availability; create uncertainty for developers and limit private investment; exacerbate the imbalance between jobs and housing; and induce urban sprawl.

Costs and negative impacts of excessive barriers to housing development

Housing production has failed to expand in too many regions with strong demand, artificially depressing the availability of construction and related jobs, limiting the ability for local populations to expand in response to job growth, and reducing the potential for increased local tax revenue. In these regions, new market-rate construction shifts toward predominantly, and sometimes exclusively, larger or higher-end units as a manifestation of supply constraints, because when there are large fixed costs to building, as is the case when land use policies are onerous, even developers that aren't profit-maximizing find it difficult to make profits from smaller or more affordable units.

Barriers to housing development are exacerbating the **housing affordability** crisis, particularly in vibrant regions with high job growth and few rental vacancies.^{14,15,16} The most recent data shows that half of renters pay more than 30 percent of their income in rent,¹⁷ and more than 1 in 4 are severely rent-burdened, paying more than 50 percent of their income in rent.¹⁸ For families working to buy their first home, rent burdens delay their plans, making it more difficult to save for a down payment. While the housing market recovery has meant growing home values for existing homeowners, barriers to development concentrate those gains among existing homeowners, pushing the costs of ownership out of reach for too many first-time buyers. This has contributed to a lower homeownership rate in the US, which has fallen to its lowest level in 50 years.¹⁹ Homelessness is on the rise in some of our nation's most rent-burdened cities despite continued decreases in homelessness nationwide – for example, according to figures released by local homelessness coalitions, Washington, D.C. saw a 31 percent increase in family homelessness last year amid a 14 percent increase in homelessness overall, and homelessness grew by 6 percent in Seattle and Los Angeles.

Increasingly, working families are pushed out of the job markets with the best opportunities for them, or can't afford to move to regions with higher-paying jobs and stronger career tracks. As Jason Furman recently discussed in a National Press Club speech, this phenomenon exacerbates **income inequality**. For the first time in over 100 years, income convergence across states has stopped, as population flows to wealthier regions has decreased – which researchers attribute to increased housing prices as a result of high local barriers to housing development.²⁰ Where housing markets are able to respond more elastically, workers can shift to meet job and wage growth through relocation, reducing income inequality.

When large flows of workers are unable to move to the jobs where they would be most productive, local barriers result in increasing **drag on national economic growth**. A recent study noted that in theoretical models of mobility, economic research suggests our Gross Domestic Product would have been more than 10 percent higher in 2009 if workers and capital had freely moved so that the relative wage distribution remained at its 1964 level.²¹ Most of this loss in wages and productivity is caused by increased constraints to housing supply in high-productivity regions, including zoning regulations and other local rules. This estimate is tentative, and would imply that some cities would see counterfactual employment increases of a significant magnitude resulting from reduced housing restrictions, but the underlying point is clear: output is lost when the supply of workers to high-productivity regions is restrained. Over time, this effect can be large enough to meaningfully reduce the nation's overall economic output.

When new housing development is limited region-wide, and particularly precluded in neighborhoods with political capital to implement even stricter local barriers, any new development tends to be disproportionately concentrated in low-income communities of color, causing displacement and concerns of **gentrification** in those neighborhoods, raising market rents within neighborhoods experiencing rapid changes while failing to reduce housing cost growth region-wide.²² As rents rise region-wide in response to insufficient housing supply, this displacement is exacerbated. Lowered region-wide barriers to new housing development would lead to more equitable distribution, allowing neighborhoods to retain character and resources as they evolve, while facilitating effective affordable housing preservation options by preventing excessively rapid change that generates displacement and dislocation.

As workers get pushed further and further from job centers – driving from Modesto to San Francisco, for example, often two hours each way – excessively **long commutes** pull them away from time with their families, increase strains on mental health and happiness, and contributing to further greenhouse gas emissions.^{23,24,25,26} The impact of these strains is being felt throughout the middle class, hurting workers that provide critical services like teachers, police officers and firefighters. For example, recent reports highlighted at least a dozen San Jose police officers living in RVs in a parking lot near Police Department headquarters to cope with the long commutes required by the lack of affordable housing nearby.²⁷

When barriers to housing development drive up rental and production costs, they constitute a countervailing force on housing assistance programs, reducing the impact of already-insufficient government resources for affordable housing. This **strain on public resources** occurs at all levels – federal, state and local. While President Obama’s budget calls for increasing investments to provide affordable housing and end family homelessness, HUD’s existing project-based and housing choice vouchers could serve more families if the per-unit cost wasn’t pushed higher and higher by rents rising in the face of barriers to new development. In order to build affordable housing, developers are often forced to supplement funding sources like tax credits with additional equities and loans, drawing down on state-allocated housing finance agency resources and city-held CDBG dollars. As each of these sources is piled onto a critical affordable housing resource, it is not available for preservation or additional new affordable housing elsewhere in the region.

Benefits of smart housing regulation

Housing regulation that allow supply to **respond elastically to demand** helps cities protect homeowners and home values while maintaining housing affordability. As cities make investments to attract residents and businesses, vibrant hubs of jobs and culture have attracted far more potential residents than many cities’ current zoning practices can accommodate. Without building adequate housing to meet the increased demand, cities that have invested in services for their residents see rents soar, making those benefits inaccessible to those they were intended to help. By allowing housing development to respond to demand, cities would capture the increased tax revenue they hope to draw by attracting more residents, and relieve pressure on existing working families that would otherwise be priced out of their communities and forced to move.

Regions are better able to **compete in the contemporary economy** when their housing development is allowed to meet local needs. When jobs and people move freely, local economies flourish, as adequate housing development reduces mismatches between housing and infrastructure, or housing and jobs. For decades, Sunbelt cities with more permeable boundaries have enjoyed outsized growth by allowing sprawl to meet their need for adequate housing supply. Space constrained cities can achieve similar gains, however, by building up with infill, reducing the eyesores of vacant lots and vacant or rundown buildings that go undeveloped in highly constrained regulatory environments. This approach facilitates cities expanding their economies across all sectors, including the essential service sector jobs that allow cities to remain attractive, rather than concentrating growth at the high end of the economy.

Smart housing regulation **optimizes transportation system use, reduces commute times, and increases use of public transit, biking and walking.** A preponderance of a metro area's commuters living far from work in pursuit of affordable housing prevents infrastructure, including public transit, from being used efficiently and effectively. Smart housing regulation would close the gap between proximity and affordability. More residents with access to walking, biking and public transit options also means less congestion on the roads and overall reductions in traffic congestion, greenhouse gas emissions, and commute times.

Modern approaches to zoning can also **reduce economic and racial segregation**, as recent research shows that strict land use regulations drive income segregation of wealthy residents.²⁸ Inclusionary zoning laws that facilitate working families accessing high-opportunity neighborhoods are effective in reducing segregation and improving educational outcomes for students in low-income families.²⁹ Research also finds that more localized pressure to regulate land use is linked to higher rates of income segregation, while more state involvement in setting standards and baselines for land use is connected to lower income segregation, reinforcing to the key role that states can play in ensuring access to affordable housing is an even playing field for all residents.³⁰

Spotlight: Local Barriers and Housing Discrimination

In tight rental markets, renters flood landlords advertising quality, affordable housing. The stronger the local barriers to development, and the tighter the market, the higher the demand for units. High demand often reflects quality housing options; however, when rental supply is unresponsive to demand, competition can be high for even low-quality units. In such situations, it can be extremely difficult for low-income families to find the quality affordable housing they need, even when they receive a HUD Housing Choice Voucher to aid them with their rent – because some landlords simply refuse to rent to voucher-holders, a practice particularly jarring to the thousands of families struggling to escape homelessness through use of a housing voucher.

Federal fair housing law explicitly prohibits landlords from discriminating against renters on the basis of race, religion, familial status or other protected classes. But many states and localities consider discrimination on the basis of voucher payment for rent to be legal in the absence of explicit source-of-income protections. Available evidence indicates that renter discrimination is widespread, and most harmful in high-barrier rental markets with limited housing options for families receiving rental assistance, hindering efforts to enable more low-income families to access affordable housing in opportunity-rich neighborhoods.

Discrimination against voucher holders is prevalent nationwide, especially in high-cost markets, and remains prevalent even in the 13 states and dozens of localities that have made such discrimination explicitly illegal. Though cities like Chicago, Philadelphia, and Pittsburgh have these laws in place, local investigative reporting has documented high rates of ongoing, illegal renter discrimination. For example, landlords post “no Section 8” tags on sites like Craigslist.org, especially for units in relatively low-poverty areas where constraints to housing development are often highest. The rarely-enforced fine for this violation in Chicago is \$500.

Renter discrimination reduces voucher success rates, limiting low-income households’ housing options in general, and particularly their ability to move to high-opportunity neighborhoods. The Administration’s actions to increase economic mobility, reduce local barriers to housing development, advance fair housing, end homelessness, and expand access to opportunity depend in part on the ability of low-income families to lease units in neighborhoods of their choosing.

Barriers to housing development that prevent supply from responding elastically to demand put additional pressure on landlords and the rental market. Discrimination, even inadvertent discrimination, increases when market conditions increase competition among renters. Unsurprisingly, many cities with the highest local barriers have seen increases in homelessness in recent years, while nationwide homelessness has been sharply in decline.

Vouchers are a critical tool for meeting the Administration’s goals of ending veteran, chronic, and family homelessness. The President’s historic FY 2017 budget proposal to end homelessness by 2020 for every family with children nationwide would invest \$11 billion over 10 years, primarily in vouchers, to end families’ homelessness, stabilize their housing, and give them a foundation to succeed economically. These goals will be easier to achieve if local leaders reduce barriers to housing development and end renter discrimination in their jurisdictions.

Framework for Modern Housing Strategies

Cities across the country are interested in revising their often 1950s-era zoning codes and housing permitting processes, and increasingly recognize that updating local land use policies could lead to more new housing construction, better leveraging of limited financial resources, and increased connectivity between housing to transportation, jobs and amenities. The President's FY 2017 HUD budget includes a \$300 million proposal for Local Housing Policy Grants to help facilitate those cities' success in modernizing their housing regulatory approaches.

In markets with high demand but currently inelastic supply, these modern housing approaches are likely to lead to more new housing construction, including multifamily rental construction. Though much of that housing would likely be market-rate housing, its introduction into the marketplace would help slow cost growth in existing and otherwise affordable housing. In markets that have not yet but are poised to experience rapid economic growth in the near to mid-term (e.g., as result of their advantageous location, emerging industrial growth, or surge in resource extraction), promising practices can be embedded into local action as they develop their economic growth strategy to ensure that sustained economic growth is achieved.

The Administration has also taken action to reinforce these practices, as the Department of Transportation now examines cities' housing regulatory approaches, and their ability to respond elastically to new demand generated by transit projects, as part of their Small Starts and New Starts project reviews.

Cities like Chicago, Seattle, Sacramento, and Tacoma and states like California and Massachusetts have already begun to foster more affordable housing opportunities by removing restrictions, implementing transit-oriented zoning ordinances, and speeding up permitting and construction processes.

Role of states and localities

Both states and cities have proven they can break free of the constraints that have stifled responsive supply and driven up housing costs across the country. While most states have devolved land use control to localities and remain relatively hands-off when it comes to land use planning, a number of states have begun to take a more active role in reducing regulatory barriers. A strong baseline at the state level creates an even playing field for local land use decisions.

Cities and other localities have the greatest opportunity to innovate in efforts to reduce barriers to housing supply, given their proximity to the effects of either a constrained or flexible supply. Without action, excessive local barriers drive up housing costs, undermining affordable housing at most income levels, and resulting in declines in homeownership. Demonstrated success in addressing these challenges can help overcome apprehension about neighborhoods evolving and growing through new development.

Spotlight: Impacts on the Ground

“As the head of EMPath, a Boston-based non-profit, that helps low-income families move out of poverty, one of the greatest hurdles my staff and participants face is finding affordable housing. When we first start working with our participants, many of them are homeless and trying to make their way from emergency shelters into permanent housing. Affordable housing in Greater Boston is in such short supply, and the costs are so high that, at their average wages (\$10/hr), participants have to work 97 hours a week in order to afford the Fair Market rent on a one-bedroom apartment. If they seek lower cost housing outside of Boston, moving often rips apart the work, childcare, and support systems they count on to maintain their precarious family and financial stability.

And my staff experience similar problems. Pay at my organization is far from minimum wage. The average employee at EMPath has a Bachelor’s degree and makes about \$26/hour. But even at this level, it is hard for staff to find affordable housing in the city and many of them move as much as 25+ miles away in order lower housing costs. When they do this, they add hours of commuting to their work week and easily spend \$360+/month for their monthly transit passes. We routinely have to alter work schedules and the offices where our staff work in order to accommodate their commuting needs.

As can be seen from all of this, high housing costs create a drag on everything we are trying to do: stabilize people’s lives, decrease their dependence on public supports, get them into the workforce, and run our non-profit business. It is fundamentally important to address this issue if we are going to succeed in improving our economy and opportunity for low and middle income workers.”

Elisabeth Babcock
President and CEO
EMPath – Economic Mobility Pathways
Boston, MA

Toolkit – Taking Action

This toolkit highlights actions taken by states and local jurisdictions to promote healthy, responsive, high-opportunity housing markets, despite the common and sometimes challenging political barriers to reform and improvement. This list is not exhaustive – there is a substantial amount of good work being done all around the country – but provides several potential starting points for local efforts to modernize housing planning and development.

1. Establish by-right development

Most development today goes through a discretionary review process prior to approval, such as public hearings or local legislative actions. These processes predispose development decisions to become centers of controversy, and can add significant costs to the overall development budget due to the delay and uncertainty they engender. The tradeoffs that developers make to account for those additional costs can result in lost affordability, quality, or quantity of units developed. “As-of-right” or “by-right” development allows projects to be approved administratively when proposals meet local zoning requirements.³¹ Such streamlining allows for greater certainty and more efficient development and, depending on a locality’s regulatory approach, supports lessening of barriers from density limits and other zoning requirements. It can also be targeted to achieve public goals by making “by-right” approval contingent on increased affordable housing, transit-oriented development, or energy efficiency.

A 2014 report by the Urban Land Institute concludes that “municipalities can facilitate more efficient development time frames and reduce costs by enabling more by-right development. This can be accomplished by relaxing restrictions related to density, building height, unit size, and parking minimums, thereby freeing developers from the need to seek waivers, variances, or rezoning.”³²

Some states have enacted or pursued these approaches in efforts to facilitate affordable housing development. In California, Gov. Jerry Brown recently proposed a policy that would ensure that new developments that conform with existing local zoning rules and include set-asides for affordable housing would be approved “by right” – as long as the project is not located on sensitive sites, such as wetlands, farmland, flood plains, and earthquake fault zones, additional discretionary review requirements would be no longer be required, facilitating more rapid development of affordable housing at lower costs.

States can also encourage localities to allow by-right development. For instance, Massachusetts allows communities to designate areas as Priority Development Sites, a designation that provides an incentive for municipalities to allow by-right development in localities where they seek to encourage economic growth.³³

Fairfax County, VA, has implemented by-right development in seven districts, with the goal of encouraging economic development through flexibility in zoning regulations and administrative processes in older commercial areas. These more flexible zoning regulations

include 40-50 foot increases in building height, parking requirement reductions, and abbreviated fees and approval processes for development changes.³⁴

2. Tax vacant land or donate it to non-profit developers

Nationwide, the number of vacant residential units increased from 7 million in 2000 to 10 million in 2014.³⁵ Vacant and abandoned properties not only represent lost housing opportunities, but can cause significant harm to the surrounding neighborhood. Strategies to address these properties can reduce blight and place them back into productive use. In-fill development can have significant environmental benefits, as well-resourced urban land can be accessed by more people and can also result in larger ridership for public transit when in proximity to city centers. A 2014 study found that in the Cleveland area, the sale price of homes within 500 feet of a vacant property depreciated by 1.7 percent in low-poverty areas and 2.1 percent in medium-poverty areas,³⁶ while a 2010 University of Pittsburgh study concluded that the rate of violent crime within 250 feet of a vacant property is 15% higher than that within 250 and 353 feet from the property.³⁷ Local governments bear the costs of these vacant properties. A 2010 study found that Philadelphia spends more than \$20 million annually to maintain 40,000 vacant properties, which cost the city over \$5 million per year in lost tax revenue³⁸.

Localities often face challenges in identifying vacant properties,³⁹ but many jurisdictions have enacted vacant property registration ordinances that require individuals to register vacant land and often pay a fee, with cities in Florida, California, Illinois and Michigan leading the way in implementation. Many localities in these states increase the fees the longer a property remains vacant, which encourages lot owners to put their properties to more productive use, such as redevelopment.⁴⁰ Once vacant property has been identified, jurisdictions are able to take action to combat the lost revenue and blight that come with vacant property by taxing vacant land or donating to non-profit developers.

At the city level, Dallas has addressed vacant property through a land bank, a “government-created nonprofit corporation designed to convert tax-delinquent and vacant properties into affordable housing or other productive uses,”⁴¹ which provides “a tool to enable cities to more effectively...pursue tax foreclosure on unproductive vacant properties in return for...placement into productive use in the development of affordable housing.”⁴² Dallas also acquires vacant lots for affordable single-family housing development, and allows nonprofit groups to develop affordable housing by purchasing foreclosed vacant lots or surplus vacant lots from the city's inventory at below market price, enabling Dallas to reduce the blight of vacant lots and foster more affordable housing development.⁴³

3. Streamline or shorten permitting processes and timelines

Permitting processes can introduce yet another source of cost and uncertainty in the effort to increase housing supply through production. Unnecessarily lengthy permitting processes restrict long-run housing supply responsiveness to demand, and also present an inefficiency for city planners and reviewers whose time could be more effectively spent on essential

tasks. Most localities' permitting processes do not fully leverage new technology to achieve greater speed, reliability and efficiency.

San Diego and Austin are two of many cities that have tackled these challenges, streamlining and shortening their permitting processes. San Diego's Expedite Program allows for expedited permit processing for eligible affordable/in-fill housing and sustainable building projects, with a 5 business day initial review.⁴⁴ In 2000, the Austin City Council created the S.M.A.R.T. Housing program which offers developers of housing that serves low-income families waivers for development fees and expedited development review; since 2005, more than 4,900 housing units have been completed through this approach.

States have also taken action, with both Rhode Island and Massachusetts driving localities toward more streamlined processes. The Rhode Island 2009 Expedited Permitting for Affordable Housing Act provides state permitting agencies with strict deadlines for making their decisions, for transit-oriented, dense, or historic preservation projects that are large enough to meaningfully increase availability of affordable housing in their communities. Massachusetts developed a model set of local permitting practices, with guidelines including predictable impact fees, use of objective criteria for by-right zoning, and uniform timelines. By incentivizing efficient permit processing at the state and local level, communities are better positioned to accelerate development, resulting in increased housing production, more stability for contractors and construction workers, and less risk for investors.

4. Eliminate off-street parking requirements

Parking requirements generally impose an undue burden on housing development, particularly for transit-oriented or affordable housing. When transit-oriented developments are intended to help reduce automobile dependence, parking requirements can undermine that goal by inducing new residents to drive, thereby counteracting city goals for increased use of public transit, walking and biking. Such requirements can also waste developable land, and reduce the potential for other amenities to be included; a recent Urban Land Institute study found that minimum parking requirements were the most noted barrier to housing development in the course of their research.⁴⁵ By reducing parking and designing more connected, walkable developments, cities can reduce pollution, traffic congestion and improve economic development. Businesses that can be accessed without a car can see increased revenue, increased use of alternative modes of transportation, and improved health outcomes for residents.

These requirements have a disproportionate impact on housing for low-income households because these families tend to own fewer vehicles but are nonetheless burdened by the extra cost of parking's inclusion in the development. The significant cost of developing parking – from \$5,000 per surface parking spot to \$60,000 underground – is incorporated at the start of the project, which can impede the viability and affordability of the construction.⁴⁶

In 2012, Seattle's city council voted to relax parking requirements, eliminating requirements in center-city areas with frequent transit services within ¼ mile, and reducing them by 50 percent in neighborhoods outside of those centers given the same minimum level of transit

service – sparking a wave of new development, including hundreds of units with no associated parking spaces. The study that accompanied this legislative change found that parking reduced the potential number of units at a site and increased the expected rental costs by 50 percent for a building without parking as compared to that with the mandated level of surface parking.⁴⁷

Cities such as Denver, Minneapolis and New York City have also demonstrated success in taking on minimum parking requirements – Denver lowered parking minimums for low-income housing, Minneapolis reduced requirements near transit stops, and New York City eliminated parking requirements for affordable housing located within ½ mile of a subway entrance. The Association of Bay Area Governments also published a rubric guiding parking requirement reform across the region, which accompanies the Metropolitan Transportation Commission’s Smart Parking Toolbox and funds parking plans for transit station areas. And in 2015, the State of California enacted a statewide override of local parking requirements for all residential projects near transit that incorporated affordable units.

5. Enact high-density and multifamily zoning

Local zoning code changes that allow for the development of higher-density and multifamily housing, especially in transit zones, can help to alleviate some of the pressure of the growing population in many city centers. In Massachusetts, the Smart Growth Zoning act provides incentives to local governments that make zoning changes and establish smart growth zoning districts, to foster, near transit nodes and city/town centers, denser residential or mixed-use zoning districts, including affordable units.⁴⁸ More recently, in June, the Fairfax, VA County Board of Supervisors approved changes to zoning codes to allow for taller buildings near Metro stations.⁴⁹ In Seattle, the city has nearly 800 micro-units with another 1,500 or so in the pipeline – more than any other city – yet, changes to the zoning code will disallow future approvals of such housing.⁵⁰

6. Allow accessory dwelling units

Accessory dwelling units can expand the available rental housing stock in areas zoned largely for single-family housing and can address the needs of families pulled between caring for their children and their aging parents, a demographic that has been growing rapidly in recent years. As a result of the recent recession, young adults have achieved financial independence at a slower rate than prior generations. While the number of Americans caring for both an aging parent and a child has increased only marginally, the costs associated with caring for multiple generations has increased significantly as a greater share of parents support their children beyond age 18.⁵¹ Accessory dwelling units offer one solution to this challenge by facilitating intergenerational living arrangements and allowing more seniors to age in place, something that nearly 90% of older Americans desire for themselves and their families.⁵² In addressing the temporary needs of families that are stretched thin, accessory dwelling units can create a permanent increase in affordable housing stock. Cities like Portland and Santa Cruz had explicitly encouraged this action, while others like San Diego have called for changes to allow more such units. The State of California moved earlier this month to streamline state regulations to promote construction of accessory dwelling units.

7. Establish density bonuses

Density bonuses encourage housing development and incentivize the addition of affordable housing units by granting projects in which the developer includes a certain number of affordable housing units the ability to construct a greater number of market rate units than would otherwise be allowed. Density bonuses are frequently tied to community goals of increased affordable housing and can be effective in driving larger quantities of units supplied through new construction. The State of California requires its local governments to grant a density bonus and concession or development incentive, if requested, for developments of five or more units including minimum portions of affordable housing or for senior housing.

8. Employ inclusionary zoning

Inclusionary zoning requires or encourages the inclusion of affordable units in new residential development projects. As of 2014, such policies had been implemented by nearly 500 local jurisdictions in 27 states and the District of Columbia.⁵³ Not only have such policies expanded the availability of affordable housing while allowing for new development that otherwise might have been locally opposed, they have also been shown to improve educational outcomes for low-income children gaining access to higher-performing schools.⁵⁴

As the Lincoln Institute of Land Policy has noted, inclusionary zoning policies require upfront commitment to long-term affordability, and perform best when both producing and preserving affordable housing.⁵⁵ While enforcement is a frequently cited obstacle to successful inclusionary housing requirements, Massachusetts' Chapter 40B provisions enables the local Zoning Boards of Appeals to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions. This flexibility reduces barriers created by local approval processes and zoning.⁵⁶

9. Establish development tax or value capture incentives

Tax incentives for developers who construct affordable housing offer another avenue to incentivize development; such incentives have been demonstrated to spur development, and have recently been adopted in Seattle and New York City. The [Seattle Multifamily Tax Exemption program](#), which was modified and renewed in 2015, provides property owners and developers a tax exemption on new multifamily buildings that set aside 20-25% of the homes as income- and rent-restricted for 12 years; currently approximately 130 properties in Seattle are participating in the program and an additional 90 are expected to begin leasing MFTE units between 2016 and 2018. Adopted in 2015, The New York 420-c Tax Incentive program provides complete or partial exemption from real estate taxes for low-income housing up to a maximum of 60 years.

10. Use property tax abatements

Like tax incentives, property tax abatements or exemptions can encourage the construction of affordable housing and spur development more generally, including by providing abatements to affordable housing production during the development phase. In 1985, Oregon adopted an approach to provide property tax abatements to properties in which units will be exclusively available to eligible low-income individuals or to vacant land intended to be developed as low-income housing. Philadelphia offers a tax abatement from real estate tax for up to 30 months during the construction of residential housing.⁵⁷

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August 26, 2019

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City Manager Lawrence, Kansas

Bonnie Lowe
President & CEO
Lawrence Chamber of Commerce

City Commissioners, Lawrence, Kansas.

Lisa Larsen, Mayor
Jennifer Ananda, Vice-Mayor
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Subject: Comments Regarding Plan 2040

It's hard to interpret the "spirit" of the Development Section of Plan 2040. But reading it, considering the desire for "Affordable Housing", its conflicts emerge, all detrimental to the global concept of affordable housing, and affordable living conditions in Lawrence, and Lawrence' future economic situation.

The provisions of the proposed Development Section of Plan 2040 over regulates the development process, artificially raises housing costs, and creates future economic uncertainty in Lawrence, KS. This section needs to be totally rewritten with the input of the Chamber of Commerce, "real developers", & knowledgeable consultants, with the goal of reducing barriers to housing that help create affordable housing for all, and for the economic future of Lawrence, KS.

The proposed Development Section of Plan 2040 is trying to be inclusive thru affordable housing, and other community benefits, but the impacts are exclusionary for everyone else, especially those who economically reside just above the affordable housing income level (defined by "Fair Market Rents"), as increasing costs/prices keep them from moving up the housing ladder and thus wealth accumulation.

There is a paper just published by the Joint Center for Housing Studies of Harvard University titled: "Eliminating Exclusionary Land Use Regulations Should Be the Civil Rights Issue of Our Time".

Published in August 2019 by Michael Stegman. See bio below. The paper PDF can be viewed here:

https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_exclusionary_zoning_civil_rights_stegman_2019_0.pdf

The above paper highlights how existing regulatory burdens, placed at all levels of government, create barriers opposite to the goal of affordable housing, and community development. On pages 7 & 8, of the paper, he lists the barriers & their causes. The following are some key take-aways.

Barriers raise housing prices

Example finding: "...estimate that excessive zoning has pushed real house prices 56 percent above real construction costs.

Barriers reduce & delay housing development

Example finding: "...find that in the most heavily regulated communities, delays for development approval average ten and a half months – nearly a year – compared to just over three months in lightly regulated communities.

Regulatory barriers increase income inequality & reduce economic growth

Example finding: "...demonstrate that increases in housing regulation among the highest wage states over the last 30 years have dramatically reduced population growth in high-wage regions, causing income convergence across states to stop for the

first time in 100 years, and contributing to growing income inequality nationwide. (My comment: High cost of housing/living excludes lower income families from housing which decreases wealth accumulation opportunity)

Example finding: "...suggest that constraints to housing supply may have lowered aggregate US growth by 36 percent from 1964 to 2009; and researchers at the University of Pennsylvania Wharton School and the Federal Reserve have recently provided new evidence that local regulations are reducing economic efficiency.

The paper goes on to say: **"Where We Go from Here...** An ideological and political consensus is emerging that exclusionary zoning and related development barriers decrease housing affordability by restricting new supply and raising housing prices, with profoundly important national implications. **The prevailing view remains that the most effective policy levers for addressing this problem reside in the hands of governors, mayors, and other local officials**, and to a limited extent, we are seeing evidence that that view is right..."

We should also note, consistent with findings in the above paper, Lawrence' current development policy of off-loading costs onto developments is hurting Lawrence' GDP. Per the St. Louis Fed, Lawrence' GDP is not keeping up with inflation, causing budgetary pressures & fee gymnastics to balance our annual budget.

The Development Section of Plan 2040 has, to me & others I have spoken, a very negative tone, even punitive in implementation. This is not a constructive, win-win, document. Citizens of Lawrence deserve better planning and policies from city management, commissioners, and staff, which lead to a brighter economic future for Lawrence.

Thank you, & please contact me if you have questions or comments. looking forward to an improved Plan 2040.

David Reynolds
Lawrence, KS

A short Bio for Mr. Michael Stegman.

Michael Stegman is a senior housing policy fellow at the Milken Institute Center for Financial Markets, a Senior Fellow in the Center for Household Financial Stability at the St. Louis Federal Reserve Bank, and a Senior Fellow at the Center for Community Capital at the University of North Carolina at Chapel Hill. Previously, he was senior policy advisor for housing at the National Economic Council from 2015 to 2016 after serving three years as counselor to the Secretary of the Treasury for housing finance policy. As the top housing policy advisor in the White House, he coordinated administration policies on housing finance reform, access to credit, and other housing issues. He also convened the "Private Label Securitization Initiative" while at Treasury, bringing together key issuers and investors to explore hurdles to the return of a viable private label securitization market. Previously, he served as assistant secretary for policy development and research at the Department of Housing and Urban Development from 1993 to 1997. He also holds the position of MacRae Professor Emeritus at the University of North Carolina at Chapel Hill.

INDUSTRY
PERSPECTIVES

Eliminating Exclusionary Land Use Regulations Should Be the Civil Rights Issue of Our Time

AUGUST 2019 | MICHAEL STEGMAN



JOINT CENTER FOR
HOUSING STUDIES
OF HARVARD UNIVERSITY

Eliminating Exclusionary Land Use Regulations Should be the Civil Rights Issue of our Time

Michael A. Stegman

August 2019

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Introduction

Like cicada swarms, presidential commissions and federal initiatives to eliminate local barriers to housing development have a certain temporal cadence. By my accounting, there have been at least five such efforts over the past fifty years put in motion by both Democratic and Republican administrations (see Table 1). Though their respective contexts may vary according to the political economy of the time, their centers of gravity are strikingly similar. Each is based on the proposition that unnecessary land use regulations drive up production costs and drive down housing supply, especially for starter homes and affordable apartments.¹ Generally, regulatory barriers include such things as “land use restrictions that make developable land much more costly than it is inherently, zoning restrictions, off-street parking requirements, arbitrary or antiquated preservation regulations, residential conversion restrictions, and unnecessarily slow permitting processes” (see Table 2).²

The latest entry in the barrier removal sweepstakes is President Trump’s White House Council on Eliminating Regulatory Barriers to Affordable Housing, created by executive order in June 2019.³ Chaired by US Department of Housing and Urban Development (HUD) Secretary Ben Carson, the council has twelve months to “identify practices and strategies that most successfully reduce and remove burdensome Federal, State, local, and tribal laws, regulations, and administrative practices that artificially raise the costs of housing development, while highlighting actors that successfully implement such practices and strategies.” The second part of the charge is more prescriptive: “Recommend federal, state, local and tribal actions and policies that would reduce and streamline statutory, regulatory, and administrative burdens at all levels of government that inhibit the development of affordable housing, and encourage these governments to reduce regulatory barriers to the development of affordable housing.”⁴

Though the outcomes of the Carson Council should not be prejudged, it is worth noting that previous federal efforts to address regulatory barriers have resulted in more talk than action, in failed modest spending measures, and in dead-end legislative proposals. Lack of success is reflected in a couple of data points. First, the quantity of state-level regulatory barriers, according to one measure,

¹ For two of the five, the Douglas Commission and the Kaiser Commission, dealing with regulatory barriers to housing development received less emphasis than proposing new affordable housing production policies and programs.

² The White House, “Housing Development Toolkit,” Washington, D.C., September 2016, https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf.

³ “Executive Order Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing,” June 25, 2019, Sec. 4 (ii) (b), <https://www.whitehouse.gov/presidential-actions/executive-order-establishing-white-house-council-eliminating-regulatory-barriers-affordable-housing/>.

⁴ Ibid.

increased by nearly half between 1980 and 2010.⁵ Second, HUD estimated that the compound effects of 40 years of housing development regulations have added \$850 million to \$2 billion in additional yearly costs to the Housing Choice Voucher program.⁶ In my judgment, the ineffectiveness of these previous federal initiatives is in large part due to underestimating the national implications of not addressing the problem, and to policymakers' collective judgment that the political pain associated with these initiatives considerably exceeds the benefits that might flow from the modest policy agendas that have resulted from them.

The impetus for revisiting this issue in my inaugural Joint Center essay is a recent *Wall Street Journal* article on the Trump executive order. The article recalled an Obama administration report that highlighted actions that state and local jurisdictions have taken and could take to promote healthy, responsive, affordable, high-opportunity housing markets; this initiative by the administration was "to little effect," according to the reporter.⁷ As a White House senior housing policy advisor at the time, I agree with her assessment. The quiet release of the "Housing Development Toolkit"⁸ late in the president's second term is evidence of our failure to convince the White House to make the elimination of exclusionary land use practices a centerpiece of the administration's housing recovery strategy and confirmation of the hypothesis above about political pain. My reflections on how this came about are, if nothing else, cathartic, but recounting the challenging politics of this issue and sharing some of the research and data we developed in the process, might provide insights and help policymakers going forward.

The remainder of this policy brief is in three parts. I start with a case study of our inability to make a sufficiently persuasive case to the Obama White House communications team that exclusionary land use practices, by constraining housing supply and raising prices, not only make housing less affordable but also contribute to growing inequality, and may reduce the rate of economic growth.

⁵ Ganong and Shoag use the number of state appellate court cases containing the phrase "land use" (as a fraction of case volumes) as a measure of changes in state-level regulatory barriers, resulting in the change reported in the text. Peter Ganong and Daniel Shoag, "Why Has Regional Convergence in the U.S. Stopped?" HKS Faculty Research Working Paper Series RWP12-028, John F. Kennedy School of Government, 2012.

⁶ For recipients of HUD rental assistance, HUD bears the full burden of rising costs, paying the difference between 30 percent of a tenant's income and the fair market rent for that metropolitan area. According to HUD analysis, the housing stock increased by roughly 67 percent over the past four decades. Based on CEA and HUD analysis, an additional 10 percent increase in housing stock in response to a rise in housing demand would have led to a \$1.97 billion per decade lower HUD rental assistance budget in a low regulatory environment (1 standard deviation below) compared to the average regulatory environment.

⁷ Laura Kusisto, "Trump Administration to Take on Local Housing Barriers," *Wall Street Journal*, June 25, 2019, <https://www.wsj.com/articles/trump-administration-to-take-on-local-housing-barriers-11561483527?mod=searchresults&page=1&pos=2>.

⁸ The White House, "Housing Development Toolkit."

While these are my personal reflections only, the case study relies on a variety of internal staff work, research and data collected by a staff of talented members of the White House Domestic Policy Council (DPC) and others with whom I worked who were committed to elevating this issue. Next, I note that, in addition to the Carson Council, the housing platforms of several Democratic presidential primary candidates include proposals to address exclusionary land use practices, but none with a potential to change local political dynamics fueling these activities to become a real game-changer. Here I also cite a few isolated but important recent local zoning breakthroughs. I argue in the third part that it is necessary to reconceive how we think about the exclusionary land use issue: we must link the importance of local efforts to increase the elasticity of local housing supplies in response to surges in demand to widening racial economic and wealth disparities and macroeconomic considerations. I conclude by suggesting that eliminating exclusionary zoning and related local laws and regulations is a challenge worthy of mobilizing the extended civil rights community.

The Housing Development Toolkit: If a tree falls in a forest...

Rather than dropping it in the final months of the president's term, we planned for the White House Development Toolkit to be part of a major presidential event celebrating the ongoing housing recovery (see Table 3 for promising reforms highlighted in the Toolkit). Staff began putting the pieces together for this undertaking over many months, starting with a speech at HUD by Vice President Biden in April 2015 in which he addressed administration plans for closing the growing housing affordability gap. It was here that the vice president previewed, among other initiatives, the administration's plan for a new local housing policy grant program "that could help with reforming local zoning and density requirements."⁹ What the vice president did not point out was that this modest \$300 million competitive grant program was funded on the mandatory side of the president's fiscal year 2016 spending plan. This type of budget gimmickry was a dead giveaway of how low the program stood on the president's agenda.¹⁰

Jason Furman, chair of the president's Council of Economic Advisors (CEA), provided the rationale for tackling the issue in a November 2015 speech: he described how restrictive land use practices raise the cost of housing, limit access to opportunity for low-income families, reduce economic

⁹ Christine Serlin, "HUD Event Addresses Affordability Crisis," *Affordable Housing Finance*, April 7, 2015 https://www.housingfinance.com/policy-legislation/hud-event-addresses-affordability-crisis_o.

¹⁰ Mandatory spending programs like this one would not count against congressionally imposed tight domestic discretionary spending caps, which are reserved for higher administration priorities. Recognizing their low priority, Congress rarely approves mandatory spending proposals like this one that have all of the attributes of a domestic discretionary spending program.

growth, and widen economic inequality.¹¹

Zoning can reinforce divergence across labor markets by impeding market forces that would otherwise help reduce income inequality and boost productivity. High-productivity cities—like Boston and San Francisco—have higher-income jobs relative to low-productivity cities. Normally, these higher wages would encourage workers to move to these high-productivity cities—a dynamic that brings more resources to productive areas of the country, allows workers in low-productivity areas to earn more, improves job matches and competes away any above-market wages (another type of economic rents) in the high-productivity cities. But when zoning restricts the supply of housing and renders housing more expensive—even relative to the higher wages in the high productivity cities—then workers are less able to move, particularly those who are low income to begin with and who would benefit most from moving. As a result, existing income inequality across cities remains entrenched and may even be exacerbated, while productivity does not grow as fast it normally would. This last result—from a paper out this past year by Chang-Tai Hsieh and Enrico Moretti—frames excessively restrictive zoning policies as hindrances to productivity growth.

Building further toward a presidential event to highlight the housing resurgence, White House Domestic Policy Council staff saw an opportunity to leverage the president’s presence at two upcoming winter meetings of the US Conference of Mayors (USCOM) and the National Governors Association (NGA). Since removal of exclusionary land use practices is most politically primed for state and local action, we wanted to include in the president’s remarks the negative impacts of excessive regulation and highlight examples where successful local strategies were working to enhance the housing recovery, and then challenge the chief executives to take on the charge.

In anticipation of the upcoming mayors meeting, DPC staff drafted illustrative speech materials that the president’s speechwriters could adapt for incorporation into his prepared remarks to the mayors. Here is an example:

In many of our most productive regions—where companies are flocking to do business—it’s harder for them to find workers because it’s so hard for those workers to find affordable housing. And it’s not for lack of developers who are willing to invest, or construction workers wanting to get back to work—it’s because some localities haven’t gotten around to reforming outdated, decades-old rules on housing development, or have unintentionally piled requirement after requirement that create real barriers to getting new, reasonably priced housing built. When that happens, hardworking families have to drive farther and farther just to find housing they can afford. So we need to see more efforts like that of the Silicon Valley Leadership Group, or the Chicago Commercial Club, who partnered with their local policymakers to ease those barriers—to make sure their employees were able to find housing.

¹¹ Jason Furman, “Barriers to Shared Growth: The Case of Land Use Regulation and Economic Rents,” The Urban Institute, November 2015, https://obamawhitehouse.archives.gov/sites/default/files/page/files/20151120_barriers_shared_growth_land_use_regulation_and_economic_rents.pdf.

Another harbinger of a disappointing outcome was a request we received from the White House communications team asking us to test the ideas reflected in our draft remarks by previewing them with another trade organization of local political officials other than the two whom the president would be meeting. The political advice we received from these local government representatives was blunt and to the point: drop the topic all together. Challenging those elected to do more to modernize their obsolete development regulations would fall on deaf ears, be politically divisive, and make it harder to get the mayors and governors behind the president's more important priorities.

The president's advisors took this advice to heart, as we struck out entirely with the governors meeting and managed to get only a single sentence in the president's remarks to the mayors. In the closing section of his remarks, the president reflected on his close working relationship with the mayors:

So we've accomplished a lot together on behalf of the American people. I could not be prouder of the work that we've done together. There's a lot more that I want to get done this last year. I still am pushing hard and we have I think a real opportunity to get criminal justice reform done this year. We have to work together to combat the scourge of opioids and heroin that is spreading through so many of our communities across the country. We still have a lot of work we can do to improve our schools. We can work together to break down rules that stand in the way of building new housing and that keep families from moving to growing, dynamic cities [emphasis added].¹²

With a presidential event not happening, the Development Toolkit sat there all dressed up with nowhere to go, and the Communications staff finally released it eight months later as a standalone product with little fanfare. While the Development Toolkit remains an important albeit underutilized affordable housing resource, the research that stands behind it is, perhaps, even more important than the report itself. Given that the Trump executive order shares our view that regulatory barriers widen the affordability gap and reduce economic growth, and directs the Carson Council to quantify those effects,¹³ the following research and data highlights compiled by our DPC staff might be useful to that effort.

¹² "Remarks by the President at U.S. Conference of Mayors," The White House, January 21, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/01/21/remarks-president-us-conference-mayors>.

¹³ Executive Order Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing, June 25, 2019, Sec. 4 (ii) (b), <https://www.whitehouse.gov/presidential-actions/executive-order-establishing-white-house-council-eliminating-regulatory-barriers-affordable-housing/>.

What the Data Show

Barriers raise housing prices

- Glaeser and Ward find that each additional acre in minimum lot size decreases new construction by roughly 40 percent and increases housing prices by roughly 10 percent.¹⁴
- Gyourko and Molloy estimate that excessive zoning has pushed real house prices 56 percent above real construction costs.¹⁵
- Glaeser, Gyourko, and Saks examine 60 Metropolitan Statistical Areas (MSAs) and find that housing prices rise more in regulated areas in response to local demand shocks, like an increase in jobs.¹⁶
- Ihlanfeldt examines more than 100 cities in Florida, concluding that each additional restrictive land use measure raises house prices by 3 percent.¹⁷
- Zabel and Paterson use data on 53 critical habitat designations introduced in California between 1979 and 2004, finding that housing prices increased by approximately 10 percent when critical habitat designations were put in place.¹⁸

Barriers reduce and delay housing development

- Gyourko, Saiz, and Summers find that in the most heavily regulated communities, delays for development approval average ten and a half months – nearly a year – compared to just over three months in lightly regulated communities.¹⁹ Moving from the 25th to 75th percentile in a regulatory index measure leads to a 20 percent reduction in supply elasticity.²⁰

¹⁴ Edward L. Glaeser and Bryce A. Ward, “The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston,” *Journal of Urban Economics* 65 (2009): 265-78.

¹⁵ Joseph Gyourko and Raven Molloy, “Regulation and Housing Supply,” in Gilles Duranton, J. Vernon Henderson, and William C. Strange, eds., *Handbook of Regional and Urban Economics*, Vol. 5B (Amsterdam, San Diego, and Oxford: Elsevier Science, 2015), 1289-1338.

¹⁶ Edward L. Glaeser, Joseph Gyourko, and Raven Saks, “Why Have Housing Prices Gone Up?” *American Economic Review* 95, no. 2 (2005): 329-33.

¹⁷ Keith Ihlanfeldt, “The Effect of Land Use Regulation on Housing and Land Prices,” *Journal of Urban Economics* 61, no. 3 (May 2007).

¹⁸ Jeffery E. Zabel and Robert Paterson, “The Effects of Critical Habitat Designation on Housing Supply: An Analysis of California Housing Construction Activity,” *Journal of Regional Science* 46, no. 1 (February 2006).

¹⁹ Using data from a survey of over 2,000 jurisdictions, Gyourko, Saiz, and Summers provide a snapshot of the regulatory and political process of residential housing development. Joseph Gyourko, Albert Saiz, and Anita Summers, “A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index,” *Urban Studies* 45, no. 3 (2008).

²⁰ Saiz estimates national housing price elasticity to be 1.75. Moving from 25th to 75th percentile in the regulatory index measure for a city of one million inhabitants with average land availability leads to a 20 percent reduction in

- Mayer and Somerville use quarterly data on housing starts and prices for 44 MSAs and find that one standard deviation increase in regulation leads to a 45 percent lower steady-state level of housing starts and 20 percent lower housing elasticities.²¹
- Quigley and Raphael examine 407 cities in California from 1990-2000 and find that housing price elasticity is .36 for regulated cities (those with at least 2 growth control measures) and essentially zero for unregulated cities.²²

Regulatory barriers increase income inequality, and reduce economic growth

- Ganong and Shoag demonstrate that increases in housing regulation among the highest-wage states over the last 30 years have dramatically reduced population growth in high-wage regions, causing income convergence across states to stop for the first time in 100 years, and contributing to growing income inequality nationwide.²³
- Saks estimates that restrictive land use regulations reduce employment by restricting migration. While the body of research in the field is not large, a signature study finds that the long-run impact of a 1 percent [labor] demand shock in a highly constrained [housing] market results in a 0.9 percent increase in employment, which is 0.1 percent lower than the increase found in less constrained areas. Translating this reduced elasticity to commonly understood terms, by reducing migration, highly restrictive land use regulations are associated with as much as a 10 percent reduction in employment.²⁴
- Hsieh and Moretti suggest that constraints to housing supply may have lowered aggregate US growth by 36 percent from 1964 to 2009; and researchers at the University of

supply elasticity, from 1.75 to 1.38. Albert Saiz, "The Geographic Determinants of Housing Supply," *Quarterly Journal of Economics* 125, no. 3 (August 2010).

²¹ Christopher J. Mayer and C. Tsurriel Somerville, "Land Use Regulation and New Construction," Columbia Business School, <https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/519/519.pdf>.

²² John M. Quigley and Steven Raphael, "Regulation and the High Cost of Housing in California," *American Economic Review* 95, no. 2 (2005).

²³ "Over the past fifty years, differences in incomes across states have been increasingly capitalized into housing prices. Coincident with this increase, we show that (1) the returns to living in productive places net of housing costs have fallen dramatically for low-skilled workers but have remained large for high-skilled workers, (2) high-skilled workers continue to move to areas with high nominal income, and (3) low-skilled workers are now moving to areas with low nominal income but high income net of housing costs." Peter Ganong and Daniel Shoag, "Why Has Regional Income Convergence in the U.S. Declined?" July 2012, https://journalistsresource.org/wp-content/uploads/2013/02/Ganong_Shoag.pdf.

²⁴ Raven Saks, "Job Creation and Housing Construction: Constraints on Metropolitan Area Employment Growth," *Journal of Urban Economics* 64 (2008).

Pennsylvania Wharton School and the Federal Reserve have recently provided new evidence that local regulations are reducing economic efficiency.²⁵

- Six of the 9 most productive metro areas over 1 million in population have moderately or highly regulated residential development climates, as shown by HUD analysis of BEA and Wharton Residential Land Use Regulation Index (WRLURI). Productivity is measured by real GDP per capita and “moderately or highly regulated” is defined as a mean metro WRLURI of 0.5 or above.
- Freddie Mac finds that the fastest growing cities in the United States saw a substantial decline in affordable housing units from 2010 to 2017. With an average population growth of more than 15 percent, the 10 fastest growing metros of the top 50 metros in the nation saw the number of units affordable to very low-income residents decline by more than a third. The average loss in very low-income affordable units was limited to about half that amount across all metro areas nationwide, where population growth averaged just over 5 percent.²⁶

Where We Go from Here

An ideological and political consensus is emerging that exclusionary zoning and related development barriers decrease housing affordability by restricting new supply and raising housing prices, with profoundly important national implications. The prevailing view remains that the most effective policy levers for addressing this problem reside in the hands of governors, mayors, and other local officials, and to a limited extent, we are seeing evidence that that view is right: “Cities like Chicago, Seattle, Sacramento, and Tacoma and states like Massachusetts have begun to foster more affordable housing opportunities by removing restrictions, implementing transit-oriented zoning ordinances, and speeding up permitting and construction processes.”²⁷ In December of last year, Minneapolis passed an ambitious zoning plan aimed at building more affordable housing throughout the city by allowing duplexes and triplexes in areas zoned for single-family. Oregon lawmakers passed a bill in July of this year requiring cities over 25,000 to mimic Minneapolis, allowing duplexes, triplexes, fourplexes and “cottage clusters”

²⁵Chang-Tai Hsieh and Enrico Moretti, Housing Constraints and Spatial Misallocation, *American Economic Journal: Macroeconomics* 2019, Available at <https://doi.org/10.1257/mac.20170388>; Joseph Gyourko and Raven Molloy, “Regulation and Housing Supply,” NBER Working Paper 20536 (October 2014), <http://www.nber.org/papers/w20536.pdf>.

²⁶ Freddie Mac, “Rapidly Growing Metros Are Losing Affordable Housing at Alarming Rates,” June 26, 2019.

²⁷ The White House, “Housing Development Toolkit.”

in neighborhoods zoned for single-family housing; in cities of least 10,000, duplexes would be allowed in single-family zones.²⁸ Illustrating that party does not strictly define the fault lines of local development issues, the Democratic California State Senate just rolled over until the 2020 session a measure to allow duplexes to be built in all single-family zones throughout the state, notwithstanding strong support from the Democratic governor.²⁹

While this patchwork of local innovations is welcome and important, without a national response, it is hard to see them adding up to the kind of systemic reforms necessary to tackle the problem. To this point, it is a positive to see that several Democratic presidential hopefuls who have assembled ambitious affordable housing supply agendas have complemented them with efforts to lower housing prices by reducing what Glaeser and Gyourko call the “implied zoning tax on new construction.”³⁰ Senator Elizabeth Warren (D-MA) offers up a new \$10 billion incentive-based competitive grant program that would allow states, regions, and localities to fund infrastructure, parks, roads, schools, or other priorities, but they can only compete for these funds if they “reform land-use rules to allow for the construction of affordable housing units and protect tenants from rent spikes and eviction.”³¹ Providing no new resources, Senator Cory Booker (D-NJ) would condition eligibility for selected discretionary federal transportation grants on localities’ adopting inclusionary zoning practices.³² While incorporating inclusionary land use requirements into HUD’s planning and reporting requirements, Booker proposes no new financial penalties for failure to perform.³³ Finally, Julián Castro, former Obama administration HUD Secretary, would create his own presidential commission to develop reforms that promote affordable housing development, including establishing federal guidelines on land use and zoning that “are consistent with efforts to combat segregation in public schools and address practices like red-lining and exclusionary zoning.”³⁴ In what is an otherwise unremarkable proposal,

²⁸ Laura Bliss, “Oregon’s Single-Family Zoning Ban Was a ‘Long Time Coming,’” CityLab, July 2, 2019, <https://www.citylab.com/equity/2019/07/oregon-single-family-zoning-reform-yimby-affordable-housing/593137/>.

²⁹ Marisa Kendall, “Gov. Gavin Newsom Talked Big on Housing. How Has He Stacked up So Far?” *Marin Independent Journal*, July 1, 2019, <https://www.marinij.com/2019/07/01/newsom-talked-big-on-housing-how-has-he-stacked-up-so-far/>.

³⁰ Edward L. Glaeser and Joseph Gyourko, “The Impact of Building Restrictions on Housing Affordability,” *FRBNY Economic Policy Review* 9, no. 2 (June 2003), <https://www.newyorkfed.org/medialibrary/media/research/epr/03v09n2/0306glae.pdf>.

³¹ Elizabeth Warren, “My Housing Plan for America,” March 16, 2019, <https://medium.com/@teamwarren/my-housing-plan-for-america-20038e19dc26>.

³² Michael Hobbes, “Finally, A Policy Proposal That Takes The Housing Crisis Seriously,” *HuffPost*, June 7, 2019, https://m.huffpost.com/us/entry/us_5cfaa05ee4b04e90f1c8d110/amp.

³³ “Housing, Opportunity, Mobility and Equity Act of 2018,” S.3342, 115th Congress, 2nd Session, August 1, 2018.

³⁴ Julián Castro, “People First Housing, Part I,” June 17, 2019, <https://www.julianforthefuture.com/news-events/people-first-housing-part-1/>.

Castro's framing of inclusionary housing as a civil rights issue is an important insight that sets the table for a bigger and bolder future policy agenda that is more up to the challenge, which I discuss in the close to this brief.

Final Thoughts

Rooted in 75 years of local actions, evidence is accumulating that the multiple layers of exclusionary zoning and land use controls are a powerful contributor not just to higher housing costs, but also to declining rates of economic mobility and productivity growth, and to widening disparities in the wealth of white and black Americans. For these reasons, we should make remedying these problems a national civil rights cause. Consistent with Richard Rothstein's argument in *The Color of Law* that we have a "constitutional obligation to remedy de jure segregation in housing,"³⁵ the Century Foundation's Richard Kahlenberg makes the civil rights case for taking on exclusionary zoning in this way:

Economically discriminatory government zoning practices... exclude low-income and working-class Americans from entire neighborhoods. This economic segregation in housing is damaging, and perhaps even as insidious as outright racial segregation, because while in effect it still excludes substantial numbers of people of color from good places to live, it does so with the open consent of the law.³⁶

Kahlenberg would operationalize Rothstein's constitutional obligation by having Congress pass a federal Economic Fair Housing Act (EFHA).³⁷ The EFHA would complement the 50-year-old federal Fair Housing Act by curtailing "government zoning policies that discriminate based on economic status."³⁸ While Kahlenberg does not raise the possibility of federal preemption of economically discriminatory local development laws, a legal analysis by Michael Schill of the Kemp Commission's unfulfilled recommendations does address this issue. He first determines through analysis of case law and precedence the constitutionality of the Kemp Commission's recommendation "that the federal government condition various forms of housing assistance on the adoption by states and localities of barrier removal strategies."³⁹ A state's failure to do so or to make an inadequate effort would result in, among other things, loss of its ability to issue tax-exempt bonds for housing and of its authority to

³⁵ Richard Rothstein, *The Color of Law, A Forgotten History of How Our Government Segregated America* (New York: Liveright, 2017).

³⁶ Richard D. Kahlenberg, "An Economic Fair Housing Act," The Century Foundation, August 2017, <https://tcf.org/content/report/economic-fair-housing-act/>.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Michael H. Schill, "The Federal Role in Reducing Regulatory Barriers to Affordable Housing in the Suburbs," *Journal of Law and Politics* 8 (1992): 703-30.

allocate housing tax credits.⁴⁰ While not endorsing it, Schill points out that preemption is a more direct alternative to conditioning federal grants in aid. Congress, says Schill, “could act directly to eliminate restrictive suburban land use practices by exercising its own constitutional power to regulate commerce.”⁴¹ He continues:

States and localities might challenge federal legislation preempting restrictive zoning ordinances on the grounds that (1) land use regulation does not fall within Congress's power to regulate interstate commerce and (2) the states' powers to regulate land use are protected from federal interference by the Tenth Amendment. Neither of these challenges, however, would be likely to succeed.

The Supreme Court has, since the early days of the republic, repeatedly stated that Congress's power to regulate interstate commerce is extremely broad. Nevertheless, prior to the late 1930s, the Court repeatedly struck down federal laws on the ground that they were directed to intrastate rather than interstate concerns. According to the Court, the commerce power was limited to activities that directly affected interstate commerce.

Beginning in the late 1930s, the Court substantially relaxed its standards for determining the reach of the federal commerce power. For example, in *Wickard v. Fillburn* a farmer challenged the power of the federal government to set quotas on the amount of wheat he could harvest. The quotas included wheat that he planned to consume rather than sell. In response to Fillburn's argument that these harvest limitations regulated activities that were local in nature, the Court stated that “even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as ‘direct’ or ‘indirect.’”⁴²

It seems to me that the research summarized earlier on the economic and racial impacts of widespread local exclusionary land use practices strengthens the nexus of those practices and interstate commerce. About one hundred years ago, Kahlenberg explains, “policymakers and individual citizens pursued a number of policies and practices to segregate housing by race and income, including explicit zoning by race, which was replaced by exclusionary zoning by income”—which had its own adverse racial impacts.⁴³ Recalling this history, the housing and civil rights community should adopt remedying the harms caused by the perpetuation of economically discriminatory land use laws as the civil rights challenge of our time.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Kahlenberg, “An Economic Fair Housing Act.”

Table 1. Fifty Years of Federal Studies & Commissions on Regulatory Barriers
(starting with most recent)

1. Federal, State, local, and tribal governments impose a multitude of regulatory barriers — laws, regulations, and administrative practices — that hinder the development of housing. These regulatory barriers increase the costs associated with development, and, as a result, drive down the supply of affordable housing. They are the leading factor in the growth of housing prices across metropolitan areas in the United States.	Executive Order Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing, June 25, 2019.
2. Locally-constructed barriers to new housing development include beneficial environmental protections or well-intentioned permitting processes or historic preservation rules, but also laws plainly designed to exclude multifamily or affordable housing.	The White House, Housing Development Toolkit, September 2016
3. The cost of housing is being driven up by an increasingly expensive and time-consuming permit-approval process, by exclusionary zoning, and by well-intentioned laws aimed at protecting the environment and other features of modern-day life. The result is that fewer and fewer young families can afford to buy or rent the home they want.	The Advisory Commission on Regulatory Barriers to Affordable Housing (The Kemp Commission), "Not In My Back Yard": Removing Barriers to Affordable Housing, July 8, 1991
4. In hearings held across the country, the Commission was told repeatedly that unnecessary regulations at all levels of government have seriously hindered the production of housing, increased its cost, and restricted opportunities for mobility.	The Report of the President's Commission on Housing, June 16, 1981 (commonly referred to as the "Kaiser Commission."
5. Restrictive zoning regulations greatly increase the price of land for housing, with rising land prices "further explaining the squeeze on low-income families seeking decent housing	Building the American City: Report of the National Commission on Urban Problems to the Congress and to the President of the United States, H.R. Doc. No. 91-34, at vii, 1968 (commonly referred to as the "Douglas Commission."

Table 2. Targeted Regulatory Barriers • Overly restrictive zoning and growth management controls; rent controls; • Cumbersome building and rehabilitation codes; • Excessive energy and water efficiency mandates; • Unreasonable maximum-density allowances; • Historic preservation requirements; overly burdensome wetland or environmental regulations; • Outdated manufactured-housing regulations and restrictions; • Undue parking requirements; • Cumbersome and time-consuming permitting and review procedures; • Tax policies that discourage investment or reinvestment; • Overly complex labor requirements; and inordinate impact or developer fees.	Trump/Ben Carson
• Excessive off-street/on-site parking requirements; • Lengthy or complex permitting processes; • Large minimum lot sizes; • Outdated, decades-old zoning codes; • Inflexible or arbitrary historic preservation rules; • Restrictive height limits, floor area ratios, setbacks, open space requirements, etc.; • Growth control mechanisms like moratoria, permitting caps and development quotas that restrict land availability without increasing density.	Obama/Domestic Policy Council
Five types of suburban land use regulations that serve to restrict the amount of low income housing built in the suburbs: • Growth controls, • Zoning, • Subdivision controls, • Exactions, and • Excessive permitting requirements.	GW Bush/Jack Kemp
• State and local governments have increased their use of traditional land use and building regulations while becoming more involved in other rulemaking that affects housing: ○ environmental regulations and energy standards; ○ State licensing requirements controlling entry into one of the construction trades; ○ municipal use of special fees for on- and off-site development; ○ growth management controls used to limit and channel development; ○ rent control and condominium conversion regulations	Reagan/McKenna, Hills
Fairer taxation and financing, in bringing larger units of government into existence, in providing a more uniform and fairer application of those State police powers, such as zoning and building codes, which they have largely abdicated to even the smallest locality. Zoning and building code restrictions have held back the application of economies of scale and production in the building industry.	LBJ/Paul Douglas

Table 3. Promising local practices include:

• High-density/multifamily zoning; • By-right development; • Inclusionary zoning; • Governmental policies to facilitate infill development; • Form-based zoning codes that incorporate expedited permitting; • Standardized building codes; • Elimination of parking minimums; • Transit-oriented development; • Mutable housing stock that can convert from single family to multi-family (and vice versa) and zoning that allows conversions by right; • Allowing accessory dwelling units (e.g., granny flats, English basements) • Allowing for micro-units; • Taxing vacant land; • Facilitating conversion of non-residential buildings to residential use; • Flexibility in historic preservation and environmental regulation processes, particularly for affordable housing; Growth management programs that increase density when restricting land availability.
Source: Development Toolkit Sept. 2016