

# ZONING PRACTICE

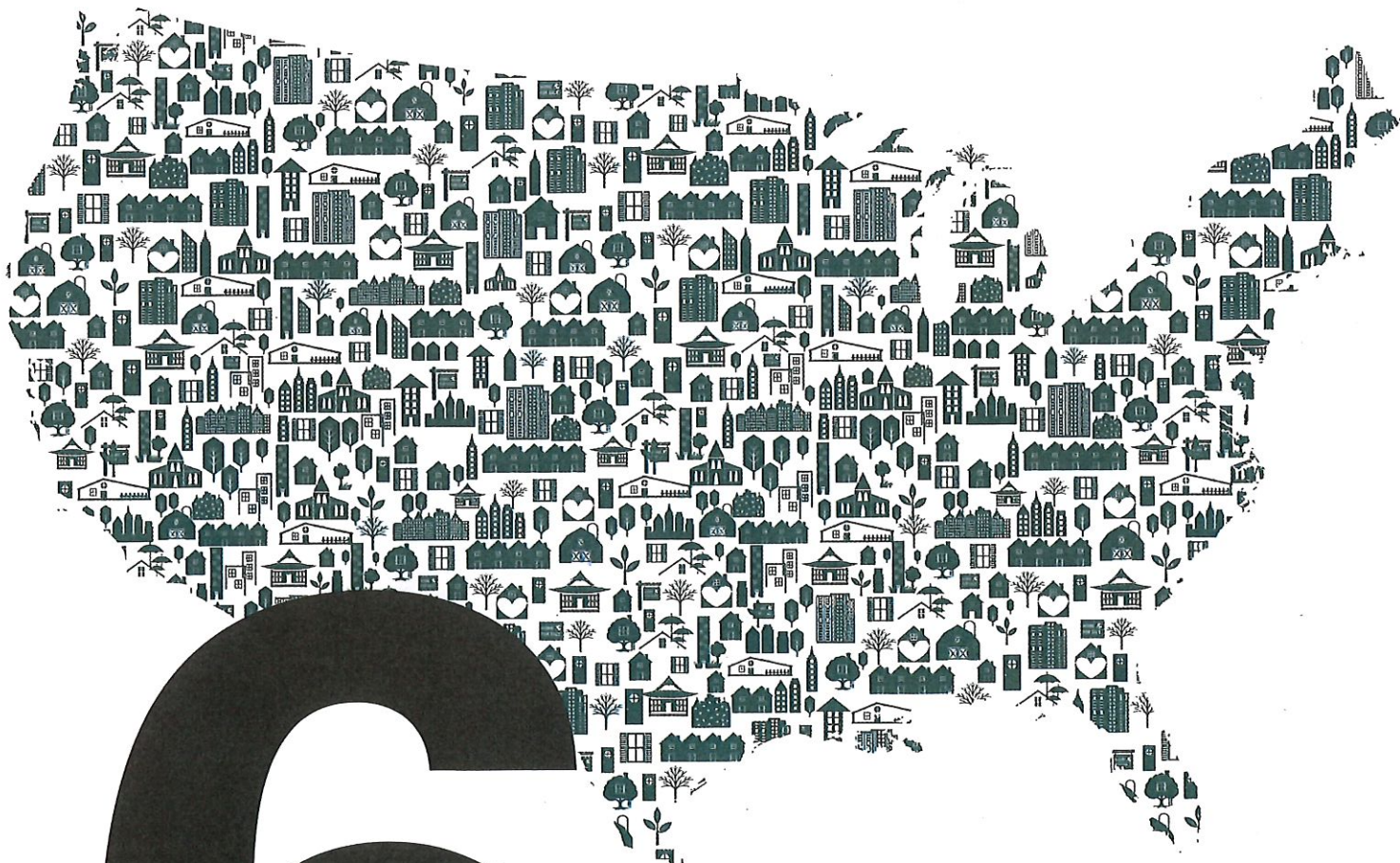
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## PRACTICE HOUSING AFFORDABILITY



# Housing Reform Through State Legislation and Local Zoning

By Catherine Hinshaw and Joseph DeAngelis, AICP

The United States is facing a housing crisis. Housing affordability and availability challenges are leading planners, state and local elected officials, developers, and community leaders to reconsider the tools necessary to dramatically expand the supply of housing.

Planners' engagement and collaboration with state legislators is critical to ensuring that enabling statutes for zoning support local efforts to address housing choice and affordability challenges. At the center of this approach lies the challenge of determining how state legislation intended to stimulate needed housing production must be balanced with local control, context, and expertise.

State legislators are increasingly recognizing the role that state legislation can play in local housing supply, choice, opportunity, and affordability. Several states have adopted or are considering legislation that directly affects local zoning. Some legislation, such as laws seeking to change density mandates, are designed to address the housing affordability crisis. Other laws, however, have prevented or sought to prevent local efforts to ease the housing affordability crisis by limiting the tools available to planners.

The housing crisis is multifaceted, and Planning Home—APA's housing initiative—explores challenges that face a variety of markets. This article examines several local approaches to housing affordability challenges, highlights examples of state legislative efforts related to zoning in local communities, and discusses the variety of ways in which states are increasingly engaging in this conversation.

## CITIES RESPOND TO THE HOUSING AFFORDABILITY CRISIS

Cities across the United States are increasingly turning to the local zoning code for answers to the ongoing housing affordability crisis. Locally, these changes include expanding "missing middle" housing options, easing or eliminating restrictions on accessory dwelling units, upzoning

transit-rich neighborhoods, and adding inclusionary housing provisions that require or incentivize developers to include a minimum percentage of below-market-rate units in their projects. A number of recent issues of *Zoning Practice* discuss these approaches in depth, including the April 2019 issue, "Standards for Contextual Infill Development"; the February 2018 issue, "Repurposing Single-Family Homes and Neighborhoods"; the May 2018 issue, "Zoning for Garage Apartments"; the December 2018 issue, "Fair Housing is More Important than Ever"; and the June 2017 issue, "Eliminating Parking Minimums." Planning Home also explores innovative solutions from communities across the county through a series of case studies seeking to "Change the Narrative."

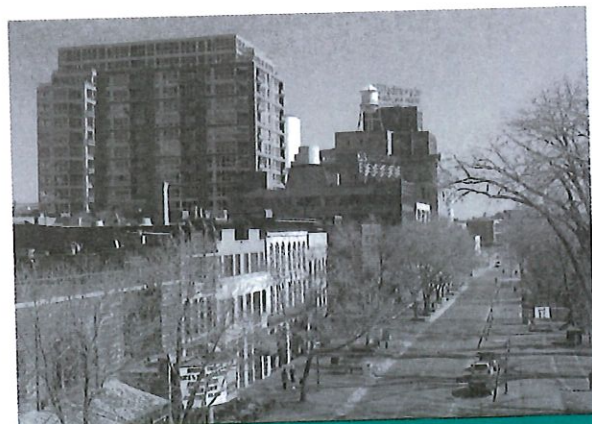
Since some state legislatures are looking to replicate local approaches on a larger scale, it may be helpful to review how some cities are using their zoning codes to enable denser local development while expanding affordable housing. These examples will help to highlight the tactical similarities between local and state approaches that mutually focus on increasing supply by incentivizing housing development in high-demand and transit-rich areas. The contrast between action taken at the local level, where planners and local officials can account for local context, and action taken at the state level, where legislation may prescribe broad-brush approaches and steep penalties, is considerable. This contrast may help to explain some of the challenges state legislatures face when passing housing legislation addressing the crisis. Alternatively, it is

important to recognize the ways states support cities making critical local reforms.

## Minneapolis

In December 2018, the Minneapolis City Council approved the *Minneapolis 2040* plan, which proposes an ambitious and innovative citywide rezoning to meet the housing needs of a growing population, address displacement, and ensure an adequate supply of affordable housing. The state of Minnesota, through its Metropolitan Land Planning Act, requires consistency of local comprehensive plans with regional plans. *Minneapolis 2040* is an attempt to align housing production goals in the city of Minneapolis with *Thrive MSP 2040*, which outlines a regional development framework for the Minneapolis-St. Paul metropolitan area.

In the plan, the city of Minneapolis explicitly recognizes the historic role of zoning in helping to enshrine and institutionalize racially discriminatory housing policies. While those discriminatory housing policies no longer formally exist, existing zoning regulations help to perpetuate segregation and financial exclusivity across wide swaths of



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➊ Increasing housing supply is a priority of *Minneapolis 2040*, with the plan focusing not just on areas near downtown (above) but also single-family residential districts.

the city. The plan states, “Although racially segregated housing is no longer enforced in these ‘desirable’ neighborhoods the zoning map remains largely unchanged from an era in which discrimination was legal, and still contributes to disparities communities of color and indigenous people experience today such as, access to commercial goods and services, quality housing, and public transportation” (Minneapolis 2018). This statement helps to set the stage for the plan’s ambitious recommendations.

Equitable housing access, affordability, and supply form the core of the overall plan. In order to realize enough housing production to meet the needs of a rapidly growing population, the plan eschews a strategy solely guided by targeted rezonings of already dense downtown or transit-rich areas. Rather, the plan calls for a broad-based rezoning of all single-family residential districts to permit by-right development of duplex and triplex units. This large-scale rezoning of all single-family residential districts is paired with the elimination of off-street parking requirements across all zoning districts and increases to permitted densities in all areas of the city—including downtown, in transit-accessible areas, and in areas that already have a mix of single and multifamily housing types. Finally, the plan proposes an expansion of inclusionary housing policies to guarantee the production of below-market-rate housing units as a condition of development.

Developed over a two-year period, the plan proved to be highly controversial and helped to highlight some of the emerging tensions surrounding the role of zoning in housing access and affordability. Some groups characterize the plan as a giveaway to developers and criticized the impacts it may have on community character. Others believe the market-oriented approach doesn’t do enough in guaranteeing affordable housing development. The emergence of YIMBY (Yes In My Backyard) groups was especially notable in the course of the plan’s development. These groups emerged as coalitions of both home owners and renters, and largely advocated in support of significant density increases across the city and against exclusive single-family zoning. These groups were critical of compromise

measures that eliminated proposed “fourplex” development in single-family areas in favor of duplexes and triplexes (Mannix 2019). Conflict over the plan is likely to continue, especially as the city moves toward formally amending the zoning code as part of the implementation process.

#### **Charlotte, North Carolina**

On April 15, 2019, the Charlotte City Council approved a text amendment to the city’s zoning code that modifies the existing Transit-Oriented Development District designation with a series of density bonuses and additional height allowances in exchange for new affordable housing development (Ordinance No. 9551). These changes are intended to help address an ongoing crisis of housing supply that is leading to rapidly increasing housing costs and displacement. Between 2016 and 2017, Charlotte’s population increased by more than 15,000 residents to a total of approximately 860,000. This rate of increase nearly matched a similar increase from 2015 to 2016, making Charlotte the seventh fastest growing city in the nation (Martin 2018). Since 2007, development has boomed in response to the city’s investments in light rail, yet the volume of development has not kept pace with the growing population. The rise in the cost of land connected with the development boom has led to increasing housing costs and fears of displacement. The approved package of density and height bonuses included with the text amendment is intended to directly address these issues.

Charlotte is currently forbidden by state law from mandating affordable housing development. Instead, the city has turned to a series of bonuses and incentives permitting development in excess of established height and bulk limits if a certain percentage of new units will be reserved for people making at or below 80 percent of area medium income. Though the specifics of each transit-oriented development district vary, additional height bonuses in one district now permit maximum heights of up to 300 feet, more than doubling the base height regulation of 130 feet. Buildings in this same district that are within one-quarter mile of a rapid transit station have no maximum height limits. To qualify for the bonus, each

floor above the by-right height limit must set aside 10 percent of gross floor area as affordable, or pay a fee to the city’s affordable housing trust fund (Charlotte 2019).

Charlotte’s approach met with resistance from some members of the city’s development community, who argued for lifting or relaxing height restrictions without requiring the development of affordable units. This approach, they argued, would increase the tax base of the city and help to more efficiently meet demand. Proponents of the city’s plan were critical of these comments for having come late in a long planning process that had already produced a series of compromise measures between housing advocates, developers, and local officials.

#### **Portland, Oregon, and Seattle**

The April 2019 issue of *Zoning Practice* by Thomas Smith featured a detailed discussion of efforts by both Seattle and Portland, Oregon, to expand housing choice and access across the city. The discussion primarily centered on how both cities are navigating the desire to maintain contextually appropriate design in the context of a significant upzoning to permit denser by-right development in single-family and lower-density districts. Seattle and Portland have made increasing housing supply a critical component of their affordable housing and housing access strategies, and have identified single-family and lower-density districts that are transit accessible as capable of supporting higher densities.

Seattle’s package of rezonings and code amendments, approved in April 2019, continues local efforts to meet the housing needs of a growing population (Ordinance No. 125791). While prior efforts have primarily focused on increasing densities and lifting height restrictions in areas that are already zoned for multifamily housing or that are adjacent to transit in exchange for developing below market rate housing, the most recent rezonings have sought to increase densities in some single-family residential neighborhoods. As part of the city’s Mandatory Housing Affordability program, Seattle’s existing urban village districts expanded to include adjacent single-family residential neighborhoods, which are now required to permit cottages, duplexes, townhomes, and other smaller scale multifamily housing.



➔ Proposed changes to many of Portland's single-family zoning districts would permit a wide variety of housing types, including smaller cottages reflective of the city's historic housing stock.

Housing developments within these areas are required to set aside up to 11 percent of units for low-income households or contribute up to \$32.75 per square foot to the city's affordable housing fund.

Portland, Oregon's most recent efforts to rezone the majority of its single-family zoning districts reflect a strategy focused on expanding both housing supply and the variety of available housing types, in an effort to limit housing costs and limit displacement. The city's proposal would permit a wide variety of new housing types such as accessory dwelling units, cottages, and a wide variety of smaller multifamily housing types in most existing single-family districts.

#### STATE LEGISLATION AND ZONING REFORM

In both the content of its proposals and the shape of controversies among advocates and opponents, efforts under way in Minneapolis, Charlotte, Seattle, and Portland are a useful lens through which to view state attempts to increase housing production, reduce housing costs, and remove local barriers to denser development. Oregon's House Bill 2001 is directly inspired by Minneapolis's approach, while its themes of increasing housing choice and lifting density restrictions in both single-family and

transit-accessible neighborhoods can also be found in approaches from the California legislature (Mannix 2019). States such as Massachusetts, Connecticut, and Utah are also examining options for zoning reform in the state legislature. The efforts below highlight the strategies that state legislatures are using to address local housing affordability and supply crises, some of the challenges associated with a statewide approach, and why state reform is critical to enabling change at the local level.

#### Density Mandates in Oregon and California

In 2019, Oregon House Speaker Tina Kotek introduced one of the year's first bills seeking to address the housing crisis through density. House Bill 2001 outlines various requirements for cities and counties to allow "missing middle" housing in areas zoned for single-family dwellings. Supporters of the legislation cite antiquated single-family zoning as a barrier to producing a variety of housing options, and recognize the bill as a major step toward addressing housing supply, access, and affordability at the local level. Others agree with this sentiment but are concerned about how the bill may affect decision making and implementation at the local level. The impacts of the legislation on

smaller communities is one aspect currently being addressed through the amendment process, with the recognition that mandates on smaller jurisdictions could create challenges due to resource availability or differences in existing infrastructure. Further, there may also be potential for the legislation to incentivize or reduce the barriers to the conversion of the existing housing stock to accommodate additional dwelling units. Conversion of existing housing can help to minimize some of the impacts of new housing construction, while still meeting new density targets at lower cost. HB 2001 continues to develop in the 2019 state legislative session through the amendment process, with the goal of ensuring the bill supports the development of necessary housing types across the state while also considering local autonomy, context, and available resources.

In California, legislators are navigating the potential for a zoning mandate that increases densities in cities across the state. State Senator Scott Wiener's Senate Bill 827 was a major driver of this dialogue in both 2018, and on into this year's session. Wiener introduced SB 827 in conjunction with several bills in California's 2018 state legislative session aimed at addressing housing affordability in the state. SB 827 would have required cities to permit higher densities around transit hubs. Among the biggest supporters were California YIMBY groups, but the voices of critics around this legislation varied, as did the rationale. NIMBY (Not In My Backyard) groups were expected to be at the forefront of opposition, fighting against the concept of increased density entirely. Others, however, made it clear that while the intent was positive, the bill lacked intentional affordability measures and expressed concerns over the bill's "one-size-fits-all" approach to addressing the housing crisis.

Despite amendments to the legislation, including an affordability measure that sought to address concerns with the first draft, SB 827 quickly failed in committee. Wiener promised to move forward with a similar bill in 2019. Now known as the More Homes Act, SB 50 seeks to accomplish some of the similar goals of SB 827. Broadly, it would increase density in transit- and job-rich areas, and it includes tenant protections and affordability measures.

SB 50 is one of many bills California is considering in steps to solve the housing

crisis. Prominent YIMBY groups say that SB 50, improved from SB 827, provides protection for existing residents and is a critical step toward fundamentally addressing the housing crisis in the state. As with Oregon HB 2001, the amendment process led to changes to SB 50 in early 2019. One such example was the consensus reached by California legislators to merge SB 50 with SB 4, including provisions that would allow fourplex apartments by right statewide. Changes to the bill reflect the work of legislators and groups on the ground, supporting the intention of the legislation to increase density and affordability near transit, but acknowledging concerns related to where it will apply and how it will influence local jurisdictions. SB 50 moved through two key California senate committees, Housing and Governance and Finance, before being put on hold until January 2020 by the Appropriations Committee. The decision coming out of Appropriations in late May makes SB 50 a two-year bill, but supporters and critics alike acknowledge the conversation is far from over and further drives the urgency to address California's housing crisis.

#### Updating State Enabling Legislation

West Coast legislators are not alone in the work to address housing affordability in a way that benefits local communities. Amidst housing affordability challenges, the Connecticut Department of Housing's Fair Housing Working Group convened, with the participation of APA Connecticut, to address zoning and state housing policy. In 2018, the Connecticut State House passed Bill 5045, "An Act Establishing Accountability for Fair and Affordable Housing Through Zoning Regulations," that would have modified existing zoning enabling legislation. The purpose of the legislation was to address the state's housing needs by way of zoning, providing additional enforcement measures and strengthening language around zoning for multifamily housing. Connecticut planners, while supportive of the goals of the legislation, offered amendments to the legislation and its companion bill, expressing concerns regarding the timeline for implementation and penalties for noncompliance. They proposed an alternative timeline to provide for ample review and the development of a statewide housing needs assessment, with

#### SIX PRINCIPLES FOR APA'S PLANNING HOME ACTION AGENDA

1. **Modernize State Planning Laws:** Update state laws to promote local planning efforts and provide housing resources to solve our most pressing affordability challenges.
2. **Reform Local Codes:** Modernize codes and rules to respond to the growing need for more housing—no matter the type or cost.
3. **Promote Inclusionary Growth:** Provide everyone with a fair opportunity to access affordable housing and economic prosperity, while addressing the effects of gentrification.
4. **Remove Barriers to Multifamily Housing:** Adopt local plans that not only expand family housing choices but also make them easier and more affordable to access.
5. **Turn NIMBY Into YIMBY:** Transform community engagement and involve everyone in the planning process from the start.
6. **Rethink Finance:** Promote innovative thinking about how to fund affordable housing in the future.



**Planning Home**  
American Planning Association  
Housing Initiative

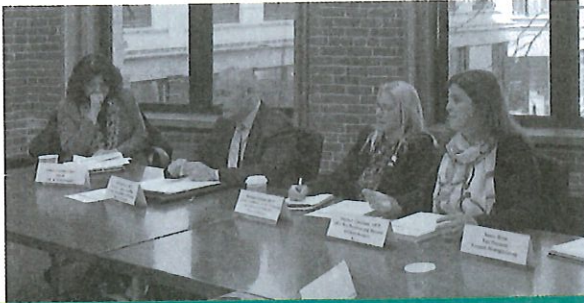
penalties taking effect only after this process was complete. Ultimately HB 5045 did not make it to the state senate floor for a vote before the end of the 2018 legislative session.

In Massachusetts, state zoning reform has also been at the center of the conversation around the housing crisis, recognizing the outdated nature of existing statewide zoning legislation. During Massachusetts's previous legislative session, planners, legislators, housing organizations, and other advocates mobilized around H.2420, "An Act Building for the Future of the Commonwealth." The goal of the bill was to reform

statewide planning, zoning, and permitting legislation to ensure that all communities have ample housing choice. Provisions included in the legislation ranged from requiring affordable housing through inclusionary zoning to removing prohibitions on accessory dwelling units. Meanwhile, Governor Charlie Baker introduced H. 4290, which aimed to lower the percentage of votes required to approve zoning amendments that would permit a greater range of housing types in strategic locations. With both bills on the table, legislators sought to compromise and pass one comprehensive bill encompassing aspects from both bills, but they were unable to come to consensus by the end of the session. At the outset of the 2019 legislative session, APA Massachusetts and the Massachusetts Association of Planning Directors drafted legislation and received legislative sponsorship for three bills addressing different mechanisms by which to improve statewide zoning processes, such as site plan review and voting procedures. The introduction of H. 1802, H. 1764, and H. 1289 represents a tactic to approach zoning reform in a series of steps, rather than through one comprehensive measure.

#### Funding and Finance

Legislation that addresses state funding can also have a major influence on the way localities approach zoning. Utah's legislature approached this possibility in the 2019 state legislative session. On March 26, Governor Gary Herbert signed Senate Bill 34 into law. This bill incentivizes certain municipalities and counties to adopt at least three strategies out of a list of recommended housing reforms. Should those municipalities facing a housing shortage fail to move forward with the recommendations, they would no longer be eligible to receive money from state transportation funds. The list of recommendations provides a range of opportunities for reform, from permitting accessory dwelling units and reducing parking minimums to allowing for "higher density or moderate income residential development in commercial and mixed-use zones, commercial centers or employment centers." Republican-controlled Utah demonstrates that state legislative efforts to address housing affordability can come from either side of the aisle. State



➔ Massachusetts planners discuss statewide zoning reform efforts with the Massachusetts Municipal Association. From left to right: Mayor Donna D. Holaday of Newburyport, Massachusetts; Steven Sadwick, AICP; Kristina Johnson, AICP; and Angela Cleveland, AICP.

Senator Jacob Anderegg, author of the bill, emphasizes that he wrote the bill to provide incentives, yet leave communities with local control. S.B. 34 underwent a series of revisions during the process, ultimately eliminating part of the legislation that would have dedicated \$24 million to fund affordable housing (McKellar 2019).

Funding and finance can also influence the way a state approaches legislation around zoning and housing affordability and provide incentives for states to enable local code reform. The September 2017 issue of *Zoning Practice*, “Zoning to Support Low-Income Housing Tax Credit Projects,” discussed the role of zoning as it relates to receiving financial support for developing affordable housing. Though the low-income housing tax credit (LIHTC) program is a federal program, the state is instrumental to ensuring that projects are eligible. In addition to overseeing the projects that receive LIHTC, states must adopt a Qualified Allocation Plan (QAP) to guide the distribution of the tax credits. Because LIHTC is a merit-based system, projects must meet certain criteria outlined by the QAP in order to receive the tax credit. As density is often one of these criteria, low-density zoning codes can be a barrier to LIHTC eligibility. In these circumstances, zoning enabling laws that create a density ceiling can inhibit a project from receiving the tax credits, and provide a reason for legislators to reexamine existing state enabling laws.

### Primary Implications for Planners

Trends are pointing toward state lawmakers across the United States taking a more active role in addressing some of the barriers to local housing production, supply, and affordability. Broadly, as demonstrated by lawmakers’ efforts in Oregon, California, Connecticut, Massachusetts, and Utah, these strategies are coalescing around a set of carrots and sticks tied to state funding coffers, and

broad-based legislative interventions that remove local barriers to denser development. These efforts, while generally in line with what cities are attempting locally (and in the case of Minneapolis and Oregon, directly inspired by), have also been criticized as not fully addressing affordability issues outside of increasing housing supply and overriding the ability of local planners and officials to apply more contextual solutions.

For planners, these state legislative initiatives have some major implications. First, efforts at the state level are likely to continue and will be informed by the successes and failures of prior attempted legislative action either locally or in other states. The involvement of planners in the state legislative process is essential to ensuring that these bills will ultimately address the underlying issues of housing affordability in an informed and effective way. As we have seen in ongoing efforts from California to Connecticut, planners can contribute essential local and technical expertise to positively influence state legislation that more thoughtfully considers local concerns and complementary approaches to ensuring housing affordability.

Next, as we have seen through ongoing local efforts to meet the challenge of housing access and affordability, cities are critical in addressing the crisis. A large and growing number of cities are attempting to increase both housing supply and access to affordable housing through a combination of inclusionary housing ordinances, strategic and citywide

upzonings, the lifting of height restrictions or parking requirements, density bonuses, and permitting or incentivizing accessory dwelling units. These efforts can provide a template for local action well in advance of state legislation. It is also important to recognize the role of states in supporting these efforts. Without state reform that supports good planning, local communities are confronted with obstacles to motivating change.

Successful state legislation to remove local restrictions on density will require local planners to have a strong understanding of how the legislation will affect both the zoning code and the community. Planners and planning departments are sources of information for residents and other stakeholders on legislation passed by the state and will likely be entrusted to lead planning processes and code revisions required by the legislation. Engagement in the legislative process and understanding the legislation will be vital.

### INCLUSIONARY ZONING BANS

While states are engaging with legislation that requires or incentivizes zoning reform, they are also hindering this process in certain circumstances. States such as Tennessee and Indiana are grappling with a different type of mandate: inclusionary zoning bans. In 2016, Nashville, Tennessee, passed an inclusionary zoning ordinance seeking to provide developers greater density opportunities if affordable units were included. Then, in 2018, the Tennessee legislature passed Senate Bill 363, preempting all inclusionary zoning ordinances in the state. The legislation prohibits any local government, calling out Nashville specifically, from “any zoning regulation, requirement, or condition of development imposed by land use or zoning ordinances, resolutions, or regulations or pursuant to any special permit, special exception, or subdivision plan that requires the direct or indirect allocation of a percentage of existing or newly constructed private residential or commercial rental units for long-term retention as affordable or workforce housing.”

Bloomington, Indiana, experienced a similar preemption situation. In 2017, the city was trying to pass legislation that would require developers to include units priced for low- or moderate-income individuals. Indiana’s state legislature proceeded

to pass Senate Bill 558. Signed into law by Governor Eric Holcomb, it prevents mandatory inclusionary zoning throughout the state of Indiana. Last year, the Louisiana state legislature passed an inclusionary zoning ban aimed at New Orleans's attempt to use this as a tool to address their housing affordability challenges. Thanks in part to involvement from the APA Louisiana Chapter, a different outcome prevailed; Governor John Bel Edwards vetoed the bill.

The veto, however, came with a caveat: If localities did not pass and implement inclusionary zoning measures in 2019, he would sign the legislation upon reintroduction by the legislature. With the tool left available, the New Orleans City Council passed an inclusionary zoning ordinance in April 2019.

Nashville, Bloomington, and New Orleans exemplify challenges that can face cities when states view their actions as overreaching. Inclusionary zoning alone will not solve the housing affordability crisis. However, state legislation must not impede local planning efforts from using inclusionary zoning as a tool. Examples from these states demonstrate the important role states play in providing a choice of tools to help local communities address the crisis.

## CONCLUSION

State legislative action in response to the ongoing housing affordability crisis in cities across the country is a growing trend. The failure of SB 827 in California was followed not by a decision to disregard the role of local zoning in housing supply and affordability, but by the introduction of SB 50.

States will continue to look to local approaches for replicable solutions, as exemplified by the role of Minneapolis's ambitious rezoning proposal in informing Oregon's House Bill 2001.

Conversely, local approaches to tie housing affordability with local zoning may also attract attention from statehouses antagonistic toward inclusionary zoning. Though each state's approach to planning and zoning is different, it is critical that states review and update statutes and requirements to advance statewide housing reform while upholding support of local efforts.

Planners should continue to engage elected officials at all levels of government to ensure that pending or future state legislation is informed by the knowledge and expertise of local practitioners.

**Editor's note:** It is possible that the status of bills active in 2019 legislative sessions will have changed since publication.

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