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# State Versus Local Paradigm Doesn't Capture Collective Responsibility of Housing Policy and Need for Common Sense Reforms

By **Greg Morrow, Ph.D.**, EXECUTIVE DIRECTOR OF THE MASTER OF REAL ESTATE DEVELOPMENT + DESIGN PROGRAM (MRED+D) AT THE UNIVERSITY OF CALIFORNIA, BERKELEY'S COLLEGE OF ENVIRONMENTAL DESIGN

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## KEY TAKEAWAYS

- Housing policy doesn't fit neatly into clear jurisdictional silos because no one level of government or sector can lay privileged claim to policy so fundamental that affects us all. Housing is a complex ecosystem of nested policies and interrelated goals and everyone has a role to play.
- We must put innovative design, sustainability, and equity at the center of real estate—not because we should “do good,” but because our circumstances today demand it.
- We must start aligning our policies objectives across disciplines (environment, economy, health, education, etc.) and at multiple scales (community, city, region, state).

## Case Study Abstract

*While subsidiarity is a sound principle—that higher orders of government should not do what lower orders can do more effectively—it should not be a covenant to excuse inaction and lack of collaboration and coordination on something so fundamental as housing policy. A lack of sufficient housing that Californians can afford is a clear indication that our housing policies are failing. California can be cleaner, fairer and a better place to live and do business if singular goals give way to policies that achieve multiple outcomes: growing the economy, protecting the environment and inclusivity to ensure shared prosperity. People and organizations need to look beyond what is good only for them and consider what is good for their neighbors and for all of California. Stakeholders must set aside parochial interests and work collaboratively to enact common-sense reforms. The key question is not whether the state should have a stronger role in setting housing policies; rather, we must recognize there are many legitimate interests in housing policy at different levels, by different groups and individuals.*

## Case Presentation

If we're honest, the question of local versus state responsibility in housing policy is a red herring and distracts us from the hard work of coming together to find common sense solutions. To put it bluntly: If you are chiefly concerned about who should get a say in determining housing policy, then you are probably part of the problem and not part of the solution.

Housing policy is messy business; it doesn't fit neatly into clear jurisdictional silos. So, yes, the state has a legitimate interest in shaping housing policy. But there's also a place for other orders of government in setting reasonable California housing policy—regional associations of government, municipalities, local communities—as well as other groups: justice, environmental, labor, business groups, homeowners, and developers. No one level of government or sector can lay privileged claim to policy so fundamental that affects all of us. Housing is a complex ecosystem of nested policies and inter-related goals, and everyone has a role to play. It is impossible to completely satisfy everyone, but it is vital that everyone feels their voice is heard.

California is not producing enough housing that most people can afford, which is a clear indication that our housing policies are failing. In the post-war era of the past, we built low-cost housing on the edge of cities; that worked until land became scarce, commuting and congestion became unbearable, and city finances were bankrupt by trying to pay for the heavy infrastructure to support a pattern of growth that doesn't generate enough in tax revenue to pay for itself. The chickens have come home to roost; doubling down on car-dependent, low-density, use-segregated growth is not the answer. Going forward, we'll need to use existing infrastructure more efficiently, build new communities that are more complete, and contemplate the on-demand sharing economy that is growing rapidly. We must put innovative design, sustainability, and equity at the center of real estate—not because we should “do good,” but because our circumstances today demand it.

For too long, we've nibbled around the edges of housing policy because that is the easiest thing

to do. So we have kept kicking the can down the road, afraid to meet our problems head-on. But the challenges we face today—rising inequality, municipal finances in disarray, the need to create jobs for everyone, soul-sucking congestion, climate change, smog, water and energy use, and so on—will require strong leadership and common purpose in the years ahead. Singular goals must give way to policies that achieve multiple outcomes: growing the economy, protecting the environment, and inclusivity to ensure shared prosperity. These are not mutually exclusive and will make California cleaner, fairer, and a better place to live and do business.

But for far too long, bold action has been framed as an either/or proposition—a zero-sum game where one group loses if another wins a concession. This is a false dichotomy. Let's set aside sacred cows and not be afraid to touch the third rails. We must undertake reforms within a framework of mutual trust and mutual benefits. It will take honesty, getting to know divergent stakeholders personally, and more face-to-face meetings to build that durable coalition. But it's urgent we do so. People and organizations need to look beyond what is good only for them and consider what is good for their neighbors and for all of California. We need to imagine what's possible, rather than always fearing change and settling for what we have.

Change is needed up and down the different orders of government. Certainly, there is work to be done in Sacramento. Let's address reform of the California Environmental Quality Act (CEQA). Used effectively, CEQA is a vital tool to protect our environment. But abuse of this law is widespread and well known with perverse results, such as frequent blocking of sustainable development while perpetuating sprawl.

Our regional partners need help. Let's fix the Regional Housing Needs Assessment (RHNA) process so housing targets are realistic. We need to diversify the kind of jobs we're creating to ensure growth isn't just being driven by the tech industry. That will require expanding access in skilled trades and providing education funding and child care to facilitate gaining those skills.

Local municipalities must also do their part; evidence shows places that embrace housing and mobility score high on quality of life. We must also audit our impact fees to see what is truly needed. While making housing more expensive to build might feel like sticking it to greedy developers, it's just making it more expensive for your kid to buy their first home. More generally, if housing affordability is a shared concern, should the cost of it not be shared more broadly by all property owners (not just new owners)?

Individual homeowners, too, can play a role by converting a garage to a granny flat or building a small accessory dwelling unit (ADU) on an underutilized part of their lot. And we must start to see the connection between rising homelessness under the local freeway overpasses and protesting the apartments being planned down the street (the greatest rise in homelessness is from "economic homeless," i.e. those forced onto the street due to financial reasons). We must ask ourselves whether it is better to site a shelter somewhere strategically within our neighborhood or on our streets.

We must start aligning our policies objectives across disciplines (environment, economy, health, education, etc.) and at multiple scales (community, city, region, state). While subsidiarity is a sound principle—that higher orders of government should not do what lower orders can do more effectively—it should not be a covenant to excuse inaction and lack of collaboration and coordination.

Land use policy can place some reasonable limits on property rights to ensure the rights of others are not unduly impacted. But what we've seen emerge over the past three decades goes far beyond what is reasonable. When we're producing seven jobs for every housing unit, we've created a virtual housing embargo. We are not providing the necessary housing to keep pace with job and population growth (most of which is internal natural growth these days). And this drives the spatial mismatch that generates more vehicle miles traveled,

pollution, congestion, poorer health outcomes, less time with family, greater energy use, and so many other negative impacts.

I believe there are reasonable solutions that can result in more housing while still protecting homeowners and mitigating displacement. But the politics around this issue have prevented reasonable conversation from emerging.

The bottom line is there are a lot of legitimate concerns by a lot of different people when it comes to housing policy. But so long as we're only looking out for our piece of the pie, we'll never make progress. We must think holistically and act collectively—at the state level, regionally, locally, and in our communities; and most importantly, we must hold ourselves accountable to each other and ask ourselves if we are doing all we can to help ensure everyone in California has a roof over their head. ■

## BIOGRAPHY

Greg Morrow is the Executive Director of Master of Real Estate Development + Design Program (MRED+D) at the University of California Berkeley's College of Environmental Design. Morrow holds a Ph.D. in urban planning from UCLA and a master's degree in city planning and architecture, as well as an urban design certificate from the Massachusetts Institute of Technology (MIT). Prior to Berkeley, he was the Richard Parker Professor in Metropolitan Growth and Change, a joint appointment in the Haskayne School of Business and Faculty of Environmental Design at the University of Calgary. He also served as the Fred Sands Professor of Real Estate, Academic Director of the MSRE program, and Executive Director of the Sands Institute of Real Estate at Pepperdine University. He has served on the City of Calgary Planning Commission, ULI LA Leadership Council, and as an Los Angeles County appointee to the Measure H (Homeless Initiative) Citizen Oversight Advisory Board. His teaching and research are in the areas of urban design, land use policy and housing supply.

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# A California YIMBY State of Mind: Ending the Housing Shortage and Preserving Community Input

By **Brian Hanlon**, PRESIDENT, CALIFORNIA YIMBY

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## KEY TAKEAWAYS

- California YIMBY's focus on housing and land use policy at the state level is designed to ensure grassroots organizers and city leaders have the tools they need to accelerate home building at the local level.
- The housing entitlement process is abused by a vocal minority of opponents who use the process to veto new development. The end result is severe barriers to—and, in extreme cases, de-facto bans on—urgently needed new housing.
- Housing policy should stay ahead of the economy. There shouldn't be a regional jobs/housing imbalance in the first place, but if one develops, cities should be able to respond rapidly, in an ideal setting.
- There is no question that NIMBYism (Not In My Backyard) plays a major role in preventing the development of new housing, at all ends of the income scale.
- SB 167 and SB 35 provide a roadmap for establishing standards that advance zoning-compliant housing developments.

## Case Study Abstract

*City governments often get hamstrung at every turn by a vocal group of residents whose response to the call for more housing—of any type—is always “not in my backyard.” Examples of the tactics used to delay or block new housing are abundant and, at this stage, well known. There are structural inequities embedded in our housing entitlement processes that need to be addressed, such as setting objective standards for new developments that spell out the specific rights existing residents have to influence the planning and development process. Legislative fixes can go a long way toward correcting historic inequities in existing zoning codes.*

## Case Presentation

Communities across California are struggling with an urgent question: How can we resolve the housing crisis while preserving some local control of land use? The way this question gets resolved—or fails to reach substantial resolution—has huge implications for our economic and social future in the Golden State.

The pressing question for policy makers, housing advocates, and others is this: Since the current policy framework has failed, what should be crafted to replace it?

### HAVING A VOICE, BUT NOT A VETO

In optimal conditions, local citizens would work with government to expand housing supply in a way that's consistent with community values and reasonable forecasts of economic growth. Planners and elected officials would anticipate job and population growth over many years—and the housing needs associated with this growth—and respond with adjustments to zoning and other incentives to align projected demand with supply.

Under such conditions, abundant housing would ensure broad-based affordability, as existing homes would become more affordable over time. The housing needs of low-income workers, and those not in the workforce (such as seniors and those with certain disabilities), could be more easily met through a blend of public-private partnerships, housing vouchers, subsidized non-profit housing, or publicly-owned social housing.

In any case, housing policy should stay ahead of the economy. There shouldn't be a regional jobs/housing imbalance in the first place, but if one develops, cities should be able to respond rapidly to authorize new home-building, protect lower-income workers and families from price shocks, reduce rent-induced poverty and economic hardship, and slash involuntary homelessness.

In this ideal scenario, locals have a say in the process, but not a veto. They can help shape the built environment, without wielding exclusionary powers over it. Community input is both necessary and valuable: Neighbors deserve a voice in how

their community “feels,” in the design and location of streets, parks, schools, and commercial facilities, and so forth. Local residents are more likely to support projects when they feel their voices have been heard, even if they don't get everything they want.

Community engagement is also vital for long-term planning; when planners have direction from citizens on the types of developments they'd accept in various neighborhoods, that can translate into a kind of certainty in the planning process that attracts housing developers and real estate investment.

If only we lived in such a world.

### THE CURRENT PARADIGM IS THE ENEMY OF THE GOOD

The reality of California in the 21st century is quite different. In communities across the state, a vocal minority of opponents abuse and overwhelm the housing entitlement process; while the process is supposed to give them a voice, in practice, it gives them a veto. The end result is severe barriers to—and, in extreme cases, de-facto bans on urgently needed new housing.

Examples of the tactics used to delay or block new housing are abundant, and, at this stage, well-known. For example, infill housing development has been identified by numerous environmental organizations and air quality agencies as a key strategy to reduce transportation pollution—not to mention other environmental benefits; however, housing opponents in many cities misuse the California Environmental Quality Act (CEQA) to delay or block housing.

Similarly, local elected and appointed officials often invent non-existent, private homeowner rights to publicly owned street parking, or defend the views of existing homeowners from the encroachment of new developments, or in extreme cases, accept concerns about shadows cast by new developments—despite the fact that no such right to a shadow-free yard exists in law.

There is no question that NIMBYism (Not In My Backyard) plays a major role in preventing the

development of new housing at all ends of the income scale. In California cities, it is common for one set of constituents to block market-rate housing and call for below market rate, affordable, deed-restricted housing; but then, at the next hearing, a similar set of opponents (or often even the same opponents) turn out to block the affordable housing, too.

This phenomenon is commonplace in San Francisco, Berkeley, Los Angeles, San Diego, Oakland, Marin County, San Mateo County, and other major job centers, but in each instance, the result is the same: City governments get hamstrung at every turn by a vocal group of residents whose response to the call for more housing—of any type—is always “not in my backyard.”

Research shows that the steadfast opponents to housing tend to share similar demographics: They are generally speaking older, richer, and whiter than the California population as a whole. Paavo Monkkonen, Associate Professor of Urban Planning at the University of California Los Angeles, wrote about this phenomenon in “Understanding and Challenging Opposition to Housing Construction in California’s Urban Areas”:<sup>1</sup>

*“Our current planning system is structurally biased in favor of wealthy homeowners, particularly those with the leisure time to attend frequent public hearings and lobby local politicians. In connection to this goal, the state can continue to provide more and better public information about these issues, as it has through the Legislative Analyst’s office ... More inclusive avenues for public participation in the planning process are needed. At present, many of the ways in which individuals can give feedback to planners are time consuming and limited to those with high enough incomes to inform themselves, travel to hearings, and wait hours to speak. One starting point is to collect demographic data about community input. There is consistent anecdotal evidence suggesting that the process is inherently biased*

*toward particular groups, no study could be found regarding the race, age, or income of attendees at public hearings. Such information might bring attention to the need for more democratic avenues of participation.”*

## MOVING TOWARD OBJECTIVE STANDARDS

So how can we correct for the structural inequities embedded in our housing entitlement processes? One place to start would be setting objective standards for new developments that spell out the specific rights existing residents have to influence the planning and development process—and which rights they don’t have.

California YIMBYs supported state legislation such as SB 167, passed in 2017, which strengthened California’s Housing Accountability Act by limiting the ability of local governments to deny zoning-compliant housing. We also strongly backed SB 35, which established clear criteria for the approval of zoning-compliant housing developments that met affordability, labor, and other requirements, also provides a roadmap for such standards.

But it’s in cities’ self-interest to develop objective standards for a host of other elements, such as building heights and viewshed regulations, that are often subject to undemocratic and unfair regulation by fiat. Such an approach is an invitation for lawsuits, drives up development costs, and ultimately serves to hinder housing production.

In addition, most California cities have yet to finish fixing the historic inequities enshrined in their existing zoning codes. There has been abundant discourse on how the advent of zoning a century ago paralleled efforts by communities to maintain racial and economic segregation, and deny access to housing and economic opportunity to communities of color. While “redlining” and other tactics are no longer legal, the impacts linger in exclusionary, low-density districts such as Rockridge in Oakland, California, that is home to a major mass transit hub and yet has virtually no high-density buildings and almost no affordable housing.

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<sup>1</sup> Monkkonen, P. 2017 ‘Understanding and Challenging the Opposition to New Housing in California: The LA Experience’ for California Assembly Housing Committee Los Angeles Hearing Panel <https://ahcd.assembly.ca.gov/sites/ahcd.assembly.ca.gov/files/Monkkonen%20California%20Assembly%20Presentation.pdf>

Legislative fixes such as SB 827, which died in the 2018 legislature (but is sure to come back in another form), can go a long way toward correcting these historic inequities. By bringing the benefits of infill zoning to neighborhoods that are well-served by public transit, such changes to city zoning codes help ensure that the benefits of public investment in transit infrastructure are shared with a broader swath of the public, through the mechanism of density. With a BART station and frequent bus service, Rockridge is a case study in such a neighborhood—but such examples exist across the state. California YIMBY will continue to pursue these types of legislative interventions, which are likely to gain support as the root cause of the housing crisis becomes more broadly understood.

### **COULD THE HOUSING CRISIS SLAY THE GOLDEN GOOSE?**

California's current status as a global economic power, with a GDP that boosts the United States and, on its own, rivals the world's largest national economies, rests entirely on our ability to attract and retain a diverse, talented pool of workers. Current economic inequities—largely driven by the housing crisis—mean we have a long way to go before our rising tide is lifting all boats. But at least the tide is rising. The alternative, and the reality staring us in the face, is an ebb tide that could leave us all high and dry.

Due to the housing crisis, we're already witnessing some attrition among our more vulnerable worker communities. Schools are losing teachers. Hospitals are flying nurses in from other states. Six-figure incomes are no longer sufficient for many workers to keep their personal finances in the black, and while the rent might get paid, too many Californians are one medical emergency away from insolvency.

In a growing number of cases, companies are putting a hold on their plans to hire, and instead looking to open branches in other states with more abundant—and affordable—housing. It's not hard to envision where this trend leads, if left unchecked.

Absent a major intervention by the state to spur more cities to build housing at all ends of the income spectrum, California faces the prospect

of stalling its world-class economic engine. Given the state's precarious position regarding pension and other fiduciary obligations, such a scenario could quickly mushroom out of control. While there's a common assumption that California is the promised land for global technology innovation, entrepreneurship, and economic prosperity, the truth is that the whole enterprise rests on an assumption of housing growth that has yet to materialize. Notwithstanding current economic conditions, we are closer to the brink than it appears.

### **THE YIMBY APPROACH**

California YIMBY's mission is to ensure that our state is an affordable place to live, work, and raise a family. Our focus on housing and land use policy at the state level is designed to ensure grassroots organizers and city leaders have the tools they need to accelerate home building at the local level.

In addition to our legislative advocacy on bills like SB 167, SB 35 and SB 827, we're active on complementary policies that tighten accountability and increase enforcement of existing housing law. While YIMBYs focus on affirmative changes to law that will expand home building in communities across the state, our legal partner, the California Renters Legal Advocacy and Education Fund (CaRLA), has found success suing cities for violations of the HAA when they illegally deny zoning-compliant housing developments.

In the coming months, we're focused on building a grassroots movement for our legislative, regulatory, and legal efforts across the state. As the scope of the housing crisis gains attention and awareness, we're optimistic that our growing movement will be able to play a vital role in helping to ensure that California really is for everyone. ■

## BIOGRAPHY

Brian Hanlon is President and CEO of California YIMBY. He is also the co-founder of the California Renters Legal Advocacy and Education Fund (CaRLA), which sues cities that violate state housing law. CaRLA's novel impact litigation strategy yielded victory against Berkeley and put scofflaw cities on the defensive across the state. Prior to co-founding California YIMBY and CaRLA, Hanlon spent 10 years working for the US Environmental Protection Agency (E.P.A.) and the U.S. Forest Service.

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# The Regional Housing Needs Assessment and Its Problematic Methodology:

## BAY AREA ECONOMY PRESENTS CASE FOR REFORM

By **Ted Egan, Ph.D.**, CHIEF ECONOMIST OF THE CITY AND COUNTY OF SAN FRANCISCO

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### KEY TAKEAWAYS

- Since the state declared its interest in stabilizing housing prices in the pioneering law that created the Regional Housing Needs Assessment (RHNA), the fact that California's housing crisis has only gotten worse since then is a clear sign that something is wrong with the process.
- The Bay Area is an extreme example; since RHNA went into effect in the mid-1980s, housing prices in the region have grown at twice the rate of inflation of other commodities.
- If the RHNA process is to help achieve the state's objective to control housing prices by ensuring enough housing is built, it needs a methodology that is capable of responding to the housing crisis affecting California: rents and prices growing faster than incomes, limited affordability, and rising housing burdens on households.
- Reform of RHNA would be useful; RHNA methodology does not sufficiently account for prices, rents, or affordability.

### Case Study Abstract

*The Regional Housing Needs Assessment's (RHNA) reliance on turning a projection of population growth into a projection of housing need is a problematic method when using population as a proxy for housing demand—particularly due to faulty assumptions about migration patterns. RHNA mistakenly rests on the theory that population change is supposed to be an indicator of housing demand, but in practice, population growth is itself a product of housing supply in a region with a dynamic economy. RHNA interprets slowing population from a lack of supply as a decrease in housing demand, which actually reduces the housing "need" in the future. Furthermore, since the allocation of the regional assessment is up to the regional planning organization, it does not guarantee that localities share the housing burden equitably.*

## Case Presentation

Perhaps no numbers question is asked more often in California housing debates than: How much housing should we be building? And can we "build our way out" of this crisis?

Everyone expects to hear a considerable number. For some, a number so large as to make the question moot, and an opportunity to re-frame the issue. For others, an ambitious target that should challenge our ideas about planning and the future of California.

But what is often overlooked in the public discourse on the subject is that we already have an answer to the question: an official answer, enshrined in state law and administrative practice for over 30 years. I'm referring to the Regional Housing Needs Assessment (RHNA). The RHNA process involves the state (through the Departments of Finance and Housing and Community Development) estimating how many housing units each region of the state should plan for. Regional planning agencies then work with the cities and counties that actually have the legal authority to change zoning controls to determine the best places for growth within the region.

The fact that this exercise compelled by state law doesn't seem to stop the question about housing supply numbers is an indication that RHNA has not worked as originally intended. The Bay Area is an extreme example, but also a large and relevant one. Since RHNA went into effect in the mid-1980s, housing prices in the region have grown at twice the rate of inflation of other commodities. And since 1995, they have grown three times as fast as inflation. Since the state declared its interest in stabilizing housing prices in the pioneering law that created RHNA, the fact that California's housing crisis has only gotten worse since then is a clear sign that something is wrong with the process.

There are many aspects of RHNA where reform could usefully begin. For one thing, it has little to no enforcement; localities have little to fear from missing their targets. Since the allocation

of the regional assessment is up to the regional planning organization, it does not guarantee that localities share the housing burden equitably. Furthermore, it is ambiguous about affordable housing, especially in areas where even the densest market-rate housing is not affordable to low-income households.

But I'd like to focus on the way RHNA answers the first question: How much housing should we build?

Essentially, RHNA requires the state to project future population growth, and then to turn that projection of population into a projection of housing need by essentially dividing the new population by the average household size in the region. This is done for different income levels, which ensures the region is addressing the housing needs of low-income households.

The method is not unreasonable, but in a place with a severe housing shortage, using population as a proxy for housing demand creates problems. Population forecasting involves estimating births, deaths, and net migration—the number of people who move in, minus the number of people who move out. With good information about today's age distribution, it's possible to make a good projection about how many births and deaths there will be in the near future. Net migration is much less straightforward, however, because it depends more on economic factors than either births or deaths do.

The RHNA process—like many population projections—assumes that a region's migration pattern in the future is going to look a lot like it did in the past. If a region was attractive to migrants in the past, it assumes that it will attract migrants in the future.

However, if you look at the state's history, migration doesn't always work like that. The Bay Area again is a good example. From 1950 to 1980, the nine Bay Area counties added 2.5 million people, close to a 100 percent increase in population in 30 years. But from 1980 to 2010, the same counties added only about 2 million people, less than a 40 percent increase.<sup>1</sup>

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<sup>1</sup> Department of Finance, E-5 County/State Population and Housing Estimates, 1/1/2016.

Did population growth in the Bay Area slow down because the region became less attractive to migrants? Not likely. In 1980, average wages in the Bay Area were 16 percent more than the national average, but by 2015, they were 71 percent higher than the national average.<sup>2</sup> If migrants were comparing how much income they could earn, they would be much more likely to move to the Bay Area today than in 1980, not less.

The answer, of course, is that the Bay Area population growth didn't slow because people stopped wanting to move there; it slowed because the region dramatically slowed its production of housing. This highlights the problem with RHNA in a nutshell. In its theory, population change is supposed to be an indicator of housing demand. But in practice, in a region with a dynamic economy, population growth is itself a product of housing supply.

If a region stopped building housing, obviously net migration would have to slow down, fewer people would naturally move there, and overall population growth would slow. But the RHNA methodology doesn't recognize that as a problem; RHNA interprets this slowing population as a decrease in housing demand, which actually reduces the housing "need" in the future. Rather than fixing the problem, the RHNA methodology makes it worse, by lowering regional need in response to a housing shortage instead of raising it.

If the RHNA process is to help achieve the state's objective to control housing prices by ensuring enough housing is built, it needs a methodology that is capable of responding to the housing crisis affecting California: rents and prices growing faster than incomes, limited affordability, and rising housing burdens on households. But there is nothing about prices, rents, or affordability in the RHNA methodology.

An alternative approach could start with a better proxy for housing demand than population, which is as much a product of housing supply as a driver of housing demand. I would recommend regional personal income as a proxy. Income has an obvious connection to housing prices; the more income people have, the more housing they want, which tends to bid up housing prices.

Economists measure a concept called the income elasticity of demand for different commodities; it represents how much more of it consumers will buy as their incomes rise, holding prices constant. According to my estimates, a 1 percent increase in personal income in the Bay Area leads to around a 0.4 percent increase in housing demand.<sup>3</sup>

In economic terms, if the goal is to keep prices stable in real (inflation-adjusted) terms, supply in a region has to grow at the same rate as demand. If personal income (after inflation) grows 1 percent a year in a region, and the income elasticity of demand is 0.4, that means housing demand will grow by 0.4 percent.

Critically, incomes in a region can rise (and drive up housing prices) much faster than population or employment increases. For example, in the Bay Area from 1995 to 2015, housing prices grew by 90 percent, and personal income (adjusted for inflation) grew by 85 percent, population grew by only 20 percent, and employment by only 30 percent (see Figure 1). This reflects the reality of a region in which the supply of both housing and employment space is heavily constrained, while productivity and real wages are rising in most industries. It's also partly because high housing prices create an exodus of low-income residents; as they are replaced with higher income residents who can afford the prices, per capita income rises.

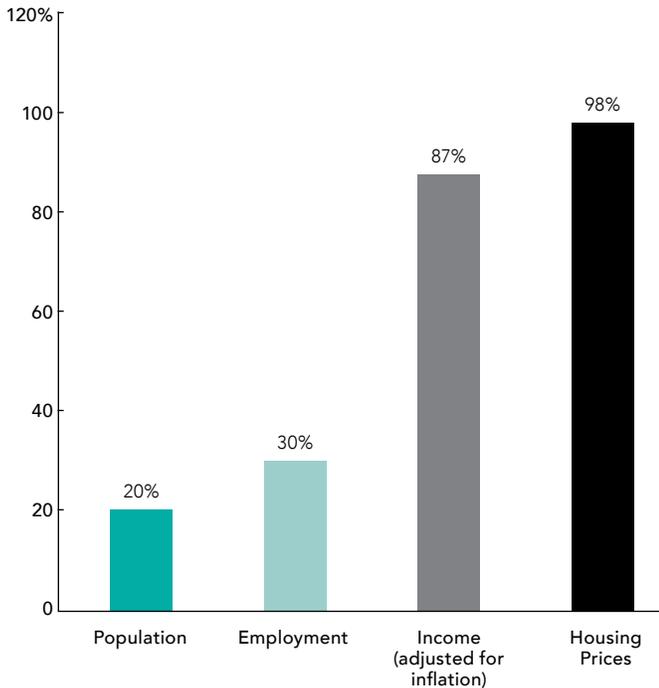
This is why an approach based on income is preferable. Slow population and employment

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<sup>2</sup>Bureau of Economic Analysis

<sup>3</sup>I used Census microdata from the annual American Communities Survey to select only households that have moved into their owner-occupied unit in the past year. I then regressed the (self-reported) value of the recently-sold house against household income and a housing price index. In a log-log specification, the income coefficient represents the income elasticity of demand; using two different housing price indices. (Zillow's average Zestimate and the median housing value for the region using the ACS), I came with estimates in the 0.35 – 0.45 range.

**Figure 1 PERCENTAGE CHANGE IN BAY AREA POPULATION, EMPLOYMENT INCOME, AND HOUSING PRICES 1995-2015**



Source: Bureau of Economic Analysis and Bureau of Labor Statistics

growth can be caused by an actual slowdown in demand, or by an artificially constrained supply. But if supply is constrained, income statistics will reveal what is concealed by population and employment statistics.

The approach is also no more difficult than the current RHNA approach that is based on population. To take again the example of the Bay Area, real personal income in that nine-county region grew at a rate of 3.2 percent per year, after inflation. If the income elasticity of demand is 0.4, then that means housing demand is growing at 3.2 percent x 0.4 = 1.3 percent per year.

If the intent of the policy is to prevent prices from growing faster than inflation, then housing supply in the region needs to grow at least as fast as demand, or 1.3 percent. As of 2015, the Bay Area had approximately 2.73 million housing units, so a 1.3 percent growth would be about 35,000 units a year. RHNA currently works on an eight-year cycle, so if the 35,000/year target was in place for eight years,

that would lead to a regional needs assessment of about 283,000 units.

This is nearly 100,000 units more than the RHNA assessment was for the Bay Area during the last (2014-2022) cycle. In percentage terms, the target using the alternative income-based approach is about 50 percent more. It's clear that, at least in the case of the Bay Area economy, there's a substantial difference between the two approaches.

In the context of regions across the state struggling to meet their RHNA targets, even using the current approach, it's an open question whether changing the projection methodology is the right way to start reforming the RHNA process. The problem, however, is unlikely to go away as long as California's coastal regions remain competitive, dynamic economies despite their infrastructure constraints. ■

### BIOGRAPHY

Dr. Ted Egan is the chief economist of the City and County of San Francisco and directs the Office of Economic Analysis in the City Controller's Office. The office prepares independent economic analysis of all important new city legislation.

Since he joined the City in 2007, his office has published over 100 economic impact reports on policy issues like the minimum wage, affordable housing, business taxes, land use planning, sporting events and short-term rentals. He has served as an expert witness for the City on the economics of same-sex marriage in the Prop 8 lawsuit and in 2013 he won a Good Government award for his work re-designing the City's business tax to promote economic development.

Previously, he spent ten years as a consultant with ICF International, managing economic development strategy projects across North America, Europe, Latin America and the Middle East. He received his Ph.D. from UC Berkeley in 1997 and has lectured in the Economics and City Planning departments at Berkeley for over ten years.

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# Stronger State Leadership and Enforcement Needed to Address California's Housing Crisis

By **Cathy Creswell**, FORMER ACTING DIRECTOR AND DEPUTY DIRECTOR FOR HOUSING POLICY DEVELOPMENT, CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

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## KEY TAKEAWAYS

- The state must require real accountability for local governments to implement local plans and state statutes.
- While a package of housing bills approved in 2017 represents real progress, enforcement of state housing and planning laws will still depend on third-party action and litigation. That is a poor and inefficient substitute for the state enforcing its own laws and creating real consequences for a lack of compliance or implementation.
- State funding should be used as an incentive for local governments to approve much-needed affordable housing by reestablishing several dormant programs that reward approval of development, which will help to meet the unique conditions of today's housing crisis.
- The state must lead in responding to California's housing catastrophe by enforcing its effective housing and planning framework.

## Case Study Abstract

*California has an effective housing and planning framework, but without the teeth of state-level enforcement, local governments will not be sufficiently held accountable for meeting the state's housing needs, thereby allowing the housing crisis to linger. The state has a fundamental role and interest in the provision of an adequate supply of housing, which is why it must take on a stronger leadership role in ensuring that local governments adopt land use plans and regulatory processes that provide opportunities for—and do not unduly constrain—the development of housing.*

## Case Presentation

California's housing crisis is commonly referred to as a catastrophe. The alarm has been sounding for years, but the "catastrophe" has now generated a consensus that more must be done. While there is recognition of the myriad of causes that have led to this moment, there is a need to develop a consensus about solutions and the appropriate role of the state to address the crisis.

To California's credit, it has long recognized that "the availability of housing is of vital statewide importance and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of highest order" (Government Code Section 65580). As a result, the state has adopted both planning and financing supports to achieve this goal. The state has a fundamental role and interest in the provision of an adequate supply of housing, particularly affordable homes, because the state recognizes the importance of housing to California's economy, environment, and the well-being of residents.

However, while the state has an inherent interest in housing, most fundamental decisions impacting housing supply and affordability are made at the local level. Traditionally, the state role has been to establish and oversee a state planning framework requiring local governments to adopt land use plans and regulatory processes that provide opportunities for—and do not unduly constrain—the development of housing. Additionally, the state has periodically invested General Fund and bond resources to subsidize and support the development of affordable homes.

Yet, despite the good intentions of this framework, California's housing needs have escalated to catastrophic levels, as is evident in data from the California Housing Partnership Corporation's (CHPC) 2018 report:

- "Rental apartment demand has dramatically outpaced supply.
- State expenditures are highly inequitable between homeowners and renters, with the state spending \$929 per owner household versus \$71 per renter household.
- The elimination of redevelopment and state bond funding foreshadowed a 14 percent rise in homelessness from 2016-17.
- California needs 1.5 million more affordable rental homes to meet current demand.
- Renters need to earn 3.5 times state minimum wage to afford the average monthly asking rent of \$2,004
- California's lowest-income renters spend 66 percent of income on rent, leaving little left for food, transportation, health care, and other essentials."

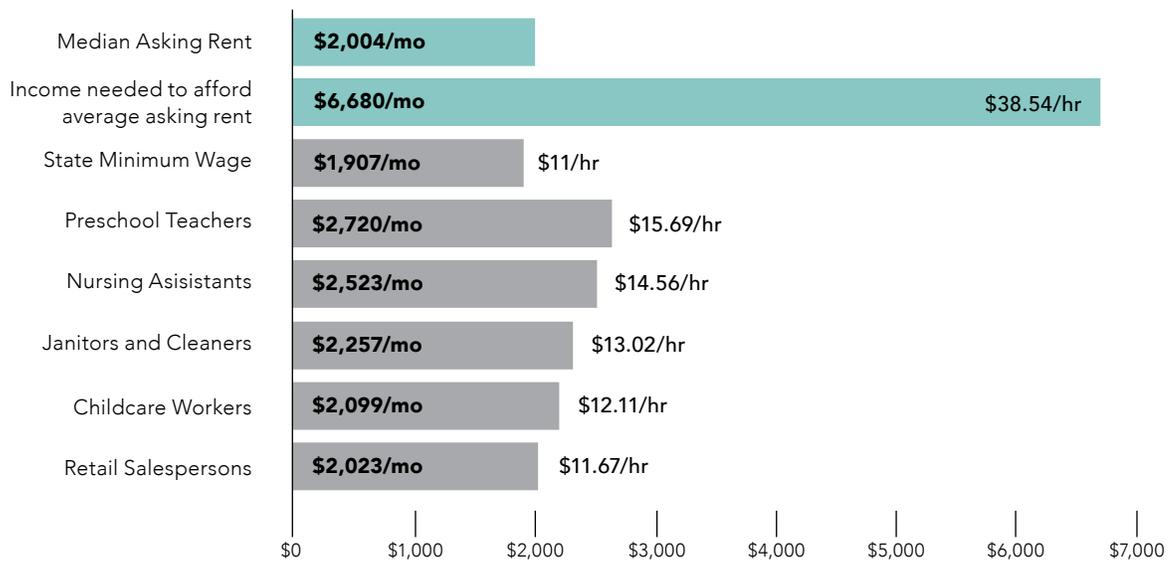
Many communities across the state experience even harsher housing conditions; for example, renters in Sonoma County need to earn \$44.23/hour, which is more than four times the state minimum wage, to afford the median monthly rent. Even in San Bernardino County, which is comparatively more affordable, renters must earn \$30.96/hour to afford the median monthly rent.

Clearly, the current state system of sporadic funding support and light "touch" oversight of local land use and regulatory processes has not been sufficient to achieve the state's housing goals. While housing planning and development is complex and dependent on market factors that are outside the control of any government, it is time for the state to give meaning to its statutory commitment of achieving housing goals by truly making them a priority of the highest order.

To do that, the state must require real accountability for local governments to implement local plans and state statutes. California has some of the strongest and most extensive planning and housing laws in the nation, yet none of these laws are enforced at the state level. California housing element, density bonus, "no net-loss," and second unit and accessory dwelling unit statutes are the envy of other states, but absent implementation and enforcement, they are merely hollow promises. Fortunately, a package of 15 housing bills passed by the legislature in 2017 begins to correct this problem.

Assembly Bills 72 and 1397 and Senate Bill 166 significantly strengthen local accountability to zone and facilitate affordable home development and include the beginnings of an enforcement scheme

## RENTERS NEED TO EARN 3.5 TIMES MINIMUM WAGE TO AFFORD MEDIAN ASKING RENTS



Source: Paul Waddell, Urban Analytics Lab, University of California, Berkeley, retrieved from analysis of online Craigslist listings in February 2018. CHPC analysis of Bureau of Labor Statistics Medial Annual Wage Data for CA Occupations for 2016.

to state planning and housing law. The Housing Accountability Act (which limits arbitrary denials of affordable housing developments) has been significantly strengthened, and while Senate Bill 35 is controversial and flawed, it links insufficient housing production to required housing permitting streamlining. In addition, bills like AB 1505 restore local governments' authority to use their local powers to promote more affordable home development through inclusionary zoning.

But these are just first steps; in most cases, enforcement of state housing and planning laws will still depend on third-party action and litigation. That is a poor and inefficient substitute for the state enforcing its own laws and creating real consequences for a lack of compliance or implementation. Potential limits on state funding and local control regarding affordable housing approvals, as well as the imposition of fines, should be considered as state enforcement tools.

The state must act where local governments fail to do so or where localities are detrimental to vulnerable populations. The state should intervene when local governments prohibit or restrict multi-family development and higher densities, place

higher burdens on housing designed for lower-income families or households with special needs, or criminalize homelessness. A strong state role is especially important for enforcing fair housing and anti-discrimination laws, and when establishing policies to prevent and limit displacement.

However, strengthening enforcement of housing and planning laws is not enough. The state has a real responsibility to assist in the funding of affordable housing development, especially for Californians with modest means and very low incomes who the private market alone will never serve. While the legislature passed Senate Bill 2 (Building Jobs and Homes Act) to establish the framework for a permanent funding resource for affordable housing, and Senate Bill 3 (Veterans and Affordable Housing Act) asking voters to support a November 2018 \$4 billion bond for affordable homes, the state must commit to maintaining adequate subsidies for affordable housing development through ongoing General Fund commitments as well as periodically issuing General Obligation Bonds.

State funding should also be used as an incentive for local governments to approve much-needed

affordable housing. Several dormant programs of the California Department of Housing and Community Development (HCD), including the Jobs Housing Balance Improvement Program and the Workforce Housing Program, provide useful models of how the state can incentivize and reward approval of development. These programs should be reestablished to meet the unique conditions of today's housing crisis. These state investments create widespread benefits beyond critical supply and shelter for low-income Californians. According to an initial assessment by CHPC, a \$3 billion housing bond would create over 147,00 jobs, more than \$9 billion in labor income, \$24 billion in economic activity, and \$1.1 billion in additional local and state taxes and fee revenues.

Over the decades, California has had its share of catastrophes (natural disasters, energy, climate) and has developed aggressive and well-coordinated state systems to respond. Similarly, the state must lead in responding to California's housing catastrophe by enforcing its effective housing and planning framework. The state must hold local governments accountable for meeting the housing needs of their residents—especially lower income families and workers, residents with disabilities, seniors, and veterans—by implementing the law and enacting the provisions of local housing plans. But the state must also commit to an ongoing and significant commitment to fund the development of affordable homes, especially rental homes. The state must not abdicate its leadership role because addressing the housing catastrophe is complex and too often controversial. The state has a critical and fundamental role in ensuring all Californians have a safe, accessible, and affordable place to call home. It's time for the state to fully embrace that role and lead California out of this catastrophe. ■

## BIOGRAPHY

Cathy Creswell spent over 25 years at the California Department of Housing and Community Development, including serving as Acting Director and Deputy Director for Housing Policy Development for over 10 years. As a housing and planning specialist, she works to preserve and increase the supply of safe, accessible, affordable homes, which she believes are a platform to improve the lives of people with low incomes, end homelessness, and strengthen families. She currently serves on the Sacramento Housing and Redevelopment Commission, Continuum of Care Advisory Board, acts as the Board President of Sacramento Housing Alliance, and the Board Vice Chair of Mutual Housing California and is an Emeritus member of the California Planning Roundtable. She continues to work and volunteer on statewide and local housing and community development issues, including serving on task forces and speaking at conferences and workshops.

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# The Role of Local Land Use Regulation in Slowing Residential Development in California<sup>1</sup>

By **Dr. Kristoffer Jackson**, FINANCIAL ECONOMIST, COMPLIANCE RISK ANALYSIS DIVISION, ECONOMICS DEPARTMENT, OFFICE OF THE COMPTROLLER OF THE CURRENCY

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## KEY TAKEAWAYS

- Data suggests that the implementation of an additional land use regulation reduces the housing stock by about 0.2 percent per year, or more than 0.7 units per 1000 residents. For the average city in the sample, this equates to 40 fewer units per year. Residential permits are reduced by an average of about 4 percent per restriction.
- Land use regulation reduces new construction for both single- and multifamily housing, but the effect on the latter is much larger.
- Regulations defined as zoning controls are the strongest deterrents to development, resulting in substantial reductions primarily in multifamily construction.
- The effects of individual land use regulations vary widely; some significantly reduce single-family and/or multifamily development, while others have a positive impact.

## Case Study Abstract

*Using panel data for California cities from 1970-1995, my research shows that land use regulation significantly reduces residential development. After accounting for time-invariant city-specific characteristics and other factors that are contemporaneously common to all cities, I find that the implementation of an additional land use regulation reduces residential permits by an average of 4 percent, which comes through effects on both multifamily and single-family units. Of the regulations measured, those categorized as zoning and general controls have the strongest effects. The partial effects of individual regulations show that while some significantly reduce development, others actually have a large positive impact.*

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<sup>1</sup>The case study presented here is based on the author's 2016 paper "Do Local Land Use Regulations Stifle Residential Development? Evidence from California Cities," *Journal of Urban Economics*, 91: 45-56. Available online at <http://dx.doi.org/10.1016/j.jue.2015.11.004>.

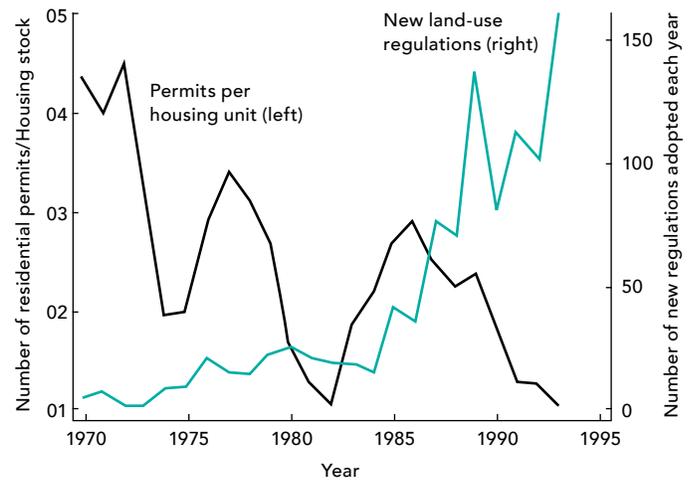
## Case Presentation

Since the beginning of the 20th century, cities and counties across the United States have turned to land use regulation in various forms to manage the location, rate, and type of development that occurs in their communities. The effects of land use restrictions have been explored extensively, but primarily in terms of their impact on housing prices. Recent studies on this topic find a positive correlation between land use regulation and housing prices. While this positive relationship may stem from an increased willingness-to-pay for housing in communities that more strictly control development, many researchers take it as support for the theoretical prediction that land use regulation restricts the supply of new housing. My research focuses on the extent to which this restriction actually occurs.

Using a panel of regulatory data, my work provides plausibly causal estimates of the effects of various land use regulations, individually and collectively, on residential development in California cities from 1970-1995. Given California's rapid population growth during much of this period, along with the extensive use of voter initiatives and the localized nature of its land use authority, many growth controls and other land use regulations were adopted across the state during these years. At the same time, residential permits per housing unit trended downward (see Figure 1).

Table 1 shows the particular residential and commercial/industrial land use regulations measured in my data, with the residential regulations categorized into four groups: population controls, zoning controls, political controls, and general controls.<sup>2</sup> For each of these regulations, the data contain each city's reported adoption years, which are used to construct a panel dataset. As shown in Table 1, the median year of adoption for most of the regulations in the data is in the late 1980s.

**Figure 1 RESIDENTIAL PERMITTING RATE AND ADDITIONAL REGULATIONS ADOPTED OVER TIME IN CALIFORNIA**



Source: Land use regulation data from survey responses to local land-use authorities in 402 California cities. Permit and housing stock data from the California Housing Foundation's Construction Industry Review Board and US Census Bureau, respectively.

The empirical approach used in my research (two-way fixed effects model) effectively compares the changes in residential development in cities that raised the restrictiveness of their land use regulations to the changes in development in cities that did not. Using this approach, I find that each additional regulation reduces a city's housing stock by about 0.2 percent per year, or more than 0.7 units per 1000 residents. For the "average" city in my analysis (with a population of 55,140 and 21,740 homes), this means that adding a new land-use regulation reduces the housing stock by about 40 units per year. This reduction in the housing stock comes as new home building slows in response to additional regulation. In particular, I find that each restriction reduces the number of new residential building permits by 4 percent. Land use regulation reduces new construction (and shrinks the overall housing stock) for both single- and multifamily housing, but the effect on the latter is much stronger, with an average of 6 percent fewer permits issued per regulation.

<sup>2</sup>These data were collected as part of 1989 and 1992 surveys of California land use officials. See Glickfeld and Levine (1992), *Regional Growth ... Local Reaction: The Enactment and Effects of Local Growth Control and Management Measures in California*, Lincoln Institute of Land Policy, Cambridge. See also Glickfeld et al. (1999), "Growth Governance in Southern California," Claremont Graduate University Research Institute.

Table 1 **LAND USE RESTRICTIONS AND VARIABLE NAMES**

<b>RESIDENTIAL</b>	<b>MEDIAN YEAR OF ADOPTION</b>
<b>POPULATION CONTROL</b>	
Population growth limits	1986
Restrictions on the number of residential building permits	1987
Established urban limit line or greenbelt beyond which development is not permitted	1983
Restrictions on number of new subdivision lots that can be created within given time frame	1987
<b>ZONING CONTROL</b>	
Restrictions on structural floor area that can be built on a given parcel	1989
Reduced permitted residential density	1988
Rezoned residential land to open space or less intense use	1985
Phased development areas where development approval is deferred until existing developed areas are substantially developed	1989
Requirement of adequate service levels as a condition for approval of a residential development (i.e., adequate public facilities ordinances)	1988
<b>POLITICAL CONTROL</b>	
Requires voter approval to increase residential densities	1987
Requires super-majority council vote to increase residential densities	1987
<b>GENERAL CONTROL</b>	
Adopted growth management element in general plan	1991
Other measure to control rate, intensity, type and distribution of development	1988
<b>COMMERCIAL/INDUSTRIAL</b>	
Adequate service levels required as a condition for approval of comm. or industrial development	1988
Reduced permitted height of commercial/office buildings	1987
Rezoned commercial/industrial land to less intense use	1989
Rezoned commercial/industrial land to less intense use	1989
Restricts industrial sq. footage that can be built within given time frame	1989

Of the four types of residential land use regulations shown in Table 1, those that are classified as zoning controls have the greatest impact. The estimated effect of an additional one of the zoning ordinances measured in the data is a reduction of about 10 percent for multifamily development and about 2-5 percent for single-family development.

An analysis of the partial effects of each regulation (holding constant the effect of each of the other regulations) shows that they vary widely in size and significance, and sometimes in surprising ways. For example, population growth limits do not have a statistically significant effect on either multifamily or single-family development, but limits on the number of residential permits that can be issued reduces construction of single-family homes by roughly 30 percent. Restrictions on the number of new lots created for a subdivision cause an average 45 percent decrease in multifamily construction. While not restricting growth outright, policies that control the form of new homes also affect the rate at which they are built: limitations to the floor-area ratio can reduce single-family construction by as much as 23 percent.

Taken as a whole, regulation reduces residential development, but some “anti-growth” policies actually increase development (at least in the short run). For example, while commonly touted as an effective remedy to urban sprawl, I find that urban growth boundaries (or “greenbelts”) actually increase the construction of single-family homes. This result may not be too surprising when one considers that urban growth boundaries have been shown to increase the value of new homes<sup>3</sup>, which may accelerate new development until abutting on the established boundary.

The key takeaways from my research are that land use constraints significantly reduce the construction of new homes, but the magnitude (and even direction) of these effects varies by individual regulation. The fact that some policies have positive effects while others have negative effects suggests that researchers must be cautious when estimating the combined effect of multiple

regulations, since some of the individual effects may offset each other. For example, for single-family housing, the positive effect of urban growth boundaries almost exactly offsets the negative effect of residential permit limitations. ■

*\*Any opinions expressed in this article are those of the author alone and do not necessarily reflect the views of the Office of the Comptroller of the Currency or the US Department of the Treasury.*

## BIOGRAPHY

Kristoffer (Kip) Jackson is a senior financial economist in the Economics Department at the Office of the Comptroller of the Currency (O.C.C.). He is currently working on several projects relating to the effects of land use regulation on housing development, housing prices, and various measures of inequality. Dr. Jackson holds a Ph.D. from the University of California, Irvine and a B.S. from Utah State University.

<sup>3</sup>See, for example, Cho et al. (2008), “Urban growth boundary and housing prices: the case of Knox County, Tennessee,” *The Review of Regional Studies*, 38: 29-44.

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# What Type of Housing Will Californians Allow?

## ADUs Represent Local Control Issues

By **Jeff Bellisario**, VICE PRESIDENT, BAY AREA COUNCIL ECONOMIC INSTITUTE; AND  
**Rachele Trigueros**, SENIOR POLICY MANAGER, BAY AREA COUNCIL

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### KEY TAKEAWAYS

- California's high housing costs top national charts, threatening to derail the state's prosperous economy, ambitious environmental goals, and values of equity.
- This affordability crisis is driven by our inability to produce enough housing to keep up with population and job growth.
- Accessory Dwelling Units (ADUs) offer a multi-benefit approach to add thousands of units across California in existing neighborhoods.
- Despite all this, statewide ADU-enabling legislation was still killed when met with local government opposition.
- To truly reform our housing delivery system and increase affordability for residents, Californians must find the appropriate balance of local control in decisions that affect the whole state.

### Case Study Abstract

*California housing costs have spiraled out of control, and the Bay Area in particular has become the posterchild for the state's housing shortage and growing affordability crisis. State legislation to make it more affordable and easier to build Accessory Dwelling Units (ADUs)—also known as in-law or granny units—was recently killed in Sacramento, illustrating the challenge of passing any meaningful housing reforms that could have a demonstrable impact on addressing our crisis. This case study shows the difficulty of balancing local control with much-needed state housing reforms and proposes solutions to improving that balance.*

## Case Presentation

Despite the word “crisis” being plastered across every headline on California’s unprecedented housing shortage and sky-high costs, Californians still want to have the final say at a local level on housing decisions that affect the whole state. Accessory dwelling units (ADUs)—also known as granny or in-law units—are one of the most broadly supported housing types and represent a valuable case study in balancing state versus local control. State legislation in 2018 would have made it much less expensive for homeowners to build these types of units. But even this “path of least resistance” was thwarted in Sacramento, begging the question: If not ADUs, then what housing can Californians agree on?

The average California home costs about 2.5 times the national average—due to a mix of above average land costs, high construction, and market factors. Monthly rent in the state is 50 percent higher than the rest of the nation and is even higher in cities such as San Francisco, San Jose, Oakland, and Los Angeles.<sup>1</sup> The main reason for these extreme costs is the state’s chronic underproduction of housing since the 1970s. To keep up with population growth, California should be building 180,000 units of housing annually. Actual annual production is about 80,000 units.<sup>2</sup> In the San Francisco Bay Area, the region has created eight jobs for every one unit of housing built.<sup>3</sup> The result is increased competition for fewer available homes, which drastically raises prices and causes displacement, threatening the economy and the environment as people are pushed into finding more affordable housing that is outside of core job centers.

ADUs offer a unique and innovative solution to disrupt California’s traditional housing production model. ADUs are small, self-contained second dwellings on the same property as a primary house, whether in a converted basement, bedroom, garage, or a tiny backyard cottage. ADUs are widely supported because they put development in the hands of the community, adding invisible density within the existing footprint of homes or backyards. They also are significantly lower cost to build than a typical housing unit, provide added income to homeowners, offer flexibility for changing household composition, and use less water, energy, and building materials than a traditional home. ADUs have extraordinary potential to add thousands of units across California. A 2016 Bay Area Council poll found that 25 percent of Bay Area homeowners would consider adopting an ADU, amounting to almost 400,000 units of housing.<sup>4</sup> Vancouver, Canada now allows ADUs for every single-family home, resulting in 1,000 new ADUs added annually to their housing stock. Today, 35 percent of Vancouver’s single-family homes have ADUs.<sup>5</sup>

In 2016, the Bay Area Council sponsored Senate Bill 1069 (Wieckowski), which eased the first set of onerous barriers that discourage homeowners from adding an ADU to their homes: utility hookup fees, parking requirements, and permitting. Once this legislation passed, California saw a huge jump in ADU permitting, illustrating the pent-up market for construction of these units. For example, in 2016, Oakland received about 100 ADU applications; once the enabling legislation took effect in 2017, the city saw 247 households apply for ADUs. In previous years, Los Angeles was averaging about 100 ADU applications; in 2017, the city had nearly 2,000 applicants.<sup>6</sup>

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<sup>1</sup>Taylor, Mac. *California’s High Housing Costs: Causes and Consequences*. Legislative Analyst’s Office, 17 Mar. 2015, [www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf](http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf).

<sup>2</sup>State of California, et al. *California’s Housing Future: Challenges and Opportunities Final Statewide Housing Assessment 2025*. California Department of Housing and Community Development, Feb. 2018, [www.hcd.ca.gov/policy-research/plans-reports/docs/SHA\\_Final\\_Combined.pdf](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf).

<sup>3</sup>Metropolitan Transportation Commission, and Association of Bay Area Governments. *Plan Bay Area 2040*. 26 July 2017, [mtc.ca.gov/our-work/plans-projects/plan-bay-area-2040](http://mtc.ca.gov/our-work/plans-projects/plan-bay-area-2040).

<sup>4</sup>Bay Area Council. *New Poll Finds That 25% of Homeowners Would Add an In-Law Unit, Creating 400,000 New and Affordable Housing Units*. 2017, [www.bayareacouncil.org/community\\_engagement/new-poll-finds-that-25-of-homeowners-would-add-an-in-law-unit-creating-400000-new-and-affordable-housing-units/](http://www.bayareacouncil.org/community_engagement/new-poll-finds-that-25-of-homeowners-would-add-an-in-law-unit-creating-400000-new-and-affordable-housing-units/).

<sup>5</sup>Bertolet, Dan. *Why Vancouver Trounces the Rest of Cascadia in Building ADUs*. Sightline Institute, 17 Feb. 2016, [www.sightline.org/2016/02/17/why-vancouver-trounces-the-rest-of-cascadia-in-building-adus/](http://www.sightline.org/2016/02/17/why-vancouver-trounces-the-rest-of-cascadia-in-building-adus/).

Adopting ADUs has significant impact on affordability in the region and across the state. In a recent report, the Bay Area Council Economic Institute estimates that 907 households in Berkeley would be willing and eligible to add an ADU. Factoring in market pressure relief and supplementary household income from ADUs, 907 new ADUs would increase affordability for 604 additional households, enabling them to afford to live in the region below a 30 percent cost-to-income ratio.<sup>7</sup>

While making ADUs easier to build would provide one simple way to make an impact on housing affordability, recent legislation to enable more ADUs was killed in the California legislature. SB 831 (Wieckowski) would have tackled remaining impact fees, created an ADU amnesty program to bring unpermitted units up to health and safety code and given the California Housing and Community Development Department more power to hold cities accountable to state ADU legislation. The primary qualms with the bill were: (1) there was a lack of resources dedicated to cities in exchange for permitting more ADUs; (2) there were multiple ADU bills moving through the legislature at the same time; and (3) cities need more time to catch up with previous legislation.

The problem is that these excuses do not hold water:

- There was a laundry list of 20+ permitting and planning fees that cities would have still been able to charge in order to fund their work under SB 831.
- Three ADU bills were passed in 2016 with no complaints.
- Frustration around requiring cities to change their ordinances too frequently is understandable, but at the same time, California currently has a two-million-unit housing deficit, so changes are desperately needed.

Closing the housing supply gap is going to require state and local governments to step outside their

comfort zones and push for changes harder than ever before. The alternative is a business as usual scenario where the state continues to gradually fall behind, driving up costs and community displacement. Supporters of SB 831 from the public, private, and non-profit sectors recognized the importance of continuing to push reforms to make it easier to build housing—but the voice of cities won out.

It is clear that to make any sort of dent in this housing crisis, state and local government must break this “business as usual” mindset and advance bold action. But one of the major problems is that there is an imbalance between local control and what is best for the region and state. Even elected officials that understand the problem and the need to build housing are often stopped by their constituents who do not want their neighborhoods to change. If it is not in voters’ self-interest to decrease their own property value and increase neighborhood density, how can we dig ourselves out of this hole and build housing for an ever-growing California?

The inability to pass ADU-enabling legislation is another example of local voices winning out over what is best for the long term economic sustainability of the Bay Area. To truly begin to build more housing units, some existing local powers must be pushed to the regional or state levels. These types of models have been explored in California, but they have proven successful in Massachusetts with Chapter 40B. This legislation allows affordable housing developers to apply for a comprehensive building permit from local jurisdictions. The application then must be reviewed over an accelerated timeline and developers are able to appeal to a quasi-judicial state body if the local government denies the application or approves it with onerous conditions. This appeals process is limited to cities that have failed to meet their fair housing goals.

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<sup>6</sup>Garcia, David. *ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes*. Turner Center for Housing Innovation at UC Berkeley, 21 Dec. 2017, [turnercenter.berkeley.edu/blog/adu-update-early-lessons-and-impacts-of-californias-state-and-local-policy](http://turnercenter.berkeley.edu/blog/adu-update-early-lessons-and-impacts-of-californias-state-and-local-policy).

<sup>7</sup>Bay Area Council Economic Institute. *Solving the Housing Affordability Crisis How Policy Impacts the Number of Alameda County Households Burdened by Housing Costs*. May 2018, [www.bayareaeconomy.org/files/pdf/AlamedaHousing.pdf](http://www.bayareaeconomy.org/files/pdf/AlamedaHousing.pdf).

In California, a newly enacted approach to make local governments more accountable for their housing production is Senate Bill 828 (Wiener). While proposals requiring streamlined approvals for projects containing certain levels of affordability and up-zoning across transit station areas have failed in the past, SB 828 looks to reform the process used to identify each jurisdiction's future housing need. SB 828 requires that cities plan for 100 percent of their needed housing and it adjusts the calculation to take into account previous underbuilding.

This piece of legislation is a first step toward greater enforcement around housing production. The solution to the housing crisis includes below-market-rate units, ADUs, high-density housing, and all building types in between. Local governments and their constituents must recognize that approving these types of projects is the way to create greater housing affordability. ■

## BIOGRAPHY

Jeff Bellisario is a Research Manager for the Bay Area Council Economic Institute. He supports a wide range of Institute research through project management, research design, and analysis. His research interests lie at the intersection of community development and finance, and his past projects include analyses of Bay Area housing programs, public-private partnerships for infrastructure, and the economic impacts of transportation investments. Rachele Trigueros is a Senior Policy Manager for the Bay Area Council. Rachele supports the Council's Housing Policy work, leading the effort to expand accessory dwelling units across the state. Rachele also leads the Council's Workforce Diversity & Inclusion initiatives, including the Bay Area Young Men of Color Employment Partnership (BAYEP).

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# Lessons from Massachusetts:

## CHAPTER 40B SHOWS STATE ACTION CAN HELP OVERRIDE LOCAL BARRIERS TO HOUSING

By **Ann Verrilli**, CONSULTANT AND AFFORDABLE HOUSING RESEARCHER

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### KEY TAKEAWAYS

- Massachusetts has successfully used a state law to broadly expand the supply of “low-and-moderate-income” housing.
- This success has come even as local zoning has become more restrictive over the decades since enactment, giving Massachusetts the fourth greatest increase in home prices between 1975 and early 2018 among the 50 states, thereby making it the fifth least affordable state for renters.
- Given the limited response to state incentive programs, state zoning reform legislation (S.81 and H. 2420) would require every municipality to zone enough land for multifamily housing (3+ units) to meet a reasonable share of the multi-family need.

### Case Study Abstract

*A 1969 Massachusetts state law (Chapter 40B) has successfully used state power to override local land use restrictions to create affordable housing in municipalities where less than 10 percent of the year-round housing is subsidized. It has helped create over 73,000 units in 253 cities and towns, including 37,000 income-restricted units.<sup>1</sup> The statute’s design has enabled it to respond to changing conditions and survive unamended. It enjoys wide popular support (a 2010 ballot initiative to repeal it was defeated by 58 percent at the polls). It also suggests a model to address the rising restrictiveness of local zoning that has created a broader affordability crisis. Massachusetts has ranked third among states in high home prices since 1990, up from 26th in 1980. State zoning reform proposals to mandate the establishment of multi-family zoning districts in every municipality—sufficient to meet regional multifamily housing need—offer a way to increase production consistent with environmental goals.*

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<sup>1</sup>All data on 40B production here is based on projects that have been completed or are under construction as of July 2017. Table 1 excludes both group homes and accessory dwelling units built under a special program.

## Case Presentation

The purpose of “Chapter 40B” is spelled out in its title: An Act Providing for the Construction of Low or Moderate Income Housing in Cities and Towns in which Local Restrictions Hamper Such Construction. Supporters were concerned about the state shortage of affordable housing and the contribution of zoning to segregation. Upheld by the state Supreme Court in 1973, it applies to all 351 cities and towns (except Boston).

The statute sets out key principles and definitions, while delegating interpretation to the state Department of Housing and Community Development (DHCD). Developers of eligible projects can apply for a single “comprehensive permit” (CP) from the local zoning board of appeals (ZBA), rather than applying to separate boards. They can request waivers of specific zoning and other local (not state) land use restrictions as needed to make a project feasible. Prior to filing an application with a ZBA, developers must obtain a letter from a subsidizing agency finding that the proposal meets its requirements and that the applicant is an eligible entity (nonprofit, public, or limited-dividend).

Profit and distribution limits guide decisions on zoning waivers (as needed for project feasibility) and developer appeals. Developers can appeal a permit denial or conditions to a state Housing Appeals Committee (HAC) if the project is in a municipality where less than 10 percent of its year-round housing units (as counted in the decennial census) is “subsidized” (effectively creating a 10 percent fair share goal) and other “safe harbors” have not been met. The HAC weighs the regional need for affordable housing against the “local concerns”

and evaluates whether permit conditions make a project “uneconomic.”<sup>2</sup> It can overturn or modify conditions and order issuance of a permit. Regional housing needs tend to outweigh local concerns.

The statute defines eligible projects as “any housing subsidized by the state or federal government under any program to assist the construction of low or moderate-income housing as defined by in the applicable state or federal statute.” Under DHCD regulations, projects must also be at least 20-25 percent affordable<sup>3</sup>, affirmatively marketed and include units for families with children, and be subject to a long term affordable housing restrictions. Most Comprehensive Permits require affordability in perpetuity under a 2002 court decision.<sup>4</sup>

In response to federal funding cuts, DHCD expanded the definition of subsidy over the years to enable developers to create affordable units - including ownership units - with little or no financial subsidy by using density and other waivers. An early shallow subsidy program, the Local Initiative Program (LIP)<sup>5</sup>, created in 1990, required approval by the chief elected official of the municipality in advance for eligibility. In 1999, eligibility was extended to a program that does not require prior local approval (it uses Federal Home Loan Bank construction interest subsidies) and shallow subsidy production took off. Shallow subsidy programs have accounted for 69 percent of the 40B projects built from 2000 forward or in construction and 54 percent of the affordable units.

As application activity has become more market driven and thus cyclical, DHCD has periodically revised its regulations<sup>6</sup> to reduce pressures on

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<sup>2</sup> State of California, et al. *California's Housing Future: Challenges and Opportunities Final Statewide Housing Assessment 2025*. California Department of Housing and Community Development, Feb. 2018, [www.hcd.ca.gov/policy-research/plans-reports/docs/SHA\\_Final\\_Combined.pdf](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf).

<sup>3</sup> Metropolitan Transportation Commission, and Association of Bay Area Governments. *Plan Bay Area 2040*. 26 July 2017, [mtc.ca.gov/our-work/plans-projects/plan-bay-area-2040](http://mtc.ca.gov/our-work/plans-projects/plan-bay-area-2040).

<sup>4</sup> Bay Area Council. *New Poll Finds That 25% of Homeowners Would Add an In-Law Unit, Creating 400,000 New and Affordable Housing Units*. 2017, [www.bayareacouncil.org/community\\_engagement/new-poll-finds-that-25-of-homeowners-would-add-an-in-law-unit-creating-400000-new-and-affordable-housing-units/](http://www.bayareacouncil.org/community_engagement/new-poll-finds-that-25-of-homeowners-would-add-an-in-law-unit-creating-400000-new-and-affordable-housing-units/).

<sup>5</sup> Bertolet, Dan. *Why Vancouver Trounces the Rest of Cascadia in Building ADUs*. Sightline Institute, 17 Feb. 2016, [www.sightline.org/2016/02/17/why-vancouver-trounces-the-rest-of-cascadia-in-building-adus/](http://www.sightline.org/2016/02/17/why-vancouver-trounces-the-rest-of-cascadia-in-building-adus/).

<sup>6</sup> The state now funds technical assistance for ZBAs, provides for municipal input to the subsidizing agency eligibility review and has expanded safe harbors (see note 5).

## UNITS PRODUCED USING CHAPTER 40B (EXCLUDING ACCESSORY DWELLING UNITS, GROUP HOMES)

(Built or in construction 6/2018)

	PROJECTS	TOTAL UNITS	AFFORDABLE UNITS	SHARE OF TOTAL UNITS	SHARE OF AFFORDABLE UNITS
<b>INCEPTION TO DATE</b>					
Shallow Subsidy					
LIP	234	7,733	2,099	10.6%	5.7%
Other	429	30,309	7,839	41.5%	21.4%
Total Shallow	663	38,042	9,938	52.0%	27.1%
Conventional Subsidy	744	35,060	26,724	48.0%	72.9%
<b>Total</b>	<b>1,407</b>	<b>73,102</b>	<b>36,662</b>	<b>100.0%</b>	<b>100.0%</b>
<b>2000 FORWARD</b>					
Shallow Subsidy					
LIP	173	5,980	1,630	13.1%	9.9%
Other	385	28,068	7,150	61.3%	43.5%
Total Shallow	252	34,048	8,780	74.3%	53.4%
Conventional Subsidy	744	11,756	7,666	25.7%	46.6%
<b>Total</b>	<b>996</b>	<b>45,804</b>	<b>16,446</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Massachusetts Department of Housing and Community Development

municipalities, reward municipalities with state-approved Housing Productions, and count projects sooner. Revisions have also made ZBA hearings and fees more predictable.<sup>7</sup>

DHCD maintains a “Subsidized Housing Inventory” (SHI) to track each municipality’s status vis a vis the 10 percent safe harbor. Projects count, whether developed with a CP or not, including projects built before 1969, if they have DHCD approved long term regulatory agreements and are affirmatively marketed. In mixed-income rental developments, all

the units count toward the 10 percent goal, if at least 20-25 percent of units are affordable.

### ACCOMPLISHMENTS

Chapter 40B has expanded the supply of affordable housing and diversified its location,<sup>8</sup> especially in towns and smaller cities (in larger cities, affordable projects can generally be permitted without 40B). Relatively few applications are denied or appealed now. Some municipalities have become more proactive about expanding affordable housing. Over 70 have used inclusionary zoning and 173 have

<sup>7</sup> Hearings must close within 180 days and decisions must be rendered no more than 40 days later)

<sup>8</sup> Adjusted from the official SHI count published in September 2017 of 262,233, which includes about 15,000 group home beds and 2,700 units that received homeowner rehabilitation loans.

- The 37,000 affordable units created using 40B account for 28 percent of the increase in income-restricted units since 1972.
- Sixty-six municipalities have reached 10 percent or more, up from three in 1972.
- Eighty-two municipalities have active housing production plans, including 10 that are appeal-proof for 1-2 years because they made progress toward their housing production goals.
- Less than 1 percent of the state’s population lives in the 42 small towns with no subsidized housing, compared to over 200 in 1972.

adopted a local property tax surcharge to support affordable housing<sup>9</sup> under a 2000 state law.

Nevertheless, most municipalities are reluctant to zone by-right to meet current housing needs, even after numerous studies have documented that 40B housing does not reduce property values, raise school costs over time, or raise crime. Despite generous incentives (payments from the state, school cost insurance, and preferential status for state grants), only 37 municipalities (including 11 older cities) have used a 2003 state law (Chapter 40R) that encourages the creation of overlay districts that allow by-right development with an affordable component<sup>10</sup> at 8-20 units per acre. Districts must be in “smart growth” locations (walkable or near transit or otherwise highly suitable).<sup>11</sup> To date, 40R has produced 3,500 units.<sup>12</sup>

## MASSACHUSETTS BUILDING PERMITS—TOTAL PRIVATE UNITS PERMITTED

DECADE	TOTAL UNITS	MULTIFAMILY (IN 5+ UNIT BUILDINGS)	IN 2-4 UNIT BUILDINGS	IN ONE-UNIT BUILDINGS	MF SHARE	2-4U SHARE	1U SHARE
1960-1969	285,762	99,525	12,186	174,051	35%	4%	61%
1970-1979	304,790	140,224	13,853	150,713	46%	5%	49%
1980-1989	277,303	72,404	22,745	182,154	26%	8%	66%
1990-1999	168,044	14,532	7,467	146,045	9%	4%	87%
2000-2009	172,544	47,674	11,255	113,615	28%	7%	66%
2010-2017	108,387	50,163	5,316	52,908	46%	5%	49%
<b>Total</b>	<b>1,316,830</b>	<b>424,522</b>	<b>72,822</b>	<b>819,486</b>	<b>32%</b>	<b>6%</b>	<b>62%</b>

Source: Census Bureau

<sup>9</sup> The property tax surcharges are authorized under the Massachusetts Community Preservation Act, first enacted in 2000. <http://www.communitypreservation.org/content/cpa-overview>

<sup>10</sup> Chapter 40R overlay districts must also have with adequate infrastructure to accommodate the allowed growth. In addition, at least 20% of units in a district must be affordable at 80% AMI for at least 30 years. <https://www.mass.gov/service-details/chapter-40r>

<sup>11</sup> Chapter 40R provides a payment of \$30,000 to \$600,000 when a municipality creates an overlay district. Municipalities receive a second state payment (\$3,000 per bonus unit) when building permits are issued and preferential status for state grants. A companion law (40S) provides state reimbursement for school costs not covered by taxes generated by projects.

<sup>12</sup> About half of the units built to date are in projects previously approved or in review under Chapter 40B or other local processes.

## NEED FOR NEW MANDATES

Chapter 40B alone cannot solve Massachusetts' affordability problem, even if every municipality reaches 10 percent (that goal, while simple, is not and never was tied to estimates of regional or statewide need nor smart growth goals). More federal funding is required to adequately assist very low-income households and new zoning mandates are needed to spur adequate housing production and bring down housing costs more broadly.

Massachusetts has a "weak planning framework" (no state or regional planning offices, no requirement for consistency between local plans and zoning), so local zoning drives development patterns. Authority for zoning rests at the municipal level and under the state zoning law (last rewritten in 1975), changes require two-thirds approval by city or town council, or in the state's 296 towns by town meeting. As local zoning has become more restrictive since 1972, multi-family production has plunged (Table 2) and become more geographically concentrated. A 2007 study found that only 1 percent of the land in 144 municipalities in eastern Massachusetts is zoned multi-family. Ten municipalities accounted for two-thirds of all multi-family units permitted statewide between 2010 and 2016, with Boston accounting for one-third.

To address these challenges, state zoning reform proposals to require every municipality to zone for multi-family housing in smart growth locations sufficient to meet a "reasonable share of the regional need for multi-family housing" make sense. These are unlikely to pass this year despite strong editorial support.<sup>13</sup> Absent such a mandate, it is likely to be difficult for a new state "Housing Choice initiative"<sup>14</sup> to meet its goal of spurring the development of 135,000 new units statewide by 2025.

The challenges and accomplishments experienced in Massachusetts can serve as important lessons for leaders in California who are striving to solve the state's severe housing shortage, as these laws are proof that well-enforced state laws can broadly expand the supply of housing. ■

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<sup>13</sup> Summaries of 2017-2018 proposals for mandatory multifamily districts can be found at <https://ma-smartgrowth.org/wp-content/uploads/2017/12/How-GN-changes-outcomes.pdf>

<sup>14</sup> For details on the state Housing Choice Initiative, see <https://www.mass.gov/orgs/housing-choice-initiative>

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## BIOGRAPHY

Ann Carten Verrilli is a Massachusetts-based affordable housing researcher and consultant who has written or provided data for numerous studies of Chapter 40B and other zoning-based initiatives. Her research has also covered inclusionary zoning and Chapter 40R to increase housing production, including affordable housing production in Massachusetts.

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