

DATE: March 18, 2022
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SUBJECT: OREGON HOUSING NEEDS ANALYSIS IMPLEMENTATION PROJECT – TASK 10 BEST PRACTICES REVIEW

Background

Under direction from the State Legislature, the Oregon Housing and Community Services (OHCS) Department and the Department of Land Conservation and Development (DLCD) are developing legislative recommendations to modernize the State’s housing planning system to more fully and equitably meet housing need. The Oregon Housing Needs Analysis (OHNA) is one component of what is envisioned as a holistic set of reforms that would also encompass changes to land use planning, housing funding, accountability measures, and administrative capacity. Collectively, these reforms would build toward the following outcomes:

1. Increased overall housing production
2. Increasing publicly funded¹ and affordable² housing production
3. Inclusive and integrated communities through increased focus on fair housing in production, and geographic housing equity

An implementation framework document, entitled [Meeting Oregon’s Housing Needs: Next Steps for Equitable Housing Production](#) offers more information on the OHNA system and implementation project and an accompanying [engagement framework](#) highlights the stakeholder engagement envisioned to guide the project. The implementation framework document also discusses three conditions for success that the OHNA reforms must advance:

- A. Identify funding to increase housing production (particularly producing housing affordable to low-income households),
- B. Identify accountability mechanisms to ensure compliance with production goals, and
- C. Build state administrative capacity to oversee expanded accountability and funding.

In implementing the OHNA, Oregon is attempting to create a unique housing production system that offers a comprehensive, equity-focused, supply-side approach to spur communities

¹ In this document, “publicly-funded housing” refers to a range of public supports that include subsidies tied to rent- or income-restricted units or any other form of public contribution to housing production (such as local incentive programs to encourage market rate housing). It may also include rent vouchers, designed to connect people to units.

² “Affordable” housing refers to housing that is affordable to a household of a given income, if that household spends no more than 30% of its monthly income on housing costs. In this way, the term “affordable” includes regulated rent- or income-restricted units as well as unregulated affordable units (such as workforce housing).

to plan for *and build* housing. It must also integrate this new housing production system into the existing land use planning system.

Doing this requires an understanding of (1) how housing markets function (and fail) in the provision of housing that is affordable to low-income households, and (2) what state governments can or should do to enable production. If Oregon succeeds in implementing the OHNA and achieving its desired outcomes, it will create a housing production planning system unlike any that exists in any other state in the country. Many other states are exploring zoning reforms and housing production programs to spur development, but most are doing so without Oregon's 40+ years of statewide land use planning context.

While there are no replica models to draw from, research and experiences in other states can help Oregon design a system that balances regulatory authority and accountability with incentives and funding, to find the right level of state interaction with local land use to help achieve meaningful results.

Purpose of this Memorandum

To help put the OHNA into context against other states, and to attempt to answer some of the key questions the implementation process will need to consider, this memorandum surveys the relevant research literature and best practices in housing production and planning happening in other states. Three recently published and highly relevant papers are reviewed to provide insight into different approaches and considerations for each of the OHNA conditions for success.

The first is a 2021 paper *How Can State Governments Support Healthier Housing Markets?* from the Brookings Institution. In this paper, Dr. Jenny Scheutz describes five states' approaches to housing planning reforms and identifies four key goals these reforms should consider: (1) assess market conditions and needs, (2) support well-functioning housing markets, (3) provide financial support to low-income households, and (4) reduce climate risk.

The most prescient topic is on how states can support well-functioning housing markets, which she defines as those where supply appropriately follows demand for housing and production is positively correlated with price, indicating that there are few regulatory constraints on production. Here she offers four approaches for how the state can intervene to support more efficient housing markets: a) offering incentives and penalties, b) statewide approval of local land use policies, c) preemption

Oregon's current policies and recent policy changes align nicely with these four topics:

- The OHNA assesses market conditions and housing needs,
 - Introducing Housing Production Strategies (HPS) into the Goal 10 system supports well-functioning housing markets,
 - The Legislature's recent increases in funding support low-income households, and
 - DLCD's climate friendly and equitable communities (CFEC) rulemaking process aligns with goals to reduce climate risk.
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laws, and d) offering development overrides.³ These are all considerations the OHNA implementation efforts could evaluate across the three questions of funding, accountability, and administrative capacity, and are discussed in each section below. They vary on likely impact and political favorability.

Secondly, in his 2020 paper, *Ending Exclusionary Zoning in New York City's Suburbs*, Noah Kazis of the New York University Furman Center describes New York's "overly restrictive zoning regulations" and makes the case for why the state needs to step in to help promote housing production in New York's exclusive, wealthy suburbs. After setting out the issue and discussing approaches in other states, he walks through a set of questions for New York to consider in statewide land use reforms that are very similar to those the OHNA is grappling with. These include:

- A. Incentivize with carrots or sticks?
- B. Where should intervention take place, statewide or in targeted areas?
- C. Should reforms eliminate low-density zoning or allow high-density zoning?
- D. In offering development overrides, should the state focus on affordable housing or allow market rate development, too?
- E. If affordable, what levels of affordability?
- F. How to enforce compliance, through the courts or agencies?
- G. What is the role for local governments?
- H. How to set housing production targets?
- I. What to do with New York City?
- J. How to coordinate housing with the provision of other infrastructure?
- K. How to pair land use reform with other policies?

Lastly, a 2020 paper by Nicholas Marantz and Huixin Zheng entitled, *State Affordable Housing Appeals Systems and Access to Opportunity: Evidence from the Northeastern United States*, describes in depth four statewide development override programs (referred to in this paper as State Affordable Housing Appeals Systems or SAHASs) that are used to monitor and boost housing production and increase access to opportunity in wealthy, exclusive cities with restrictive zoning.

These papers provide a useful starting place for evaluating the OHNA reform options because they focus explicitly on ways to improve housing production and dismantle exclusivity and housing segregation. Each offers a review of policy interventions in other states and focus on the economics of the housing market in alignment with Oregon's supply-side focused goals.

The Brookings and Furman Center papers remind the reader that states already influence housing production indirectly in several ways, such as through taxation, funding, environmental planning, building codes, sustainability requirements, wage and labor laws, and

³ Development overrides are often called "builder's remedies" and in one paper they are referred to as "State Affordable Housing Appeals Systems" (SAHASs). They essentially allow a developer of a qualifying project to appeal and override local land use decisions in certain circumstances.

fair housing policies (such as landlord-tenant laws) among other policies. In many states including Oregon, the cumulative effect of these numerous layers of rules and regulations has impeded the proper functioning of housing markets which leads to reduced housing production,⁴ reduced labor market efficiencies, reduced economic opportunities for lower-income households, and increased greenhouse gasses as households and housing units sprawl.⁵

These papers also remind the reader that although most states have ceded land use control to local jurisdictions, the power to regulate land use ultimately resides with them, which also means that they have the power to rescind this control if they so choose. Statewide reforms in housing planning are part of a toolkit that states already have substantial influence over.

While this can seem like a relatively combative stance to take, DLCD has routinely demonstrated that it prefers to be collaborative rather than punitive and wants to be a partner to jurisdictions as they work toward housing goals. In addition, the OHNA goals aim to increase housing market efficiency so that housing production can follow demand. As the OHNA system is not yet defined, it can include Oregonians' preferences for the right mix of incentives, funding, and accountability to make the system work better for all.

Below, we describe the findings from these papers as they relate to the three conditions for success (accountability, funding, and administrative capacity) and offer a few examples of what approaches that other states are using.

OHNA Conditions for Success

Implementing the OHNA to identify and allocate housing production targets and develop systems for local jurisdictions to achieve this production has numerous far-reaching considerations. It necessitates changes to the current land use system to integrate the targets and change land supply and capacity measurements to account for full housing need and smooth development processes. The implementation framework document identifies two pathways by which the OHNA could be implemented: via Housing Production Strategies (HPSs) or via Housing Capacity Analyses (HCAs). These two pathways have broad implications for local governments, practitioners, developers, and numerous other players involved in planning and producing housing in Oregon.

Changes to HPSs or HCAs would be an important avenue for implementation of the new system, but by themselves will not produce the outcomes that are needed. The framework document also describes three conditions for success (see page 1) that would need to accompany any changes in the land use system to ensure that the OHNA goals – more housing production, more affordable housing production, and reduced housing segregation – are actually achieved. This section steps through these three conditions, draws in findings from

⁴ The White House, 2016, "Housing Development Toolkit," obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf.

⁵ Scheutz, Jenny, 2021, "How can state governments support healthier housing markets?" The Brookings Institution, papers.ssrn.com/sol3/papers.cfm?abstract_id=3967227.

other states, and highlights implications for Oregon and the OHNA. Where the literature discusses production outcomes from a given program, they are mentioned in call-out boxes next to the policy.

Accountability Mechanisms Overseeing Housing Production

From the Implementation Framework:

A strong accountability system will be needed to achieve housing production that is sufficient to meet need while also overcoming the patterns of racial and economic segregation that have been enabled by state and local policies for more than a generation. Such a system would coordinate and clarify the enforcement of land use decisions as they relate to Goal 10, housing production strategy implementation, and fair housing outcomes. It would provide sufficient penalties to inaction, coupled with adequate support for production, to motivate local political will toward substantial changes in existing land use patterns. Oregon's current system does not meet these conditions.

These research papers describe several mechanisms states can take to encourage well-functioning housing markets. The most hands-off approach is for a state to offer financial incentives and enforcement mechanisms (“carrots and sticks”) associated with production targets for each locality. They also highlight the appeal of offering local governments incentives as opposed to removing control or creating unfunded mandates.

In addition, states can put in place development overrides that allow developers to bypass local zoning requirements in certain conditions. These are most often structured around a locality failing to meet certain outcomes, such as total housing production or maintaining a “fair share” of publicly funded housing. In addition, development overrides typically only apply to high-density housing or publicly funded housing in 100% affordable or mixed-income projects.

Two other accountability mechanisms are suggested in the research: requiring approval of local land use plans and preempting local governments from adopting unfavorable housing planning laws. Oregon already employs these two mechanisms, the first through Goal 10 housing planning requirements and the second through recent statewide housing bills, such as 2019's House Bill 2001.

In other states, the accountability mechanisms of carrots and sticks and development overrides must be paired with localized housing production targets. The OHNA will determine targets, but the methodology is not set in stone and will likely change as the system is implemented and works its way through the policy adoption process.

Just as states must decide whether reforms will apply statewide or be targeted, reforms using incentives and penalties could also be statewide or focused on specific areas. Focused reforms could be punitive, directed at under-producers, or opportunistic, directed at areas where housing production is desired and needed (such as in high-opportunity areas or near transit). Some targeted incentive programs are described in the Funding section beginning on page 12.

California's Accountability System

California has a strict accountability system tied to housing production targets set in its regional housing needs analysis (RHNA). Funding is used as part of the state's accountability program, as both a "carrot" when it is incentivizing behavior and a "stick" when it is taken away for noncompliance. There are other penalties for a jurisdiction falling out of compliance with its Housing Element and housing element laws. The Association of Bay Area Governments summarizes these penalties to include:⁶

- Late submittal of a housing element can result in a jurisdiction being required to submit a 4-year update to their housing element (rather than the 8-year cycle). This is an expensive, burdensome, and time-consuming process that can incentivize jurisdictions to adhere to the rules and receive certification on time.
- The Housing and Community Development (HCD) Department may refer jurisdictions to the State Attorney General if they are noncompliant with their housing element, do not adhere to their HDC-approved element, or if they run afoul of California's numerous laws overseeing housing planning, including:
 - Housing element laws,
 - The [Housing Accountability Act](#) (which "prohibits a local agency from disapproving, or conditioning approval in a manner than renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based upon substantial evidence in the record.")
 - The [Density Bonus Law](#) (which "encourages developers to incorporate affordable units within a residential project in exchange for density bonuses and relief from other base development standards.")
 - The [No-Net-Loss Law](#), (which requires that jurisdictions "maintain adequate sites to accommodate its remaining unmet RHNA by each income category at all times throughout the entire planning period"), or
 - Land use discrimination laws.
- A jurisdiction that is noncompliant with its housing element is also noncompliant with its General Plan, which can open it up to the risk of legal challenges to the general plan from entities outside of HCD (such as lawsuits from developers, advocacy groups, or the state).
- Local governments noncompliant with their general plans are also no longer able to make permitting decisions.⁷ Courts may take control over a local government's permitting abilities to bring the housing element into compliance with the law, may

⁶ The Association of Bay Area Governments, 2020, "Regional Housing Needs Allocation: Frequently Asked Questions about RHNA," abag.ca.gov/sites/default/files/abag_2023-2031_rhna_faq.pdf.

⁷ The Association of Bay Area Governments, "Housing Element Compliance One Pager," https://abag.ca.gov/sites/default/files/documents/2021-04/HE_Compliance_One-Pager.pdf.

suspend the jurisdiction's ability to grant permits, and may appoint an agent the power to correct any deficiencies with the housing element.

- In addition to having a certified HDC-approved housing element, jurisdictions must also implement their housing elements properly, or face penalties. An example is rezoning based on the adequate sites inventory submitted in the housing element: if a jurisdiction does not rezone in a timely manner, the Association of Bay Area Governments notes that this can impact its "land use authority and result in a carryover of RHNA to the next cycle."
- In addition, jurisdictions must permit adequate amounts of housing each year to keep pace with their RHNA goals. Failure to do this can result in a streamlined approval process for development on infill sites that comply with zoning and offer at least 10% of units below market, or it can allow a developer to use ministerial approval ("by right" development) in certain conditions to streamline project approvals and make it easier to build. These are often called development overrides, discussed below.^{8 9}

Development Overrides

Several states employ development overrides to incentivize local jurisdictions to produce adequate housing, including Massachusetts, New Jersey, Connecticut, Rhode Island, Illinois, and California. While these programs vary, they all offer developers of mixed income and/or below-market rate housing the opportunity to appeal local zoning decisions or apply for streamlined permits in a jurisdiction that has not met its "fair share" of the state's housing obligation (a discussion of fair share targets is next).¹⁰

Massachusetts' Chapter 40B is the oldest of these development override programs, enacted in 1969 to combat exclusionary zoning, and provides the basis for several other state policies.¹¹ This policy offers developers of below-market rate properties the opportunity to overcome local land use laws in jurisdictions that have fallen behind in housing or affordable housing production. Under this statute, developers may petition their local zoning board of appeals (ZBA) for a comprehensive land use permit for housing developments that do not fully comply with local zoning if their development contains the

The Furman Center report suggests that Massachusetts' Chapter 40B program has had moderate success.

- The number of cities above the 10% threshold has increased from four in 1969 to 40 in 2012.
 - An estimated 31,000 affordable units (26% of all affordable units) and 27,000 market rate units (about 7% of total) have been built under the program.
 - 80% of the increase in affordable units has been in suburban areas.
 - The program is disproportionately used in areas with the strictest zoning.
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⁸ The Association of Bay Area Governments, 2020.

⁹ The California Governor's Office of Policy and Research, 2022, "CEQA & Housing," <https://opr.ca.gov/ceqa/ceqa-housing.html>.

¹⁰ Marantz, Nicholas and Huixin Zheng, 2020, "State Affordable Housing Appeals Systems and Access to Opportunity: Evidence From the Northeastern United States," Housing Policy Debate, DOI: [10.1080/10511482.2020.1712612](https://doi.org/10.1080/10511482.2020.1712612).

¹¹ Kazis, Noah, 2020, "Ending Exclusionary Zoning in New York City's Suburbs," The New York University Furman Center, furmancenter.org/files/Ending_Exclusionary_Zoning_in_New_York_City's_Suburbs.pdf.

required affordable unit set aside (typically 20-25% of units).¹² Understanding that jurisdictions want to avoid these comprehensive permits, the state has offered three ways out. The jurisdiction can:

1. Ensure that 10% of its housing stock is subsidized affordable housing as calculated in the state's Subsidized Housing Inventory,
2. Create a certified Housing Production Plan and make progress on it, or
3. Dedicate as deed-restricted affordable housing at least 5% of its total area that is zoned for residential, commercial, or industrial use.

The state maintains a Subsidized Housing Inventory list for every jurisdiction. This inventory tracks all new development and calculates the share of new development that is deed restricted affordable housing. A jurisdiction under the 10% affordable housing threshold can produce a certified Housing Production Plan (HPPs) every five years to strategize and demonstrate how it will develop more affordable housing. To receive state certification, the locality must produce at least 0.5% to 1% of all units as affordable to low- and moderate-income households. The certification of the HPP is tied to the amount of housing the locality has produced:

“Certification lasts for one year if the community has produced 0.5% of year-round housing units or two years if it has produced 1.0%.”¹³ As an incentive program, this ties a developer's ability to request a comprehensive permit for noncomplying developments to the jurisdiction's total share of affordable housing or ongoing progress in developing affordable housing.

The program also has important time limits on the application process: the ZBA must initiate hearings within 30 days of the application, must complete hearings within 6 months, and must decide within 40 days of the final hearing or the permit is automatically approved.¹⁵ This helps to avoid undue delays that can effectively kill a project. This streamlined process is available for 100% affordable projects statewide.

If the ZBA still denies the project or requires undue conditions and the jurisdiction has less than 10% of its stock as regulated affordable housing (and no HPP), the developer can appeal to a state-level Housing Appeals Committee which has the power to overturn the ZBA decision.¹⁶ Several papers have highlighted that the

OHCS tracks and maintains an affordable housing inventory that is updated every year and under House Bill 4006 cities with more than 10,000 people are required to report to DLCD on permit and development trends.

Under ORS 227.181 cities have 120 days to take final action on a final order issued by the Land Use Board of Appeals relating to an application for a permit, limited land use decision or zone change.¹⁴

¹² The Metropolitan Area Planning Council, “What is a Housing Production Plan?” <https://www.mapc.org/resource-library/whatishpp/>.

¹³ Commonwealth of Massachusetts Department of Housing and Community Development, 2021, “Housing Production Plans: Frequently Asked Questions,” <https://www.mass.gov/doc/frequently-asked-questions-33/download>

¹⁴ Oregon Revised Statutes 227.181, “Final action required within 120 days following remand of land use decision,” https://oregon.public.law/statutes/ors_227.181

¹⁵ Kazis, Noah, 2020.

¹⁶ Ibid.

burden of proof is flipped so that the ZBA must “demonstrate that its decision was based on valid health, safety, environmental, or design concerns, and that those concerns outweigh the regional housing need.”¹⁷

Massachusetts’ program is the oldest and has inspired other states to adopt similar, but varying programs. The Furman Center and Marantz and Zheng papers discuss these variations:

- Connecticut’s Section 8-30g operates in much the same way but has different affordability thresholds both for the property to qualify and for the jurisdiction to be exempt. It does not offer the streamlining aspect of Massachusetts’ program but does require the burden of proof to be on the jurisdiction. In addition, appeals in Connecticut go to the judicial system, not a state agency.
- Rhode Island combines the Massachusetts model with a planning obligation like Oregon and California. Local governments must develop a housing element in conjunction with larger comprehensive planning requirements.
- Illinois also requires that jurisdictions plan for affordable housing. In areas where less than 10% of the housing stock is affordable, jurisdictions must create housing plans to demonstrate how they will accommodate more affordable housing. If a jurisdiction has not met the goals in their own plans, developers can appeal the permit denial for a development override. In 2009, the state created a specific agency, the Housing Appeals Board, to handle these appeals.
- New Jersey’s development override program has a complex “fair share” requirement (discussed below) that allows municipalities to sue jurisdictions that are not meeting their “fair shares” to override a permit denial and build outside of local zoning requirements.¹⁸

These two papers suggests that Massachusetts’ program is the strongest and most effective, although it has not remedied the larger housing challenges facing the state. Connecticut’s program is considered to be weaker because (a) it has deeper affordability thresholds that limit the profitability of developing under these programs, (b) it lacks the procedural streamlining process, and (c) judicial review instead of a state board is less efficient. These papers suggest that Illinois’ program is less effective because it does not shift the burden of proof from the developer to the locality. Rhode Island’s program is like Massachusetts’. Less is said about New Jersey’s program, except that it does not shift the burden of proof and that its “fair share” requirements are complex and different across jurisdictions, which makes the program less effective.

Production Targets

All three papers demonstrate that any of these accountability mechanisms (carrots and sticks, development overrides, land use planning requirements, or preemption laws) require a

¹⁷ Ibid.

¹⁸ Ibid.

measurable outcome to track and determine whether a jurisdiction is in compliance. In the examples listed, states have created localized housing production targets.

California

California has its complex RHNA process by which the state allocates housing targets to its regional coalitions of governments who then allocate targets to each jurisdiction. Each coalition of governments can decide its own methodology for allocating units, and these can change each cycle. The coalitions of governments undergo a lengthy public process when creating and changing their methodologies. Targets span the income spectrum, not just for subsidized affordable housing. This is a complex, contentious, and lengthy process. While cities can appeal their allocations, the regional need does not change. That means that if a jurisdiction wins its appeal to reduce its allocation, the extra housing units are reallocated to the other jurisdictions in the region.

Connecticut, Rhode Island, and Massachusetts

Connecticut, Rhode Island, and Massachusetts have much simpler targeting mechanisms, and are also only focused on affordable units. Massachusetts maintains an inventory of all publicly funded housing and requires all jurisdictions to maintain a threshold that at least 10% of their housing stock will be regulated affordable. Connecticut and Rhode Island also have consistent and simple fair-share requirements for exemptions under their development override programs.¹⁹

New Jersey

New Jersey also uses a complicated formula to calculate “fair share” thresholds and housing obligations for jurisdictions, but these are only for affordable units. The legislature assigned this task to an independent state agency called the Council on Affordable Homes (COAH). In addition to challenges with the COAH itself, there were multiple methods to calculate “fair shares” and significant resistance from municipalities in trying to evade the intent of the policies. The Furman Center paper discusses these challenges, including:

- Complex methodologies that changed over time and were struck down by the courts (the third complicated methodology tied affordable housing production to job and housing growth which was struck down for “incentivizing municipalities to halt growth altogether.”)
- An attempt at imposing residency preferences in the affordable housing units which meant that people who lived outside Mount Laurel could not move into the affordable units.²⁰ This was also struck down by the courts.

The Furman Center report discusses New Jersey’s success despite this complicated process:

- An estimated 80,000 units have been created under this program
 - Northern New Jersey has seen a large increase in affordable housing construction compared to that of New York City which lacks this type of program.
 - Residents of Mount Laurel’s affordable housing properties have reportedly higher incomes and better employment and educational outcomes than a peer group.
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¹⁹ Marantz and Zheng, 2020.

²⁰ Fair Share Housing Center, “Mount Laurel Doctrine,” <https://fairsharehousing.org/mount-laurel-doctrine/>.

- An attempt to meet affordable housing requirements through the filtering process of producing market rate housing was also struck down by the courts.
- An attempt to restrict housing developments to seniors, thereby excluding families with children from developments was also struck down by the courts.

According to Marantz and Zheng, the result of this complex system is less overall housing production and “extensive bureaucratic wrangling and litigation over the adequacy of both the determinations of municipal fair shares and the underlying methodologies.”

Pennsylvania

The Furman Center paper also highlights Pennsylvania’s unique approach to “fair share” policies. Instead of setting targets for unit production, it requires that all jurisdictions zone for different types of housing, including some forms of multifamily housing. The policy came about from legal challenges to exclusionary zoning and subsequent zoning that was effectively exclusionary. This “fair share” methodology considers the exclusionary effective of zoning alongside an area’s growth potential and its current build out. The mechanism operates through the courts as developers can sue municipalities to overcome the exclusive zoning when they have not zoned for a fair share of housing types.

The policy aims to operate through market mechanisms only; it does not have requirements for affordable housing units. A 2007 review of exclusionary zoning in Pennsylvania elaborates on this point, noting that “the Pennsylvania Supreme Court has clarified that municipalities must provide for a variety of uses, not a variety of classes of people, because the fair-share doctrine is based on constitutional property rights rather than a large-scale social justice program such as New Jersey’s.”²²

A review of Pennsylvania’s “fair share” law highlights a major loophole that developers have exploited, dubbed the “sue and switch.” Under the policy, developers who successfully sue to challenge an exclusionary zoning regulation are not required to build the type of housing they sued for, which allows the jurisdiction and the developer to renegotiate the development. The paper highlights evidence that seven times from 1987 to 2007 when developers sued to build manufactured homes disallowed by local zoning, and then switched to single family homes or townhomes.²¹

Massachusetts and in Connecticut attempted to pass similar bills (in 2016 and 2018 respectively) that would have required jurisdictions to zone for housing types in conjunction with their development override incentive programs but neither moved through both chambers of their state legislatures.²³

Legal Compliance in New Jersey

New Jersey’s housing planning system developed from litigation surrounding planned development in the Mount Laurel Township when the township sought to exclude affordable

²¹ Rowan, Katherine, 2007, “Anti-Exclusionary Zoning In Pennsylvania: A Weapon For Developers, A Loss For Low-Income Pennsylvanians, The Temple Law Review, www.templelawreview.org/lawreview/assets/uploads/2011/07/rowan.pdf.

²² Rowan, Katherine, 2007.

²³ Kazis, Noah, 2020.

housing units as an attempt to create an affluent suburban community. The litigation spans two court cases:²⁴

- Mount Laurel 1 (1975) states that zoning power could not be exclusionary and that every municipality must provide a fair share of affordable housing.
- Mount Laurel 2 (1983) allows affordable housing developers who are denied permits by municipalities not meeting their fair share requirements to sue the municipality and receive a development override from the court to proceed with the development.

New Jersey lacks in its accountability for non-compliant local jurisdictions. From 1983 to 1985, the courts needed to determine statewide affordable housing need and enforce the laws.²⁵ More details about New Jersey’s statewide oversight and administrative capacity are discussed on page 18. New Jersey’s accountability for the provision of affordable housing lies in the development override mechanism granted through the courts.

Funding to Increase Housing Production

From the Implementation Framework:

Oregon’s current system does not provide sufficient housing funding, clear avenues for leveraging and coordinating that funding across levels of government, or the certainty about the future availability of funding that is needed to enable long-term planning. It relies on a complex array of local incentives and funding sources, state funds dispersed through competitive processes and grants, and federal funds and tax credits that each come with their own regulatory and administrative requirements. This array of funding sources provides for hard-to-pencil market-rate development, affordable housing options (including rent- or income-restricted units that serve households earning below 60% of area median income (AMI) or unregulated affordable housing such as workforce housing), wrap-around services, and other housing-related needs. To meet the full spectrum of need, these sources would need to be scaled and better coordinated toward common housing goals. And given the scale of need and the importance of planning over time, new, dedicated streams of revenue will be needed.

Most states reviewed have funding systems like Oregon’s current system, with funding for rent-restricted housing controlled through a state housing agency, and local governments providing an array of tools to support public-private partnerships to encourage the production of some types of housing in certain areas. Many states use these funding tools as part of their accountability programs, as both a “carrot” when it is incentivizing behavior and a “stick” when it is taken away for noncompliance.

No state has a comprehensive, production-focused funding system that addresses housing production costs such as infrastructure needs and adequate subsidies to fund housing types that are not typically produced by the market (such as mixed-use or higher density units, support for missing middle housing production, or support for homeownership product.)

²⁴ Ibid.

²⁵ Ibid.

In the Brookings paper’s review of five states, Utah stands out in that the bulk of its housing assistance is aimed at homeowners: the housing agency states that it has assisted 100,000 homebuyers and 34,000 renters. The other four states reviewed, like most states, focus on building rental housing and assisting renters.

In addition, a 2000 paper from the Massachusetts’ Executive Office for Administration and Finance highlighted the state’s outsized role in supporting affordable housing in the state, placing it in “a league of its own.”²⁶ While this paper is now 22 years old, the findings suggest that the state plays a larger role than most in supporting low-income tenants by operating two state-funded rental assistance program and building state-funded public housing rather than relying (exclusively or heavily) on federal programs.

Funding Incentives

The Furman Center paper discusses funding incentives in several states, described below. Funding incentives are a relatively hands off, politically palatable approach to spur housing production. The majority are location specific and most contain provisions for rent-restricted affordable housing or other housing types that are not typically produced by the market (such as higher density or mixed-use housing).

Many states have tax exemption incentive programs for developing either affordable housing (such as inclusionary zoning) or multifamily housing. Some have vertical housing development zones targeted near transit or in downtown areas. As these are common, they are not described herein.

California

California has a very complex system of funding programs aimed at spurring housing development. Most programs are tied to the provision of rent or income restricted housing; it appears that only one of California’s 32 active funding and planning programs do not require an affordability component. The Affordable Housing and Sustainable Communities Program (AHSC) offers competitively awarded planning grants and loans for housing (among other types of development) in designated TOD areas or integrated connectivity project areas to support infill and compact development to reduce greenhouse gas emissions.²⁷

Three planning grants and an infill infrastructure funding program described below, also do not require affordability components to these developments.

New York

The Furman Center paper, which focuses on New York suburbs, describes New York’s past transit-oriented development (TOD) grants funded through its Department of State

²⁶ Ardon, Ken, Carlo DeSantis, Pamela MacLeod, Rebecca Rissman, and John Simon, 2001, “Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts,” The Commonwealth of Massachusetts Executive Office for Administration and Finance, www.mhp.net/writable/resources/documents/a_f_housingreport.pdf.

²⁷ California Department of Housing and Community Development, 2022, “Programs: Active - Funding Next 12 Months,” www.hcd.ca.gov/grants-funding/active-funding/index.shtml.

Environmental Protection Fund or its Downtown Revitalization Initiative. These were focused on smart growth planning and development in suburban areas.

Massachusetts

Chapter 40R, enacted in 2004 which provides incentives for jurisdictions to adopt a zoning overlay district that aligns with “smart growth” in that they are near transit, retail areas, commercial centers, or other amenities. The overlays increase zoned capacity, allow by-right development for moderate densities, and have some affordability requirements. Based on the increase in zoned capacity, localities can receive between \$10,000 and \$600,000 immediately and another \$3,000 per unit when permits are issued.²⁸

The Furman Center paper suggests that Massachusetts’ Chapter 40R program has seen mixed results. As of 2018, 42 districts have been created generating zoned capacity for more than 15,000 new units. Only about 3,500 units have been constructed. Only about 1,750 of these are affordable to low-income households. The program has not made inroads into Massachusetts’ wealthy, exclusionary communities

Connecticut

In Connecticut, 72 municipalities have received grants to create Incentive Housing Zones, but only two have built housing.²⁹

Connecticut has a similar Incentive Housing Zone program that also offers financial incentives and funding for development. Jurisdictions receive \$50,000 to adopt the zone and another \$2,000-\$5,000 per unit when permits are issued.³⁰

Utah

Senate Bill 34 adopted in 2019 in Utah boosted affordable housing funding by \$20 million and also included housing reforms as an eligibility requirement for local jurisdictions to access \$700 million in state transportation funding.³¹ According to the new law, local jurisdictions must implement at least three housing reform policies (from a list of 23) to be eligible to receive state transportation funding. According the Furman Center paper and Bloomberg,³² these policies range in scope and scale; a sample are included below.

1. Subsidize city employee mortgages
2. Work with technical assistance providers to promote housing
3. Allow high-density zoning
4. Permit single-room occupancy housing
5. Permit accessory dwelling units
6. Lower or eliminate parking requirements
7. Start a community land trust
8. Purchase and preserve existing affordable housing
9. Relax minimum lot sizes
10. Encourage housing near high-capacity transit
11. Encourage the conversion of unused retail strips into mixed-use residential

²⁸ Kazis, Noah, 2020.

²⁹ Ibid.

³⁰ Ibid.

³¹ Kiani, Fatemeh (Neda), Amanda Dillon, Dong-ah Choi, Junsik Kim, and Fariba Siddiq, 2020, “Affordable Housing Strategies: State-of-the Practice in Ten Utah Cities,” Metropolitan Research Center at the University of Utah, www.utahhousing.org/uploads/2/6/4/4/26444747/affordable_housing_guide_20200720.ss.pdf.

³² Fuller, Brandon and Nolan Gray, 2019, “A Red-State Take on a YIMBY Housing Bill,” Bloomberg City Lab, www.bloomberg.com/news/articles/2019-02-20/utah-pro-housing-bill-is-zoning-reform-red-state-style.

Planning Grants

California

The state offers funding for jurisdictions to comply with the onerous requirements of its RHNA, including planning grants and \$250 million in specific funding in the 2019-2020 budget cycle to help jurisdictions prepare for their 6th cycle RHNA: the [Local Early Action Planning \(LEAP\) Grants](#) and the [Regional Early Action Planning \(REAP\) Grants](#). In addition, Senate Bill 2, passed as part of a package of sweeping housing reforms in 2017, offers jurisdictions noncompetitive funding for housing planning. According to the HCD website, jurisdictions must meet several criteria to apply, including (a) having an HCD-compliant housing element, (b) having a recently submitted Annual Progress report, and (c) demonstrating a nexus to accelerating housing production.

Many other states have planning grants, such as Vermont, New York, and Minnesota, but few are focused on housing, and not affordable housing.

Funding for Infrastructure

Some states operate Urban Renewal Areas (URAs) to fund infrastructure and other improvements such as wayfinding, street lighting, or water/sewer systems. A few other states have infrastructure funding programs specific for housing developments, listed below.

California

California has an Infill Infrastructure Grant program that seeks to overcome infrastructure cost hurdles to providing mixed use and residential infill development. Funding is competitive and projects must be located in designated areas and demonstrate project readiness, affordability, density, proximity to transit and amenities, and adherence to local and regional plans.³³ In the 2021-2022 budget this program had a total of \$534 million to provide critical infrastructure.³⁴

California also requires water and sewer providers to prioritize proposed affordable housing developments when setting service allocations.³⁵

Massachusetts

Massachusetts has specific funding for local jurisdictions to reimburse education costs for school-aged children who move into Smart Growth districts created under the Chapter 40R program. Chapter 40S is intended to overcome concerns from local jurisdictions about the costs to municipalities associated with developing new housing. The program reimburses qualifying communities for the cost of educating students living in these districts, less the educational

³³ California Department of Housing and Community Development, 2022, "Infrastructure Infill Grant Program (IIG), <https://www.hcd.ca.gov/grants-funding/active-funding/iigp.shtml>.

³⁴ Newsom, Gavin, 2021, "California State Budget, 2021-2022," www.ebudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf.

³⁵ Kazis, Noah, 2020.

portion of new property or excise taxes generated by the district, or other state education funding increases that result from the increase in students in the area.³⁶

Kansas³⁷

Kansas has a program allowing jurisdictions to designate a rural housing incentive district (RHID) to aid in the development of housing in rural areas by funding infrastructure improvements. The program operates like a URA and captures the incremental property tax generated in the district over a 25-year period. In 2021, Senate Bill 90 amended the program to allow for the improvements of second story residential units in buildings more than 25 years old located in central business districts. Cities and counties must complete a housing needs analysis describing the shortage of housing in their areas, then must pass a resolution to create the district that is approved by the state Secretary of Commerce, and then must create a redevelopment plan.

Statewide Administrative Capacity Overseeing Housing Production

From the Implementation Framework:

Introducing the OHNA methodology and targets into the Goal 10 planning system will stretch current capacity at both the local and state levels. At the state, effective management of the OHNA will require an administrative system that coordinates the activities of a range of state agencies that have an intersection with housing production outcomes. This will need to include the technical capacity to operate the OHNA on an ongoing basis, and the policy leadership to convene multiple agencies with a shared mission of housing production. At the local level, many jurisdictions will require technical assistance to generate quality plans and additional expertise to execute them. Current state agency structures are disjointed in planning, funding, enforcing, and implementing the development of different types of housing.

Statewide administrative capacity varies as much as the state systems encouraging and overseeing housing planning and production systems. California has a maximalist approach with billion-dollar state agencies administering a complex web of rules. In this fiscal year, the state has about 70 FTE and \$630 million dedicated to housing policy development alone. The Brookings paper highlights Utah as an example at the other end of the spectrum, as it takes a very light touch to planning for and encouraging the production of housing.

Other State Approaches

California

California's maximalist approach to housing planning and production oversight means that it has a large and complex array of state administrative capacity to provide oversight and track accountability. Many state agencies have some involvement in housing. The Department of

³⁶ Massachusetts Community Development, Planning, and Funding, 2022, "Chapter 40 S." www.mass.gov/service-details/chapter-40-s.

³⁷ Kansas Department of Commerce, 2022, "Rural Housing Incentive District," www.kansascommerce.gov/program/community-programs/rhid/.

Housing and Community Development (HCD) is the main agency responsible for overseeing California’s RHNA process and compliance, as well as administering the numerous housing programs and grants associated with production. The California Housing Finance Agency lives within HCD and oversees the state’s Low-Income Housing Tax Credit (LIHTC) program and administers federal affordable housing funding programs like HOME and Community Development Block Grants (CDBG).

Figure 1. California Housing Agency 2021-2022 Budget and Staff

Department	Budget	Staff (FTE)
Department of Housing and Community Development (HCD) ³⁸	\$7.1 B	964.5
Financial Assistance Program	\$6.4 B	369.7
Housing Policy Development Program	\$632.3 M	69.0
Codes and Standards Program	\$40.7 M	179.4
California Housing Finance Agency	\$37.8 M	223.2
Administration	\$29.2 M	123.2
Department of Fair Employment and Housing (DFEH) ³⁹	\$48.5 M	264.2
Department of Real Estate ⁴⁰	\$56.7 M	314.0
Homeless Coordinating and Financing Council ⁴¹	\$1.1 B	64.0

Massachusetts

In Massachusetts, the Department of Housing and Community Development (DHCD) oversees housing planning and compliance. Agency divisions include Public Housing, Housing Development and Construction, Community Services, and Energy Programs. DHCD had a budget of \$584.0 million in FY22.⁴²

Connecticut

Development override appeals in Connecticut go to the judicial system, not a state agency. The Connecticut State Department of Housing is the lead agency for all aspects of housing policy and planning, with a primary responsibility for promoting affordable housing opportunities. The Department budget was \$104 million in FY22 with 23 authorized full-time positions.⁴³

³⁸ California State Budget, 2021, “2240 Department of Housing and Community Development,” www.ebudget.ca.gov/2021-22/pdf/Enacted/GovernorsBudget/1000/2240.pdf.

³⁹ California State Budget, 2021, “Business, Consumer Services, Housing,” www.ebudget.ca.gov/budget/publication/#/e/2021-22/Agency/1000.

⁴⁰ California State Budget, 2021.

⁴¹ California State Budget, 2021, “0515 Secretary for Business, Consumer Services, and Housing Agency,” <https://www.ebudget.ca.gov/budget/publication/#/e/2021-22/Department/0515>.

⁴² Commonwealth of Massachusetts, 2022, “Budget Summary: Executive Office of Housing and Economic Development,” budget.digital.mass.gov/summary/fy22/enacted/housing-and-economic-development?tab=budget-tracking.

⁴³ Connecticut General Assembly Office Of Fiscal Analysis, 2021, “Connecticut State Budget: FY 22 and FY 23,” www.cga.ct.gov/ofa/Documents/year/BB/2021BB-20210927_FY%2022%20and%20FY%2023%20Connecticut%20Budget.pdf.

New Jersey⁴⁴

The Mount Laurel 2 ruling in 1983 allowed developers to sue municipalities that were out of compliance of the fair share requirements and secure a development override on their project. Following the ruling, numerous lawsuits came to bear, and the courts were left to determine statewide affordable housing need and enforce the laws. Soon after, in 1985, the New Jersey State Legislature passed the Fair Housing Act (FHA) and created the Council of Affordable Housing (COAH). The COAH was tasked with creating regulations to guide affordable housing requirements and certify local plans. The Council was housed in the Department of Community Affairs, but it was its own separate entity.

The COAH has had a rocky and politically charged existence and was deemed effectively defunct in 1999 when it stopped issuing rulings.⁴⁵ Since then, jurisdictions had ignored their fair share Mount Laurel requirements and fought court rulings stating they had an obligation to provide affordable housing for their lowest-income residents. In 2015, the State Supreme Court stepped in again requiring that towns bypass the COAH and settle affordable housing disputes directly with trial courts. In 2017, the State Supreme Court then ruled that towns were responsible for making up the backlog of affordable housing that was not produced in the 1999-2015 time period, settling on an estimated 155,000 missing homes.⁴⁶

Recommendations and Conclusions

The research identifies several recommendations for states to consider as they implement statewide housing production systems and accountability mechanisms.

Focus on Outcomes

The research suggests that without measurable outcomes, planning and production efforts will not succeed. Outcomes should be tracked as part of any accountability system, but they should not be associated with inputs (like funding) or adherence to narrow rules without achieving policy goals. Rather, outcomes should act like targets and should be clearly aligned with policy goals as well as clearly communicated to stakeholders. Examples include improved affordability, number of households successfully assisted, or increased housing production.

Dr. Scheutz notes that outcomes tied to plans, rather than production (like Oregon's current system) will not likely succeed because jurisdictions can plan without achieving anything. In addition, careful monitoring and tracking of outcomes can help to identify potential problems and course correct, such as unintended consequences or impacts that spill across the intended

⁴⁴ Kazis, Noah, 2020.

⁴⁵ Rizzo, Salvador, 2017, "N.J. Supreme Court: Towns must have affordable housing," NorthJersey.com, www.northjersey.com/story/news/new-jersey/2017/01/18/nj-supreme-court-ramps-up-towns-affordable-housing-obligations/96712760/.

⁴⁶ Pugliese, Nicholas, 2018, "Judge says NJ towns must allow affordable housing, maybe more than 150,000 new units," NorthJersey.com, www.northjersey.com/story/news/new-jersey/2018/03/08/judge-says-nj-towns-must-allow-affordable-housing-maybe-more-than-150-000-new-units/408766002/.

geographies or sectors. She notes that it can be very challenging to repeal or adjust deeply entrenched policies, even if they are problematic.

Flexibility is Needed

The research also highlights the need for flexibility in any state-driven policy that will be implemented statewide. Recognizing that states are made up of numerous individual and unique jurisdictions, policies need to have flexibility to work across different challenges and in areas with different housing markets, development conditions, local technical capacity, and local resources. Policies need to be firm enough so that accountability can be measured and tracked, but flexible enough to allow a jurisdiction to adapt the policy to meet its needs. Inner cities, suburbs, metro areas, and rural areas all have different housing conditions and housing needs which statewide policies are trying to help. Flexibility needs to come with direction and responsibility for implementation. In addition, if the state is tracking outcomes, then some flexibility in how the outcomes are achieved can be allowed. Policies that are too rigid will not likely succeed politically or in achieving the desired outcomes.

Several papers note the flexibility accorded to local jurisdictions in Oregon’s 2019 House Bill 2001 as a model for other states to consider as it relates to the local discretion and technical assistance provided to localities.^{47 48 49}

Dr. Scheutz suggests using data to track the regions or jurisdictions that have the biggest market distortions – where supply does not adequately follow price increases – to focus additional policies, incentives, or penalties.

In addition, the research suggests that technical assistance should accompany any statewide policy so that jurisdictions do not face new unfunded mandates and so that they have the appropriate tools to reach the desired outcomes.

Politics Matter

Another theme that emerged from the literature is that politics matter in passing statewide housing reforms. This builds on the need for flexibility in designing the policy so that jurisdictions can envision the policy actually meeting their housing needs, rather than creating new challenges. Technical assistance, carrots rather than sticks, and preserving some measure of local implementation and control can all go far in persuading adherence. In addition, if underproduction is a highly localized problem, targeted or incremental approaches that relax restrictive policies can be more appealing and politically palatable.⁵⁰

⁴⁷ Turner Center for Housing Innovation, 2019, “Lessons in Land Use Reform: Best Practices for Successful Upzoning,” University of California Berkeley, turnercenter.berkeley.edu/wp-content/uploads/pdfs/Lessons_in_Land_Use_Reform.pdf

⁴⁸ Kazis, Noah, 2020.

⁴⁹ Scheutz, Jenny, 2020.

⁵⁰ Ibid.

In addition, the research demonstrates that statewide policies can give political cover to local planners and politicians who genuinely do want to make a positive difference.⁵¹ The Furman Center paper also notes that housing policy debates shift when they move from the local level to the state level. The debate at the state level is more theoretical in that it discusses broad and widely applicable policies rather than particular projects, sites, or developers. Further, in most states, the state-level discussions between supporters and opposers are more balanced; advocates for affordable housing, fair housing, renters, civil rights or environmental rights are typically better organized at the state level compared to local discussions being overrepresented by homeowners. The author suggests that state level political dynamics are typically more balanced.

The research also suggests that some policies can be harder to pass politically than others. “Naming and shaming” policies and preemption laws are generally less favorable than incentive-based policies. Naming and shaming policies typically only work in jurisdictions that genuinely want to make the policy changes that are sought.⁵² If they are unwanted, prevention laws, which prevent local jurisdictions from passing laws that limit housing production, can be helpful in some jurisdictions, but can be dulled if other jurisdictions layer in policies that effectively undo the change. Stakeholders who are opposed to a state exerting control may perceive a wide variety of policies to be preemptive and unfavorable.

Incentives Don’t Work for Every Community—Some Will Need Sticks

Importantly, research and evidence from other states has shown that financial incentives aimed at local governments do not always work when offered statewide and may only affect communities that already want to change. Incentives without enforcement mechanisms are also less likely to succeed on fair housing and anti-segregation policy goals. Generally, incentives lose traction in wealthy, exclusive communities because they do not need the funding and do not want what the funding is exchanged for (typically higher density or affordable housing).⁵³ This is a major challenge since these are the communities in which most states are trying to produce more housing.

Without development overrides or other mechanisms that threaten the loss of local control, the research suggests that many planning mandates will not make inroads in communities that do not want higher density or affordable housing.⁵⁴ The potential for loss of local control over development can be a powerful motivator for a local jurisdiction to find a way to meet its housing obligations. These types of tools can be structured to address bad faith actors while not penalizing jurisdictions facing economic and market conditions outside of their control.

⁵¹ Scheutz, Jenny, 2020, and Kazis, Noah, 2020.

⁵² Scheutz, Jenny, 2020.

⁵³ Kazis, Noah, 2020.

⁵⁴ Marantz and Zheng, 2020.

The Furman Center paper highlights Massachusetts and Connecticut as examples in the limits and inherent weakness of funding incentives without penalties:

“However, even Massachusetts’ 40R program has shown limited efficacy. Funding incentives have helped promote growth in places that were already more affordable, more urban, and more interested in building new housing. Funding incentives have not promoted growth in high-income suburbs; those affluent communities have less need for state money and more interest in exclusion.”

Incentives can either be directed at a jurisdiction or a developer. In the case of the well-designed development override programs (like in Massachusetts), the incentive is targeted at the developer (e.g., streamlined review, comprehensive permit) while the is penalty is targeted at the jurisdiction (loss of local control, adherence to housing obligations). The Marantz and Zheng paper even highlights evidence that developers of mixed-income multifamily housing will seek out jurisdictions who are not meeting their housing obligations (since these are published) and propose to build there as a way to challenge exclusionary zoning. The paper highlights findings from Massachusetts and comments on the profitability of the policy, which has lower affordability requirements than other states, such as Connecticut.

The paper highlights a 2015 study that found that “most multifamily units permitted in the suburbs of Boston used the permitting system associated with the Massachusetts SAHAS” policy, and that “for-profit developers of rental housing systematically used the SAHAS to build in municipalities with relatively convenient access to jobs that placed comparatively stringent restrictions on residential development.”⁵⁵ This type of policy puts the developers on the offense and the jurisdictions on the defense unless they adhere to the statewide housing requirements.

Incentives Need to Work with the Market

A related finding is that financial incentives need to work with the market to succeed. Policies that require a share of units to be affordable will only work in markets with strong housing demand and must be appropriately calibrated so that the project is profitable and financially attractive to developers and so that the state is maximizing the public benefit.^{56 57 58} Affordability restrictions need to be balanced with the costs of construction and land in the areas where development is targeted. Restrictions that are too high mean that developers will not be able to adequately income-mix and will not use the policy, but restrictions that are too low means that the jurisdiction is relinquishing value without public benefit.

⁵⁵ Fisher, Lynn, and Nicholas Marantz, 2015, “Can state law combat exclusionary zoning? Evidence from Massachusetts,” *Urban Studies*, 52(6), 1071–1089.

⁵⁶ Scheutz, Jenny, 2020.

⁵⁷ Kazis, Noah, 2020.

⁵⁸ Marantz and Zheng, 2020.

Several papers compare the success of Connecticut and Massachusetts' development override policies and, among other differences, point to Connecticut's stricter affordability requirements as one reason it is less effective.^{59 60}

Zoning is Where the Rubber Meets the Road

Beyond the papers sampled here, a host of academic literature exists evaluating the importance of zoning and land use regulation in determining housing outcomes. In addition, zoning and land use changes are the driving mechanisms behind many of the implementation methods reviewed. From accountability measures that take away local control to fair share programs to incentives for zoning districts to grants for improving local housing planning systems, states are very focused on dismantling exclusive zoning and excessive land use regulations. Zoning is a critical tool that can be used to help integrate communities and boost production, but on its own it does not produce outcomes. Generally, zoning needs to allow enough types of development to accommodate diverse resident needs, and there needs to be proper funding, accountability, and oversight to allow the market to develop naturally, free from undue barriers.

Simple Policies Can be Successful and Reduce Costs

In addition, the research suggests that states enact simpler policies, both to reduce their own administrative costs and that of the implementing jurisdictions, organizations, and developers. The Brookings paper relates this finding to applications for financial assistance for homeowners and renters as well. Both the Brookings paper and the Furman Center paper identify simpler policies as those that do not require jurisdictions to revise their comprehensive plans / land use documents and those that do not have lengthy approval / appeals processes (such as some development overrides or preemption laws). Policies that can simply change the rules without the bureaucracy can reduce future conflicts by allowing qualifying developments to proceed under the new rules. Removing the planning and process requirements from statewide production policies can save time, money, and frustration.

Simplicity also proves more successful in states that have housing production targets, like Massachusetts, Rhode Island, California, and New Jersey. The latter two have very complex formulas for allocating housing targets which differ across jurisdictions and change over time, while the former two have simpler, consistent targeting mechanisms that do not change much year to year or cycle to cycle.⁶¹ The process of setting complicated formulas is also complex and time consuming and can be fraught with special interest groups vying for changes. The processes of setting or changing methodologies, gathering public input, making decisions, and appealing results can be avoided with simpler policies.

Lastly, simplicity also extends into accountability and oversight as states decide whether to send appeals to a state agency, specific board, or to the courts. The Furman Center paper

⁵⁹ Kazis, Noah, 2020.

⁶⁰ Marantz and Zheng, 2020.

⁶¹ Ibid.

summarizes this nicely: “States have split over whether, and how much, administration should be vested in a state agency, as opposed to the judicial system. Some mechanisms, like California’s ongoing review of local housing plans, all-but require an agency structure. For those that do not, however, this is a critical choice of institutional design.”

It elaborates on the pros and cons of each approach.

- The courts can be less political than agencies, which provides insulation from changing administration or policy winds.
- The courts can also be more objective, allowing them to enforce the rules firmly.
- The courts can be lengthy and expensive.
- The courts are more adversarial and divisive.
- Agencies can provide better and more nuanced analysis and can conduct a wider variety of tasks.
- Agencies can be better suited to offer carrots along with sticks.
- Agencies can offer technical assistance and exceptions; they are more likely to collaborate to find solutions.
- Agencies can be political, which can be both good and bad.

Understand Where the Burdens Fall

Several papers highlight the relative success of Massachusetts’ Chapter 40B development override program and point to the fact that cities must bear the burden of proof that a development should not proceed, rather than developers bearing the burden of proving that it should. The Furman Center paper notes that local zoning boards must demonstrate that the health, safety, environmental, or design concerns causing the permit denial in fact outweigh the need for more housing in the region. In this design, developers get the incentive (a streamlined permit) while the local zoning board and or elected officials face the burden.

Understanding where the burdens of accountability and compliance lie is important when designing policies. In many cases, complying with onerous and complex layers of regulation, as well as some of the enforcement mechanisms, become administrative burdens that largely fall on city staff who have little control over the outcomes and limited budgets to address them. In California, for example, the penalty of needing to adopt a housing element every four years is largely an administrative burden (an expensive and time-consuming one) that falls on city staff, pulling them from other important planning priorities.

Policies Need to Work Together

The last key theme emerging from the research identifies the need for different policies to work together toward common goals. This was most often highlighted as a warning against state environmental policies that have been weaponized on both sides of the housing and environment debates: some use these policies to prevent housing development writ large while others use the housing crisis to override environmental concerns about urban growth boundaries and sprawl. The research identifies the need for states to find the right balance

between protecting natural resources, promoting racial equity, and providing housing. This pairs with the suggestion to monitor progress, watch for unintended consequences, and move quickly to remedy well-intentioned policies before they become entrenched. However, this was also highlighted as a way to build policy support and a broad coalition. Oregon's 2019 housing bills which combined upzoning with some tenants' rights and rent control bills were exemplified as a successful way to pair land use reform with other housing interventions.⁶²

As Marantz and Zheng noted, affordable housing developers in Massachusetts have been empowered by the development override mechanisms available to them that they have sought out underperforming jurisdictions where their developments have the upper hand. Affordable housing developers gained similar momentum in New Jersey. According to the author of the Furman Center paper, New Jersey aligned the development standards in its LIHTC qualified allocation plan (QAP) to the policy goals and outcomes sought in the Mount Laurel rulings to really unlock development potential in the state. Seeking additional points in the competitive affordable housing applications, developers of these properties will build the types of projects desired by the state in the locations desired by the state. The QAPs set out the state's priorities on affordable housing locations, populations served, and development types. Thus, there can be a lot of momentum gained from aligning policy outcomes with the cohort of affordable housing developers, in large part because they have millions of dollars in state and federal funding behind them.

⁶² Kazis, Noah, 2020.