



Testimony in Support of LD 1498:

“An Act to Limit Municipal Impact Fees on Housing Development”

Senator Curry, Representative Gere, and the distinguished members of the Committee on Housing and Economic Development, my name is Harris Van Pate and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to submit testimony in support of LD 1498, “An Act to Limit Municipal Impact Fees on Housing Development.”

LD 1498 takes meaningful steps to curb government overreach in the application of municipal impact fees, ensuring that private developers are not unfairly burdened with costs that are disproportionate to the actual needs created by their projects. It promotes transparency, fairness, and economic development at a time when Maine desperately needs to lower barriers to housing construction and growth.

Currently, municipalities have broad discretion to levy impact fees, often without a clear, consistent, or publicly accessible methodology. This unpredictability not only deters investment and development, especially in housing, but also places an undue burden on small businesses and families trying to build or expand in their communities. LD 1498 addresses these concerns by:

- **Requiring municipalities to publish clear, publicly available policy documents** detailing how infrastructure needs are determined and how developers' shares of the costs are calculated;
- **Limiting the developer's financial responsibility** to infrastructure improvements on land that *directly abuts* their development, ensuring they are not held responsible for broad municipal infrastructure upgrades that benefit the wider community; and
- **Mandating the timely use of collected fees**, requiring municipalities to spend these funds within 180 days, which will prevent municipalities from using impact fees as an ongoing or speculative revenue source rather than addressing immediate infrastructure needs.

Without these reasonable reforms, municipalities risk chilling much-needed housing development and economic growth. As documented in Maine Policy Institute's attached housing report, promoting sustainable growth at the local level requires reducing regulatory burdens and ensuring that public costs are allocated fairly and transparently.

Moreover, limiting arbitrary or excessive impact fees aligns Maine with best practices nationwide. States that have implemented reforms to restrict and clarify the use of



impact fees have seen stronger housing markets, increased affordability, and more predictable development climates—all outcomes that Maine urgently needs given its ongoing housing shortage.

Finally, the principles underlying LD 1498 reflect a broader commitment to ensuring that government actions are transparent, justified, and narrowly tailored—a core tenet of preserving individual liberty and promoting economic opportunity.

For these reasons, Maine Policy Institute urges this committee to vote “Ought to Pass” on LD 1498 and advance it to the full Legislature. Thank you for your time and consideration.

UNDER CONSTRUCTION

FIXING MAINE'S SELF-IMPOSED
HOUSING CRISIS



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EXECUTIVE SUMMARY

Maine faces a significant housing crisis, characterized by a shortage of housing stock and rapidly increasing costs. These problems have been growing worse over time, and public policy at the state and local level has played a significant role in exacerbating the problems. This report analyzes the impact of local housing policies and proposes solutions to promote housing availability and affordability. It is our hope that a more complete understanding of the impact that certain policies have on both housing supply and cost will lead to more effective state and local decisions that will incentivize building.

Key Findings

- Policies such as inclusionary zoning, rent control, and short-term rental restrictions often hinder rather than help the housing market. These regulations can reduce housing supply and increase prices.
- Towns with land use zoning tend to have higher average house prices compared to unzoned towns. This price difference has persisted since at least 2010 and appears to be widening recently. In 2023, towns with land use zoning had roughly 7% higher home prices than unzoned towns.
- Stricter minimum lot size requirements correlate with significantly higher housing costs. A 10,000 square foot increase in minimum lot size is associated with a 4% increase in average house price.
- Local governments are best positioned to address housing issues due to their responsiveness to local conditions. However, state policies can significantly impact local markets, and the state should use incentives rather than mandates to achieve local deregulation.
- Cities with pro-housing policies have successfully increased housing supply and stabilized or reduced housing costs. These cities often employ policies like reduced zoning regulations, elimination of rent control, and improved transparency in local regulations.

Policy Recommendations

Local Level:

- Streamline zoning codes, allow for mixed-use development, and empower private agreements to manage externalities.
- Repeal rent control, short-term rental restrictions, and inclusionary zoning policies, as they discourage development and harm market efficiency.
- Simplify land use codes, make them more objective, and enhance online databases to make regulations easier for developers to navigate.

- Repeal Energy Efficiency Mandates and avoid policies like the Green New Deal that frontload costs and discourage housing development.

State Level:

- Reduce upfront costs for developers and incentivize new construction.
- Streamline the approval process for housing projects and reduce discretionary approvals.
- Explore third-party permitting options to increase permitting efficiency and reduce government burden.
- Create a statewide board to swiftly resolve housing-related appeals.
- Avoid top-down mandates, which towns can easily circumvent, and find ways to incentivize voluntary local deregulation.

Conclusion

Maine's housing crisis is significantly influenced by restrictive land use policies at the local level. By adopting pro-market reforms, Maine municipalities can increase housing availability, improve affordability, and foster economic growth. State-level policies that reduce regulatory burdens and incentivize development can further support these efforts. It is crucial to recognize that market forces play a vital role in housing supply and that government intervention should aim to support rather than hinder these forces.

SECTION ONE

**LITERATURE
REVIEW**

Introduction

Much of Maine is currently facing a housing crisis, which is a shortage of housing stock and a rapid increase in demand for housing causing a significant rise in the cost of rent and home purchases. The worst part of this crisis is that many cities don't know how to fight it.¹ Some cities have been trying to solve the issues of housing affordability and housing access for decades, and the policies they implement to address these problems have had, in most views, mixed results. With the rising demand for housing that Maine has experienced after the COVID-19 pandemic, we as a state are facing a rapidly growing problem. For many cities, finding the right solution to that problem has not been easy.

This is especially true with so many policy options on the table. Maine cities have begun experimenting with policies like inclusive zoning², rent control³, and short-term rental restrictions⁴, despite these tools being shown to cause more harm than good. In particular, Portland, Lewiston, and Bangor have experimented with many housing regulations that create obstacles for market reactivity, which is concerning when considering the fact that these are Maine's three largest cities.

In 2022, in response to the growing demand for housing and the policy barriers blocking market response, the Maine legislature passed LD 2003.⁵ Some obstacles this law attempts to alleviate are single-family zoning and restrictions on accessory dwelling units.⁶ From the perspective of state lawmakers, municipal restrictions on multi-family properties were squeezing housing supply, partially due to NIMBYism and local government incentives to inflate property values.

However, LD 2003 has had mixed effects so far, and many cities have worked to circumvent its goals. Portland, for example, complies by technically allowing up to four units on previously single-family properties, but creates an intricate system of requirements to build that many units in a single-family zone.⁷ Thus, the city is technically compliant on paper but is able to undermine the intended impact of LD 2003. Lewiston and Bangor have implemented similarly complex rules for building multiple units on traditional single-family parcels.

Another requirement of LD 2003 is for municipalities to weaken density restrictions for affordable housing, which aims to encourage affordable housing development.⁸ This solution runs into many of the same problems as inclusionary zoning and generates some questions of its own.

1

<https://cssh.northeastern.edu/maine-is-leading-new-england-in-housing-production-but-it-isnt-enough/#:~:text=Despite%20leading%20the%20region%2C%20Maine,all%20current%20and%20future%20residents.>

² <https://www.portlandmaine.gov/267/Inclusionary-Zoning>

³ <https://www.hemlane.com/resources/maine-rent-control-laws/>

⁴ <https://mainepolicy.org/home-sharing-should-never-be-a-crime-in-maine/>

⁵ <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1489&item=9&snum=130>

⁶

<https://smpdc.org/ld2003#:~:text=It%20requires%20municipalities%20to%20allow,with%20existing%20single%20family%20homes.>

⁷ <https://mainebeacon.com/opinion-portlands-strategy-to-dodge-ld-2003-will-prolong-our-housing-crisis/>

⁸ <https://legislature.maine.gov/statutes/30-A/title30-Asec4364.html>

The effects and workarounds of this policy show that state-level housing mandates are generally not the best policy tool to combat the housing crisis. In proceeding with housing policy as a state, Maine needs to understand how both the housing development market and local governments will respond to state policies going forward.

Like other markets, housing supply tries to grow in reaction to an increase in housing demand, and housing crises are typically caused by some regulatory barrier thwarting increases in supply. Housing regulations—even those intended to create affordable housing—can become supply barriers. In this report, we examine some of the policies municipalities are experimenting with across the state, how they become barriers to the housing market, and how cities should react to them when proposed.

Inclusionary Zoning/Workforce Housing

Inclusive zoning currently exists in Portland and is being considered in Lewiston and Bangor, but it can have counterintuitive effects considering the goals of this policy. Inclusive zoning is a policy that requires housing developers to set the price of some units below market level, with a certain percentage of the units created as either “affordable housing” or “workforce housing.” Alternatively, the developer can pay a fee-in-lieu, which waives the requirement to build affordable units but forces the developer to pay the city a fee instead.

Inclusionary zoning has been found by scholars to function as a tax on housing development, and for every below-market unit produced through inclusionary zoning policies, these policies can stop an additional 20 market-rate units from being produced.⁹ A 2024 report produced by the Turner Center at UC Berkeley in cooperation with UCLA entitled, “Modeling Inclusionary Zoning’s Impact on Housing Production in Los Angeles: Tradeoffs and Policy Implications” found that:

“Nevertheless, it is important to understand IZ’s costs and benefits, and existing research suggests that IZ can have unintended consequences. Because in effect it operates as a tax on development, IZ should reduce housing production and increase the overall price of housing in the market, all else being equal.”¹⁰

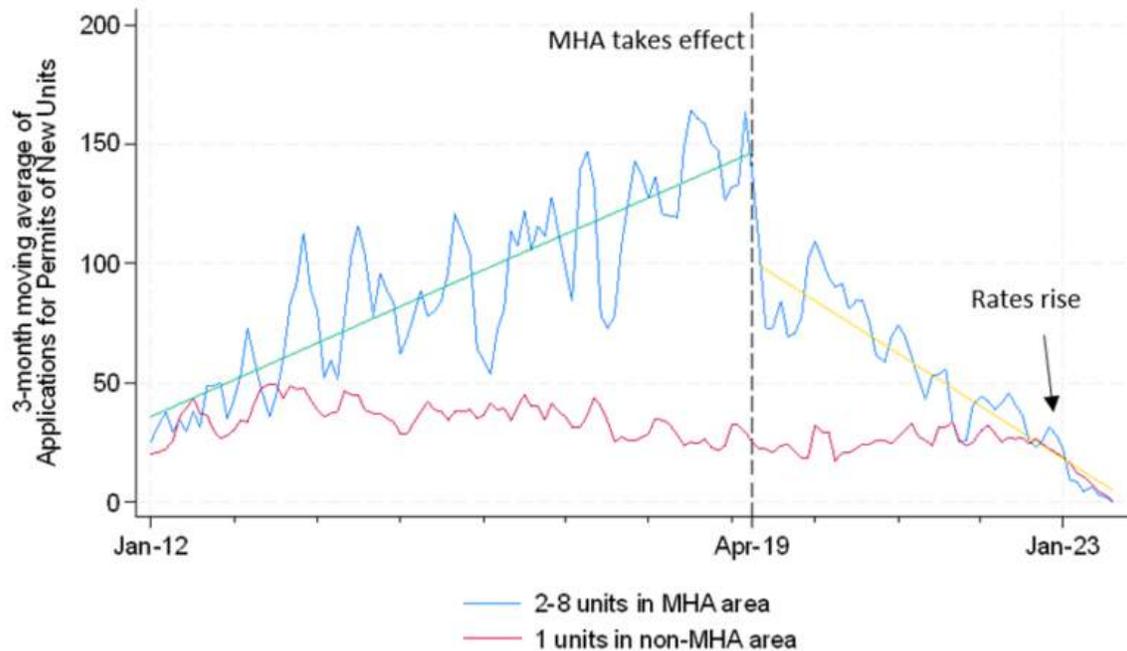
The same report found that inclusionary zoning has a net negative public welfare effect on housing supply and that, at a minimum, four market-rate units are lost for each below-market “workforce housing” unit supplied.¹¹ In certain cases, a single affordable housing unit provided through an inclusionary zoning policy removes more than 20 housing units from the market. The report also estimated that the cost landlords incur from renting out affordable housing through inclusionary zoning policies is likely passed on to their market-rate tenants, with the rent increase needed to offset the private subsidy.

⁹ <https://turnercenter.berkeley.edu/research-and-policy/inclusionary-zoning-housing-production-modeling/>

¹⁰ <https://turnercenter.berkeley.edu/wp-content/uploads/2024/04/Inclusionary-Zoning-Paper-April-2024-Final.pdf>

¹¹ <https://turnercenter.berkeley.edu/wp-content/uploads/2024/04/Inclusionary-Zoning-Paper-April-2024-Final.pdf>

Implementing these policies benefits a few people by providing them with below-market housing but harms a greater number of prospective tenants by driving down the housing supply and driving up market prices. Additionally, while fee-in-lieu systems may seem more flexible in allowing developers to choose whether they wish to implement affordable housing programs, these systems warp the market even further.



Graph from the environmentalist thinktank the [Sightline Institute](#) showing the number of permits to build tonnhouse-style housing before and after their inclusionary zoning law (there called “mandatory housing affordability”) was passed

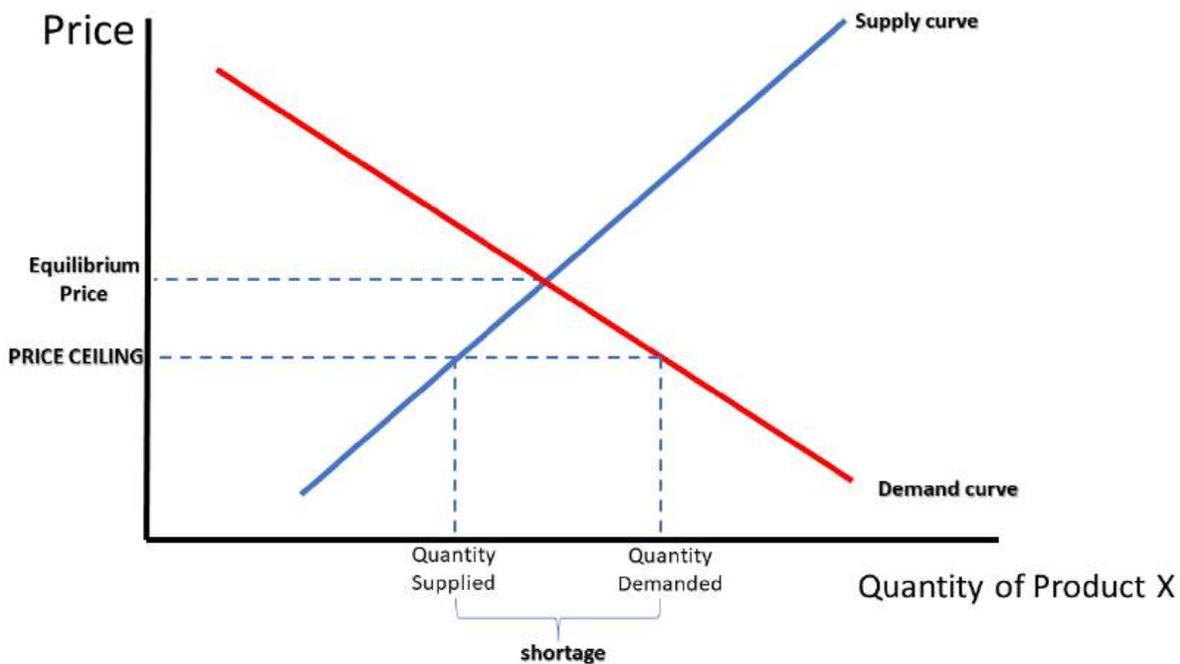
Developers who are most willing to price their housing below the market are the same ones who make housing of a quality that is below the market average. Most inclusionary zoning projects require no or little difference between the affordable housing and the developer’s normal housing. However, nothing stops the developer from reducing the quality of the regular housing below what it would have been without inclusionary zoning. Additionally, a fee-in-lieu system allows developers to avoid typical inclusionary zoning problems, but only the highest quality luxury housing developers will pay the high fees.

Thus, while many housing markets will encourage development to centralize around affordable, middle-class housing, inclusionary zoning significantly disincentivizes the middle. Inclusionary zoning can, therefore, encourage the creation of a massive gap in the quality of housing and, thus, the quality of life. While all housing is discouraged by inclusionary zoning, middle-quality housing is discouraged more than any other kind.

Rent Control/Rent Notice Requirements

Rent control and rent notice requirements are both policies that regulate when landlords can change the rent they charge and by how much. Rent notice regulations have negative impacts on the market by restricting landlords' ability to adjust to rapid market shifts and inflationary pressures, thus discouraging development when inflation seems likely. The effects of rent notice requirements on development are not as directly obvious as rent control. Rent control directly affects the revenue developers of multi-unit housing can receive while keeping the amount needed for investment the same. Both policies hurt development, but rent control is more directly harmful.

Rent control is a selection of local policies that establish a maximum allowable rent increase, often a percentage of the rent currently being charged. Some municipalities use different systems for determining this increase, but Portland has decided to take a very controversial approach. They have created a rent control board and have tied the allowable increase percentage to 70% of the Consumer Price Index for the Greater Boston Metro Area.¹² Rental notice requirements instead require a lengthy notice period for landlords to legally increase the rent they charge their tenants, making it harder for landlords to guarantee reliable revenue from housing units they own.



Rent Control functions as a “price ceiling” on rent, well documented to cause shortages in the product being regulated. [“A price ceiling occurs in a market when a maximum price is imposed that is below equilibrium.”](#)

¹² <https://www.portlandmaine.gov/1148/Rent-Control-Rental-Housing-Rights>

The Consumer Price Index is one of many ways to measure inflation, and it would be accurate to describe the growth that it experiences as the total inflation rate of the local market. This means that for landlords in Portland, the baseline rent increase, by definition, does not allow them to adjust the rent they charge to equate to inflation and that, adjusting for inflation, they are expected to make less and less money every year they rent out a unit.

The only way a landlord in Portland can keep pace with inflation is if they request—and are granted from the Portland Planning Board—an exception, though this is not guaranteed or even likely.¹³ If one considers the incentives this creates, it quickly becomes obvious that developers are outright guaranteed to not receive a return on their investment in the housing market.

Rent control advocates claim the policy creates affordable housing by keeping rents low,¹⁴ but the effects this policy has on the housing market tell a different story. Rent control discourages the creation of new housing, which means less housing is available to fewer people.¹⁵ Rent control also stops landlords from significantly improving the quality of their housing units, as they cannot adjust revenue to costs incurred.

Lastly, rent control policies can also, paradoxically, discourage keeping prices low. By removing the opportunity for landlords to drastically raise rent in massive market shifts, landlords rationally respond by keeping rents high and profit margins as large as they can.¹⁶ If this ability to shift prices up existed, landlords' incentive to compete for tenants with lower rent prices would be unimpeded, thus causing an increased chance of downward rental price movement. However, since all landlords are forced into this rent control scenario, the rent-minimizing landlords are no longer incentivized with more rental applications.

Zoning Regulations

Zoning is a widespread form of housing regulation, and since the 1920s has grown to affect almost all of America's cities.¹⁷ However, the effects of this type of regulation on housing quantity and price are often negative.¹⁸ While some report that zoning regulations allow for a more effective allocation of resources regionally, increased strictness of zoning is strongly correlated with increased housing prices.^{19 20}

Local government-imposed regulations are often clumsy and allow small groups to overemphasize the impact certain externalities have on the local area. A new bar may cause some people to object

¹³ <https://www.portlandmaine.gov/780/Rent-Board>

¹⁴ <https://www.housingisahumanright.org/economists-say-rent-control-works/>

¹⁵ https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Rent_Control_Paper_053018.pdf

¹⁶ https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Curbing_Runaway_Rents_Policy_Brief_July_2019.pdf

¹⁷

<https://manhattan.institute/article/a-brief-history-of-zoning-in-america-and-why-we-need-a-more-flexible-approach>

¹⁸ <https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability#appendix-b-state-rank>

¹⁹ https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9764&context=penn_law_review

²⁰ <https://law.yale.edu/sites/default/files/documents/pdf/hier1948.pdf>

to the noise, but these externalities are not universal or objective. After all, someone with a hearing impairment may not care and even be happy about the reduced cost of living near a bar the same way a veterinarian may not care if their neighbors have pets.

While zoning appears to allow people to self-select regions with their own preferences in mind, this same selection would be done already without these sorts of restrictions, and on an individual priorities basis. Artificial limitations on land use can poorly mimic free-market self-selection by owners. However, it still creates major inefficiencies by imposing regional, cookie-cutter land use restrictions.^{21 22}

Additionally, zoning encourages racial and income-based segregation, as it allows for housing in certain neighborhoods to be priced too high for lower-income workers.²³ Evidence dating back to the 1990s shows that higher levels of local land-use regulation reduce the local minority population, and thus, these policies should also be opposed due to their disparate impact on lower-income and minority populations.²⁴ While the economic effects of zoning is the primary focus of this report, the fact that this policy can be used to discriminate based on income or class should also make it inherently suspect.

By artificially inflating the cost of housing in specific neighborhoods, property use and density zoning allows for the underhanded banning of lower-income groups. Class-based segregation is often also co-opted by those desiring race-based segregation, meaning that the impact of these policies can be both classist and racist.

While the effects of increased zoning restrictions on economic efficiency, class, and race have generally been noted, specific forms of zoning regulation can differ in how they burden local populations. Thus, while zoning regulations generally have negative effects, the following sections will analyze the specific forms this policy takes in Maine and the impacts each form has.

Parking and Setback Requirements

Parking and setback requirements operate in similar ways to each other, as they require a certain part of a property to remain undeveloped. Parking requirements do so with the justification of allowing parking to be available to a city's population, while setback requirements are often justified using aesthetics but have the same overall effect.²⁵

²¹ <https://www.dcpolicycenter.org/publications/economic-cost-land-use/>

²² https://www.nber.org/system/files/working_papers/w10124/w10124.pdf

²³

<https://www.whitehouse.gov/cea/written-materials/2021/06/17/exclusionary-zoning-its-effect-on-racial-discrimination-in-the-housing-market/>

²⁴

https://www.researchgate.net/publication/46438261_Local_Land_Use_Controls_and_Demographic_Outcomes_in_a_Booming_Economy

²⁵

<https://www.planetizen.com/definition/parking-requirements#:~:text=Parking%20requirements%20are%20a%20form,developer%20of%20any%20new%20development.>

Setback requirements mandate that buildings be a certain distance from the property line and usually specify different distances for the side, front, or rear of the property.²⁶ Those supporting setback requirements often justify them by forcing the building of larger sidewalks, front or back yards, or by allowing an increased open-air space in denser cities.

While Portland has recently worked to remove parking requirements for a large number of residential properties throughout the city, many of the city's setback requirements are still in place.²⁷ Both of the "Recode Portland" waves have made minor reductions to certain zones' setbacks, and some zones that were merged together even saw increases in setbacks.²⁸ One example of this is zone R-6a's transition to RN-5, which increased a five-foot front setback and ten-foot rear setback to 25 feet each.²⁹

Lewiston is still behind Portland on parking requirements, as their rules largely require at least one parking space per dwelling unit, with some requiring twice that. Recent changes have required only two off-street parking spaces for every three units in some parts of the city, but this is still far from Portland's partial parking requirement abolition.

While the setbacks here are not much greater than Portland's on average, there are areas in Portland's downtown regions with essentially no setback requirement to allow for maximal property use. These no-setback zones simply don't exist in Lewiston outside of the Centreville district, which has no rear or side setbacks but still has a five-foot front setback.

Bangor also requires at least one parking space per dwelling unit citywide, though buildings with 2-4 dwelling units can count driveways for this. They also have setback requirements in every dimension for every zone except the Downtown Development zone, which covers only a small section of the inner city.

Both parking requirements and setback requirements require property owners to leave a portion of their property vacant. Similar to property taxes, which require owners to pay the government to continuously own land in a jurisdiction, these requirements require property owners to allow parts of their land to be continuously vacant for public use.

While ensuring parking availability and creating a beautiful and dynamic-looking city are laudable goals for local governments, these policies not only discourage efficient property usage by requiring

²⁶ <https://www.bobvila.com/articles/setback-requirements/>

²⁷

https://parkingreform.org/mandates-map/city_detail/Portland_ME.html#:~:text=Summary,ADUs%20are%20allowed%20without%20parking.

²⁸

https://static1.squarespace.com/static/5a75f43a692ebee1159413d/t/66143f581988e4058148e8da/1712602980438/0_Portland+Zone+Guides_Updated_040824.pdf

²⁹ <https://www.recodeportland.me/final-draft-changes>

some properties to be undeveloped, but they also force urban spread, which has a variety of negative impacts.

A recent study by the Turner Housing Center found that reducing parking minimums by 25% in Los Angeles would lead to a 6.9% increase in expected housing units per year, while reducing setbacks by 25% paired with a 25% floor area ratio and maximum height increase would lead to a 16% increase in expected units.³⁰ Research from the same report showed that significant housing market change is more likely to occur when multiple “policy levers” like this are moved at once rather than only one or two small movements at a time. This is a major policy area where every one of Maine’s largest three cities needs serious reform.

Height Restrictions

Height restrictions are one of the most impactful anti-development local housing policies in existence, as they are an outright ban on properties being developed above a certain height. The impact this has on cities is massive, as it forces outward rather than upward development.³¹ Outward development means that cities are less walkable, that public transportation is less efficient, and that even private transportation has to go farther to get to the same places. Studies show that this increased travel cost to city centers has a significant net welfare loss for the city’s residents.³²

All of these factors add up to increasing the cost of living in the city and decreasing the availability of housing. Research shows that the unutilized airspace from height restrictions directly leads to a shortage in housing supply, which in turn indirectly leads to an increase in the cost of housing.³³ While the desire to maintain the aesthetics of the buildings in local neighborhoods is a sympathetic one, such agreements should be through private contracts between property owners rather than government mandates. If someone wants to use their own property to maintain a certain look, even if it is a suboptimal use of their property, then it is their own prerogative, but in that case, government intervention is unnecessary. Similarly, if a group of neighbors wants to collectively enter into an agreement that their properties will have a shared aesthetic or use, that is similarly their prerogative.

However, many residents of single-family neighborhoods feel that they are entitled to control not just their own property, but everyone else’s in sight. It is important to remember that, for most intents and purposes, your property rights do not extend beyond the borders of your property. Lastly, as any lawyer with land use experience will explain, unless there is a specific law stating otherwise, property owners do not have “a right to a view.”³⁴

³⁰ <https://turnercenter.berkeley.edu/wp-content/uploads/2022/10/Dashboard-Brief-Final.pdf>

³¹ https://www.academia.edu/23711402/Building_height_restrictions_land_development_and_economic_costs

³² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4136410

³³ https://www.academia.edu/23711402/Building_height_restrictions_land_development_and_economic_costs

³⁴

<https://www.nolo.com/legal-encyclopedia/homeowners-right-views-29942.html#:~:text=Homeowners%20ordinarily%20have%20no%20right,reasonable%20use%20to%20the%20owner.>

Weakening height restrictions, especially when combined with other restrictive land use policy reforms such as density restrictions and setback requirements, have been shown to significantly increase the available number of local housing units.³⁵ Increasing the availability of housing not only reduces artificially inflated housing prices but also reduces the rates of homelessness by increasing available housing.³⁶

Lot Coverage Requirements, Density Requirements & Property Use Zoning

While lot coverage, density requirements, and use-based zoning all appear at first to be different, their effects all amount to properties not being used in the most profitable way. Lot coverage requirements, similar to parking and setback requirements, mandate that a certain amount of a property should remain unutilized, effectively functioning as a tax on property ownership.³⁷

Property use requirements instead restrict the ways in which a property can be used, meaning that people who want to open neighborhood convenience stores or build parking garages so neighbors don't need parking spots aren't allowed to if in a residential-only zone.³⁸ Density zoning is somewhere in between the two. While it does not require only a portion of the property to be utilized, it does regulate how many residential units can be established on a lot.³⁹ Sometimes minimum lot size requirements are considered a density requirement, but typically, this means a "maximum dwelling units per lot" requirement.

Recent research on the Dallas housing market shows that the cost of lot coverage regulations, when combined with other land regulations, can be equal to or even greater than the total cost of land.⁴⁰ There are several reasons for this—not only because of the reduction in lot number, but also the restrictions on how lots can be used and even shaped. Lot coverage, especially when combined with density requirements, creates a major restriction on the freedom of property owners and the market's ability to adapt.

³⁵

<https://www.bostonfed.org/publications/research-department-working-paper/2022/how-to-increase-housing-affordability-understanding-local-deterrents-to-building-multifamily-housing.aspx>

³⁶ <https://mainepolicy.org/local-deregulation-is-the-path-to-relieving-maines-housing-crunch/>

³⁷ https://codelibrary.amlegal.com/codes/bowlinggreen_oh/latest/bowling_oh/0-0-0-57120

³⁸

<https://www.lawinsider.com/dictionary/use-requirements#:~:text=Use%20Requirements%20means%20any%20and%20all%20building%20codes%20or%20permits,or%20regulations%20of%20any%20Governmental>

³⁹

<https://www.lsd.law/define/density-zoning#:~:text=Definition%3A%20Density%20zoning%20is%20a,also%20known%20as%20cluster%20zoning.>

⁴⁰

<https://www.mercatus.org/research/state-testimonies/minimum-lot-size-regulations-are-barrier-homeownership-dallas>

Density requirements similarly hinder supply, especially that of multi-family units, and reform of these regulations, especially when combined with the relaxing of height restrictions, can increase housing units by up to 92%.⁴¹ Strict density restrictions don't only force city sprawl, but can ironically force inefficient highly-dense regions. A Boston Federal Reserve study found that a massive leap in housing density occurred clustered against the edge of highly regulated parts of Boston. By forcing parts of a city's population into the few regions that have weak density requirements, density regulations may potentially cause a myriad of health issues related to cramming many people into a small area.⁴²

While property use would not have as much of a negative effect as the others do in isolation, it still worsens the overall impact regulations have on the housing market. By allowing the market to develop mixed-use projects, where the natural demand is greatest, cities can create a catalyst for economic growth and address housing shortages simultaneously.⁴³

Minimum Lot Sizes

Minimum lot sizes are rules mandating that an individual property parcel must have a minimum square footage, which can lead to inefficient land use. They share traits with many other regulations. For example, they require extra land on a lot beyond what is optimum, similar to setbacks and coverage requirements. Additionally, they impact how properties can be optimally used, sharing some traits with usage requirements. Lastly, requiring properties to be larger than the necessary minimum lot size can directly affect local density, too.

Research by the Federal Reserve Bank of Boston shows that relaxing minimum lot size in combination with loosening density requirements and max height restrictions is one of the most impactful ways to increase housing supply and reduce both single-family prices and multi-family rents.⁴⁴ The Congressional Research Service found that minimum lot sizes have significant regulatory costs, lowering the total housing supply.⁴⁵

Related but less studied are minimum frontage and minimum width requirements. Unlike minimum lot size rules which mandate a certain total property size in the region, minimum frontage requirements mandate a certain length of the property facing the street or some other specific side of the property. If one thinks of a property like a square, minimum lot size regulates the square's area, while frontage requirements regulate the square's length on a side.

⁴¹

<https://www.bostonfed.org/publications/research-department-working-paper/2022/how-to-increase-housing-affordability-understanding-local-deterrents-to-building-multifamily-housing.aspx>

⁴² https://furmancenter.org/files/publications/Demons_of_Density_wp.pdf

⁴³

<https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Residential-Redevelopment-of-Commercially-Zoned-Land-in-California-December-2020.pdf>

⁴⁴ <https://www.aeaweb.org/conference/2022/preliminary/paper/SiyR8HKE>

⁴⁵ <https://crsreports.congress.gov/product/pdf/R/R47617>

Minimum frontage requirements, in particular, make cities harder to navigate, on foot or by car, by forcing properties to be uniformly spaced. If a popular deli can afford to be only 20 feet wide and wants to split in half its 40-foot wide property with another business, frontage requirements won't allow them to despite this deal being in the best interest of the customers, businesses, and local economy. These types of situations happen all the time. By serving as an obstacle to easier navigable city streets, frontage requirements increase transportation costs and force development away from corridors of transit.

In analyzing the Auburn, Maine housing market, Dr. Salim Furth of the Mercatus Center divided housing market demand into two categories: the privacy market and the walkability market.⁴⁶ While minimum lot sizes and frontage requirements have little or even a slight positive impact on properties' attractiveness to privacy market consumers, walkability market consumers prefer areas that are easy to navigate on foot and foster a tight-knit local atmosphere. Of the two markets to address, the walkability market is by far the more important, as the privacy market can simply purchase a larger or more private property than regulations mandate.

With the fast-growing urban population percentage throughout America, appealing to the urban-focused walkability market is incredibly important for cities.⁴⁷ Furth specifically highlights both frontage and minimum lot size requirements as obstacles to this. Parking minimums and setback requirements are also emphasized in his report, but combining as many policy levers as possible to alleviate the housing crisis is the only effective way to address Maine's ongoing problems with market quantity and price.

Short-term Rental Restrictions

Another poorly planned housing policy is the restriction or banning of short-term rentals, and both Bangor⁴⁸ and Portland⁴⁹ already have such regulations on the books. Most recently, Lewiston passed an ordinance banning short-term rentals in the city's residential areas, and the justification for this was the same poorly thought-out reasoning as other cities.⁵⁰

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https://www.auburnmaine.gov/CMSContent/Planning/Staff_Reports/2021/7_13_2021_Meeting/Salim_Furth%20Memo_Auburn%20ME.pdf

⁴⁷ <https://www.census.gov/newsroom/press-releases/2022/urban-rural-populations.html>

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<https://www.bangordailynews.com/2024/05/07/bangor/bangor-government/bangor-sets-deadline-airbnb-new-city-rule-n6hjn1me0n/>

⁴⁹ <https://portlandmaine.gov/1150/Short-Term-Rental-Registration>

⁵⁰

<https://www.wgrz.com/article/money/business/lewiston-town-board-imposes-short-term-rental-ban/71-47bc7e3b-8742-4c1e-a000-ca636ebc442c>

The reasoning behind short-term rental bans is that short-term renters take up space that other tenants might occupy.⁵¹ Cities theorize that short-term and long-term rentals compete for the same space and that banning one will allow the proliferation of the other and, therefore, alleviate Maine's housing crisis. Not only is this assumption incorrect, but it ignores the natural response that the rental market will experience to reduce the reliability of its profitability.

Firstly, the short-term and long-term rental markets do not compete with each other, as many short-term rental situations are people's vacation homes or bed and breakfasts. While renting one's cabin out while away is a good way to make some money on the side, doing so for a long term tenant denies the homeowner the ability to visit the property when they want. Additionally, having a bed and breakfast that caters to temporary travelers is a great way for people to make money, but many of those bed and breakfast owners are not willing to become long-term landlords or have permanent roommates.

Removing or restricting these markets not only discourages people from other states from investing in or moving to Maine, but also makes it harder and more expensive for vacationers to visit the state while denying valuable business to local Mainers. While the theory appears to be that these vacancies will be filled with long-term tenants, there is no actual proof that this is the case, and for the reasons listed above, the impacts this has on supply may not be as clear-cut as cities often think.

Additionally, short-term rental bans ignore the market incentives created by these policies. Property developers of apartment buildings and similar long-term tenancy buildings likely consider short-term rentals a way to fill vacant apartments and provide more stable profits. While the two markets don't naturally compete for space, the short-term market is naturally situated to fill in space that the long-term market would be guaranteed not to want.

A landlord would rather have a long-term tenant and guaranteed income than have to engage in frequent searches for short-term tenants who would also provide less reliable income. However, a landlord might temporarily make do with a short-term lease rather than a vacancy, as some income is better than none. By banning this practice, developers are less likely to make apartments or other leasing structures available, as their guarantee of profits has been removed.

“Energy Efficiency Building” Mandates and Portland’s Green New Deal

Another policy that some cities have begun adopting is energy-efficient construction requirements. Portland, in particular, has been at the forefront of this so-called policy “innovation,” and while energy efficiency is claimed by some to be a cost-savings maneuver, the impacts of the mandates are not that clear-cut.⁵² The cost-saving effects of energy-efficient buildings are a long-term benefit of owning an energy-efficient building. Additionally, while reducing alleged climate change-caused

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<https://hbr.org/2024/02/what-does-banning-short-term-rentals-really-accomplish#:~:text=The%20exponential%20growth%20of%20Airbnb,who%20now%20face%20higher%20rents.>

⁵² <https://neep.org/sites/default/files/resources/Portland%20Maine%20Case%20Study.pdf>

weather risks externalities is another benefit, this has little to no direct effect on the housing market or consumer behavior.⁵³ The relevant question, then, is whether the long-term savings of an efficient building requiring less energy consumption by either the owner or tenants cancel out the immediate increase in the building's material costs.

It is important to note that the savings from energy efficiency are long-term, and it could take years for the energy savings to make a meaningful profit for the homeowner.⁵⁴ Meanwhile, high investment costs, long payback time, and investment risks have all been found to be significant barriers to energy-efficient construction projects.⁵⁵ Mandating this sort of construction won't remove the barriers but simply remove the option for the industry to avoid them, thereby increasing the cost of construction.

Another issue of note is where the costs and benefits of the policy fall: on the builder or the consumer. Increased construction costs also mean an increased cost of the building. Homebuilders, assuming they are not building their own residences, will not see the profits from the reduced emissions but will see the increased costs from the installation. Therefore, recapture profit, the price charged for homes will grow faster. This is frequently found to happen when the cost of producing something goes up significantly, such as wage increases or regulatory production costs.⁵⁶

While the upper class may be able to make what is essentially an investment in their home's electricity consumption levels, forcing this upfront cost increase on lower-income households will reduce their ability to afford homeownership. This fact is obvious when one considers that there is a direct and obvious correlation between a person's income level and the percentage of that income that they invest rather than spend.⁵⁷ Thus, making homeownership even more of an investment than it already is will make it more of a good associated with the wealthy than one accessible to Mainers at a variety of income levels.

Portland's Green New Deal is another example of restrictions on construction and methods that increase the costs of construction. In 2022, Portland passed via referendum new regulations that require green building standards for buildings receiving a minimum of \$50,000 in public funds.⁵⁸ It also requires construction contractors to hire a percentage of workforce employees as apprentices,

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<https://www.bradley.com/insights/publications/2024/02/the-climate-bubble-real-estate-and-extreme-weather#:~:text=Changes%20in%20Consumer%20Behavior,and%20at%20a%20historic%20rate.>

⁵⁴ <https://www.investopedia.com/investing/pros-and-cons-investing-energyefficient-buildings/>

⁵⁵ <https://www.hsph.harvard.edu/news/hsph-in-the-news/environmental-health-green-buildings-spengler/>

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<https://www.investopedia.com/terms/c/costpushinflation.asp#:~:text=Cost%2Dpush%20inflation%20theorizes%20that,are%20passed%20on%20to%20consumers.>

⁵⁷

https://apps.irs.gov/app/understandingTaxes/teacher/whys_thm03_les02.jsp#:~:text=Explain%20to%20students%20that%20sales,food%20from%20the%20sales%20tax.

⁵⁸ <https://mainebeacon.com/wp-content/uploads/2020/05/Portland-Green-New-Deal-FINAL-bg-051520.pdf>

which means they are inexperienced but are paid less.⁵⁹ Some have argued that both of these standards save money, the first because they let building owners spend less on energy consumption and the second because they allow contractors to save money by paying workers less and training new workers.⁶⁰⁶¹

However, as previously stated, the long-term savings are likely canceled out by upfront costs, which harm both construction companies and potential homeowners. The apprentice workers are inexperienced and not readily available. If increased apprentice numbers were economically optimal, they would already have been hired and a government mandate would not be necessary. By mandating that developers meet a 25% apprenticeship worker requirement, the Green New Deal makes it harder, not easier, for housing development to be completed.

Complex Regulations

Another obstructive policy many municipalities create for new development is less obvious than those discussed above. By making local regulations complex and difficult to navigate and understand, some cities discourage development, especially by nonlocal and nonprofessional developers. Portland's zoning code is particularly dense, and the recent Recode Portland zoning code reform has sought to reduce the city's more than 1,000-page zoning code to a comparatively small 371 pages.⁶²

Lewiston's zoning code is easier to navigate, as it organizes all of its zoning and land use ordinances on the city website and subdivides by subject.⁶³ Bangor's code is a mixed bag. While the city makes most of its regulations reasonably easy to find, its zone-by-zone lot size requirements are kept in a separate Schedule A, which can be difficult to find, and guidance from city staff may be necessary to locate it at all.

All three cities' zoning maps are a different story, as none are very easy to use. Lewiston's map links users to a page with zoning standards and shows each zone's initials, but constant cross-reference between the two pages is necessary to understand a parcel's zoning regulations. Bangor similarly shows the user acronyms of the zones a parcel is in, but not the regulations or even zone names without a cross-reference to various zoning documents.

Portland's land use code is slightly more user-friendly because it shows the names of the zones rather than simple acronyms. However, after Recode Portland was completed, the post-recode map only uses acronyms, which may be a worrying slip into a lower transparency system the other cities

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<https://wgme.com/news/local/impact-of-portlands-green-new-deal-gets-new-look-after-emergency-shelter-falls-through>

⁶⁰ <https://www.enr.com/articles/50826-portland-maines-green-new-deal-worries-local-contractors>

⁶¹ <https://www.mainebiz.biz/article/residential-construction-permits-in-portland-down-82-since-green-new-deal>

⁶² <https://www.recodeportland.me/final-draft-changes>

⁶³ <https://www.lewistonmaine.gov/114/City-Ordinances>

use.⁶⁴ In the currently circulated map for the changes put in place on December 4, 2024, the map requires zooming in very closely to even have the zone acronyms appear, and to view the map with a wider view one needs to refer to the map, the map legend, and the land use code. Having to refer to three separate sources simply to understand a zone's purpose is absurd and incredibly low-transparency. Hopefully, this is just a format they are using for the post-recode map currently, and Portland intends to upgrade the map quality when the effort is finalized.

These are the three largest cities in Maine and while they might argue that, looking at each other, none of their behavior here is abnormal, there are Maine cities that do far better in this area. Auburn has about 75% of the population of Bangor, the smallest of the big three cities, but it still manages to have a significantly more transparent zoning map than any of the big cities.⁶⁵

Accessing the online page will show a clear color-coded zoning map with acronyms.⁶⁶ While official zone names are typically preferable labels to acronyms, clicking on each zone addresses this and will show not only the full zone name but also the zone's base elevation, building height, and various setbacks. If a developer in Auburn wants to know how large a building they can build on any property, they can get a general idea of the rules applied to it simply by looking at the zoning map and nothing else. This may not seem as important of an issue as the earlier ones, but in many cases, the ease of regulatory navigation and understanding it is the most important policy of them all.

If one thinks from the perspective of a developer deciding where and when to build, the ease at which one can learn and access the local land use rules is the very first issue that they will have to face. This is a massively underestimated category of local housing regulations, as developers who are either new to the industry or new to the area are going to face major challenges when trying to make sense of more complex city codes. Auburn has seen an influx of in and out-of-state developers investing in the city, and with its transparent zoning system accompanied by other pro-development policies, it is not hard to see why.^{67 68}

⁶⁴ <https://portlandme.maps.arcgis.com/apps/webappviewer/index.html?id=e60d70a8e0ab4d698d7355a55fdb3c34>

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https://www.maine-demographics.com/cities_by_population#:~:text=The%20most%20populated%20cities%20in,26%2C840%2C%20and%20Auburn%20with%2024%2C793.

⁶⁶ <https://auburnme.maps.arcgis.com/apps/webappviewer/index.html?id=8baefdffe25846e48a6a688155dd7809>

⁶⁷ <https://www.auburnmaine.gov/Postings/Blogs/Detail/Development-Opportunities-Abound-in-Auburn>

⁶⁸ <https://www.discoursemagazine.com/p/the-yimbyest-city-in-america>

Major Maine Cities Examined

Portland

Portland Zoning Regulations Chart (Using Final Recode Draft)	Traditional Single-Family Zone (RN-1)	Largest Inner City High Density Zone (RN-4)	Downtown Business Sector (B-3)	Average across all City Residential Zones
Parking Requirements	None for the first four dwellings	None for the first four dwellings	None	Eliminated most parking mandates ⁶⁹
Front Setback Requirements	20 feet or the average of adjacent yards	Five feet less than the average of adjacent yards	None	13.33 feet ⁷⁰
Rear Setback Requirements	25 feet	10 feet	None	17.5 feet
Height Max	35 feet	1-2 units: 35 feet 3-4 units: 45 feet	55 ft to 325 ft, with street walls varying	43.33 feet
Density Requirements	Max Four Units	Multifamily	Multifamily	
Minimum Lot Sizes	6,500 square feet	2,000	N/A	9,989 square feet
Lot Coverage	60%	60%	100% Build-To	66.67%
Permitted Uses	<5 family units, neighborhood nonresidential	Multifamily units, Townhouses, neighborhood nonresidential	Multifamily units, Townhouses, Business use	

Portland is both the largest city in Maine and the best known nationally, and because of this, the housing policies on the books in Portland often serve as a model for other Maine cities. This, and the fact that the ordinances in Portland affect more Mainers than any other city, make the effects of Portland's policies some of the most important in the state. It is because of these reasons that the harmful anti-housing policies Portland employs are concerning for the state as a whole.

⁶⁹ https://parkingreform.org/mandates-map/city_detail/Portland_ME.html

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https://static1.squarespace.com/static/5a75f43a692ebee1159413d/t/66e3035d7180bd13b7212e79/1726153573822/00_Portland+Zone+Guides_Updated_091224.pdf

Some of Portland’s housing policies are actually quite beneficial. The city has abolished off-street parking requirements for most residential areas, and the recent “Recode Portland” zoning reform efforts have included some positive changes.⁷¹ The largest is cutting back on the massive size of the city housing code from more than 1,000 pages to less than 400.⁷² Another is simplifying and merging several zones together and weakening many setback, height, and use regulations, especially in residential areas.⁷³

Portland has tried to communicate to developers that it especially wants to pursue “transit-oriented development,” or development along the major transportation corridors.⁷⁴ Lastly, Portland has made several steps toward encouraging Accessory Dwelling Units and multi-family housing uses in traditionally single-family zones.⁷⁵

However, the anti-development and anti-housing policies in Portland dwarf the pro-development ones, and what’s worse is many of the above positives have major caveats. Transit-oriented development focuses reform on only a small section of the city of Portland, reducing the market impact that can be achieved. Additionally, the ADU and single-family neighborhood reforms were actually mandated by LD 2003, and Portland instituted several strange rules to restrict the impact of these reforms. Lastly, the actual reforms to height requirements, setbacks, and permitted uses were quite limited. While they represent a step in the right direction, they are a set of very small reforms that could have greater impact with greater deregulation.

As for anti-development policies, Portland has plenty of them. The city’s inclusionary zoning ordinance mandates 25% of multi-unit developments to be workforce housing, which ties the rent charged to a percent of the area’s median income rather than what the landlord wants to charge.⁷⁶ These units are rented out at far below market rate, and as discussed earlier, this is a major disincentive for potential Portland housing developers. The city’s rent control ordinance also requires that landlords only increase rent by 70% of inflation in the Boston area, which means accounting for inflation, Portland landlords are guaranteed to see profits decline year over year. Investors are known to avoid risky investments, but even less popular are investments with a guaranteed loss in value over time. That is what an apartment that can’t keep rent stable with inflation is—a losing investment.

The combined effect of these policies is quite apparent when one looks at the Portland housing market, as the referendum to increase inclusive zoning from 10% to 25% was passed in 2020, and looking at Figures 22 and 23 of Portland’s 2023 Annual Housing report shows a massive increase in

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<https://www.kgw.com/article/news/local/city-council-portland-parking-overhaul/283-d69d17e0-a41e-4b53-bbb8-9669477264ca>

72 <https://www.pressherald.com/2024/05/28/portland-is-years-in-to-its-recode-process-so-what-is-it/>

73 <https://www.recodeportland.me/>

74 <https://www.portlandmaine.gov/704/Public-Transportation-Planning>

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[https://boulos.com/multifamily-the-effects-of-portlands-inclusionary-zoning/#:~:text=Any%2010%2B%20unit%20of%20new,AMI%20\(area%20median%20income\).](https://boulos.com/multifamily-the-effects-of-portlands-inclusionary-zoning/#:~:text=Any%2010%2B%20unit%20of%20new,AMI%20(area%20median%20income).)

76 <https://content.civicplus.com/api/assets/53b781df-9206-4db7-b1e4-12933d26493d?cache=1800>

housing that has been approved, but not completed.⁷⁷ This shift is clearly due to various factors, one prominent issue being the lack of return on investment in housing and the extra cost of the fee-in-lieu system.

Figure 22: Administratively Approved Project Completion & Expiration by Year



Figure 23: Planning Board Approved Project Completion & Expiration by Year



The completion gap in this graph from [Portland's 2023 report](#) could be excused by later projects not being completed due to recentness, however five of the last seven years listed "expired" projects, undermining this interpretation. Of the seven years with "expired" projects, five were after 2016.

Furthermore, Portland has a strict quota and registry system for short-term rentals, meaning that units with a short vacancy period cannot be utilized by landlords and are guaranteed to be a losing investment.⁷⁸ With these policies on the books, which reduce the total revenue a landlord can generate from multi-unit developments and their reliability of return, one wonders why anyone would ever want to build apartments in Portland. At this point, building multi-unit housing in Portland is a nonprofit endeavor because there is little to no chance a landlord will make a long-term profit.

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<https://www.pressherald.com/2024/07/19/portlands-latest-housing-report-reignites-debate-over-inclusionary-zoning/#:~:text=The%20Green%20New%20Deal%20requires,Fund%2C%20which%20subsidizes%20affordable%20housing.>

⁷⁸ <https://portlandmaine.gov/1150/Short-Term-Rental-Registration>

Portland’s residential zones have quite restrictive height and use limits, even when accounting for recent reforms. Most zones have a maximum height allowance of 35 feet, which makes it very difficult to develop multi-family housing in such confined spaces. Many zones also have setback and coverage requirements, meaning that expanding multi-family housing from preexisting buildings is technically possible but not at all feasible. Removing parking requirements but keeping many coverage requirements the same often means a parking spot turned into more yard space rather than more housing.

Portland’s business zones are far less restrictive, but the more permissive ones cover a very limited part of the city. If Portland truly wants to encourage a walkable, dense, modern, and affordable city, encouraging more mixed-use zones that allow both housing and businesses is the best pro-development policy they can implement, as would the lifting of the many anti-development policies described above.

Bangor

Bangor Zoning Regulations Chart	Traditional Single-Family Zone (LDR)	Largest Inner City Multi-family Zone (URD-1)	Downtown Business Sector (DDD)	Average across all City Residential Zones
Parking Requirements	1/Unit	1/Unit	None	1/Unit (smaller exceptions for some Multifamily homes)
Front Setback Requirements	25 ft (increased based on use)	10 ft	None	15 ft (depends on use, includes Low Density, High Density, Urban, and Multifamily)
Rear Setback Requirements	20 ft(increased based on use)	15 ft	None	15 ft (depends on use, includes Low Density, High Density, Urban, and Multifamily)
Height Max	35 ft	35 ft	None	35 ft
Density Requirements	Max Four Units	Max Twelve Units	No Max Units	
Minimum Lot Sizes	12,000(+6,000 per unit)	5,000	None	7,200 ft (changes in certain zones with additional units)
Lot Coverage	20%	35%	None	35%
Permitted Uses	<5 family units with heavy restrictions, <3 outside growth zone	<5 family units with heavy restrictions	Businesses use, Residences not facing major streets on the ground floor	

Bangor, compared to Portland, is broadly less experimental. Experimentation can have both good and bad outcomes, as with its parking requirement abolition, Portland actually did something very good for the housing market. However, experimenting can also have very bad effects, such as with policies like rent control or inclusionary zoning. Bangor often seems to copy Portland's policies a few years after they're passed, which means that some of the newer, more radical regulations haven't reached Bangor yet. Some of Portland's major policies have already spread to Bangor, though, such as rental notification requirements and short-term rental restrictions, while inclusive zoning is now being considered.

One of the good things Bangor has done is recently approving a tiny home park to provide low-cost, smaller rental properties. Additionally, Bangor has recently supported projects to renovate older large homes and turn them into boarding houses, thus turning underutilized properties into several new units.⁷⁹ Additionally, Bangor's Housing Work Group worked to reduce minimum lot sizes in much of the town by up to 50%, and in 2022, the city approved over 345 new housing units which surpassed the Portland number of 344.^{80 81 82} This is especially impressive considering Portland's population is more than double that of Bangor, meaning that the same number of new units proportionally impacts the city's housing problems twice as effectively.^{83 84}

While these policies seem to be alleviating much of the rising demand for housing, there are several caveats to them. First, while turning older properties into multi-unit housing is a good temporary measure, it becomes less effective as the number of larger older properties in the city becomes depleted. Additionally, the tiny home units will allow for more densely concentrated housing, but not to the degree that apartment buildings would, as they fail to utilize a large amount of vertical space.

Bangor's copying of some of Portland's anti-development policies will also reduce its market's ability to shift supply. While Bangor does not yet have rent control or inclusionary zoning, it does have short-term rental restrictions. As with Portland, the justification for this is the false belief that short-term tenants compete with long-term ones when this is simply not the case.⁸⁵ Landlords will automatically prefer a more guaranteed long-term investment if they can afford it. Thus, if a unit is set up for long-term tenants and there are, in fact, interested potential tenants, then they will be preferred over short-term applicants already.

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<https://www.mainepublic.org/business-and-economy/2022-06-28/after-months-of-debate-bangor-clears-the-way-for-more-boarding-houses>

⁸⁰https://web.archive.org/web/20231107095442/https://www.bangormaine.gov/filestorage/318/334/23803/6880/Bangor_Housing_Report_Final.pdf

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<https://web.archive.org/web/20221109115234/https://www.bangordailynews.com/2022/10/29/opinion/opinion-contributor/bangor-is-doing-a-lot-to-address-homelessness/>

⁸² <https://content.civicplus.com/api/assets/fc42e96b-52d3-4ace-a89e-355e01df3ef7>

⁸³ <https://worldpopulationreview.com/us-cities/bangor-me-population>

⁸⁴ <https://worldpopulationreview.com/us-cities/portland-me-population>

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<https://www.bangordailynews.com/2024/05/07/bangor/bangor-government/bangor-sets-deadline-airbnb-new-city-rule-n6hjn1me0n/#:~:text=In%20October%202023%2C%20the%20Bangor,annual%20fee%20for%20the%20license.>

Short-term tenants often occupy apartments for shorter periods of time to supplement the landlord's revenue during the long-term off-season, such as during the summer when college students are no longer commuting to the University of Maine. Alternatively, part-time owner occupants may lease their property for only a few weeks or months to short-term tenants, and restricting them from being able to do so does not mean these units would be leased to long-term tenants instead.

Additionally, Bangor has quite strict rent increase notification requirements, requiring 60 days prior notice to any rent increase.⁸⁶ This is not quite as long as Portland's 90-day increase notice, but two months prior notice is a lot, especially since Maine law already requires 45 days notice.⁸⁷ Requiring over two weeks longer notice only seems to complicate and make renting in Bangor harder than necessary, rather than actually providing extra protection for tenants.⁸⁸

In addition to the poor policy moves copied from Portland, Bangor has some original regulations that provide greater barriers to the housing market. One is how difficult Bangor's zoning code and map are to navigate compared to other cities.

Portland's code has been massive and difficult to use and understand for quite some time, but the city is at least in the middle of reforming it.⁸⁹ Additionally, Portland's zoning map is middle of the road in difficulty of use, but Bangor's only shows the zone in which properties are located if one toggles the option.⁹⁰ Also, zooming out too far automatically turns off the zoning labels, and one either has to click on the parcels or cross-check with the colors legend to see which color represents which zone. Doing either of these will only give you the zone acronym, and then cross-referencing again with the list of zones and their purposes is the only way to understand them. This is quite a cumbersome process considering other Maine cities, such as Auburn, have far easier to navigate codes and maps.⁹¹

⁸⁶ <https://www.bangormaine.gov/tenantsrights>

⁸⁷ <https://www.portlandmaine.gov/1148/Rent-Control-Rental-Housing-Rights>

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<https://rudmanwinchell.com/2024/01/04/understanding-maines-new-rental-laws-what-you-need-to-know/#:~:text=How%20however%2C%20a%20significant%20change%20applies,least%2075%20days%20written%20notice.>

⁸⁹ <https://www.arcgis.com/apps/webappviewer/index.html?id=53778b868b5f4465a8931ebb4faae4c5>

⁹⁰ <https://bangor.maps.arcgis.com/apps/webappviewer/index.html?id=542e4d3d42e3454ebd8f35bcbebf8368>

⁹¹ <https://auburnme.maps.arcgis.com/apps/webappviewer/index.html?id=8baefdffe25846e48a6a688155dd7809>

Lewiston

Lewiston Zoning Regulations Chart	Traditional Single-Family Zone (LDR)	Largest Inner City Multi-family Zone (DR)	Downtown Business Sector (CV)	Average Across All City Zones
Parking Requirements	2/Unit	1.1/dwelling	None(?)	2 spaces per dwelling
Front Setback Requirements	20 ft	5 ft	5 ft max	18.3 ft (includes Residential and Neighborhood Conservation)*
Rear Setback Requirements	30 ft	10 ft	None	20.8 ft (includes Residential and Neighborhood Conservation)*
Height Max	35 ft	60 ft	150 ft	41.6 ft (all Downtown and NCB 35 ft)
Density Requirements	Max Four Units	Multifamily	Multifamily	
Minimum Lot Sizes	10,000 sq ft	4,000 sq ft	None	15,667 sq ft 35,000 sq ft w/o public sewer
Lot Impervious Coverage	45%	85%	100%	60%
Permitted Uses	<3 family units with significant restrictions	Multifamily dwellings with significant restrictions	Multifamily dwellings with significant restrictions, Business use	

**Includes some use-based alterations*

Lewiston appears to be better off than the other two large cities in several ways. First, they are not currently considering instituting rent control. In fact, in an article in the Sun Journal, a member of the Lewiston Housing Committee was quoted as saying, “I, like most, think rent control is the worst thing we could do. It causes current landlords to increase rents and scares off too many potential developers. Portland may be able to afford to turn investors away, but Lewiston cannot.”⁹² Short-term rentals also are not restricted like Bangor or Portland, nor is inclusionary zoning being

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<https://www.sunjournal.com/2023/07/09/more-of-everything-a-vacancy-rate-of-zero-is-pushing-up-rents-and-has-the-twin-cities-embracing-any-and-all-housing/>

considered. All of these policies reduce the incentives to develop housing, so the fact that Lewiston does not implement any is positive for the city's housing market.

Additionally, while Lewiston's zoning map is not easy to navigate, its zoning ordinances are, and its land use code is only 287 pages, more than 100 pages smaller than Portland's code. Additionally, it is divided into sections by purpose, making it easier to navigate than other codes' either mono document format or page-based, ordinance-focused systems. Finding different parts of Lewiston's code that apply to a specific property or issue is much easier than Bangor or Portland.

Lewiston still has several areas where it can improve, though. Its maximum impervious coverage requirement, which covers both buildings and other rain-impervious areas, is below 100% in all but one zone. Impervious coverage requirements are quite similar to lot coverage requirements, but instead of just including buildings, they also include other rain-impervious structures, like concrete parking spots. The fact that this includes impervious structures other than buildings, such as concrete parking spaces or driveways, makes this even more restrictive, especially on smaller lots where parking spaces can take up a large portion of the property. It may further exacerbate parking problems as well by restricting those attempting to provide parking spaces from making parking lots readily available to meet demand.

Additionally, unlike the other two cities, every zone in the city has some sort of setback requirement, as well as a far lower height maximums. While Lewiston has not adopted any recently trending anti-growth policies, it also has not adopted many pro-growth reforms some other cities are adopting to encourage housing market innovation. This means that developers make far less of a gamble building in Lewiston because the policy dynamic of the city is less volatile, and thus more predictable.

Especially since Lewiston is just across the Androscoggin River from Auburn, one would hope that they would copy more of the policy innovations coming from the other side of the river. This sadly has not been the case, although their refusal to copy many of Portland's more ill-advised schemes is still a good policy move. Auburn has created many pro-development policies over the last 10 years, though, and has, as a result, faced a significant increase in housing growth.

In general, Lewiston's policies can be summarized as slow-moving, but since most of Maine's larger cities are moving in the pro-regulation and anti-development direction, this position appears to be more positive than negative by comparison. Still, one would hope that with the obvious negative consequences of policies like those on the books in Portland, Lewiston will see the writing on the wall and move in the opposite direction in the future.

SECTION TWO

**DATA
ANALYSIS**

Introduction

Previous studies have shown that heavy-handed regulations on the housing market will reduce housing availability and increase cost, but some may argue that Maine's market is intrinsically different. Maine is a national outlier in many ways, having the highest median age of any state and being the most forested state by percentage of land. Maine is also known as “Vacationland” and a small-town state, with far more of its population living in small to moderate towns than large cities, like many other states.

Due to Maine's many differences from other states, there will inevitably be objections to applying nationwide findings to Maine. After all, if Maine is so different from other states, then its housing market may behave differently as well. Thus, this section studies the correlation between the status of land use zoning in towns and housing prices, and a separate analysis of local minimum lot size requirements.

Using a 2022 report on land use and zoning by the Mercatus Center, Maine Policy, in conjunction with Professor James Siodla of Colby College, compares the housing markets of various towns throughout Maine. By focusing on the relationship between restrictive local land use policies and high demand and growth in the housing market, we can see if there is a correlation between the two variables. Once a correlation is established, we can analyze the form of the relationship.

In other sections of this report, we have emphasized policies such as rent control and inclusive zoning, but these policies are not widespread in Maine outside of a few larger cities, such as Portland. As of 2021, out of New England’s almost 200 localities with inclusive zoning, only 1% were in Maine.⁹³ Meanwhile, Maine has about 9% of New England’s population, showing that for New England at least, Maine has a disproportionately low amount of inclusive zoning.⁹⁴ Rent control policies were similarly distributed, with only larger cities and cities in southern Maine appearing to have experimented with it.⁹⁵

Because of the limited Maine-specific data on these two policies, we will focus on land use regulations used more widely throughout the state. Both land use zoning and minimum lot size are policies used commonly enough in Maine to have accessible data and also show enough variance to isolate the town-by-town effects of the policies. Many Maine towns are restrictive in one of these categories and nonrestrictive in the other, so it should be possible to identify whether a relationship exists between these policies and housing market growth.

While many modern cities employ heavy-handed land use regulations regardless of size, some towns throughout Maine do not employ use-based zoning. Use-based zoning restricts the type of

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<https://www.jchs.harvard.edu/blog/inclusionary-and-incentive-zoning-six-new-england-states#:~:text=Almost%2000%20localities%20in%20all,households%20and%20households%20of%20color.>

⁹⁴ <https://dlt.ri.gov/sites/g/files/xkgbur571/files/2021-09/newengpop.pdf>

⁹⁵ Exact numbers for towns with rent control is not known, but most of the towns that have it are either Lewiston/Bangor/Portland or towns south of Portland.

buildings that can be built and the things they can be used for based on where they are located within the municipality. While many towns in Maine do use zoning, around 200 do not employ it at all.

Many of these towns are small towns in rural northern Maine with very inactive housing markets; however, this is not true for all of them. Many of these towns are medium-sized and located in central, midcoast or even southern Maine, including Lebanon, Paris, Harpswell, and Monmouth. These towns all have a population of 5,000 or more, are either west or south of Augusta, and do not have the traditional form of land use-based zoning.

Comparing the housing markets of similarly sized and located zoned and unzoned towns will not be a perfect answer as to the impact of land use regulations, and even unzoned towns can have strict land use regulations in other categories. However, a possible correlation between zoning and inflated housing prices can still provide helpful insight into how Maine's housing market functions.

Minimum lot size is another important kind of land use regulation. Additionally, the more rural a town is, the more it tends to restrict minimum lot size. Thus, finding a correlation between stricter minimum lot size and higher housing costs will show that this is not simply "city housing is more expensive," but that the housing regulations are genuinely impacting prices. Minimum lot size, in short, disallows people from developing or using properties for specific purposes without the lot being a minimum size. By restricting minimum lot size, towns thus limit the density at which people can build, the number of people able to live in their locality, and the type of residential properties that can be developed.

Zoning vs Nonzoning

Using the data collected by the Mercatus Center in their "Regulating without Zoning in Maine Towns" report, we have organized Maine towns by zoned and unzoned status. Then, by crossreferencing that with Geographic Information Survey (GIS) data and regional Zillow home price indexes, we can detect any correlations between towns' zoned or unzoned status and their local home price. If either category's home price is significantly higher, that may mean the cost of housing, and thus the housing market, is impacted by whether a town uses land use zoning. Other potential explanations exist for a difference in home prices between these categories, which we address later in our research.

When looking at the Maine-specific data, towns with land-use zoning codes experience higher average house prices. According to our data, this significant difference in price between zoned and unzoned towns has existed since at least 2010. This difference appeared at its highest at 10.8% higher home prices in zoned cities in 2010. However, the difference seems to be increasing again recently, from 5.9% in 2020 to 6.9% in 2023.

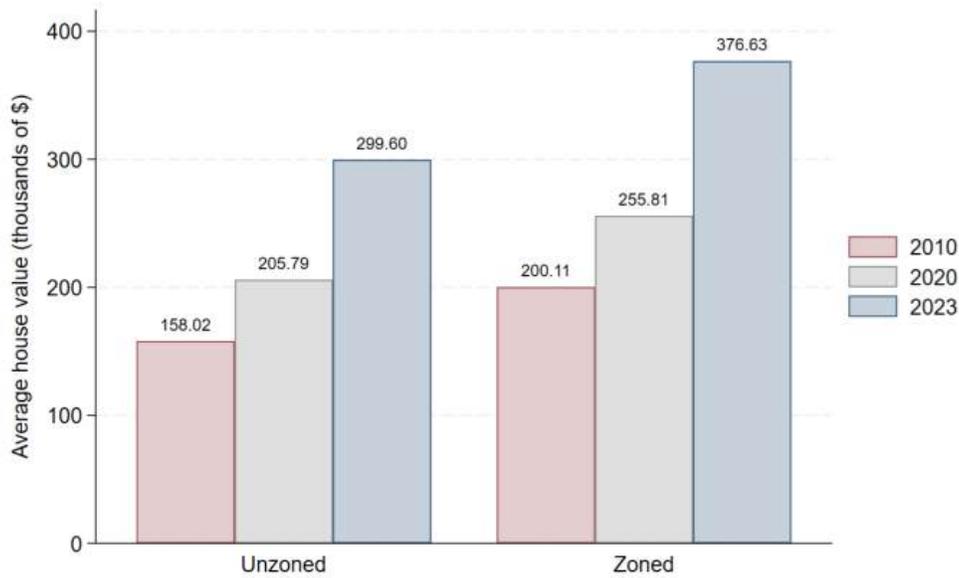


Figure 1: Average house value, by zoning status and year

(graph showing the average house value in unzoned and zoned towns in the years 2010, 2020 & 2023)

Because zoned towns tend to be larger and more urban than unzoned towns, they also permit denser housing unit designs, such as multi-family housing. However, a troubling trend has emerged since 2020, where zoned towns have permitted 9.06 fewer total units, 1.95 more single-family units, and 11.01 fewer multi-family units than unzoned towns. Thus, despite the demand for Maine housing increasing, many towns in Maine have reduced their housing production rather than increasing it to meet demand. Between 2010 and 2024, Maine’s population grew by over 70,000 people, however, we have not had housing growth at the same rate.⁹⁶ Additionally, the gap between the permits issued in zoned and unzoned cities has been growing, suggesting that the price difference is partially caused by a change in supply.

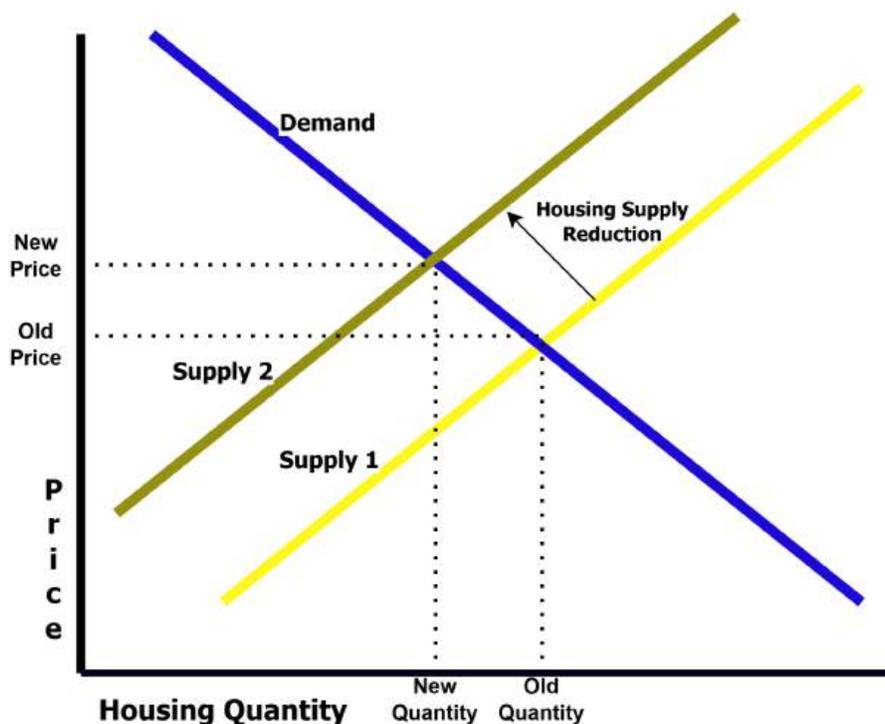
This change is also concerningly recent, as from 2010-2019, there was no statistically significant difference between the two categories of housing stock growth. This indicates that the zoning-based difference is very recent, possibly due to the increased demand from new Mainers moving here from other parts of New England. As the demand for housing increases, unzoned towns increase supply to respond to demand, while zoned towns do not respond to that shift in demand in the same way.

The second concern to control for is mistaking the source of price changes, which can be caused by differences in demand or differences in supply, all else equal. One market’s price may be lower for several reasons, and while one reason may be a regulatory burden, another possible reason is a difference in local demand. Certain small northern towns have seen a decline in population over the

⁹⁶ <https://www.macrotrends.net/global-metrics/states/maine/population>

past decade, while significant population increases occurred in southern Maine. Of course, housing is inherently likely to face higher demand in places where people want to live. This will naturally increase the price of high-demand towns, meaning that one other reason zoned towns are pricier to live in is that more people may simply want to live there.

Accounting for this was not as straightforward as accounting for town size, but we combined the data from Mercatus and Zillow with towns' permitting requests, which helped us account for demand and supply shifts. Markets with higher demand will naturally also receive more building permit requests. So, by considering this data, we were able to contextualize the above differential between zoned and unzoned towns, further proving that the regulatory burden is to blame for the increased costs instead of an increase in local demand for housing.



Simple illustration of a leftward supply curve shift and its effects on quantity and cost

The above graph is an illustration that one might find in an economics classroom displaying a leftward supply shift. Economists use these graphs to simulate the market forces of demand and supply in a simplified way. The “Y” axis is always shown as price, and the “X” axis is displayed as quantity. Because people demand products less when they are cheaper, the demand curve slopes downward, and similarly, more significant quantities of goods are supplied by firms when they sell for higher prices. By shifting the supply curve left, we see that the equilibrium price of homes increases and housing quantity decreases, precisely what we have seen in Maine.

Regulations on the housing market lead to a leftward shift of the supply curve, as do many regulations that restrict suppliers of a good or service. Regulations on housing typically create some

extra cost or burden on suppliers, which means their profits from constructing housing are reduced.⁹⁷ When earnings from building housing are reduced, housing suppliers are willing to build fewer houses, which causes a leftward shift of the supply curve. This leftward shift increases the average market price and reduces the total quantity of housing available.

Zoned towns in Maine have been shown to have less affordable housing markets, negatively impacting housing accessibility. Assuming that the disparity between these two binary categories indicates a more significant negative relationship between zoning and housing market growth, towns may benefit from even smaller steps toward deregulation. Even if such steps are minor, the speculative long-term nature of the housing market may encourage developers to pick one town over its more restrictive neighbors.

Zoning is just one of the local land use policies in Maine we analyzed, and it would be incorrect to assume that this inverse relationship between land use regulation and market growth is limited to zoning policy alone. In the next section, we will analyze the impact of restrictive minimum lot sizes across nonzoned towns in Maine.

Minimum Lot Size

While we have now shown a correlation between inflated housing prices and the presence of zoning, some may feel this is limited to only one kind of land use regulation. Providing evidence of a relationship between minimum lot size and housing price should further solidify the case that land use regulation in Maine harms the housing market. If our theory is correct, the more restrictive the local land use policy is, the greater the burden on the housing market. While zoned towns have a wide divergence in minimum lot size from one zone to another, the hundreds of unzoned towns in Maine typically only employ one minimum lot size or occasionally two. Focusing on these towns will allow us to understand the relationship between this policy and the local affordability of houses.

For several reasons, the minimum lot size is more challenging to analyze than the zoning and nonzoning status. First, because zoned towns employ so many diverse zoning methods with separate minimum lot sizes, it would require far more data and more significant resources to include them in this section entirely. Additionally, many unzoned towns have low populations, making the divergence of lot sizes and home prices very volatile. To account for these factors, we have explicitly focused on unzoned Maine towns with a population greater than 2,000, of which there are 44.

The minimum lot size of unzoned towns can diverge greatly, with some cities, such as Lebanon, Bowdoin, and Pittston having a minimum lot size of two acres. These towns appear unzoned because they desire a small town “leave me alone” atmosphere, but this can motivate them to create incredibly restrictive minimum lot sizes to prevent denser property uses from obstructing the towns’ aesthetics.

⁹⁷ <https://www.investopedia.com/terms/s/supply-curve.asp>

Meanwhile, other towns appear unzoned to allow residents to do what they want with their properties. This motivation impacts not only the local zoning policy but also the minimum lot size, and many unzoned towns in Maine, such as Madison, Jay, or Blue Hill, have no minimum lot size. There are two caveats to this section, which complicates our analysis somewhat, but the negative relationship between minimum lot size and housing affordability was still observed.

The first problem we encountered was shoreland zoning. Maine has a statewide law requiring stricter zoning policies for properties directly abutting shoreland to preserve the aesthetic and environmental values of Maine's shoreland. This law applies to some but not all of these towns. The good news is that even coastal towns such as Harpswell are not universally affected because the shoreland zoning restrictions only reach about 200 feet from shore. Thus, unless a property directly touches the waterfront, it is unlikely to be directly affected.

The second problem was a greater challenge. Maine also has a statewide minimum lot size requirement of 20,000 square feet. However, this only applies to properties that use private subsurface waste disposal systems, such as septic systems, so properties with public sewer access or no sewer are allowed to be as small as the owners want. Additionally, there are still two reasons that this complicates the minimum lot size analysis.

First, some towns with minimum lot sizes of less than 20,000 square feet or no minimum lot size also have little to no public sewer access. This makes it almost impossible to judge whether a property in the town is impacted by the statewide mandate, at least not without going door to door to every property in town to see whether they have private subsurface waste disposal systems.

This combines with the second issue, which is that the towns with public sewer systems for only part of the town, in effect, have an invisible "reduced minimum lot size" zone of which not even the town itself knows the full coverage. Understanding the coverage of this zone is crucial because it impacts whether a property has a 20,000-square-foot minimum lot size, a smaller minimum, or no minimum lot size. Again, all of the towns with partial coverage do not know how many residential properties in their town have public sewer access. Aside from being an obstacle to our research, this is incredibly concerning because it means that the local land use boards who decide minimum lot size for their town also have no idea what percentage of the town population they are impacting and how.

The justification for the statewide legal requirement of 20,000 square feet for properties with private subsurface sewage disposal is understandable. Human waste can have significant negative impacts on the local environment when condensed into denser areas. However, a situational minimum lot size burdens many prospective developers by complicating land use requirements. This policy creates an extra land use requirement that invisibly applies only to specific properties and frequently is not referenced in the local land use code. The conflict may even confuse some developers who may be unsure whether the local land use code takes precedence over the state's, and may need to hire legal counsel to explain that the state code takes precedence.

We were able to account for this statewide requirement in a somewhat indirect way. While a map of each town's sewer system could not be easily found, we could locate some towns' total sewer connection numbers. Furthermore, this included differentiation between a commercial, industrial, and residential sewer/water district connection. By cross-referencing this data with the number of households in the town, we estimated the number of households that did not have sewer access. Knowing this allows us to assess the proportion of the town impacted by the statewide minimum lot size requirement.

This had potential risks, such as those inherent to combining data from multiple sources, as one source's definition of a household may be more limited or expansive than another. Additionally, some sewer connections may have been mislabelled as residential, or over or undercounted. Regardless, this data was used to estimate the percentage of towns' households without public sewers rather than generate a precise number. Since general trends were being analyzed rather than individual towns, the impact that individual, incorrectly labeled lots will have is somewhat minimal.

While we could not discern which specific parts of each town were impacted by the statewide minimum lot size statute, we could find a general estimate of the percentage of each city affected by the law. By accounting for this in our data, we could still compare the rate of the towns that genuinely had the minimum lot size mandated by the town rather than the state. Since many towns had a larger minimum lot size regardless of sewer access, this consideration did not impact those towns.

While the above factors should be considered in adding context to our analysis, as should the smaller sample size of the towns we examined, the difference between towns with and without minimum lot restrictions was significant. It is even more remarkable than the difference between zoned and unzoned towns. In 2010, towns with minimum lot sizes had a 40.9% higher home price than those without. This number decreased in 2020 to 20.1%, then 34.7% in 2023. While this gap is smaller than in 2010, it still shows that towns without minimum lot sizes have significantly lower housing costs than those with minimum lot sizes.

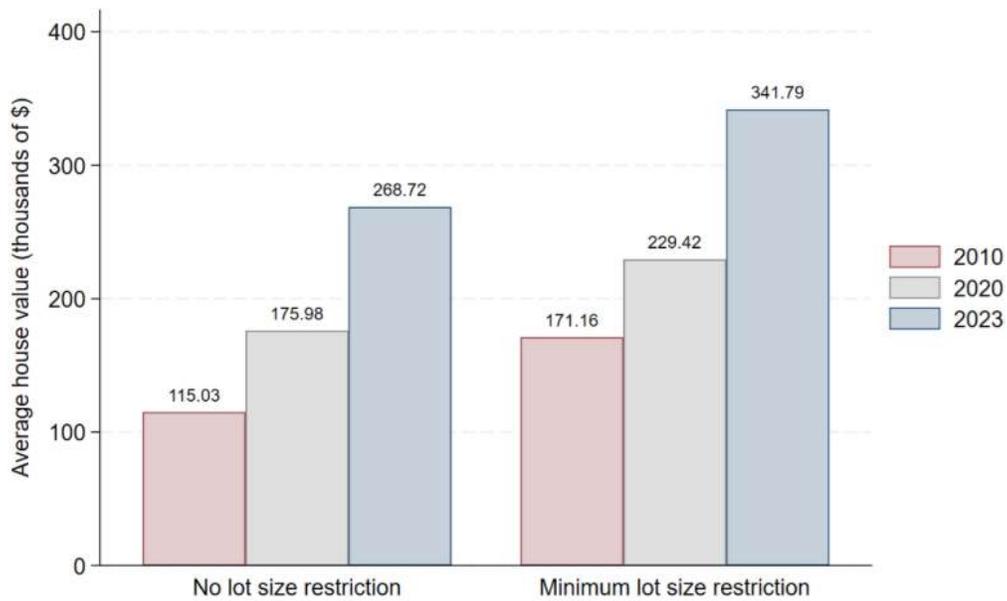


Figure 2: Average house value, by minimum lot-size restriction and year

(graph showing the average house value in towns with and without minimum lot sizes in the years 2010, 2020, and 2023)

When analyzing the minimum lot size, it should be noted that the sample size was much smaller. This is because zoned towns almost universally have minimum lot sizes that vary throughout the towns' zones, making it essentially impossible to compare them. However, focusing on medium-sized unzoned Maine towns still provides enough data to create a somewhat reliable outline of the relationship between minimum lot size and housing price. Emphasizing these towns in our analysis allows us to avoid the effects that being in a big city can have on local housing prices. Overall, a 10,000-square-foot increase in minimum lot size was associated with a 4% increase in average house price.

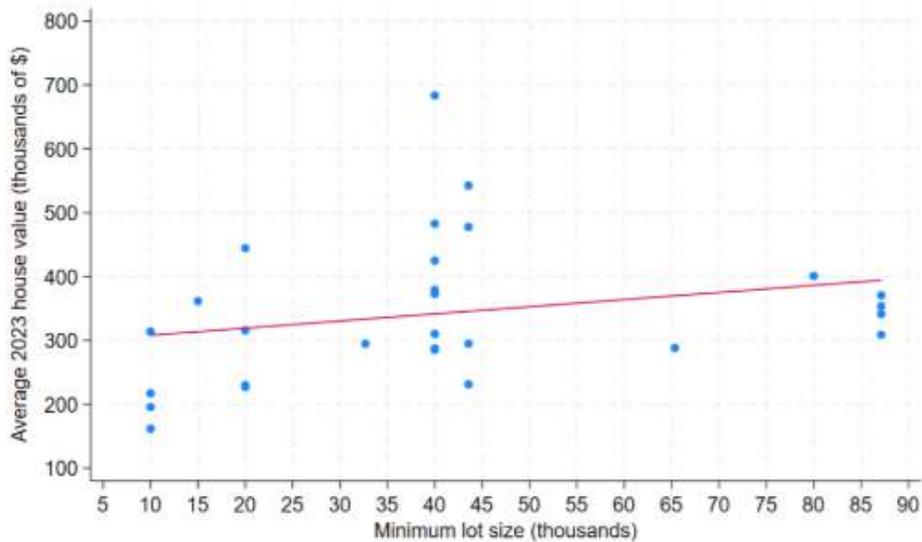


Figure 3: Average 2023 house value and minimum lot size

(graph showing the relationship between minimum lot size and average 2023 house value)

While this difference may not seem significant, it should be noted that even 4% of a half-a-million-dollar house is \$20,000. In 2024, the average home price in Maine rose above \$400,000, with 4% of that figure totaling \$16,000.⁹⁸ If this 4% increase represents a causal relationship, Maine could reduce minimum lot sizes statewide by 10,000 square feet and save the average home buyer \$16,000. Additionally, this figure does not include the interest that most homeowners would be paying on that amount when it is incorporated into their mortgage.

Furthermore, several towns have highly restrictive minimum lot sizes over 80,000 square feet. If this correlation represents a causal relationship, then those towns' minimum lot sizes may increase the cost of a house locally by around 32% compared to if that town had no minimum lot size at all. One such town is Lebanon, which has a minimum lot size of two acres for any lot with a building on it.⁹⁹

Houses in Lebanon regularly sell for north of \$400,000.¹⁰⁰ If the 4% increase per 10,000 square feet remains stable, Lebanon's minimum lot size ordinance inflates the average home's price by about 34.8%. That works out so that the mean home sale price would be closer to \$297,000 if Lebanon had no minimum lot size. If our analysis holds, Lebanon's minimum lot size costs the average home buyer over \$100,000.

⁹⁸ <https://www.pressherald.com/2024/07/23/price-of-typical-maine-home-climbs-above-400000-for-first-time/>

⁹⁹ https://www.lebanon-me.org/sites/g/files/vyhlf4601/f/uploads/lot_size_ordinance_-_2017_0.pdf

¹⁰⁰ https://www.realtor.com/realestateandhomes-search/Lebanon_ME/overview

Conclusion

While Maine goes against national trends in many ways, it is clear that this does not apply to the fundamental relationship between land use regulations and the housing market. As with any market, rules and fees are passed on to consumers. Natural supply shortages are created by reducing the number of developers who can afford to develop new housing and the number of buyers who will pay inflated prices. This is caused by inclusive zoning, rent control, and similar rental-focused policies. In Maine, however, zoning and minimum lot size restrictions mainly reduce housing availability.

Due to Maine's "small town" nature, these two policies can disproportionately affect us compared to other states. Large cities tend to be more flexible on minimum lot size and zoning requirements than small towns, but far less of Maine's population lives in cities than in other New England states. Vermont is the state that has the smallest share of its population living in urban centers, only 35%, but Maine is a close second with 39% urban population.¹⁰¹ The next most urban state is West Virginia, with a distant 45% urban population. Because the predominant number of lower-income Mainers live in smaller, rural towns, we can expect this to burden them disproportionately.¹⁰²

Both minimum lot sizes and zoning reduce the number of houses that can be built in a town. Not surprisingly, reducing minimum lot sizes correlates positively with housing availability and more affordable housing options. This has already been established elsewhere in New England. Still, we now know that the same relationship also exists in Maine housing markets in particular.¹⁰³ Similarly, reducing zoning restrictions allows for a larger percentage of the town to be developed into housing, reducing the cost of the average home. This relationship was also shown to exist nationally, but even in Maine-specific markets, this effect exists.¹⁰⁴

The evidence shows a strong correlation between housing costs and regulations, best explained by a leftward supply shift. While there is some expected difference in demand between zoned and unzoned towns, this should not be understood to be the sole cause of this difference and does not account for the discrepancy in permit requests. Even in Maine specifically, the evidence shows a clear decline in housing availability when strict local zoning or minimum lot size ordinances are present.

This is not to say that other policies in Maine do not have similar or even worse effects. The literature and direct evidence show that housing market regulations can be divided into two groups: those that reduce the flexibility of available housing options and those that reduce the profitability of creating and providing housing. Both minimum lot size and zoning requirements fall primarily

¹⁰¹ <https://www.visualcapitalist.com/mapped-how-much-of-each-u-s-states-population-lives-in-cities/>

¹⁰²

<https://www1.maine.gov/dhhs/mecdc/phdata/non-dhp-pdf-doc/healthy-maine-2010-opportunities-for-all-residence-ural-a.pdf>

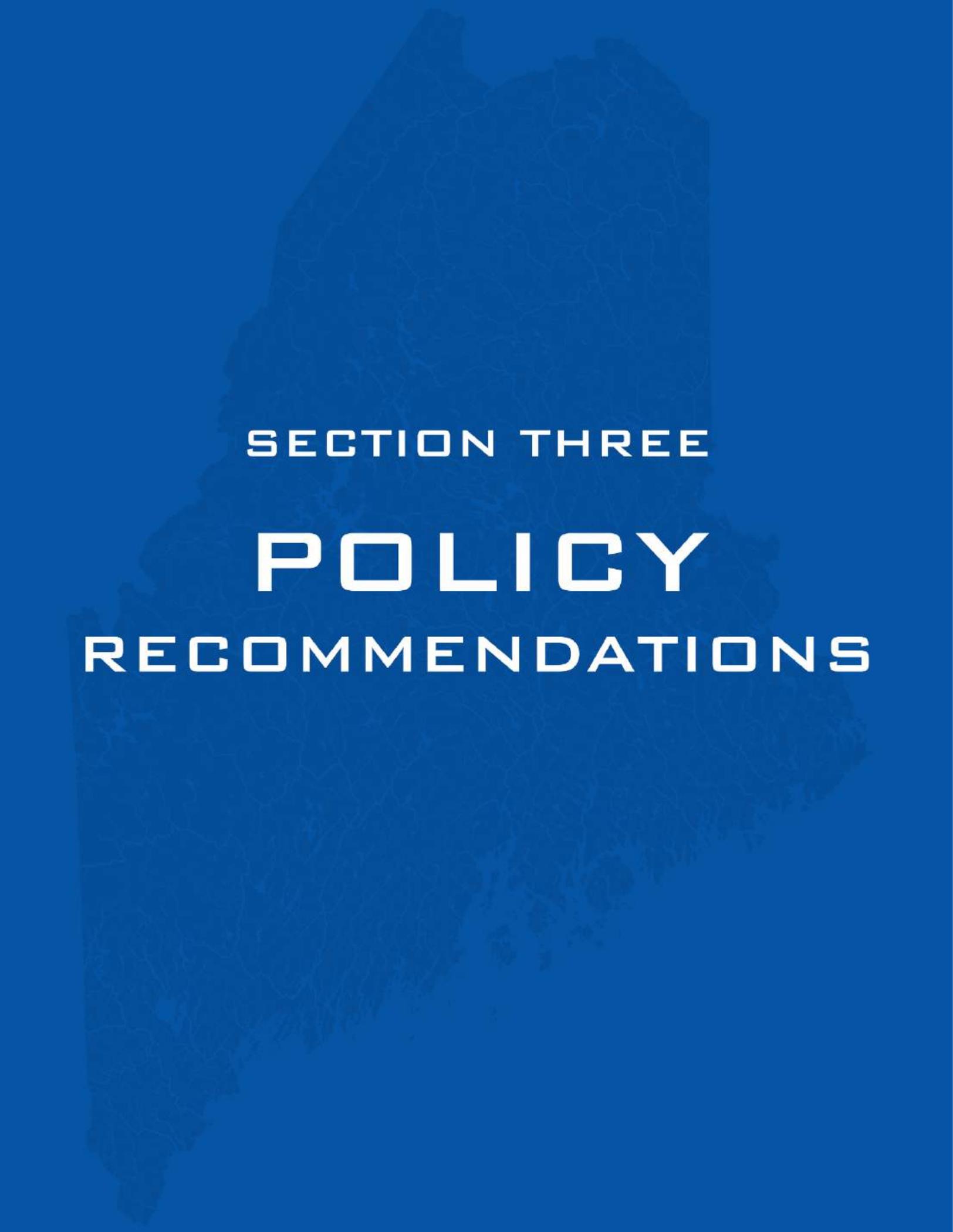
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<https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability#effects-of-land-use-regulation>

¹⁰⁴ https://www.nahro.org/journal_article/rethinking-zoning-to-increase-affordable-housing/

into the first category, as they restrict the amount and type of housing that can be provided. Meanwhile, profitability restrictions such as inclusive zoning or rent control are less widespread in Maine, making comparative Maine-centric data challenging to find.

Maine-specific evidence shows that these more restrictive land use regulations reduce availability and affordability. In a period when much of the country and Maine faces a severe housing crisis, Maine localities must employ land use policies that synergize with and understand market forces rather than work against them. In the next section, we will rely on the findings discussed in sections one and two to draw conclusions on which policies would benefit Maine's housing market most. However, it is essential to understand from this section that not only do housing market restrictions negatively impact housing market health in the abstract, but they have also been shown to place unnecessary burdens on home buyers and developers here in Maine.



SECTION THREE

POLICY

RECOMMENDATIONS

Introduction

While most of this report focuses on what Maine cities should not do, the following section concentrates primarily on favorable, pro-market policies that municipalities can implement. It also highlights which American cities best implement pro-market and pro-housing policies. Both local and state-level policies in Maine can be improved to better incentivize housing development, and the good news is that there are multiple examples of jurisdictions throughout the country that encourage housing development through sound public policy.

For several reasons, the primary leadership on housing policy should be at the local government level rather than at the state level. One is that local governments will be more responsive to local problems than cookie-cutter statewide policy mandates. Another problem with Maine state government taking the leadership role in housing was illustrated during the rollout of LD 2003, where localities that weren't on board found myriad ways to circumvent the law's requirements. Without local government buy-in, state government action will be largely ineffective.

Lastly, local leadership allows for more diversity and experimentation with policies to see which are most effective. Because pro-market housing policies are so underappreciated by many regulators, it will likely take experimentation to find the most effective combination. Statewide mandates don't allow for experimentation like this, making it more difficult to analyze the potential positive or negative effects of policies proposed and adopted at the local level.

That is not to say that Maine state government has no role to play in housing policy creation, as there are several things state governments can and should do to encourage development. However, many of these policies are far less impactful on housing markets than local government action and largely consist of reducing the regulatory burden on developers and streamlining the permitting process.

Cities With Pro-Housing Policies

Auburn, ME

The city of Auburn is the best example municipality in Maine, which has been discussed before for its highly transparent housing map and policy. Auburn has a variety of pro-market policies, mainly from the term of Mayor Jason Levesque, who set the goal of making Auburn the "YIMBYest city in America." For context, YIMBY is short for "yes in my backyard," which is the opposite of NIMBY or "not in my backyard."

Levesque did this in several ways, one of which was making significant modifications to how much land in the city of Auburn was in certain low-density zones and loosening those restrictions.¹⁰⁵ He

¹⁰⁵ <https://www.discoursemagazine.com/p/the-yimbyest-city-in-america>

also prioritized transitioning older nonresidential buildings into multiple residential units and improved ADU and multifamily allowances before LD 2003 went into effect. Lastly, Levesque transitioned part of the city to a more form-based code, which allows for more mixed uses in an area by only prioritizing the physical appearance of buildings instead of focusing on their use.¹⁰⁶

These policies have been largely successful, and Auburn saw new highs in construction permits since these changes were enacted.¹⁰⁷ This has encouraged both population and business growth in the city, with manufacturing in Maine having grown by over 10% since 2019, many of those jobs focused in Auburn.¹⁰⁸ While there are few examples of recent pro-market housing policies being instituted in Maine, Auburn has done well in encouraging the development of new housing and businesses in the city.

Houston & Austin, TX

Outside of Maine, there are even better examples of pro-market cities. Houston and Austin, Texas, have effectively employed pro-market policies to encourage local housing development in ways that have not been attempted yet in Maine. Many advocates for statewide housing policy mandates argue that Maine's home rule policy gives local towns too much control, which naturally leads to NIMBYism.¹⁰⁹ However, Texas is also a home rule state.¹¹⁰ Although their cities and towns have similar levels of local control as Maine, their cities have still adopted much more pro-market policies, showing that the issue is local and cultural rather than one that inherently requires state-level intervention.

One might argue that Texas' home rule provisions are more restrictive than Maine's, as Texan cities need a certain population to qualify.¹¹¹ However, both Austin and Houston are qualifying Texan home rule cities, which means that this distinction is somewhat irrelevant when considering how these two cities compare to Maine localities.^{112 113}

Houston's population has seen a massive boom since COVID, in part due to the South's, and especially Texas's, refusal to engage in more restrictive pandemic shutdown policies.^{114 115} Houston's

¹⁰⁶ <https://formbasedcodes.org/definition/>

¹⁰⁷ <https://www.mainebiz.biz/article/lewiston-and-auburn-say-yes-to-development>

¹⁰⁸

<https://www.sunjournal.com/2024/10/21/how-the-city-of-auburn-became-maines-manufacturing-and-distribution-hub/>

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<https://www.memun.org/Training/Citizen-Education/Local-Government-in-Maine#:~:text=Under%20%22home%20rule%2C%22%20municipalities,government%20is%20exactly%20the%20reverse.>

¹¹⁰ <https://www.tml.org/DocumentCenter/View/244/Types-of-Texas-Cities-PDF>

¹¹¹ <https://statutes.capitol.texas.gov/Docs/CN/htm/CN.11.htm#11.5>

¹¹² <https://www.axios.com/local/houston/2023/05/10/texas-preemption-bill-houston>

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<https://services.austintexas.gov/edims/document.cfm?id=114612#:~:text=Authority%20to%20govern&text=General%2Dlaw%20authority%20means%20that,is%20a%20home%2Drule%20city.>

¹¹⁴ <https://www.fox26houston.com/news/houstons-population-surge-a-beacon-of-southern-growth>

¹¹⁵ <https://www.texastribune.org/2021/08/06/texas-greg-abbott-covid-restrictions/>

population, in particular, has grown faster than most of Texas and is currently the second fastest-growing metro area in the United States.¹¹⁶ This growth combines a robust local job market and economy and a comparatively low cost of living compared to other metropolitan areas. While many regions throughout the country have strong economies, fewer and fewer have a low cost of living; studying how Houston's city policies impact the housing market should help emulate their success in combining the two.

One policy that Houston lacks, but most large cities have, is land use zoning.¹¹⁷ This means no zones exist in Houston, so industrial, residential, and commercial patterns can emerge naturally, as can mixed-use regions of the city. Houston still has parking minimums, land use regulations, and setbacks that apply citywide, but otherwise, the city relies on private agreements and other systems to regulate property use.¹¹⁸ Some complain poor planning due to market-led development has led to more cars and too much parking in downtown Houston.¹¹⁹ However, this could be blamed on the city's overly strict parking requirements rather than its lack of zoning. Additionally, providing more public transportation options or further allowing parking garages and other denser parking options would help solve this problem.

Austin is also a very pro-market and pro-development city, and it has used this to combat rapid population growth. Austin is currently the fastest-growing city in the United States, but in the early 2020s, their rent prices ballooned rapidly.¹²⁰ Austin, instead of mandating rent control or inclusionary zoning, responded by encouraging the building of the most apartments of any city in the country, nearly twice as fast as the national average.¹²¹ This change has been largely successful, as Austin's rents have declined by 7% in the past year against a widespread national average of rapid rent increases.¹²² That said, Austin is still near the top of an over decade-long housing price increase and is still pursuing even stronger pro-market policies to help further combat this.^{123 124}

Minneapolis, MN

Minneapolis has more mixed results and policies than the above examples, but it still engages in more widespread local regulatory reform than many Maine cities. Minneapolis has not seen widespread rent decline recently, but their rent has primarily remained stable while other

¹¹⁶

<https://www.colliers.com/en/research/houston/2023-2024-houston-economic-outlook#:~:text=Houston%20was%20recognized%20as%20the,new%20residents%20to%20the%20area>.

¹¹⁷ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3659870

¹¹⁸ <https://kinder.rice.edu/urbanedge/houston-doesnt-have-zoning-there-are-workarounds>

¹¹⁹

<https://www.houstonchronicle.com/news/houston-texas/article/downtown-houston-parking-one-quarter-area-17888647.php>

¹²⁰ <https://www.theatlantic.com/ideas/archive/2024/03/austin-texas-rents-falling-housing/677819/>

¹²¹ Id.

¹²² Id.

¹²³ <https://www.texastribune.org/2024/05/16/austin-lot-size-housing-affordability/>

¹²⁴ <https://www.texastribune.org/2023/09/19/austin-housing-affordability-zoning/>

comparable midwestern cities have seen significant increases.¹²⁵ Between 2017 and 2022, Minneapolis's housing stock went up by 12%, and its rent grew by only 1%, while the rest of Minnesota experienced an average of 4% housing stock growth and 14% rent increase.¹²⁶ As established throughout this report, the best way to combat rising prices and inaccessible housing is to increase housing supply, and these results clearly show that Minneapolis' tripling the state's housing growth rate is directly correlated with avoiding the state's rising cost of housing.

Minneapolis encouraged this increase in housing production by reforming preexisting strict land use regulations. The best examples are removing minimum parking requirements, allowing accessory dwelling units, and lowering minimum lot sizes throughout residential zones. Additionally, the city weakened height restrictions along transit corridors. It also permitted duplexes and triplexes on any residential lot in the town, thus allowing a more significant number of multi-unit properties to be developed in historically low-density neighborhoods.

By reducing the regulatory burden on its housing market, Minneapolis was able to largely avoid the significant wave of increased housing costs that hit the rest of Minnesota and much of the United States. This is a classic example of supply increasing to meet demand and deregulation being an avenue to encourage this economic shift. While Minneapolis served as a great example of housing deregulation for a temporary period, it sadly also serves as an example of the effects that reinstating stricter land use regulations can have.

Over 2023, a significant chill in development occurred in Minneapolis, partially due to the passage of a rent stabilization ordinance that spooked apartment building developers.¹²⁷ Additionally, environmental groups have now issued a successful state lawsuit against Minneapolis's ambitious 2040 plan, meaning that a large amount of the regulatory reforms in the plan are now canceled, and developers are thus abandoning plans to invest in the city's housing market.¹²⁸

Because so many housing developers treat their developments as long-term investments, creating beneficial policies and a stable, soft-regulation environment would encourage housing growth far more effectively than a volatile housing policy. Rent stabilization is undoubtedly a policy that reduces the long-term profitability of any housing development. Still, the injunction against the 2040 plan also caused developers' prospects in the Minneapolis market to disappear. This helps illustrate why long-term deregulatory policy is a better avenue for housing growth than back-and-forth, strict housing regulation.

¹²⁵ <https://onefinaleffort.com/blog/a-detailed-look-at-minneapolis-housing-supply-reforms>

¹²⁶

<https://www.pewtrusts.org/en/research-and-analysis/articles/2024/01/04/minneapolis-land-use-reforms-offer-a-blueprint-for-housing-affordability>

¹²⁷

<https://minnesotareformer.com/2024/01/16/twin-cities-met-new-housing-targets-in-recent-years-but-growth-slowed-in-2023/>

¹²⁸

<https://www.minnpost.com/cityscape/2024/03/former-minneapolis-2040-leader-cynical-use-of-environmental-laws-and-communication-plagued-the-plan/>

Salt Lake City, UT

Between 1985 and 2021, home prices in Utah surged by 90% while average income increased by only 20%.¹²⁹ A recent legislative audit shows that Utah will need to construct 28,000 homes a year to keep up with population growth, let alone improve housing affordability. No place in Utah has this shortage been more acute than Salt Lake City.

In response to this growing problem, Salt Lake City recently adopted an incentive approach to encourage developers to build more affordable housing. The city has varying definitions of affordable housing ranging from 30-100% of the area median income and household sizes of 1-8 people.¹³⁰

Under the new law, zoning regulations have been relaxed, specifically in the case of affordable housing. On a macro level, developers can be qualified to receive incentives such as reduced parking requirements, streamlined planning and approval process, and extra permissible stories, which serve as exceptions to height restrictions.¹³¹

Additional benefits exist within specific zoning areas. Under single-family and two-family zoning districts, developers building affordable housing can build multi-family homes, triplexes and fourplexes, sideways and rowhomes, and cottage developments. In single-family districts, developments can be allowed to construct two-family homes in areas where they are not currently permitted.

In multi-family districts, builders can construct additional stories (~12 ft per story), and density requirements will be removed. The approved rule changes will also permit more types of housing in commercial areas.

Ultimately, these regulatory reforms represent a step in the right direction. However, there is little reason to limit this deregulation to affordable housing. Salt Lake City correctly assumes that deregulation will build more housing. Maine cities should adopt this approach and extend it to its logical conclusion. By implementing zoning reform that affects all developers, Maine can increase its supply of housing to combat its critical shortage.

Local Pro-Housing Policies

As we have seen, many cities nationwide are experimenting with reforming their housing regulations. While some cities are helpful examples, every case is context-dependent. Therefore, it is necessary to examine the local land use policies that would positively impact the housing market and how Maine cities can implement them effectively.

¹²⁹ <https://www.utahfoundation.org/reports/moving-utahns-toward-homeownership/>

¹³⁰ <https://www.slc.gov/planning/2024/04/25/ahi-guide/>

¹³¹ <https://slc-council-affordable-housing-incentives-slcgov.hub.arcgis.com/>

Reduce Zoning Regulations

In Houston and several other cities, removing or weakening zoning regulations was shown to encourage an expansion of housing stock and a reduction in housing prices.¹³² Not only do strict government-mandated zoning regulations decrease the efficiency of town layouts, but they also stop mixed-use development, which allows for more walkable and easily navigable cities. While reducing the burden on the housing market should be local regulators' top priority, it should be noted for those with environmental concerns that more walkable cities resulting from flexible mixed-use zoning will likely reduce commute-related emissions in the long term, as will increase the number of people able to live near their place of work.

Empowering local landowners to restrict uses through private agreements is a far more efficient way to prevent noise pollution or other incompatible uses than cumbersome government mandates. This is especially true when variances in government-mandated land use restrictions require permission from local appeal boards. This makes regulatory outcomes unreliable and requires extra action by developers, further chilling local investment. No investor in housing prefers a risky investment to an otherwise identical, reliable one.

More flexible multi-use-based zoning makes cities more walkable, affordable, and accessible. This is why so many student housing designers, in particular, often use a building model with first-level stores and offices and then around three levels of apartments above.¹³³ Because college students are less likely to express NIMBY-style opposition to local housing growth and improvement, these far more efficient forms of housing are evidence of what should be pursued in a more widespread capacity in Maine.

Eliminate Rent Control, Short-term Rental Restrictions, and Inclusionary Zoning

While most of these categories involve specific policies, this recommendation instead calls for the elimination of certain regulations. One commonality that rent control, short-term rent restrictions, and inclusionary zoning all share is that they inherently assume that the market is at fault for rising rents throughout the country. This assumption is incorrect, as it is truly regulation that is burdening the housing market.

Each of these policies further limits the rental market, restricting supply by mandating lower rents. Still, all these policies do is increase the cost of creating new housing, which discourages potential developers from investing in new development. If housing availability and affordability are

¹³²

<https://www.pewtrusts.org/en/research-and-analysis/articles/2024/01/22/how-restrictive-zoning-in-virginia-has-hurt-housing-affordability#:~:text=Research%20has%20found%20that%20cities,jobs%2C%20and%20opportunities%20these%20communities>

¹³³ <https://warrington.ufl.edu/due-diligence/2022/03/17/retail-under-apartments/>

problematic, the government should encourage housing creation rather than discourage it via rent restrictions.

Rent control, in particular, has been shown to cause renters to behave like homeowners, causing them to develop similar NIMBY-style opposition to local development.¹³⁴ This is mainly due to the vesting of continuous profit the renters of rent-control apartments receive compared to an identical apartment rented at market rate. A typical renter's rent goes down when competition enters the market. A rent-controlled apartment does not. Because quantity inversely affects price, most renters should be encouraged to support new local housing development.

Absent rent control, renters have a significant incentive to encourage local housing growth, which is likely to reduce or stabilize the rent cost. However, rent control avoids this, so it removes substantial YIMBY incentives among renters.

Inclusive zoning will logically create the same effects, potentially leading to a vicious anti-development cycle where even renters support NIMBYism. Inclusive zoning is comparable to rent control in its impact on the behavior of renters and landlords. While most renters still living in market-rate apartments will want to reduce the cost of rent, affordable housing renters supported by an inclusive zoning program will have the opposite incentive. The best way to avoid this is to keep the market incentives applying to renters by avoiding rent control and inclusive zoning policies. Otherwise, the political and economic damage might become irreversible due to the feedback loop this may cause on local politics and, thus, policy.

Improve Transparency and Simplicity of Local Regulations

One of the simplest things pro-growth cities can do to attract developers is to make it easy for them to navigate and understand the local regulatory scheme. This applies to Maine-located YIMBY cities like Auburn and cities outside Maine, such as Houston. Houston's local code is likely attractive to developers because it lacks the complex additional dimension of zoning policies, which means that developing in one part of the city is essentially the same as developing anywhere else within city limits.

However, municipalities don't have to remove all zones in their city to increase their regulatory transparency. A way to increase accessibility is simply reforming land use codes and improving online databases. Portland's shortening of its code will undoubtedly reduce the [difficulty of its navigation](#), though its various concurrent anti-market policies will likely undermine its benefits. Auburn's [easy-to-navigate code and zoning map](#) similarly avoid massive policy revamps while increasing the general public's ease of navigating their local land use rules.¹³⁵

¹³⁴

https://bpb-us-e1.wpmucdn.com/sites.dartmouth.edu/dist/6/2312/files/2021/03/Rise_of_Homevoters_Fischel_Nov2016.pdf

¹³⁵ <https://auburnme.maps.arcgis.com/apps/webappviewer/index.html?id=27c0920863174d74813240046905c655>

Repeal Green New Deal and Other Energy Efficiency Construction Requirements

Green energy mandates for building methods and materials may sound like they reduce homeowners' costs, but instead, they make costs more frontloaded. By frontloading expenses, these policies make housing less affordable and thus further discourage the building of housing that middle and lower-income earners can afford. Since Portland passed its Green New Deal, residential construction permits went down 82%.¹³⁶ While some of this may have been from the jump of construction applications immediately before the deadline to be grandfathered for exception to the new policy, 82% is a massive collapse, and it seems that many NIMBY groups are aware of these effects.

Portland's Green New Deal included energy efficiency mandates and inclusionary zoning expansion, likely because its supporters were aware of the chilling effect both policies would have on housing development. The fact that these two policies were married together in one proposal should not be ignored because they were likely both proposed with the same intention: reducing housing growth.

Suppose one aims to promote a local housing policy that reduces emissions. In that case, one should instead support weakening density regulations and height restrictions, both local policies that force greater travel emissions and less efficient city layouts. This will do far more to reduce emissions than policies like the Green New Deal, which will instead force outward sprawl and reduce housing availability.

Instead, Portland instituted a policy that would reduce density and thus walkability and frontloaded more costs for developers and buyers of homes. It may not be immediately apparent why frontloading costs are worse for lower-income buyers, but comparing this to other purchases highlights the actual effect. While paying for a car upfront is technically cheaper than a payment plan, only higher-income buyers can afford that option. A 15-year mortgage saves thousands of dollars versus a 30-year mortgage, but working-class homeowners often can't afford the increased payments.

While increased energy utility costs over time increase the total cost of owning a home, the cost is like a payment plan or a mortgage: it is paid over an extended period. Meanwhile, the upfront cost of more expensive building materials and processes is borne immediately by the developer and buyer in the form of inflated home prices. Mortgages increase these costs over an extended period, impacting a home's price in the long run. The higher a home's price is, the less likely someone will be able to afford the monthly mortgage payments. Again and again, the frontloaded cost of energy-saving housing mandates makes it harder for lower-income earners to afford a home.

¹³⁶ <https://www.mainebiz.biz/article/residential-construction-permits-in-portland-down-82-since-green-new-deal>

State Pro-Housing Policies

Many state-level policies encourage housing affordability and availability. The general theme of pro-housing policies is that they create incentives for the market to invest in housing rather than reducing those incentives, like inclusive zoning and rent control do. One way to create these incentives is to reduce the frontloaded cost of building housing, and another way to do this is to increase the reliability or amount of return on investment.

It should be noted that Maine Policy's stance is that housing policy is best handled locally due to the fluctuations and differences between different housing markets and the ability of local governments to better respond to local problems. State and especially national housing policy can frequently result in a widespread cookie-cutter result. Failing to adapt to local markets and issues can fail to assist localities with the greatest needs for housing reform.

That being said, local governments legally exist as extensions of the states, which means they must operate in the markets and systems the states establish. Thus, states can still design regulatory systems to encourage better development of the healthy housing market and support local governments attempting to do the same. LD 2003, a bill passed in 2022, clearly had this goal in mind.¹³⁷ Whether or not it adequately does so, it is encouraging that Maine is already attempting to lift regulatory barriers from the housing market.

When a state-level mandate like this attempts to force municipalities to participate rather than incentivize participation, local governments will inevitably try to circumvent state law. Revenue sharing, for instance, is a policy tool that Maine has used in the past but has not employed in housing policy reform.

Exempting Construction Materials from the Sales Tax

Removing frontloaded costs is the easiest way to react at the state level. While Maine does not tax labor related to construction, about half of the cost of housing construction is typically materials, which are covered by state sales tax. Maine's sales tax is above 5%, and this includes construction materials. Therefore, whenever new housing construction is built, a 5.5% tax is levied on half of the overall costs, making the effective tax on housing construction over 2.5%. This may seem like a small number, but not so when one is talking about housing that costs hundreds of thousands of dollars to build.

Stricter building standards also add to these upfront costs, but the easiest way to reduce this barrier is to exempt construction materials from the state sales tax. While opponents of this proposal might

¹³⁷

https://www.maine.gov/decd/sites/maine.gov.decd/files/inline-files/DECD_LD%202003_digital-%20Feb%202023%20update%20website_0.pdf

argue that the state would lose revenue, a better way to think of this policy is as an investment of that revenue back into the housing market.

Maine is clearly willing to spend money to support affordable housing solutions, so simply not taking that money in the first place would not only be more effective but also allow the market to invest in providing housing throughout the state. Maine already exempts limited kinds of low-income housing from the state sales tax, along with a long list of other categories.¹³⁸ It seems logical that if exempting groceries will increase their accessibility to Mainers of all income levels, the same will apply to housing.

By-right Development

It can be challenging for states to directly create more substantial long-term incentives for housing investment, as those incentives are often tied to multiple changing variables and even the long-term attractiveness of living in the state. However, it is likely that disincentivizing anti-market local policies in some way, such as revenue sharing, would discourage municipalities from employing these types of policies in the future. It is clear that in recent years, people have wanted to move to Maine, and many have, but enormous upfront costs and local policies have likely been the most significant barriers to market supply shifts.¹³⁹

Maine should embrace a by-right development approach to incentivize and expedite housing construction. Most states exist on a spectrum between by-right development and discretionary development. Maine heavily leans towards the latter category. In practice, this means that housing projects are not only subject to existing regulations, but their approval is subject to local discretion.¹⁴⁰ Thus, localities can add additional burdens onto developers specific to individual projects.

Not only does this delay the construction of new housing, but it also disincentivizes developers from building in areas that engage in these restrictions. At best, this creates delays, and at worst, discretionary approval creates fundamental uncertainty over whether a project will receive approval even if it meets all standard regulatory requirements.

By contrast, by-right development allows for more stability in the construction process. The approval of new housing projects becomes a simple administrative procedure rather than a bureaucratic normative debate. In 2019, Oregon, facing a housing shortage, passed legislation allowing for developers to build fourplexes via by-right development.¹⁴¹ Beyond implementing by-right development across the board, there is also a case to be made that discretionary development could still be necessary on large-scale projects, but at the very least, reducing the

¹³⁸ <https://www.maine.gov/future/sites/maine.gov.revenue/files/inline-files/BusinessGuide2020.pdf>

¹³⁹ <https://taxfoundation.org/data/all/state/state-population-change-2023/>

¹⁴⁰

https://housingtoolkit.nmhc.org/wp-content/uploads/2019/04/F2_NMHC_PDF-Sections_Tools_By-Right-Dev_PG-6-3-TO-73.pdf

¹⁴¹ https://www.oregon.gov/lcd/Housing/Documents/HB2001_Hist_Resources_Guidance.pdf

practice should be a priority for Maine and other states. Ultimately, by eliminating or reducing discretionary approval, Maine can expedite, expand, and stabilize the process of constructing new housing.

Third-Party Permitting

Some states are experimenting with a “third-party permitting” policy to encourage new housing development. This process operates quite differently from traditional land development and aims to increase permitting efficiency. Many supporting this reform make an incentive-based argument similar to those supporting school choice. When you create a competitive system with customers, you encourage the process to increase in efficiency over time, as opposed to government bureaucracy, which has no such incentive.

Third-party permitting as a policy is specifically referring to building permits. Typically, the local building authority, a subsidiary of the town or city, reviews and approves permit applications to develop housing or other buildings. This creates a government bureaucracy at the local level, which, as discussed above, has little incentive to optimize their permitting process. Third-party permitting, however, has the local government stepping back and allowing private parties to license developers.

However, this would not mean a laissez-faire, unregulated mess of unchecked third-party permitters. Instead, this process would involve the local government licensing and approving third-party permitters to do business, allowing them to operate in the town somewhat independently but still with government oversight. Since multiple third-party permitters will be in the same place, the ones that are more efficient and faster in their permitting process will have more business. Meanwhile, local governments will still regulate them to ensure permitters don't drop below safe and reasonable standards.

Other benefits include specialization, flexibility, reduced government burden, transparency, and innovation. Different permitters could specialize in specific project types and even advise developers. Privatizing most permitting would reduce local spending, allowing local resources to flow toward other priorities or decrease local tax burdens. This would also enable double transparency to the government and private stakeholders, ensuring unfair permitting behavior has more vigorous checks.

While third-party permitting might seem like a niche issue, it is essential to remember that housing developers must approve their permits before building. Thus, permitting policy reform is one of the most effective ways to improve the housing market in Maine. This could be done at the state or local level, either through local authorities stepping back and providing support and structure for local private permitters or the state government providing a loose framework for local governments to implement themselves by opting into it.

In 2023, Texas and New Jersey passed legislation ensuring that builders facing slow review processes can go to third-party reviewers to expedite the process.^{142 143} Other cities have allowed developers to hire third parties (private companies or other cities) to ease their workload. Allowing private companies to reduce the permitting workload at the builders' expense is a common-sense measure that would expedite housing construction. Some of these bills are more limited than blanket allowances of third-party permitting, specifically allowing the process as an alternative in emergencies or at other times when housing demand is high.¹⁴⁴

Housing or Land Use Appeals Board

In addition to burdensome delays, the appeals process can significantly disrupt construction. Creating a statewide board specifically to address housing concerns would ensure that appealed cases can be swiftly resolved and either approved or rejected. This policy was adopted by New Hampshire in 2023, and all pending cases filed after January 1st, 2024, were referred to a three-person board.¹⁴⁵

If adopted in Maine, a land use appeals board would allow appeals to be expedited, creating more certainty and efficiency for developers and improving the rate of housing construction. While this might at first be seen as taking power from local governments, this would simply create a more streamlined and efficient appeals process compared to the current one. Currently, when a planning board denies subdivisions or site plans, employs divisive land use controls, or denies variances, the only effective avenues in Maine are to appeal to a local appeals board or a Maine state court.^{146 147}

The first of these options is flawed because the appeals board is established by the same locality as the planning board, and for smaller towns, this option may not even exist. The second option is not great either, as courts are often ill-equipped to delve into the complex world of land use regulation. Even if they are, court costs to appeal a land use decision become a significant barrier to changing local land use policy, a fact of which local planning boards are no doubt aware. Court cases are well known for taking long periods of time as well, and providing a way to avoid this excessive time and money-consuming avenue would certainly improve Maine's land use regulations.

¹⁴²

<https://re-nj.com/murphy-signs-bill-to-allow-third-party-code-inspections-drawing-cheers-from-real-estate-industry/#:~:text=By%20Joshua%20Burd-,Gov.,days%20of%20a%20requested%20date.>

¹⁴³

<https://www.jdsupra.com/legalnews/2023-texas-legislative-update-issues-5425059/#:~:text=2023%20Texas%20Legislative%20Update%3A%20Issues%20Affecting%20Real%20Estate%20Entitlement%20and%20Development,-Mark%20Grobmyer%2C%20Will&text=HB%2014%20adds%20a%20new,applications%2C%20as%20well%20as%20improvements.>

¹⁴⁴

<https://www.texansforreasonablesolutions.org/tfrsinthepress/governor-abbott-signs-hb-14-into-lawstreamlining-the-residential-permitting-process-by-allowing-private-third-party-reviewers>

¹⁴⁵ <https://www.hab.nh.gov/>

¹⁴⁶

<https://legislature.maine.gov/statutes/30-A/title30-Asec2691.html#:~:text=Any%20party%20may%20take%20an,%20of%20Civil%20Procedure%2C%20Rule%2080B.>

¹⁴⁷ <https://legislature.maine.gov/statutes/30-a/title30-Asec4482-A.html>

This policy proposal creates a state-level planning board specializing in zoning, land use, and housing appeals. This will increase the accountability of local regulators, reduce the individual and state cost of land use trials, and make the process faster and more efficient. Thus, the only power this would extend to the state government would be the power to review local actions more efficiently, making this both a pro-market and pro-efficiency policy.

Specific and Objective Zoning Criteria

Across the United States, many housing regulatory criteria are subject to discretionary approval from councils or administrative staff. As a result, there is ambiguity regarding what exact projects can qualify, and this uncertainty intuitively hurts housing construction.¹⁴⁸ Furthermore, local discretionary approval beyond legally outlined criteria has allowed NIMBY movements to derail local housing construction, contributing to the nationwide housing shortage. One of the possible solutions to this problem is requiring “specific and objective” zoning criteria to obtain permits. If enacted, “specific and objective” criteria will involve less administrative discretion and expedite approval. The presence of “specific and objective” criteria would also make the appeals process smoother, as interpretative differences will matter less.

In 2023, Rhode Island passed several laws requiring “specific and objective” criteria for a variety of zoning permits.¹⁴⁹ Additionally, the laws streamlined the approval process, turning it into a two-step rather than a three-step process. Furthermore, the reforms clarified and provided more detail on the criteria for approving and rejecting local projects. Similarly, Washington state cracked down on aesthetic standards and mandated “clear and objective” standards for exterior design, among other reforms designed to boost the rate of housing construction.¹⁵⁰

If Maine municipalities embrace this approach, obtaining approval for construction will be expedited and less costly. The process would become more transparent, approval would become more predictable, and developers would be more incentivized to engage in housing projects. Establishing this “clear and objective” standard is not necessarily a call for deregulation or otherwise disregarding restrictions municipalities believe are essential. However, it is a call for transparency. As much as possible, regulations should be drafted to make it apparent to those who need to follow the rules and what can be approved. Ultimately, by embracing this regulatory approach, Maine would promote transparency, expedite the zoning approval process, reduce costs, and increase housing construction.

¹⁴⁸ <https://www.mercatus.org/research/policy-briefs/housing-reform-options-2025>

¹⁴⁹ <https://www.psh.com/new-ri-legislation-to-significantly-change-land-use-law-and-development-process/>

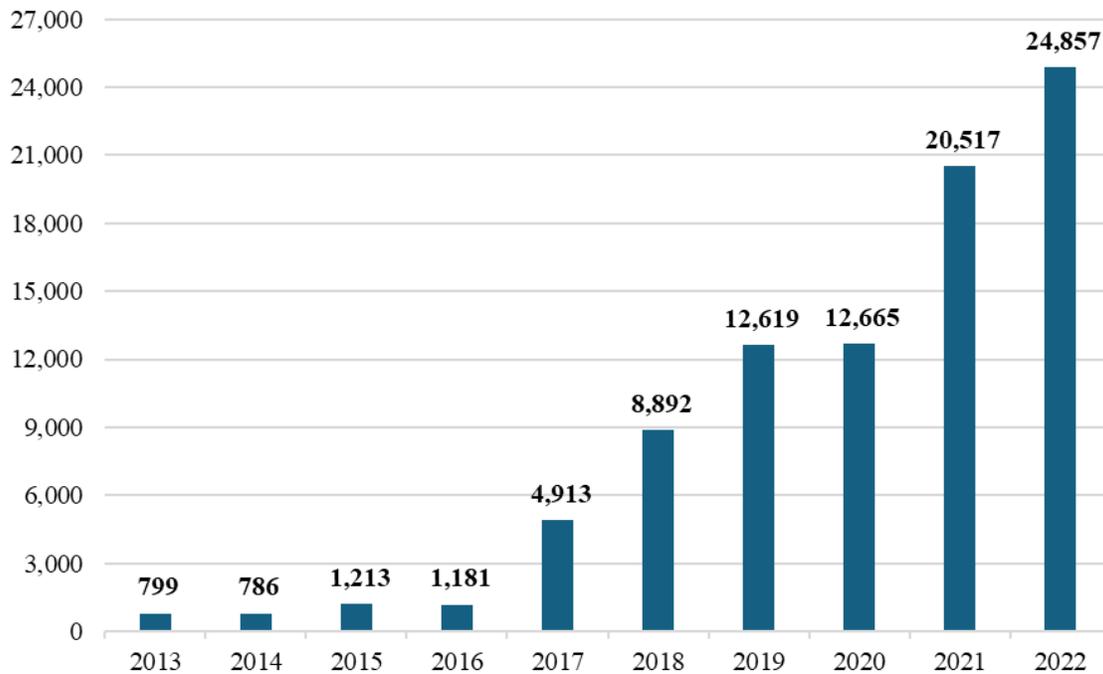
¹⁵⁰ <https://mrsc.org/stay-informed/mrsc-insight/july-2023/major-changes-to-washington-housing-laws>

Expanding Access to Accessory Dwelling Units

Accessory dwelling units (ADUs) are secondary houses or apartment buildings that share the same lot as a larger primary home. As the housing crisis continues to worsen, increasing the construction of ADUs represents a low-cost, mutually beneficial opportunity for both homeowners and renters.

In 2016, California passed legislation to “give property owners the ability to add ADUs to their property as a matter of right, removing all zoning barriers for conversions of existing spaces (obstacles included requirements on parking, lot size, open space, and density) and moving these units straight to building permit with a short local approval deadline.”¹⁵¹ The law went into effect in 2017.

Accessory Dwelling Unit Permits in California by Year



As seen in the graph above, implementing these deregulatory measures coincided with a dramatic increase in the number of permits for ADUs. Notably, the number of ADU permits in 2022 exceeded the combined annual total of single-family attached homes, two-to-four-unit multifamily buildings, and manufactured housing permits. For further context, ADUs are usually constructed by single owners with minimum home-building experience instead of the professional owners and developers traditionally associated with other housing categories.

¹⁵¹

https://www.urban.org/sites/default/files/2024-04/Final_To_Increase_the_Housing_Supply_Focus_on_ADU_Financing

ADUs have been particularly impactful for low-income residents. In 2018, ADUs comprised 14% of all low-income housing in California. By 2022, this number rose to 28%. This speaks to the utility of ADUs and the broader housing crisis facing California and other states.

As of the enactment of LD 2003, Maine has given its residents significant liberty to construct ADUs on the lots of many single-family homes. However, localities can go further. LD 2003 does not require localities to protect the rights of multi-family residents to build ADUs (neither does it restrict it). Localities should take measures to expedite ADU permitting approval and allow homeowners of all stripes to partake in ADU construction on their own property.

Increasing Access to Manufactured Homes

In recent years, the number of Americans purchasing manufactured homes has increased. Manufactured homes are defined by Maine statute as “a structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its chassis or an independent chassis, to a building site.”¹⁵² This growing popularity can be attributed to their far cheaper price when compared to standard homes. In 2021, the average per square foot of a manufactured home was \$72 compared to \$144 for on-site homes.¹⁵³

Although there are some downsides to manufactured homes, such as asset depreciation, shorter lifespan, and a more complicated financial process, Maine would substantially benefit from ensuring its residents can purchase manufactured homes if they choose. From a regulatory perspective, statewide legislation was passed in March of 2024 stating that manufactured homes would be treated the same as single-family homes.¹⁵⁴ This is a vital step in the right direction, but municipalities could go further by creating environments allowing this cheaper option to be fostered.

Municipalities can either permit or disallow manufactured home parks through their zoning laws. These parks consist of moderately dense communities of manufactured homes that provide cheap housing in a small space. Ultimately, municipalities, particularly those facing acute shortages, can incorporate this type of housing to provide affordable, quality housing to their residents.

¹⁵² Title 30-A, §4358: Regulation of manufactured housing

¹⁵³ <https://www.urban.org/research/publication/role-manufactured-housing-increasing-supply-affordable-housing>

¹⁵⁴ <https://legislature.maine.gov/backend/App/services/getDocument.aspx?documentId=106244>

CONCLUSION

Maine is facing a major housing crisis, and many policymakers are responding to the problem created by troublesome regulations by doubling down on housing regulation. As long as this approach serves as policymakers' response to high housing costs, we will continue to see the unaffordability feedback loop worsen. The reality is that the best examples of cities and states combating their housing crisis are those that work toward deregulation rather than more regulation. Maine is now at a crossroads where it can become more expensive, like many cities in California, or it can decide to increase affordability by reducing regulatory burdens, such as in Austin, Texas, Minneapolis, Minnesota or Salt Lake City, Utah.

This report does not conclude that Maine should have no housing regulations whatsoever. However, in the past few years, policymakers have been increasing the number of housing regulations, especially in many of Maine's larger cities. It is no coincidence that this was simultaneous to one of the larger drops in housing affordability and availability. However, if Maine does its best to remove regulatory barriers to housing production, the market will respond quickly by increasing housing supply to meet demand better. Many other states – red, blue, or purple – have already done this effectively.

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