



**Testimony in Support of LD 2003**  
Joint Standing Committee on Labor and Housing

Senator Daughtry, Representative Sylvester, and Members of the Committee on Labor and Housing,

My name is Eamonn Dundon, and I am the Director of Advocacy at the Portland Regional Chamber of Commerce. We represent 1,300 businesses in our region who employ over 65,000 Mainers. I am here today to express our organization's strongest support for the bold, necessary and past-due proposals in LD 2003.

Our organization closely followed and provided extensive testimony to the Commission to Increase Housing Opportunities in Maine by Studying Land Use and Zoning Restrictions. We were encouraged by the bipartisan support for the commission, the relative consensus from a wide variety of voices on the commission, and the bipartisan sponsorship of this bill. We hope these recommendations are considered by your committee and the full Legislature with a similar understanding that housing and land use are inherently non-partisan issues that deserve sober, fact-based analysis. It is rare for a bill of this magnitude to have such a solid rationale in both progressive and conservative ideological frameworks, and that is why we expect it will be easy for you to find consensus to support these recommendations.

We focus our advocacy efforts on three related policy areas: workforce development, affordable housing, and public transportation. We are the state's largest local chamber of commerce embracing and advocating for policies that benefit everyone in Maine.

As has become glaringly apparent in the era of COVID-19, Maine is woefully short in the creation and preservation of affordable housing. **Consistently, we hear from our members that the single largest impediment to economic growth and workforce development is the shortage of affordable, safe, and convenient housing in proximity to good-paying jobs, transportation, schools and community amenities.** With current increased labor shortages leading to supply chain challenges and inflation, it has never been more important to create more housing. For too long our municipal regulatory structures of land use and zoning restrictions have held back much needed housing production. The suite of initiatives proposed in this bill would allow our state to **unleash public and private capital** to get to work building housing without undue regulatory barriers and red tape.

Our support for these initiatives is based in the following truths:

- 1. The zoning status quo deprives Mainers of their property rights and basic freedoms.** Currently, individuals are arbitrarily limited in their ability to do what they wish with their land by municipal ordinances that regulate everything from the number of units and parking spaces on a lot, to setbacks, height and other dimensional standards. Zoning was initially established in the early 20<sup>th</sup> Century to control issues around industrial uses and their impacts on residential and commercial uses. Since the Supreme Court's decision in *Euclid* in 1926, municipalities have been empowered to impede on property rights through municipal ordinances that are virtually unlimited in their police powers to limit an individual's rights. There exists a rational basis for many sensible components of zoning that address design, utility access, and life safety issues, but the state should be empowered to significantly limit what areas of property rights a municipality can restrict.

2. **The zoning status quo limits the ability of people to be economically independent and successful by restricting the ability of individuals to move to places with higher-paying jobs.** We are seeing massive workforce shortages in our state, specifically in areas with large employers, like Greater Portland, and seasonal destinations like Acadia, Moosehead, and our ski resorts. Unfortunately, the biggest limiting factor in finding qualified individuals to fill these high-paying jobs is a lack of housing. If people cannot move to economically prosperous areas, they will be locked into lower-paying jobs or unemployment in less economically viable areas, increasing dependency on government assistance and reducing the ability of our state to grow economically.
3. **The zoning status quo is regressive, with the biggest burden being felt by those at the bottom of the income scale.** The current system only favors landlords and incumbent property owners. Because supply is so constrained housing cost inflation is rising at a rapid clip which enriches the incumbents while making housing security further out of reach for low-income individuals. As supply becomes more constrained, lower-income individuals are forced out of the market by those with greater wealth.
4. **The zoning status quo inhibits the state's ability to address our climate goals.** As increasingly desirable communities like those in Greater Portland make it harder to build new housing, housing gets pushed further out into the suburbs and exurbs, increasing commutes via personal vehicles and eating up swaths of existing farmland, open space, and forests. Allowing denser housing proximate to work, school, and other community amenities decreases vehicle miles traveled, increases pedestrian and bike trips, and preserves valuable open space in more rural areas.

### **The Case for Pre-Emption**

Before we get into our support for specific provisions in the bill, it is important to establish why the state has an interest in playing a larger role in zoning and land use, which have typically been delegated solely to municipalities with few exceptions. As you know, Maine has a long history of home rule and that is an asset to community's agency over the execution of their local priorities. So, why shake that up and insert the state in a policy realm that municipalities have long had free reign? Simply put, because municipalities have failed to create an environment for property owners to use their property as they see fit to meet the market demands for more housing. **In no other area of policy would the state tolerate the level of historic inaction and free market manipulation that has led us to the crisis we now find the availability of affordable housing in.**

The status quo is enabling municipalities to internalize discussions which have inherent external interested parties. When we place all the decision-making power around land use and zoning in the hands of people who already live in a community, we are necessarily excluding the input and interest of those who would like to move to that community but can't because they cannot afford to live there. This leads to local officials who only have an interest in listening to local concerns, ignoring the negative externalities their decisions may have on issues of state interest like economic growth, climate mitigation, and racial equity.

Right now in Maine, discussions about the creation of affordable housing happen almost exclusively around single projects in different communities. Groups like employers, state and federal policy makers, and renters all have an interest in expanding the supply of housing, but when the decisions necessary to make that happen are cordoned off into one-off community-specific projects, they don't have the opportunity to participate, ceding the public involvement almost exclusively to NIMBY homeowners who carry great influence with town and city councils. Because these excluded groups do not have a way to be at the table, local land use restrictions have been enacted that directly undermine economic mobility and growth, to the detriment of the state as a whole. Attend any planning board or city council meeting in the state when a

housing project is up for review, and you will quickly see that the folks in the room invariably have more privilege, wealth and influence than anyone who might someday want to live in said housing development. The most recent example was in Cape Elizabeth where a handful of residents stifled a high-quality affordable housing proposal within walking distance of the town's school. The lack of affordable housing there makes the town a virtual gated community.

To combat this dynamic that has played out routinely in Maine communities, it is now necessary to scale up the conversation and discuss reform at the state-wide level where more representative voices can be involved in making substantive change. Local communities may well think that they are making substantive positive change on this issue in their own way, but if we zoom out to the state level it is demonstrably clear that is not the case. Given the number of municipalities in the State of Maine, trying to reform zoning and land use regulations at the local level will only be accomplished slowly over decades, and the result will be one in which regulations vary widely from community to community.

### **Specific Provisions**

We are in strong support of all the recommendations in LD 2003. The commission worked hard to define a comprehensive and complimentary suite of tools to accomplish our state's housing goals. With that said, we would like to speak specifically to sections 5, 6, 7, 10, and 15 of the bill.

- 1. Section 7, Technical Assistance:** The first step in partnering with municipalities to tackle zoning and land use restrictions centers on data and information. We realize that many municipalities have limited resources to undertake complex analysis and action on zoning and land use reform, so the state should step in to provide the resources necessary for communities to understand the problem and get to work on imagining solutions unique to that community.

Many of the proposed recommendations in the bill are of little to no cost to either the state or municipalities. They merely propose to eliminate long standing regulatory barriers to housing development, increased density, and sustainable smart growth. To do it right though, many of these changes will require technical work and community engagement at the municipal level — that will come at a cost. For that reason, we are incredibly supportive of the commission's recommendations to increase technical assistance and incentives to municipalities to fund the completion of this work, and we are glad that Speaker Fecteau has included robust assistance and incentive funds in his bill, totaling approximately \$4.5MM.

- 2. Sections 5-6, Growth Caps:** Current state law places artificial caps on the production of housing through the growth permit scheme enabled by statute and employed by several communities in Maine. Repealing this enabling language and enacting a prohibition on growth caps is incredibly important in the context of the other recommendations in this bill. Any meaningful progress made on decreasing regulatory barriers to housing production would be for naught if municipalities are enabled to continue limiting housing production in this manner.

The Town of Scarborough [recently](#) enacted a growth management ordinance, which led to a new cap of 144 units annually. This is both nowhere near the demand in that specific community nor the underlying regional and state demand necessary to meet our shared housing needs. Comments from municipal officials included statements like, “we need to slow the curve of housing production” or “it will help us flatten the curve”, using language more apt for fighting a pandemic like COVID-19, than combating the housing production that our state so desperately needs.

This rhetoric is coming from a community that very clearly has interest from housing providers who want to build a range of housing—market rate, workforce, low-income—that would easily be absorbed by the growing demand. The Downs project in Scarborough is a perfect example of what thoughtful investment in housing can look like. It incorporates a mix of uses from office, to light industrial, apartments, and single-family houses that will create a walkable town center in a historically auto-centric town, but none of that is possible if local regulations continue to insist on artificial caps on housing.

In the Town of Falmouth, [similar conversations](#) about growth caps are playing out. Their growth ordinance was created in 2000 with an annual cap of 100 homes, which has since been lowered to a paltry 65, moving in the wrong direction at a time of unprecedented demand. Over the last few years there has been considerable demand for these permits, which ran out in 2018, 2020, and 2021. Instead of recognizing that the cap is undermining the fundamentals of the free market, the town is hemming and hawing about simply “borrowing” permits from future years when the real solution is to abolish the cap.

- 3. Section 10, Single Family Zoning:** One of the keys to Maine getting land use and zoning reform right, is to make sure that the benefits of increased housing development are spread evenly across the state. Will this look like four and five story apartment buildings in every town in the state? No, but it could look like incremental density increases across a broad swath of Maine neighborhoods that broadly resemble the type of modest, multi-family living that was commonplace in earlier eras of Maine’s towns and cities before restrictive zoning measures were put in place. By simply allowing the by-right construction of fourplexes on all parcels with sewer and water connections, we can dramatically lower the entry cost to housing.

Historically, Maine and other New England states have developed around dense and walkable town and village centers that featured all sorts of housing options, from single family homes, to rowhouses, to 2–4-unit apartment buildings, and finally much larger multi-family developments. From Portland’s Old Port to the small fishing communities that dot our coast and the mill towns along the rivers of our interior, dense and walkable urban clusters evoke positive feelings from many and reflect some of the most economically dynamic periods of our state’s history. This is no accident. The Biddefords, Portlands, Stoningtons, Augustas, Bangors, and Lewistons of yesteryear allowed workers and families to be near jobs, schools, and small businesses. These cities were built incrementally over time by carpenters, mariners, and other lay people who were allowed to expand housing units on their property little by little. Unfortunately, we’ve moved away from that with the advent of single-family housing that pushes new development further afield from places they want to be, with more reliance on personal automobiles, and, most importantly, much higher costs for housing. Why would we want to accept that raw deal we have rationalized ourselves into over the last 70 years?

Many states have recently tackled legislation to broadly legalize fourplex developments. Most notably, Oregon passed HB 2001, which requires municipalities with over 10,000 people to allow duplexes in areas zoned for single-family homes, and municipalities with over 25,000 people to allow fourplexes in zones previously reserved for single family homes.

The Oregon proposal [was supported by a broad range of organizations](#), including the AARP of Oregon, who argued it would make it easier for people to age in place; transportation advocates who argued it will let more people live near good transit and walkable neighborhoods; the NAACP who argued it will reverse many of the racist policies zoning was created to enact; climate groups

who said densifying housing will help address climate change; and public school advocates who see it as a key way to address school segregation.

Following passage of HB 2001 in Oregon in 2019, similar proposals have been brought forward in several states, including our neighbors in northern New England. In New Hampshire [HB 341](#), proposed in last year's session, would allow four units of housing by-right on any residentially zoned lot with municipal water and sewer. The bill's sponsor [notes](#) that the four unit number works well with lending guidelines for conventional mortgages from FHA, the VA, Freddie Mac, and Fannie Mae, dramatically lowering the barriers to entry for real estate development.

In Vermont, Republican Governor Phil Scott signed legislation that also encourages this type of "middle" 2-4-unit housing. [Act 179](#) bans zoning laws that set minimum lot sizes greater than 1/8<sup>th</sup> of an acre, while also allowing duplexes and accessory dwelling units to be built by-right. Additionally, it requires all municipalities that currently allow some form of multi-family housing to allow residential dwellings up to four units on parcels with water and sewer connections.

Section 10 of the legislation before you represents a step that is deferential to municipalities, while making the state's preference for growth and new housing a required consideration as they debate their local codes. Under the proposed language, municipalities will still have significant control over height, size, and aesthetics of new housing, which, from our observations in Southern Maine are often the most sensitive components of the planning process. Notably, this law would not eliminate single family homes, it would simply allow other types of homes to be built in areas that have traditionally been off limits to those who could not afford to, or simply preferred not to, live in the post WWII phenomenon of a single family detached home.

In making these type of minor up-zoning amendments to the land use code, entire neighborhoods are not razed overnight. When we act simultaneously to broadly up-zone our entire state, development naturally gets interspersed into more neighborhoods in an incremental fashion, reducing the pace of rapid change in the select neighborhoods where multi-family development is already allowed, broadening both where new tenants and homebuyers can live, and lowering the barriers to who can build new housing. Maine should seriously consider the important benefits a statewide mandate would provide for these types of incremental, neighborhood scale middle housing projects that were the hallmark of urban development before the advent of restrictive single-family zoning. There is no doubt that a move such as the ones proposed here or in New Hampshire and passed in Vermont and Oregon represent a paradigm shift in the state's role in zoning and land-use, but the state's overriding interests in economic growth, promoting housing affordability, and enhancing property rights call out for such bold action.

- 4. Section 15, Appropriations & Allocations:** We are fully supportive of the \$4.5MM contemplated in this bill to assist municipalities with incentives and technical assistance. We are also encouraged to see that the Governor has devoted \$3MM towards these initiatives in her supplemental budget proposal. We testified before the Committee on Appropriations and Financial Affairs in support of increasing the amount in the proposed supplemental from \$3MM to \$4.5MM, and we request that this committee advocate for the same in budget negotiations.

The state has a role to play in directly subsidizing the creation of affordable housing, but these initiatives allow meaningful expansion of housing opportunity without the immense costs associated with direct subsidy. Zoning and land use restrictions place enormous burdens on housing development that drive up costs, but with the stroke of a pen many of those restrictions can be limited, unleashing the potential for tens of thousands of newly feasible housing units around the

state with only a modest general fund expenditure. Please do not forgo this opportunity to leverage this modest amount of state funds for immense investment of private capital in pursuit of our state's housing goals.