

Policy Brief: Promoting Housing Construction Through Local Zoning Preemption and Development Incentives– Overview of Statewide Initiatives and a Review of Recent Literature.

Most states have been experiencing increased housing prices and less new construction in recent years. To deal with this, many policymakers are promoting land-use regulation changes, either statewide or at the local level, to incentivize construction and grow affordable housing stock. California, Oregon, Maine, Florida, as well as several cities throughout the country have passed laws that preempt local zoning. More states, like Minnesota, are trying to do the same. The review of recent research of zoning policies throughout the country seeks to determine whether preemptive zoning led to more affordable housing in areas where reform was implemented.

The research shows that stricter zoning regulations are associated with less construction and higher housing prices. Relaxing those regulations, or upzoning, does not necessarily produce the reverse results at the desired pace. Improvements to housing stock and affordability occur in limited settings. This implies that zoning reform is a partial, potential solution to affordable housing issues. The Commission will continue to monitor this topic and any research in the future as the impacts of reforms become more discernible. In addition to the literature review, this brief provides an overview of preemptive zoning initiatives in other states. It will focus on Florida's newly passed Live Local Act, which provided large incentives as well as preemptive zoning measures.

Literature Review of Recent Locality Case Studies– Does Zoning Reform Lead to Increased Construction of Affordable Housing?

Key Takeaways:

- **Research shows that areas that have relaxed land-use regulations to allow for greater density may not necessarily experience more housing construction in the short term but are eventually likely to see growth. However, there is no consensus in the research as to whether these zoning changes produce changes to housing stock and affordability that are statistically significant.**
- **Even if a zoning regulatory change leads to an increase in housing supply, prices may not fall (or stop rising), in certain rezoned areas.**
- **The increase in rental housing supply occurs primarily in rental units with higher incomes over the short and medium-term once zoning reforms have passed. Units affordable to those with low and very-low incomes have not experienced statistically significant increases.**
- **The benefits of wide-ranging zoning reforms are often not as large as expected, and many times the reforms do not yield more *affordable* housing for low-income households. However, zoning reforms that impose increased regulations, or downzonings, have been proven to limit construction and worsen affordability.**
- **The scope of evidence indicates that upzoning offers mixed success in terms of increases in housing production and lower home prices and outcomes are widely dependent on the climate of local markets. Market demand, local political context, housing types, timing, and other factors affect whether zoning changes increase housing stock and/or lower costs.**

1) Zoning Reform Potential Outcomes: Housing Prices

Upzoning alone may not produce more affordable rental housing for low to moderate income households. It has more of an effect on moderating the costs of higher-end rental units. Allowing additional housing construction often attracts investment in the creation of additional market-rate units.

One area of consensus among researchers in recent years is that while adding supply to the rental housing market will eventually help moderate housing costs, that moderation is insufficient and often ineffective when it comes to achieving affordability for low-income families.

New rental buildings increase housing supply and are usually more expensive than previously existing buildings. As a result, the existing units often maintain, not reduce, rents due to the increased demand that comes with a more attractive housing market. Many skeptics of zoning reforms intended to increase supply argue that most new supply is aimed at the top of the market and will not alleviate affordability challenges in other market segments. However, in the long term, researchers expect that more construction will eventually reduce housing costs (Been, Gould Ellen, & O'Regan, 2019).

A 2022 study published in the *Journal of Economic Geography* found that for every 10 percent increase to the housing stock added by new high rises, residential rents for the buildings within a 500-foot radius decreased by one percent. The decreases were seen for nearby high-and medium-rent buildings but were not significant in nearby low-rent buildings (Li, 2022). In contrast, two recent studies found that adding supply is associated with increasing rents in the surrounding neighborhoods. One study based in Minneapolis covering the years 2000-2018 found that buildings near new market-rate apartment buildings had no significant effect on rents overall, but when looking exclusively at buildings categorized as the lowest rent tier, prices increased by 6.6 percent (Damiano & Freneir, 2020).

When looking at rental prices, the effects new construction has on neighborhood rents depends upon the relative impact of two factors; 1) the competitive pressure that additional supply exerts to drive rents down and, 2) any positive amenity effect that increases demand and drives rents up (Been, Gould Ellen, & O'Regan, 2023). Amenity effect is also referred to as demand effect. It is the idea that new housing can attract wealthier households to neighborhoods, bring new amenities, and signal to existing landlords that they could raise their rents.

Still, stricter zoning regulations are correlated with higher rents, although this correlation is not typically seen in areas with low incomes and higher unemployment (Been, Gould Ellen, & O'Regan, 2019). In sum, evidence shows that rent decreases caused by new construction occur in limited settings. The contrary results of recent studies emphasize how local context may determine how new supply impact rents in surrounding neighborhoods.

Both upzoning and downzoning can lead to short and mid-term housing price inflation or stagnation depending on local market factors (Stacy et al. 2023).

In some cases, zoning changes can lead to increased home prices by changing what can be developed on a parcel of land and influencing what amenities investors may bring to a surrounding neighborhood. A 2019 study focusing on long-term impacts of zoning reform in Portland, Oregon, found that home buyers pay more to live in communities with higher-density zoning. Additionally, while the Portland reforms limited lot sizes, the reduction did not reduce prices. Instead, there was an increased demand for larger, more expensive homes on smaller lots (Dong & Hansz, 2019). Evidence indicates that upzoning leads to mixed success in impacted neighborhoods and the outcomes are dependent on local context and market factors. While outcomes appear to trend positively, the impacts are often considered minimal, and more time is needed to evaluate the long-term effect of these policies (Freemark, 2023).

Different markets may be affected differently by zoning policy changes. Several studies found affordability is not a guaranteed outcome following zoning reforms. However, there are additional studies that found rent decreased in areas near new buildings in large cities.

The Minneapolis study found that homes in less-expensive neighborhoods became more expensive compared to those in more expensive areas. In contrast, the 2020 Chicago study found the opposite – price changes were greater in upzoned high-income areas compared to low-income areas (Freemark, 2020). A 2019 analysis of 11 major cities, including New York, Chicago, Atlanta, Austin, and more, found that rents in large market-rate buildings near new development fall by 5-7% compared to rents in buildings slightly farther away (Asquith, Mast, & Reed, 2020).

After rezoning, properties may quickly incorporate future development opportunities into their values. Builders often convert existing lower cost units into higher cost ones, increasing surrounding housing values.

A study of Minneapolis' 2018 decision to allow up to three residential units on parcels previously zoned for single-family homes showed that homes in areas that had been upzoned experienced rapid sale price increases of three to five percent (Kuhlmann, 2021).

A 2020 study of Chicago found significant increases in upzoned property values in parcels with a 20% increase in density. The reform allowed for higher densities and reduced parking, later resulting in raised prices and no notable supply changes. Upzoning led to a 15 to 23.3 percent increase in sales prices between six months and two years after rezoning. Property owners benefitted from the reform and buyers were willing to pay more for potential development rights (Freemark, 2020) (Dong & Hansz, 2019) (Liao, 2022) (Jacobus, 2022)

2) Zoning Reform Potential Outcomes: Construction

Different local markets will likely produce different results when it comes to housing construction.

A 2021 study showed that reform effects may depend on the characteristics of where they are implemented. Loosening restrictions in communities with high demand, limited supply, and strict pre-existing regulations could lead to periods of significantly increased construction. Similar reforms in communities with weaker economies could result in no construction in the short or mid-term (Zhu, Burinskiy, De la Roca, Green, & Marlon, 2021). Factors such as parcel availability are also important considerations when evaluating the success of zoning changes in different local markets.

Increased construction is known to occur following zoning changes that lessen restrictions but is likely not enough on a regional level for policymakers to rely on zoning reforms alone to increase housing stock.

Scholars have found that more localized housing development increases after upzoning, but regionally the level of construction that occurs in upzoned areas does not match the scale of regulatory change since most parcels do not experience investment (Freemark Y. , 2023). A 2021 study examined 15 years of post-upzoning construction in Portland, that allowed for duplexes, triplexes, and fourplexes. It found that 5.1% of upzoned parcels had any development, producing a total of 240 units over the 15 years. Though this increase in development was larger than on parcels with no zoning reforms, the impacts are not significant when compared to overall city growth. While upzoned sites experienced faster housing than they might have historically, the difference between upzoned areas and the rest of the region was considered small (Dong, 2021)

Minneapolis's ban on single family zoning and the legalization of triplexes and duplexes wherever single family homes are allowed made national headlines, but some question the success of the change. The number of duplex, triplex, and fourplex units permitted increased

from 13 units in 2015 to 53 units in 2021. These numbers have been described as small when it comes to addressing the larger supply issues in the city (Blumgart, 2022). According to the city's Department of Community Planning and Economic Development, newly constructed triplexes and duplex homes were a small portion of homes being built. The literatures shows that targeted upzoned areas may or may not experience desired housing construction increases in the short-term, but are likely to experience slight increases over the long-term compared to an area without such changes. However, it is important to note that a number of recent studies were unable to establish a causal link between zoning reforms and construction activity. It is difficult to separate the effects of the reforms from the influence of other variables that could have also driven construction.

Increasing housing stock does not guarantee an increase in affordable housing.

A 2023 study encompassing data from 1,136 cities from 2009-2019 found that reforms that loosen zoning restrictions are associated with an .8% increase in rental housing supply. This is within three to nine years of reform passage – a statistically significant increase. However it is important to note that this increase occurs predominantly for units at the higher end of income distribution. While the effects are positive, there is no significant increase of lower or middle-cost units available in the years following zoning reforms (Stacy, et al., 2023).

Conclusion

Based on findings and analysis it can be concluded that zoning reform is a partial, potential, solution to affordable housing issues. It often produces successful results, but the significance and scope of that success is often mixed when looking at construction and pricing outcomes.

Overview of Other States Methods to Promote Housing Construction Through Development Incentives and Local zoning Preemption – With a Focus on Florida’s Live Local Act.

Most states have been experiencing increased housing prices and less new construction in recent years. To deal with this, many policymakers are promoting land-use regulation changes, either statewide or at the local level, to incentivize construction and grow affordable housing stock. California, Oregon, Maine, Florida, and several cities throughout the country have passed laws that preempt local zoning, with more states, like Minnesota, trying to do the same.

This section first provides an overview of preemptive zoning initiatives in other states before focusing on Florida’s newly passed Live Local Act, which provided large incentives as well as preemptive zoning measures.

Statewide Efforts to Eliminate Single-Family Only Zoning

Minnesota

A bill introduced in the 2023 session called for an override of certain local zoning requirements to spur construction of smaller lot sizes, but it failed after heavy opposition from municipalities. Local government leaders argued their own zoning reform efforts haven’t done much to reduce housing costs. Advocates in Minnesota say there will be a push to have the bill debated again during the next legislative session.

Minnesota did pass a housing omnibus bill with broad support from both developers and localities that includes more than \$1 billion in spending, \$729 million in the first year. Among the most popular provision for developers and localities is the \$121 million allocation over the next biennium towards a state program that serves rental households with incomes at or below 80% AMI, creating funding pots for construction of workforce housing. This bill is partially funded through a sales tax increase for metropolitan shoppers by .25% and it includes funding for down payment assistance, first-generation homebuyers’ assistance, rental assistance, manufactured home lending grants, and more. This bill also provides \$90 million to rehabilitate older, lower rent homes that might otherwise be purchased by investors and lose affordability.

Minneapolis

In 2019 Minneapolis became the first large city in the country to end single-family only zoning. New housing has not seen a significant uptick compared to the years prior to 2020, but experienced more growth compared to other midwestern cities in the first six months of 2022.

Observers described the initial results of the reform’s goal of increasing duplexes, triplexes, and fourplexes as modest. While the city has experienced an increase in housing development, increases have been minimal in multi-unit constructions. Some city officials credit the city’s elimination of parking minimums with facilitating increased construction of smaller apartment buildings. The 2040 Minneapolis plan calls for a more comprehensive implementation effort with additional interventions such as funding allocations and regulatory reforms requiring the construction of affordable housing.

Minneapolis 2-4 Unit Housing Permits

Year	2-4 Unit Housing Permits
2018	49
2019	45
2020	54
2021	53
2022	63

Minneapolis Department of Community Planning and Economic Development

In September 2023, a county judge ruled that Minneapolis must cease implementation of the 2040 plan in response to a years-long environmental lawsuit based on the Minnesota Environmental Rights Act. The plaintiffs successfully argued that the city failed to account for the impacts of authorizing almost 150,000 new residential units. However, representatives from the city argued that the city anticipates closer to 40,000 new units built by 2040 instead of their initial vision of 150,000.

In response to this legal roadblock, two representatives in the Minnesota state legislature authorized separate bills banning people from suing cities over comprehensive plans. The proposal was initially

included in a housing bill but was ultimately removed before the bill passed the legislature. The provision is likely to be discussed again when the Legislature reconvenes in February 2024.

Oregon

Oregon's 2019 bipartisan zoning reform law, known as the first state-level act of its kind, preempted single family zoning laws. The law legalized duplexes on all residential land in small towns and up to four-unit homes in single-family zoned land in communities of at least 25,000 people. It is too early to know the true success of Oregon's House Bill 2001 as most large cities did not update their zoning codes to meet the bill requirements until 2021 or 2022. In 2020, housing in 2–4-unit buildings made up less than 3% of Oregon's new housing permits.

Portland built on this law by approving zoning changes to promote the construction of townhomes, fourplexes, and cottage clusters. The change was recognized at the time as the country's most ambitious low-density zoning reform. The results have been modest, producing 100 new units from August 2021-2022.

A statewide law passed in 2021 restricts local governments from denying affordable housing applications on land currently zoned for commercial or light industrial use. However, many officials have argued that the biggest hurdle to getting more affordable housing build is the funding needed to subsidize development.

Maine

Maine became the third state to end single family only zoning in 2022, following Oregon and California. The bill was met with considerable pushback from local officials who said the requirements would give localities zero control over density, allowing development to potentially outpace infrastructure and local services. Not doing so would open them up to lawsuits. This year, lawmakers have said the provisions of the 2022 legislation were not enough to address Maine's housing crisis. Many are proposing other solutions like eliminating lodging taxes on seniors as they move into senior living facilities and boosting assistance for first-time homebuyers and those with higher rents. Maine's eviction levels in 2023 are on track to be the highest in the state's history – legal advocates blame developers coming into the state, purchasing large apartment buildings, renovating, and then utilizing “no cause,” evictions to remove existing tenants.

California

California has made substantial efforts to address their housing needs, but local zoning preemption has led to numerous fights between state and local government. In 2021, California passed SB 9 which legalized duplexes on almost all single-family zoned land. Progress has been slow. Activists have started using lawsuits and legal threats to force local governments to comply with affordable housing planning quotas – forcing local governments to permit has been challenging. Also in 2021, California invested a historic \$10.3 billion into a comprehensive affordable housing strategy, called the California Comeback Plan, and passed additional laws and accountability measures.

In 2022, California passed SB 6, (the Middle-Class Housing Act) and AB 2011 (the Affordable Housing and High Road Jobs Act of 2022). Both pieces of legislation permit residential development on sites currently zoned and designated for commercial or retail uses.

Under the Middle-Class Housing Act, if a project site is currently zoned for commercial retail or parking use, a developer can develop a qualifying multifamily project instead without rezoning. The expedited development process is expected to help localities avoid properties remaining vacant. It allows the developer to develop 100% market rate housing. In mixed-use projects, at least 50% of the square footage must be developed for residential uses. In addition, the project must be located within a city containing some portion of an urbanized area.

One tradeoff to this new legislation is the requirement that the developer must pay prevailing wages and utilize a “skilled and trained” workforce. Paying these rates can significantly increase housing construction costs, which in turn increases sales prices for homes developed under these requirements. The real-world implementation of the 2022 legislation to proposed development sites and development projects has been described by area law-firms as complicated and site-specific.

Florida’s Live Local Act

- It requires cities and counties to approve the projects without any hearings or public input, even if they do not follow existing height and density restrictions.
- It allows developers to build big in exchange for setting aside units at lower rents and offers large tax benefits to incentivize building.

Florida’s 2023 “Live Local Act,” is the largest investment in affordable housing in Florida’s history, appropriating \$1.5 billion over the next ten years in various housing programs. As part of the Act, local municipalities are to permit multifamily and mixed-use residential developments in areas zoned for commercial, industrial, or mixed use, as long as at least 40% of the units are affordable and serve incomes up to 120% of the AMI. Additionally, it is important to note the Act bans local governments from imposing rent control, even under emergency declarations.

Main incentives for developers offered in the Live Local Act include:

- Multifamily and mixed-use projects now permitted in otherwise restricted areas;
- Access to no-to-low interest loans;
- Large tax credits;
- Sales tax refunds; and
- Locality inventory must be publicly available on municipal websites.

Live Local offers development incentives outside of the traditional affordable/LIHTC model. Rather than waiting for Florida Housing to issue a Request for Applications to support housing development for a specific population and hoping to receive an allocation, a developer may proceed anywhere. The Act also offers significant property tax exemptions, 75-100%, for multifamily projects that are considered charitable.

The Act has led to increased development, with at least 30 projects moving forward under the Live Local Act, mostly due to the large tax exemptions. Several smaller scale projects are being revised to significantly increase density, with one 234-unit market rate project now expanding to 400-units with 40% workforce housing.

Marisa Button, Florida Housing’s Managing Director of Strategic Initiatives, shared with the Commission that they are expecting to be oversubscribed for all multifamily resources, indicating a lot of interest from developers. According to Button, developers in Florida say their biggest problem is financing, not preemption. The incentives offered in the Act have been recognized as a key factor in developer participation.

The Live Local Act, while bipartisan and supported by many, has prompted widespread confusion and opposition from Florida localities:

- **Legal Battles:**
 - Many localities are considering a moratorium on all new development while they figure the implications– many find it ambiguous. At least two localities have voted to pause development for six months, despite possibly being in violation of the Act. Local property developers are filing lawsuits in return.
 - Miami Beach’s Mayor pledged to fight one project “through city, state and federal courts as well as the state legislature.”

- DeBary, as mentioned in the case below, is also looking to pursue legal action.
- **Preemption of local zoning undercutting long-term planning of localities:**
 - The zoning preemption can jeopardize planned industrial and commercial development projects, replacing them with residential projects. The law worries job-poor localities who are planning to build out industrial areas.
 - DeBary case: An industrial and commercial project was expected to add 300 to 500 jobs and \$50 million to the local tax base. Now, it is likely to be turned into a 372-unit apartment complex under the Live Local Act.
 - Several localities say a one-size-fits-all approach to locality zoning allows no provisions for differing local conditions and impacts, such as climate sustainability in Florida's barrier island communities.
- **Scope of the tax exemptions:**
 - The tax exemptions are substantial, and the lack of tax revenue paired with necessary infrastructure and emergency service needs that could come with new apartment complexes could put localities at an economic loss.
 - Some officials worry the prices of land in warehouse districts are rising as developers see the potential for profit that comes with the various incentives. This could make continued industrial use a less preferable option.
- **Not enough focus on affordability:**
 - Many advocates worry the measures will do nothing to combat Florida's famously soaring apartment rents because it entices homebuilders who typically build market-rate housing. Many localities consider rent relief to be a greater need and are concerned that the spending provisions will lead to less money to fund relief.
 - One affordable development firm said the zoning provisions do little to encourage construction of housing affordable to those making less than the AMI, and developers already building subsidized housing don't qualify for the tax breaks under the Act. Instead, it is geared towards encouraging market-rate developers to expand into workforce housing by offering high profit capacity so developers can afford to charge lower rates for some homes or units. Button shared that Florida is looking into refining the program to loosen restrictions on Low Income Housing Tax Credits to address this issue and bring in more experienced affordable housing developers.
- **Changes to local character:**
 - In one locality, owners of a popular restaurant proposed converting their space into a highly controversial 30-story tower, located in an "Art Deco" district of Miami Beach where building heights are limited to 50 feet. Many similar projects are being proposed throughout the state.

*****Sources for the literature review were taken from academic institutions and peer-reviewed journal publications. These studies were not conducted by the Virginia Housing Commission. The State analysis was based on those same studies as well as information taken from local news publications, State-managed websites, bipartisan research organizations, and HUD.**

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