



Encouraging Transit-oriented Development

Several states have recently implemented transit-oriented development (TOD) laws that require local governments to allow denser housing development near transit stations. In the last New York State legislative session, similar legislation was introduced but never voted on. The New York region's extensive mass transit systems provide significant opportunities for TOD that would alleviate housing shortages while encouraging mass transit use and thereby helping to slow climate change. New York City has already undertaken some TOD initiatives, proposing rezonings near Metro-North stations in the Bronx¹ and reducing or eliminating parking minimums in affordable housing near many transit stations.² Suburbs like New Rochelle,³ Harrison,⁴ and Patchogue⁵ also have adopted TOD policies. New York State could encourage such initiatives by requiring local governments to allow TOD. This brief aims to help the state consider strategies to promote TOD by examining how the proposals introduced during the last session and in Governor Hochul's 2023 State of the State message compare to legislation other jurisdictions have adopted or considered.

1. "Bronx Metro-North Station - Overview." *New York City Department of City Planning*, <https://www.nyc.gov/site/planning/plans/bronx-metro-north/bronx-metro-north.page>

2. "Housing New York: Zoning for Quality and Affordability Overview." *New York City Department of City Planning*, www1.nyc.gov/assets/planning/download/pdf/plans-studies/zqa/adoption-overview.pdf?r=1

3. "New Zoning Makes New Rochelle's Vision a Reality." *Smart Growth America*, 13 Sept. 2019, smartgrowthamerica.org/new-zoning-makes-new-rochelles-vision-a-reality

4. "Transit-Oriented Development Program." *MTA*, new.mta.info/agency/construction-and-development/transit-oriented-development

5. Winzelberg, David. "Report Finds Patchogue Reboot Generated \$693M in Growth." *Long Island Business News*, 7 Dec. 2018, libn.com/2018/12/06/report-finds-patchogue-reboot-generated-693m-in-growth



The Basics

As detailed in the [Introduction to this series](#), housing production in New York State has not kept pace with population growth for the last several decades, leading to housing shortages and exponential increases in costs for both rental and owner-occupied housing across the state.

New York and the rest of the world are also facing a climate crisis due to greenhouse gas emissions. The transportation and building sectors generate a large portion of greenhouse gas emissions in the United States, and reducing those emissions is critical to slowing climate change.⁶

Restrictive zoning in many of the state’s suburbs exacerbates the housing shortage and climate threats because low-density development is dependent on private cars and generally is less climate-friendly than higher-density development patterns.⁷ Minimum parking requirements for housing, even homes built close to mass transit, raise the cost of housing, and subsidize the use of private autos. The magnitude of TOD’s effect on emissions and affordability depends on where and what kind of housing would be built if TOD policies were not adopted, and on just how efficiently the TOD development is located and constructed. Generally, TOD will be better from a climate perspective than typical current building patterns.

TOD poses particular opportunities in New York because the tri-state metropolitan region has the most extensive transit infrastructure in the country, including New York City’s subway system and a far-reaching network of commuter rail lines through suburbs in Long Island, Connecticut, the Hudson Valley, and New Jersey. Nearly 40 percent of all public transit riders in the United States live in the New York City metropolitan area, despite the area being home to just 6 percent of the country’s population.⁸

6. The transportation sector contributed 36.2% of U.S. CO₂ emissions from fossil fuel combustion in 2020; residential buildings contributed another 19.8%. See: “Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020—Executive Summary.” *U.S. Environmental Protection Agency*, 13 July 2022, www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-chapter-executive-summary.pdf

7. People living near public transportation tend to have lower greenhouse gas emissions than those living far from it. See, e.g., “Transit Oriented Development and the Potential for VMT-Related Greenhouse Gas Emissions Growth Reduction.” *Center for Transit Oriented Development*, Mar. 2010, ctod.org/pdfs/2010TODPotentialGHGEmissionsGrowth.pdf

8. American Community Survey Reports, et al. “Commuting by Public Transportation in the United States: 2019.” *U.S. Census*, Apr. 2021, www.census.gov/content/dam/Census/library/publications/2021/acs/acs-48.pdf



Meanwhile, the federal and state governments and New York City are making significant investments in public transit infrastructure. The Long Island Railroad (LIRR) opened its third main line track and is scheduled to open its Grand Central Madison expansion soon.⁹ Metro-North is building Penn Station Access,¹⁰ and a substantial rehab of Penn Station was approved by the Empire State Development Corporation’s board last summer.¹¹ Discussions are underway for a new Inter-Borough Express train along an abandoned rail corridor between areas poorly served by transit today in Brooklyn and Queens.¹² These projects represent an investment of tens of billions of dollars on top of ordinary operations and maintenance, with the Grand Central Madison LIRR extension alone costing \$12 billion.¹³

Local land use policies requiring or encouraging development that relies upon or subsidizes travel by private vehicles limit these investments’ potential housing and environmental benefits and exclude poorer households who would especially benefit from the better access to jobs mass transit offers.¹⁴ Those policies are ubiquitous throughout the state, particularly in the suburbs of Long Island and Westchester. As a result, housing production in Long Island and the southern Hudson Valley has declined to well below those areas’ share of the region’s population, even as production in New York City and the inner New Jersey suburbs has significantly increased over the last two decades.¹⁵

The time is ripe, therefore, for New York State legislators to consider implementing transit-oriented development (TOD) policies, taking advantage of the region’s extensive infrastructure by encouraging housing development near transit stations.

9. “All Aboard: Governor Hochul Celebrates Completion of LIRR Main Line Third Track on Time and Under Budget.” *Governor Kathy Hochul*, www.governor.ny.gov/news/all-aboard-governor-hochul-celebrates-completion-lirr-main-line-third-track-time-and-under

10. “Penn Station Access.” *MTA*, new.mta.info/project/penn-station-access

11. Haag, Matthew, and Patrick McGeehan. “What to Know About Penn Station’s \$7 Billion Redevelopment Plan.” *The New York Times*, 21 July 2022, www.nytimes.com/2022/07/21/nyregion/penn-station-redevelopment.html

12. “Interborough Express.” *MTA*, new.mta.info/project/interborough-express

13. Renner, Thomas. “60 Years in the Making, New York’s East Side Access Is Close to Becoming a Reality.” © 2023 *Metro Magazine*, *Bobit*. All Rights Reserved, 25 May 2022, www.metro-magazine.com/10171717/60-years-in-the-making-new-yorks-east-side-access-is-close-to-becoming-a-reality

14. The Editorial Board. “Opinion | the L.I.R.R. Only Works if Long Island Gets Affordable Housing.” *The New York Times*, 2 July 2021, www.nytimes.com/2021/06/26/opinion/lirr-long-island-affordable-housing.html

15. “NYC Metro 2020 Housing Production Snapshot.” *New York City Department of City Planning*, *New York City Department of City Planning*, Nov. 2021, www.nyc.gov/assets/planning/download/pdf/planning-level/region/nyc-metro-housing-production-2020-snapshot-1121.pdf



Recent Proposals for New York State

In 2021, then-Governor Cuomo proposed the Rail Advantaged Housing Act in his Executive Budget, though it was removed prior to final passage.¹⁶ The bill would have exempted small housing developments within one-half mile of Metro North or LIRR stations outside New York City from reviews required by the State Environmental Quality Review Act (SEQRA) and allowed local governments to collect a fee to mitigate the costs of services the development would require. However, the bill would have applied only to counties that chose to participate, and within those counties, only upon approval of each development’s rezoning proposal by the local government’s chief executive officer.

Governor Hochul proposed a Transit Oriented Development Act¹⁷ in 2022. The legislation would have required local governments to permit at least 25 homes or apartments per acre on residentially-zoned land within one-half mile of commuter rail stations or bus park-and-rides in the New York City suburbs. The bill, along with an accompanying proposal to require local governments to allow accessory dwelling units (ADUs), generated significant opposition from many suburban residents and elected officials. Opponents expressed concern about losing local control over land use decisions and fears about how ADUs and TOD could change their communities.¹⁸ Housing advocates, however, lauded the proposals’ potential to help alleviate the housing crisis while encouraging the use of mass transit.¹⁹

The Governor’s 2023 State of the State speech on January 10th called for requiring local governments to zone for additional density in areas one-half mile from all rail stations served by the MTA’s subway and commuter trains, and proposed that affected local governments would have an opportunity to obtain funding from the state for assistance in planning for TOD.²⁰

16. New York, State Senate. Senate Bill S2508C, Part DD. *nysenate.gov*, 20 Apr. 2021, www.nysenate.gov/legislation/bills/2021/S2508

17. New York, State Senate. Senate Bill S8006, Part EE. *nysenate.gov*, Jan. 2022, www.nysenate.gov/legislation/bills/2021/s8006/amendment/original

18. See, e.g., Lewis, Rebecca. “Hochul’s Reversal on Granny Flats Is an Exercise in Compromise.” *City & State NY*, 24 Feb. 2022, www.cityandstateny.com/policy/2022/02/hochuls-reversal-granny-flats-exercise-compromise/362390; Carrozza, Tom. “RVC Mayor to Fight Hochul’s Zoning Plan.” *Herald Community Newspapers*, 10 Feb. 2022, www.liherald.com/stories/rvc-mayor-to-fight-hochuls-zoning-plan,138381; Reif, Carol. “Local Leaders Applaud Removal of ADU Law | Somers, NY News.” *TAPinto*, 22 Feb. 2022, www.tapinto.net/towns/somers/sections/government/articles/local-leaders-applaud-removal-of-adu-law

19. See, e.g., McNulty, Mark. “Governor Hochul’s Historic State of the State Includes Victories for the Region.” *Regional Plan Association*, 11 Jan. 2022, rpa.org/latest/lab/governor-kathy-hochul-state-of-state-address

20. Achieving the New York Dream: 2023 State of the State. *Governor Kathy Hochul*, 10 Jan. 2023, <https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSBook.pdf>



Learning from Other States' TOD Measures

California

In 2018, the California Legislature passed a bill requiring cities to permit more housing on land owned by Bay Area Rapid Transit (BART), allowing BART's parking lots and other underused land to be used for TOD.²¹ Thousands of housing units are now planned around stations in cities that had long opposed such development.²²

State Senator Scott Weiner proposed a much broader TOD approach in 2019 in Senate Bill 50 (SB 50),²³ which would have required cities across the state to allow apartment buildings near rail stations, frequent bus lines, other transit hubs, and job centers. The bill ultimately failed after resistance from residents of higher-income suburbs opposed to apartments and residents of lower-income urban neighborhoods concerned about gentrification and displacement.

In 2022, however, California passed two separate TOD-related bills. First, the state prohibited cities from imposing minimum parking requirements on residential and commercial development near transit, reducing the cost of TOD and encouraging the use of the mass transit.²⁴ Second, as part of legislation to promote multifamily development on land in commercial zones, California allowed such development near transit to have up to 3.5 times more housing than on land further from transit. The legislation requires local governments to allow housing development in zones located along commercial corridors where office, retail, or parking are a principally permitted use as-of-right, without environmental review, and subject only to a streamlined ministerial process, as long as the development sets aside at least 15 percent of the units for affordable housing and meets certain prevailing wage and labor standards.²⁵

21. *AB 2923 Implementation* | bart.gov. www.bart.gov/about/business/tod/ab2923

22. See, e.g., Curry, Melanie, et al. "Berkeley Approves Zoning for BART Station Housing." *Streetsblog San Francisco*, 4 June 2022, sf.streetsblog.org/2022/06/03/berkeley-approves-zoning-for-bart-station-housing; *Renderings Released for Huge Development Surrounding BART's West Oakland Station*. 18 Feb. 2022, hoodline.com/2022/02/renderings-released-for-huge-development-surrounding-bart-s-west-oakland-station

23. California, State Senate. S.B. 50, Cal. Leg. 2019-2020. *California Legislative Information*, 6 Jan. 2020, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB50

24. California, State Assembly. A.B. 2097, Cal. Leg. 2021-2022. *California Legislative Information*, 23 Sep. 2022, leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2097

25. California, State Assembly. A.B. 2011, Sec. 65912, Cal. Leg. 2021-2022. *California Legislative Information*, 29 Sep. 2022, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011



Massachusetts

Since 2004, Massachusetts has provided incentives to local governments that zone for and approve transit-oriented development in what is often referred to as the Chapter 40R program.²⁶ Local governments receive a payment from the state when they create a “smart growth” zoning district that allows dense development as-of-right in areas well-served by transit (or other infrastructure) and requires at least 20 percent of units to be affordable to low-income households.²⁷ Local governments also receive a small payment per unit when building permits are issued.

The Massachusetts Legislature passed a bill in 2021 requiring local governments with commuter rail, subway, ferry, or bus stations in their jurisdictions to establish zoning districts around those stations where multifamily housing is permitted as-of-right.²⁸

The legislation grants communities significant flexibility in deciding how to comply, requiring them to create zoning districts near transit of specified minimum sizes that allow at least 15 multifamily units per acre. Communities are allowed to determine exactly how they will allocate that capacity.²⁹ A local government can, for instance, permit apartments and townhouses in some areas while retaining single-family housing in others. Local governments must submit compliance plans to the state and come into full compliance between 2023 and 2025, depending on the municipality’s size and level of transit access. The bill does not apply to Boston.

26. Massachusetts, General Court of the Commonwealth of Massachusetts. Mass. Gen. L. Ch. 40R, Smart Growth Zoning and Housing Production. mass.gov, malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40R; *Commonwealth of Massachusetts*. “Chapter 40R.” Mass.gov, www.mass.gov/service-details/chapter-40r

27. “The Use of Chapter 40R in Massachusetts: 2018 Update.” *Citizens’ Housing and Planning Association*, May 2018, www.chapa.org/sites/default/files/TheUseofCh40R_2018.pdf

28. Massachusetts, State Senate. S. 1191, 191st Mass. Leg. 2019-2020, An Act Relative to Transit-Oriented Development. malegislature.gov, <https://malegislature.gov/Bills/191/SD1378>

29. Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act at 11-13 describes how local governments may determine the location and boundaries of their multi-family zoning districts and vary density within districts as long as they meet the minimum average density requirements. See: “Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act.” Commonwealth of Massachusetts Department of Housing and Community Development, 21 Oct. 2022. <https://www.mass.gov/doc/data-sources-and-methodology-document-link/download>



Connecticut

Connecticut’s Incentive Housing Zone/Housing for Economic Growth program provides incentives to local governments that zone for and approve housing, like Connecticut’s 40R program.³⁰ The state pays local governments when they create zones, in certain locations, including near transit, that allow dense housing development as-of-right and require 20 percent of units to be affordable to low-income households.

In 2015, then-Connecticut Governor Dannel Malloy proposed to create a state Transit Corridor Development Authority that would have the authority to use eminent domain to acquire property near transit stations for TOD.³¹ The proposal would have allowed the Authority to override local zoning, but local government officials objected, and the proposal did not move forward. The Legislature also considered legislation similar to New York’s 2022 TOD legislation, requiring local governments to permit higher-density housing within one-half mile of rapid transit stations.³² That bill would have required developments taking advantage of the statute to make at least 10 percent of their housing units affordable. It spurred controversy and did not move forward, but advocates continue to push for similar legislation.³³

Drawing upon the experience in those states, New York should take another look at the key issues addressed by the proposed 2022 Transit Oriented Development Act and consider a number of potential additional strategies:

30. Connecticut General Assembly. Gen. Stat. Conn. Ch. 124b, Incentive Housing Zones. cga.ct.gov, cga.ct.gov/current/pub/chap_124b.htm; “Housing for Economic Growth Program.” *CT.gov - Connecticut’s Official State Website*, www.portal.ct.gov/DOH/DOH/Programs/Incentive-Housing-Zone-Program

31. Connecticut General Assembly. H.B. 6851, Conn. Leg. 2015, An Act Establishing the Connecticut Transit Corridor Development Authority. cga.ct.gov, Jan. 2015, www.cga.ct.gov/2015/TOB/H/2015HB-06851-R00-HB.htm

32. Connecticut General Assembly. H.B. 5429, Conn. Leg. 2022, An Act Concerning Transit-Oriented Development. cga.ct.gov, Mar. 2022, www.cga.ct.gov/2022/TOB/H/PDF/2022HB-05429-R00-HB.PDF

33. Vallejo, Camila. “Advocates Say Transit-oriented Development Is Misunderstood. Their Walking Tours Aim to Change Minds.” *Connecticut Public*, 1 July 2022, www.ctpublic.org/news/2022-07-01/advocates-say-transit-oriented-development-is-misunderstood-their-walking-tours-aim-to-change-minds-in-ct-towns



Where Should Local Governments Be Required to Allow TOD?

Near What Types of Transit Facilities?

The rail-advantaged housing proposal would have applied only to commuter rail stations outside New York City, while the 2022 TOD proposal would have added bus park-and-rides in the New York City suburbs. Governor Hochul mentioned only subway and commuter rail stations in her 2023 State of the State address. In California, the new law removing parking minimums near transit applies to urban and commuter rail stations, bus rapid transit (BRT) stations, and ferry terminals.³⁴ California’s proposed SB 50 also would have allowed more housing near intersections between two or more frequent bus routes.

The only urban rail system in the state outside the New York City metropolitan area is a single light rail line in the Buffalo area; adding that system could help steer the area towards more climate-friendly development in Buffalo and help maximize the use of the region’s transit investments. Applying the TOD requirements to certain bus stops around the state could expand housing options in the state significantly. If the legislation applied to BRT stations, for example, it would cover additional parts of Albany, Syracuse, and New York City. Expanding the proposal to apply to intersections between frequent bus lines (California’s proposed SB 50, defined “frequent” as every 15 minutes at peak times) or transit centers where many bus routes meet would expand the reach of the proposal to other areas across the state. Adding ferry terminals could help take advantage of investments in ferry infrastructure in New York City.

34. A.B. 2011, *supra*, at 65912.101(j) (defining “major transit stop” according to the definition of Ca. Pub. Resources Code Sec. 21155(b), which specifies that the term includes bus stops with routes that come at least every fifteen minutes, along with rail, bus rapid transit, intermodal ferry terminals, and intersections of frequent bus stops as specified in Sec. 21064.3). California, State Legislature. Ca. Gov. Code § 65912.101. leginfo.ca.gov, Jan. 2020, leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=21064.3.&lawCode=PRC



On the other hand, park-and-ride facilities, which are included in the 2022 TOD proposal, are not necessarily near rail stations (in which case they already would be included) or have high-quality bus service, and tend to be located near highway interchanges,³⁵ so they may require some additional standards to ensure that they are suitable for multifamily housing.

Another policy that the Legislature could consider is allowing higher-density housing on land owned by transit agencies. California’s law requiring cities to allow denser multifamily housing on BART-owned property enables construction of thousands of housing units on BART park-and-ride lots. Given the large number of surface parking lots at transit stations in Long Island and Westchester County, such a law could have a significant impact.³⁶

In What Parts of the State?

The Rail Advantaged Housing Act and 2022 TOD proposal focused on the suburbs outside New York City. Both would have applied to areas around LIRR and Metro-North stations outside New York City, with the TOD bill adding on bus park-and-rides as well. The focus on the suburbs is understandable, as Long Island and Westchester County have high-quality transit access but have produced little housing over the last several decades.³⁷

Governor Hochul’s 2023 State of the State message, however, proposed including New York City’s subway and commuter rail stations. New York City has built more housing, taken steps to encourage TOD by lowering parking minimums near transit, and encouraged affordable housing in much of the developed housing. Nevertheless, the Legislature should consider applying TOD requirements to New York City. While multifamily housing is permitted in roughly 85 percent of the City’s residential districts, some swaths of the outer boroughs remain zoned for single-family housing, even around transit stations.³⁸ There are dozens of LIRR stations in Queens, 13 Metro North stations in the Bronx, and 21 stations on the Staten Island Railway, many of which are surrounded by single-family housing. Some of the hundreds of subway stations in the City, as well as many high-quality bus routes, are surrounded by single-family zoning as well. Opening those areas to multifamily housing could generate significant new houses and apartments. Further, applying a TOD bill to the City could be perceived by suburban politicians as ensuring fairness.

35. See, e.g., Rockland County park-and-rides, the vast majority of which are located along major highways. *County of Rockland, New York :: Park and Ride Lots*. rocklandgov.com/departments/public-transportation/commuter-info/park-and-ride-lots

36. See MTA website on TOD, including developments on MTA-owned parking lots. “Transit-Oriented Development.” MTA, new.mta.info/agency/construction-and-development/transit-oriented-development

37. *NYC Metro Region Explorer*. metroexplorer.planning.nyc.gov/housing/units-permitted

38. Badger, Emily, and Quoc Trung Bui. “Cities Start to Question an American Ideal: A House With a Yard on Every Lot.” *The New York Times*, 30 Sept. 2021, www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html



Upstate New York does not have as acute a housing shortage as the New York City metropolitan area because many parts of the region have lost population over the last several decades. However, the housing crisis has become a nationwide problem and is quickly expanding to many smaller, historically more affordable areas, so applying a TOD ordinance to upstate cities could help prevent future housing shortages there and steer whatever new development takes place to areas with transit infrastructure.

How Big of an Area Around Transit Should Be Zoned for TOD?

Previous New York proposals would have required local governments to allow TOD on land within a half-mile radius of transit, which equates to a walk of approximately ten minutes. Studies have shown that people will walk between a quarter- and half-mile, or about five to ten minutes, to transit.³⁹ California’s SB 50 envisioned a tiered structure with higher density within a quarter-mile radius of stations and more modest increases in density between a quarter- and half-mile radius. New York legislators may want to retain a mandated overall density for the half-mile radius, but give local governments some flexibility about achieving that density. In addition, lawmakers could prescribe a smaller radius around qualifying bus stops than rail stations, as bus stops generally are closer together and people are typically willing to walk longer distances to rail than to bus stops.⁴⁰

In What Zoning Districts?

The 2021 Rail Advantaged Housing Act and 2022 TOD proposal would have allowed more housing only on land already zoned as residential. California recently passed a law requiring cities to allow multifamily housing on land abutting commercial corridors (defined as highways with rights-of-way between 70 and 150 feet) where office, retail, or parking are the principal permitted uses.⁴¹ New York may want to similarly expand the zones in which TOD could be allowed.

39. “Pedestrian Safety Guide for Transit Agencies.” *Federal Highway Administration*, 13 Jan. 2013, safety.fhwadot.gov/ped_bike/ped_transit/ped_transguide/ch4.cfm; The ten-minute walk is used in other land use policies as well. The Trust for Public Land’s 10-Minute Walk campaign, for example, aims to encourage cities across the nation to ensure all residents are within a half-mile of a park. “About Us - Our Mission.” *10-Minute Walk*, 23 Dec. 2022, 10minutewalk.org/about-us

40. “Pedestrian Safety Guide for Transit Agencies.” *Federal Highway Administration*, 13 Jan. 2013, safety.fhwadot.gov/ped_bike/ped_transit/ped_transguide/ch4.cfm

41. A.B. 2011, *supra*, at 65912.101(a) (defining commercial corridors for the purpose of the legislation. While the legislation applies to all commercial corridors, Sec. 65912.123 provides that allowable density under the law is significantly higher near transit). *California, State Legislature. Ca. Gov. Code § 65912.101*. leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=21064.3.&lawCode=PRC



Allowing multifamily housing only on land already zoned for residential use ensures that new housing follows local governments' current land use policies, just at a higher density. However, allowing multifamily housing on commercial land instead of, or in addition to, land zoned as residential could reduce neighborhood opposition by putting taller buildings farther from single-family homes and avoiding pressure to redevelop existing single-family housing. Further, allowing denser housing on any land near transit could avoid creating loopholes local governments could exploit to avoid any TOD. Where a local government believes development on commercial or industrial land would interfere with its economic development investments or generate conflict among the various uses, the local government could be required to apply for a waiver of the TOD requirements, offer alternative areas for TOD, or be given more flexibility about the specific locations of housing and the types of mixed-use buildings allowed within the TOD area.

What Exemptions Should Be Allowed?

Finally, the Legislature should consider strategies for addressing calls to exempt certain types of land from the statute. Wetlands and other environmentally sensitive areas, existing publicly owned parkland or open space, and areas designated as historically significant, for example, may already be excluded from development (or open only to very modest development) due to their characteristics and existing law. Proposed exemptions that go beyond existing law may seriously undermine the value of a state TOD requirement. Several California housing laws have excluded smaller cities and counties to preserve rural areas, but similar exclusions could prevent TOD in suburbs close the New York City, where many local governments are extremely small.⁴² Exempting smaller communities also can reward areas that have avoided growth by further exempting them from development. Similarly, some have argued that a TOD program in New York should exclude areas without municipal sewer service, but that could significantly reduce the reach of the TOD requirements (because large parts of Long Island and the Hudson Valley do not have municipal sewers⁴³) and prevent further development in areas that already have avoided growth.

42. For instance, Nassau and Suffolk Counties on Long Island have 13 towns, 2 cities, 97 villages, and 173 hamlets for their population of just under 3 million, resulting in a small average population per municipality. "The Region." *Long Island Regional Planning Council*, lirpc.org/resources/the-region

43. The majority of Suffolk County on Long Island is without sewer service. Schwartz, David. "Here's Why Most of Suffolk County Doesn't Have Sewers." *Newsday*, 30 Apr. 2018, www.newsday.com/long-island/suffolk-clean-water-t23000; Tens of thousands of households in Westchester County rely on septic tank systems. Garcia, Ernie. "Westchester Considers Changes for Septic Systems." *lohud.com*, 19 May 2015, www.lohud.com/story/news/local/2015/05/19/septic-systems/27575043



Some advocates have suggested that low-income neighborhoods should be exempted from TOD requirements, arguing that low-income residents and people of color are more likely to live near transit and that allowing denser development close to transit will impose an unfair burden upon those communities and displace existing residents.⁴⁴ Such concerns led the sponsor of California’s most ambitious TOD proposal to amend the bill to give low-income neighborhoods additional time to plan how best to accommodate new development while preventing displacement.⁴⁵ The best available evidence finds that new housing generally does not displace a neighborhood’s current residents. While those studies were not looking specifically at TOD, many likely involved areas near transit.⁴⁶ Exempting low-income neighborhoods from TOD requirements altogether could deprive households living in those neighborhoods of jobs, increased housing opportunities, and other benefits of new development, so legislators should look to solutions short of complete exemptions. As discussed more fully below, fear of displacement can be addressed through requirements that the TOD include a share of affordable housing, that new TOD development results in no net loss of affordable or rent-regulated housing, and through more specific anti-displacement initiatives.⁴⁷

44. See discussion of opposition to transit-oriented development because of its potential to gentrify neighborhoods. “When Public Transportation Leads to Gentrification.” *NRDC*, www.nrdc.org/onearth/when-public-transportation-leads-gentrification

45. S.B. 50, *supra*, as revised Jan. 6, 2020, Sec. 65918.58 (delaying implementation by three additional years in “sensitive communities,” including those identified as “the intersection of disadvantaged and vulnerable communities” in the San Francisco Bay Area). *California, State Legislature. Ca. Gov. Code § 65918.58*. leginfo.legislature.ca.gov, Jan. 2020, leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65918.&lawCode=GOV

46. For a review of the recent evidence, see Phillips, Shane, et al. *Research Roundup: The Effect of Market-Rate Development on Neighborhood Rents*. 17 Feb. 2021, escholarship.org/uc/item/5d00z61m. A major study completed after that review was published finds some evidence of only slightly higher rates of outmigration by the lowest income households. Chapple et al. found that “when new market- housing is built in a neighborhood, there is only a slight increase in people of all income levels both moving in and moving out—churn. The increase in rates of displacement for very low- to moderate-socio-economic groups is not as high as commonly feared, at 0.5% to 2% above normal rates.” Chapple, Karen, et al. “Housing Market Interventions and Residential Mobility in the San Francisco Bay Area.” *Federal Reserve Bank of San Francisco*, 15 Mar. 2022, www.frbsf.org/community-development/publications/working-papers/2022/march/housing-market-interventions-and-residential-mobility-san-francisco-bay-area; Chapple, Karen, et al. “Housing Market Interventions and Residential Mobility in the San Francisco Bay Area.” *Changing Cities Research Lab*, ccrl.stanford.edu/publications/housing-market-interventions-and-residential-mobility-san-francisco-bay-area

47. Herrine, Luke, et al. “Gentrification Response: A Survey of Strategies to Maintain Neighborhood Economic Diversity.” *NYU Furman Center*, *NYU Furman Center*, Oct. 2016, furmancenter.org/files/NYUFurmanCenter_GentrificationResponse_26OCT2016.pdf



How to Ensure More Housing?

Should the Program be Voluntary or Mandatory?

The 2021 Rail-Advantaged Housing Act would have provided two incentives to encourage counties to voluntarily opt into the TOD program. First, in those counties, the TOD projects that met the state’s standards for TOD and were approved by the chief executive of the locality where a development was proposed would be exempt from environmental impact review, which reduces the risk and cost of the development for both the developer and the local government. Second, the local government would be allowed to collect impact fees from those TOD projects to “mitigate the impact of housing construction on the quality of a jurisdiction’s environment and on a local agency’s ability to provide essential public services,” which gives the county and host locality some incentive to opt in, but may raise the cost of housing. Governor Hochul’s 2023 State of the State address proposed state funding to help local governments plan for TOD, and also discussed a fund that would be available to aid critical infrastructure projects triggered by plans for increased housing. Other states have adopted various incentive programs that encourage local governments to voluntarily allow higher density near transit stations in their communities. For example, Connecticut’s Incentive Housing Zoning and Massachusetts’ 40R program provides state funding to towns that create multifamily zoning districts near transit that require a certain percentage of affordable housing.⁴⁸

Voluntary programs like these have had limited success in convincing local governments to allow denser housing near transit. In Massachusetts, for instance, only a small proportion of local governments have opted into the 40R TOD incentive program, and those have largely been older cities that are more in need of state funding than wealthy suburbs.⁴⁹ As noted above, Massachusetts recently passed legislation to require, rather than just incentivize, TOD.

48. “Incentive Housing Zone (IHZ) Program.” *Partnership for Strong Communities*, www.pschoosing.org/IHZ-program.; “Chapter 40R.” *Commonwealth of Massachusetts Department of Housing and Community Development*, www.mass.gov/service-details/chapter-40r

49. “The Use of Chapter 40R in Massachusetts: 2018 Update.” *Citizens’ Housing and Planning Association*, May 2018, www.chapa.org/sites/default/files/TheUseofCh40R_2018.pdf



Incentives may be helpful as part of a mandatory program to reduce opposition by local governments and encourage developers to propose TOD projects. In addition to the waivers of environmental review for certain projects and eligibility for state funding, various state programs provide streamlined permitting processes that may reduce risks and costs to both the locality and the developer,⁵⁰ allow land swaps with government or quasi-governmental entities,⁵¹ provide funding to upgrade transit stations,⁵² and offer technical assistance.⁵³

What Flexibility, if Any, Should Local Governments Be Given?

Some states require local governments to allow more multifamily housing near transit but give local authorities flexibility on some details. Massachusetts' 2021 TOD law requires cities and towns to zone for a certain average density near transit stations while allowing them to decide where and how that density will be distributed within the transit-adjacent area.⁵⁴ The 2022 New York TOD proposal would require cities to permit multifamily housing at a density of at least 25 units per acre near certain transit stations, and would prohibit "restrictions that effectively prevent the construction or occupation of such dwellings," but otherwise would leave details to the local government.⁵⁵

A well-designed flexible program could be effective in encouraging TOD. But the experience of several states has been that local governments often find ways to circumvent a state's attempts to reduce or override local restrictions on a particular kind of development by imposing other, often more general, regulations that make it impossible to develop despite the state's intervention. California's experience with accessory dwelling unit legislation, for example, suggests that local governments may try to get around requirements of TOD legislation by imposing onerous fees, difficult design review processes, or requirements in their building codes that make development too costly.⁵⁶

50. S.B. 50, *supra*.

51. See Wyandoch LIRR station land swap with the Metropolitan Transit Authority, "Transit-Oriented Development Program." MTA, new.mta.info/agency/construction-and-development/transit-oriented-development

52. See MTA reconstruction of Westbury and Wyandoch stations, "Transit-Oriented Development Program." MTA, new.mta.info/agency/construction-and-development/transit-oriented-development

53. See, e.g., Massachusetts' TA offerings, Commonwealth of Massachusetts. "Multi-Family Zoning Requirement for MBTA Communities." *Mass.gov*, www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities

54. See Compliance Guidelines at 11-13. "Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act." *Commonwealth of Massachusetts Department of Housing and Community Development*, 21 Oct. 2022, www.mass.gov/doc/data-sources-and-methodology-document-link/download

55. New York, State Senate. Senate Bill S8006, Part EE. *nysenate.gov*, Jan. 2022, www.nysenate.gov/legislation/bills/2021/s8006/amendment/original

56. See, e.g., Chapple, Karen, Dori Ganetsos, et al. "Implementing the Backyard Revolution: Perspectives of California's ADU Owners." *aducalifornia.org*, UC Berkeley Center for Community Innovation, Apr. 2021, www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf. (Note that some cities' ADU regulations did not comply with state law.)



A different strategy uses stricter state mandates to limit the flexibility given to local governments and avoid leaving loopholes for any recalcitrant local governments to exploit. For instance, California’s new commercial corridors zoning law prescribes specific minimum housing densities that local governments must allow as-of-right on commercial land in different contexts.⁵⁷

What Level of Density or Size of Buildings Should Be Required/Encouraged?

Whichever of those approaches the Legislature takes, it must define the minimum level of density that local governments would be encouraged or required to permit. The 2022 New York TOD proposal would have required at least 25 units per acre to be permitted near transit, but it doesn’t provide enough detail about how that density would be calculated to compare it to other jurisdictions. Massachusetts’ TOD law, for example, requires an average gross density of at least 15 units per acre. Gross density includes the area of lots, street rights-of-way, and common areas in the calculation, and therefore results in less housing than net density, which uses only the area of the buildable lots. California’s requirement that local governments allow multifamily housing on land zoned commercial abutting commercial corridors isn’t clear about whether it is using gross or net density, but mandates density of 80 units per acre for areas near “major stations” in metropolitan areas, and 70 units per acre in jurisdictions outside metro areas.⁵⁸

Rather than specify the minimum density of residential development that should be allowed on a units per acre basis, California’s SB 50 would have required local governments to allow multifamily buildings of at least 45 or 55 feet in height (about four or five stories) near transit stations, depending on how far the development is from a transit station.⁵⁹ That approach may help residents of communities affected by a TOD requirement to better visualize what TOD would look like, since densities are a harder concept for people to understand.

57. California, State Assembly. A.B. 2011, Sec. 65912.123, Ca. Leg. 2021-2022. *California Legislative Information*, 29 Sep. 2022, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011

58. California, State Assembly. A.B. 2011, Sec. 65912.123, Ca. Leg. 2021-2022. *California Legislative Information*, 29 Sep. 2022, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011

59. California, State Assembly. S.B. 50, Sec. 65918.54, Ca. Leg. 2019-2020. *California Legislative Information*, 29 Sep. 2022, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011



Should Affordable Housing Be Required?

Many states encourage or require affordable housing through their TOD programs.⁶⁰ Affordability requirements are valuable because they allow people who are unable to afford market-rate housing to directly benefit from new development in transit-rich areas (and the access to jobs and amenities that transit provides). Further, they ensure that the TOD neighborhoods are both mixed-income and more racially integrated and equitable. Low-income renters are disproportionately people of color,⁶¹ so including affordable housing in new development can help remedy past discrimination in the siting, financing, and sale and rental of homes,⁶² and mitigate displacement concerns.⁶³

New York could require developers taking advantage of higher-density zoning to include a certain percentage of below-market-rate housing in their projects, much like New York City’s Mandatory Inclusionary Housing program.⁶⁴ California’s commercial corridor housing legislation requires projects taking advantage of its provisions to designate at least 15 percent of units as affordable.⁶⁵ The broader proposed TOD bill, SB 50, would require projects with more than 20 units to reserve between 15 and 25 percent of the total number of units as affordable (reduced if the incomes targeted are extremely or very low, or by the amount required by the local government’s inclusionary housing program, whichever is higher).⁶⁶ Massachusetts’ 2021 TOD requirement does not include such a mandate, but it allows local governments to require 10 percent of units to be affordable.⁶⁷

60. For instance, California’s new commercial districts housing law only applies to development near transit that has dedicated, for 55 years or more, at least 15% of the units as affordable to low-income households, or 8% affordable to very low income households and another 5% to extremely low income. If the local government’s existing affordable housing requirement is higher than that, it governs, but the lowest income targeting of the local government’s policy or the state policy applies. California, State Assembly. Section 65912.122. *California Legislative Information*, 29 Sep. 2022, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011

61. “Racial Disparities Among Extremely Low-Income Renters.” *National Low Income Housing Coalition*, nlihc.org/resource/racial-disparities-among-extremely-low-income-renters

62. See, e.g., Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. Reprint, Norton, 2018.

63. “Racial Disparities Among Extremely Low-Income Renters.” *National Low Income Housing Coalition*, nlihc.org/resource/racial-disparities-among-extremely-low-income-renters

64. Madar, Josiah. “Inclusionary Housing Policy in New York City: Assessing New Opportunities, Constraints, and Trade-offs.” *NYU Furman Center*, Mar. 2015, furmancenter.org/files/fact-sheets/NYUFurmanCenter_InclusionaryZoningNYC_March2015.pdf

65. California, State Assembly. A.B. 2011, *supra*, at Sec. 65912. *California Legislative Information*, 29 Sept. 2022, leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011

66. California, State Assembly. S.B. 50, *supra*, at Sec. 65918.53. *California Legislative Information*, 6 Jan. 2020, leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB50

67. See Compliance Guidelines at 7. “Compliance Guidelines for Multi-family Zoning

Districts Under Section 3A of the Zoning Act.” *Commonwealth of Massachusetts Department of Housing and Community Development*, 21 Oct. 2022, www.mass.gov/doc/data-sources-and-methodology-document-link/download



Alternatively, the Legislature could create a density bonus program, mandating a baseline level of density in TOD, but allowing higher densities in developments that include higher levels of affordability.⁶⁸ California’s density bonus program allows larger developments than otherwise permitted under zoning if developers set aside at least 10 percent of units as affordable, with larger density bonuses for projects that include more affordable units.⁶⁹

It is important to note, however, that affordability requirements increase the cost to developers and therefore could result in lower overall housing production unless they are carefully designed to allow the developer to make sufficient profit to undertake the risk of the development.

What Other Ways Can New York State Use to Encourage TOD?

Should TOD Projects Be Exempted From Environmental Review?

New York’s environmental review statute, the State Environmental Quality Review Act (SEQRA), impedes new housing. Compiling an environmental impact statement can take years and cost millions of dollars for a large project. Further, environmental review often spurs litigation that ties projects up for an extended period of time and increases the cost of the projects considerably. The Rail-Advantaged Housing Act would have deemed housing projects near transit in counties that opt into the TOD program as having no significant effect on the environment (and therefore requiring no environmental review), as long as the local government’s chief executive approved the project and certified that it meets certain standards.⁷⁰ The 2022 TOD proposal does not clearly make TOD an as-of-right use and disclaims any intent to override SEQRA, so it may not be interpreted to exempt TOD from environmental review. Legislation proposed in 2022 by New York State Senator

68. “Density Bonuses.” *Local Housing Solutions*, 31 Aug. 2022, localhousingsolutions.org/housing-policy-library/density-bonuses

69. California, State Assembly. Ca. Gov. Code Sec. 65915. *California Legislative Information*, 1 Jan. 2023, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV

70. New York, State Senate. Senate Bill S2508C, Section 5. *nysenate.gov*, 20 Apr. 2021, www.nysenate.gov/legislation/bills/2021/S2508



Rachel May would have largely exempted new housing projects under a certain size from environmental review and eliminated the study of certain impacts from reviews required for other housing projects.⁷¹

Other states have designated TOD an as-of-right use, which automatically exempts the project from environmental review. For example, the recent California commercial district housing bill defines projects that meet the statute’s standards as a “use by right,” for which environmental review is not required.⁷²

Providing SEQRA exemptions for housing developments near transit could help encourage new construction by lowering costs and legal risks. While environmental review serves important goals, more housing in already-urbanized areas near transit generally has a lower environmental impact than sprawl on the outskirts of the metropolitan area that relies on private vehicles.⁷³ An exemption for such projects would therefore be consistent with SEQRA’s environmental goals.

Should TOD Be Exempted From Minimum Parking Requirements?

Cities across the United States have required parking in new developments for decades, but many urban policy and transportation experts have raised significant questions about whether parking requirements are warranted. Constructing parking to comply with these requirements is expensive, particularly in dense urban settings where it must be in an above-ground or underground garage (rather than just a surface lot), so removing these requirements can help encourage more housing development. Developers will provide parking if prospective renters and buyers seek it, so mandatory minimums pose a risk that the regulations require more parking than demand supports.⁷⁴ Moreover, the provision of abundant parking (particularly if it is free of charge) encourages more car ownership and driving.⁷⁵

71. New York, State Senate. Senate Bill S6907, Section 2. *nysenate.gov*, 2 Dec. 2022, <https://www.nysenate.gov/legislation/bills/2021/S6907>

72. California, State Assembly. A.B. 2011, *supra*, at Sec. 65912. *California Legislative Information*, 29 Sept. 2022, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011); see also “Technical Advisory - CEQA Review of Housing Projects.” *opr.ca.gov, Governor’s Office of Planning and Research*, Jan. 2020, opr.ca.gov/ceqa/docs/20190208-TechAdvisory-Review_of_Housing_Exemptions.pdf

73. “Right Type, Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development Through 2030.” *Berkeley Law*, 24 Mar. 2022, www.law.berkeley.edu/research/ceer/research/land-use/right-type-right-place

74. Been, Vicki, et al. “Searching for the Right Spot: Minimum Parking Requirements and Housing Affordability in New York City.” *NYU Furman Center*, Mar. 2012, furmancenter.org/files/publications/furman_parking_requirements_policy_brief_3_21_12_final_2.pdf; see also Litman, Todd. “Parking Requirement Impacts on Housing Affordability.” *Victoria Transport Policy Institute*, 15 Nov. 2022, www.vtpi.org/park-hou.pdf

75. Shoup, Donald. *The High Cost of Free Parking*. Routledge, 2011.



Accordingly, many cities have begun removing parking requirements, either specifically near transit or in all areas. Those cities, such as Minneapolis⁷⁶ and Buffalo,⁷⁷ have significantly less transit infrastructure and ridership than the New York City metropolitan area, yet New York City and its suburbs still retain parking requirements.⁷⁸

New York’s Rail-Advantaged Housing Act and 2022 TOD bill did not expressly pre-empt local governments’ ability to impose parking requirements on development near transit, and in fact, the Rail-Advantaged Housing Act would have penalized projects that resulted in the loss of existing parking.⁷⁹ The California Legislature, on the other hand, recently prohibited local governments from imposing parking requirements near transit stations.⁸⁰

What Can TOD Programs Do to Prevent Displacement?

Concerns that TOD could spur or exacerbate increases in rents and housing prices and result in displacement of existing residents or residents of nearby neighborhoods helped defeat a broad TOD proposal in California. While research has shown that new housing generally does not cause increases in the rents or prices of nearby existing buildings, nor cause significant displacement (and indeed can help prevent those wishing to move into a neighborhood from outbidding current residents for existing housing), concerns about displacement will have to be addressed in the deliberations over TOD legislation.⁸¹

76. Minneapolis, City Council. Minneapolis Ord. 2020-00704. *Minneapolis LIMS*, 22 May 2021, lims.minneapolismn.gov/file/2020-00704

77. Buffalo Green Code Sec. 8.3.1. *City of Buffalo Mayor’s Office of Strategic Planning*, Dec. 2016, www.buffalogreencode.com/December_2016/UDO_Dec_2016.pdf

78. There are no parking minimums in Manhattan south of 96th Street and the minimums have been reduced in a few other areas and eliminated for entirely affordable buildings. However, market rate buildings in the vast majority of the city must build parking. For a proposal to prohibit parking minimums throughout the city, see, e.g., Cuba, Julianne, et al. “State Bill Would Eliminate Parking Minimums in the City.” *Streetsblog New York City*, 31 Jan. 2022, nyc.streetsblog.org/2022/01/31/state-bill-would-eliminate-parking-minimums-in-the-city

79. New York, State Senate. Senate Bill S2508C, Part DD. *nysenate.gov*, 20 Apr. 2021, www.nysenate.gov/legislation/bills/2021/S2508

80. California, State Assembly. A.B. 2097, Cal. Leg. 2021-2022. *California Legislative Information*, 23 Sept. 2022, [leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2097](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2097)

81. See *supra*, n. 45.



TOD legislation can include provisions to help prevent displacement or fear of displacement near transit as the area develops. A TOD proposal could, for example, require projects that demolish existing rental housing to offer its residents temporary housing followed by a right to return at comparable rents. Legislation can also prohibit projects involving the demolition of a significant number of units from taking advantage of the bill's benefits, particularly if the existing housing is subject to affordability restrictions or is rent-regulated. This would direct development to existing commercial, industrial, or vacant properties instead of land already devoted to housing (as long as the TOD program required local governments to allow sufficient housing on those types of properties). Other policies to ensure that existing residents benefit from new development could include additional affordability requirements in areas considered particularly vulnerable to displacement, rental assistance programs to cover unusual rent increases, and a variety of other tools in use around the country.⁸²

How Can TOD Programs Further Reduce Auto Dependence?

Having amenities like grocery stores and land uses that provide jobs within walking distance in a TOD can further reduce residents' need to use private vehicles. That argues in favor of including New York City, which generally provides a mix of uses in neighborhoods near transit, in any state TOD program. It also suggests that state TOD proposals may need to require that local governments allow ground-floor retail or office space in housing developments near transit, or encourage such space by exempting it from the area subject to density or floor area calculations or height and other dimensional limits, for example.

82. See, e.g., Herrine, Luke, et al. "Gentrification Response: A Survey of Strategies to Maintain Neighborhood Economic Diversity." *NYU Furman Center*, Oct. 2016, furmancenter.org/files/NYUFurmanCenter_GentrificationResponse_26OCT2016.pdf; "Housing Policy Library Archive." *Local Housing Solutions*, localhousingsolutions.org/housing-policy-library; "Neighborhood Gentrification." *NYU Furman Center*, May 2014, <https://furmancenter.org/research/iri/discussions/neighborhood-gentrification>



In Sum

Despite having more mass transit opportunities than any other state in the nation, New York lags behind in reforming its land use regulations to allow more housing near transit stations. As the state enters the 2023 legislative session, it should learn from what other states have done to craft TOD strategies that will effectively, efficiently, and fairly achieve both more affordable housing and less environmentally harmful transportation patterns.

By Vicki Been, Alex Jonlin, and Noah Kazis

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