



Allowing More and Different Types of Housing

In recent years, states across the nation have adopted new legislation to require their local governments to zone less restrictively and support both new housing development and housing to meet the needs of a broader range of households. Restrictive land use regulations imposed by New York's local governments artificially constrain the amount of housing available across the state. That constraint in turn reduces affordability and choice for residents, perpetuates or exacerbates existing racial and economic inequities, and harms the broader economy by limiting people's ability to pursue jobs in places they would like to live. Further, depending on where people move when housing is not available in the location they would otherwise choose, restrictive land use regulations may result in more greenhouse gas emissions, habitat loss, and other environmental degradation.¹

1. See "Critical Land Use and Housing Issues for New York State in 2023" for a more detailed description of the problems that restrictive zoning imposes on New York State and why these problems require statewide solutions. Vicki Been, Jiaqi Dong, & Hayley Raetz, Critical Land Use and Housing Issues for New York State in 2023 (2023), https://furmancenter.org/files/publications/Critical_Land_Use_and_Housing_Issues_for_New_York_State_in_2023_Final.pdf.

New York’s inaction in the face of those harms is unusual amongst its peer states.² Starting in the 1970s, many states have adopted legislation to ensure that their local governments allow housing to meet the needs of different types of households (including those at different income levels). Just in the last few years, several states have adopted even more aggressive strategies to reduce restrictive zoning and require local governments to allow new development, especially “gentle density”³ or “missing middle” housing. Both those terms refer to building types such as townhomes, two- to four-family houses, garden apartments, and small scale apartment buildings that can fit more affordable, equitably available, and environmentally friendly housing into traditional single-family neighborhoods. Those forms of housing play a valuable role in providing more choices for households at different stages of life or with specific individual needs. The legislatures in California, Connecticut, Maine, Massachusetts, Oregon, and Washington, for example, have set many new statewide policies to allow a wider range of housing types, as well as more housing in general, in motion, including requiring local governments to:

- 1. Allow accessory dwelling units (ADUs)**
- 2. Permit lot splits**
- 3. Increase by-right development in low-density zones**
- 4. Prohibit downzoning**
- 5. Make certain lands available for residential use even if not zoned residential (new development)**
- 6. Allow buildings of one zoning type to be converted to another (conversions)**

2. NOAH KAZIS, ENDING EXCLUSIONARY ZONING IN NEW YORK’S SUBURBS 3 (2020), https://furmancenter.org/files/Ending_Exclusionary_Zoning_in_New_York_Citys_Suburbs.pdf.

3. Alex Baca, Patrick McAnaney & Jenny Schuetz, “Gentle” Density Can Save Our Neighborhoods, BROOKINGS INSTITUTION (Dec. 4, 2019), <https://www.brookings.edu/research/gentle-density-can-save-our-neighborhoods/>

In 2022, New York State legislators sought to follow suit by proposing a few strategies to encourage or require localities to legalize more housing types and reduce onerous local restrictions on building.⁴ In her recent State of the State 2023 address, Governor Hochul announced plans to incentivize the construction of more housing, including ADUs and conversions of office buildings to apartments.

This brief assesses how lessons learned from the adoption, implementation, and impact of these strategies in other states can help New York’s governor, legislature, and local governments consider which strategies may prove most useful to address New York’s increasingly pressing housing crisis (which we detailed [here](#)). Strategies other states have adopted to encourage or require their local governments to allow [transit oriented development](#) and to end racially [exclusionary and classist zoning](#) are explored in separate briefs.

I. Allowing Accessory Dwelling Units (ADUs)

Accessory Dwelling Units (ADUs) are residential units located on the same lot as an existing home that provide completely independent living facilities for another household. ADUs include units attached to an existing home, units in structures (like garages) that are detached from the existing home, and converted portions of existing homes (e.g., basement or upper-level units). So called “granny flats,” “in-law apartments,” or garage conversions are traditional examples; more recently, “alley flats.” and “backyard cottages” have become popular.⁵ Constructing ADUs typically requires less time and money than other forms of housing.⁶ Legalizing ADUs can help provide new housing, meet needs for inter-generational caregiving, reduce overcrowding, and provide new rental income to ease the cost of homeownership or allow homeowners to leverage their home to build wealth.⁷

4. E.g., Senator Hoylman introduced S.B. S7574, 2021-22 Leg., 244th Sess. (N.Y. 2021) <https://www.nysenate.gov/legislation/bills/2021/S7574> (prohibiting certain minimum lot sizes, off-street parking requirements, and restrictions against four-family dwellings on any residential lot or six-family dwellings near transit in cities and villages); Senator Harckham introduced S.B. S4547A, 2021-22 Leg., 244th Sess., § 1 (N.Y. 2021) <https://www.nysenate.gov/legislation/bills/2021/S4547> (authorizing at least 1 ADU per residential lot, prohibiting certain envelope constraints that may impair ADU creation, requiring ministerial review of ADU permits, and establishing a lending program to assist low- and moderate-income homeowners with ADU financing, among other provisions).

5. *Accessory Dwelling Units*, AM. PLAN. ASS’N, <https://www.planning.org/knowledgebase/accessorydwellings/>

6. JULIA GREENBERG, HANNAH PHALEN, KAREN CHAPPLE, DAVID GARCIA, & MUHAMMAD ALAMELDIN, TERNER CENTER FOR HOUSING INNOVATION, ADUS FOR ALL: BREAKING DOWN BARRIERS TO RACIAL AND ECONOMIC EQUITY IN ACCESSORY DWELLING UNIT CONSTRUCTION 2 (2022), <https://turnercenter.berkeley.edu/wp-content/uploads/2022/08/ADU-Equity-August-2022-Final.pdf>.

7. KAREN CHAPPLE, DAVID GARCIA, ERIC VALCHUIS, & JULIAN TUCKER, TERNER CENTER FOR HOUSING INNOVATION, REACHING CALIFORNIA’S ADU POTENTIAL: PROGRESS TO DATE AND THE NEED FOR ADU FINANCE 2 (2020), <https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/ADU-Brief-2020.pdf>.

ADU Proposals in New York

In early 2022, New York’s new governor, Kathy Hochul, proposed to require municipalities to allow a minimum of one ADU on each owner-occupied residentially zoned lot, while allowing municipalities to set reasonable standards for ADUs as long as they would not “unreasonably restrict the creation” of such units.⁸ The Governor withdrew her proposal from the state budget in February 2022, acknowledging local government objections that she wanted more time to address.⁹ In her recent State of the State address, the Governor talked about incentivizing ADUs, but did not mention her previous ADU proposal.¹⁰ Several legislators had bills pending in the 2022 legislative session, and are expected to reintroduce them in 2023. Senator Harckham and Assembly Member Epstein proposed S4547A and A4854A, for example, which would direct localities to adopt ADU ordinances that allow homeowners to build at least one ADU as-of-right on lots zoned for residential use, subject to owner-occupancy requirements, short-term lease limitations, and “reasonable standards” localities might impose.¹¹

ADU Reforms in Other States

California

California passed SB 1069 in 2016 to encourage the development of ADUs throughout the state in areas zoned for single-family and multi-family residential use.¹² SB 1069 gave local agencies the option of either adopting an ordinance to allow ADUs, subject to some local standards,¹³ or allowing development of any ADU meeting requirements specified in the state law.¹⁴ These state default allows of up to 1,200 square feet on any lot zoned for residential use with an existing single-family dwelling.¹⁵ SB 1069 required all localities to

8. S.B. 8006A, 2021-22 Leg., 244th Sess., Part AA (N.Y. 2022) <https://legislation.nysenate.gov/pdf/bills/2021/s8006>. See also KATHY HOCHUL, NEW YORK STATE OF THE STATE: A NEW ERA FOR NEW YORK 130 (2022). <https://www.governor.ny.gov/sites/default/files/2022-01/2022StateoftheStateBook.pdf> [hereinafter 2022 STATE OF THE STATE].

9. Timothy Bolger, *Hochul Nixes Accessory Dwelling Unit Proposal That Riled Some Long Island Pols*, LONG ISLAND PRESS, Feb. 18, 2022, <https://www.longislandpress.com/2022/02/18/hochul-nixes-accessory-dwelling-unit-proposal-that-riled-some-long-island-leaders/>

10. KATHY HOCHUL, NEW YORK STATE OF THE STATE: ACHIEVING THE NEW YORK DREAM 43-44 (2023) [hereinafter 2023 STATE OF THE STATE]. Governor Hochul also announced a proposal to give New York City the authority to offer amnesty for existing illegal basement units that meet health and safety standards to be determined by the City. *Id.*, at 42. Basements are a type of ADU, but the issue of legalizing existing ADUs that were occupied illegally involves a number of different policy issues than the proposals to require local governments to allow new ADUs to be constructed. This brief focuses on those proposals.

11. S.B. S4547A, 2021-22 Leg., 244th Sess. § 481-82 (N.Y. 2021) <https://www.nysenate.gov/legislation/bills/2021/S4547>

12. S.B. 1069, 2015-16 Leg., (Cal. 2016), Act of Sept. 27, 2016, ch. 720, 2016 Cal. Stat. 720, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1069

13. *Id.*, § 5 (codified at CAL. GOV’T CODE § 65852.2. (a)(1)).

14. *Id.*, § 5 (codified at CAL. GOV’T CODE § 65852.2. (b)(1)).

15. *Id.*, § 5 (codified at CAL. GOV’T CODE § 65852.2. (b)(1)) (setting the default maximum floor area of an ADU to 1,200 square feet and maximum increase in floor area to 50% of the existing living area)

consider ADU development applications ministerially—based on objective standards set in the local ordinance or state law rather than through discretionary review—and without a public hearing, or environmental impact review.¹⁶

In the year after the passage of SB 1069, the number of ADUs permitted across California’s largest metro areas increased from 654 in 2016 to 3,126 in 2017.¹⁷ Many local governments managed to limit ADUs, however, by imposing onerous requirements on their size, setbacks, parking, permitting fees, or owner-occupancy. The state responded by passing additional bills to limit those local regulations. In 2019, AB 68 and AB 881 expanded the statewide requirement to allow multiple ADUs within an existing multifamily dwelling structure, as well as one ADU and one junior ADU (“JADU”—one that is internal to a proposed or existing single-family residence and contains no more than 500 square feet)¹⁸ per single-family lot.¹⁹ The 2019 bills prohibit localities from imposing various requirements if they would make it impossible to construct an ADU of at least 800 square feet, up to 16 feet in height, and with four-foot side and rear yard setbacks.²⁰ The bills also reduce the maximum amount of time that a locality can spend reviewing an ADU or JADU application for a lot with an existing single family or multifamily unit from 120 days to 60 days.²¹ AB 68 and AB 881 also prohibited localities from imposing owner-occupancy requirements prior to 2025, or imposing parking requirements on ADUs located within ½ mile walking distance from a transit station.²² In the years after those further restrictions on local governments’ regulations were passed, the number of ADUs permitted has increased from 8,769 in 2019 to 19,303 in 2021, and the number of ADUs completed has increased from 3,112 in 2018 to 9,604 in 2021.²³

16. *Id.*, § 5 (codified at CAL. GOV’T CODE § 65852.2 (a)(3)).

17. CHAPPLE ET AL., TERNER CENTER FOR HOUSING INNOVATION, *supra* note 7, at 2.

18. California Department of Housing & Community Development, *Accessory Dwelling Units*, <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units>.

19. A.B. 68, 2019-20 Leg., §§1-2 (Cal. 2019), Act of Oct. 9, 2019, ch. 655, 2019 Cal. Stat. 5633, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=2019202000AB68 (codified at Cal. Gov’t Code § 65852.2 (a)(3)).

20. *Id.* (codified at CAL. GOV’T CODE § 65852.2 (a)(3)).

21. *Id.* (codified at CAL. GOV’T CODE § 65852.2 (a)(3)).

22. *Id.* (codified at CAL. GOV’T CODE § 65852.2 (d)); A.B. 881, 2019-20 Leg., § 1 (Cal. 2019), Act of Oct. 9, 2019, ch. 659, 2019 Cal. Stat. 5681, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=2019202000AB881 (codified at CAL. GOV’T CODE § 65852.2 (a, d)). In addition to these major bills allowing ADUs statewide, California has passed several other bills to support ADU development in recent years. See, e.g., S.B. 13, 2019-20 Leg., § 1.1 (Cal. 2019), Act of Oct. 9, 2019, ch. 653, 2019 Cal. Stat. 5559 (codified at CAL. GOV’T CODE § 65852.2(a) (6) to prohibit requirements on owner-occupancy and parking space replacement if covered parking demolished to create an ADU, among other provisions); A.B. 3182, 2019-20 Leg., § 3 (2020), Act of Sept. 28, 2020, ch. 198, 2020 Cal. Stat. 3068 (codified at CAL. GOV’T CODE § 65852.2 (a)(3) to deem an ADU/ JADU application approved if a local agency has not acted on it within 60 days, among other provisions); A.B. 670, 2019-20 Leg., § 2 (2020), Act of Aug. 30, 2019, ch. 178, 2019 Cal. Stat. 2515 (codified at CAL. GOV’T CODE § 4751) (declaring void and unenforceable any covenant, condition, or restriction effectively prohibiting or unreasonably restricting ADU/ JADU construction or use). For a description of the history of major bills in California from 2016 to 2021, see BEN METCALF, DAVID GARCIA, IAN CARLTON, & KATE MCFARLANE, TERNER CENTER FOR HOUSING INNOVATION, WILL ALLOWING DUPLEXES AND LOT SPLITS ON PARCELS ZONED FOR SINGLE-FAMILY CREATE NEW HOMES? 3-4 (2021).

23. California Department of Housing & Community Development, *Annual Progress Reports—Data Dashboard and Downloads*, <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>

Washington

In 2019, Washington State enacted HB 1923, which provided an incentive for localities to authorize attached ADUs on all lots over 3,200 square feet containing single-family homes, and to permit both attached and detached ADUs on all parcels over 4,356 square feet containing single-family homes.²⁴ Localities that authorize ADUs as the state suggests, and do not require on-site parking or owner-occupancy, do not prohibit the rental or sale of the ADU separately from the primary residence, and do not limit the size of ADUs below 1000 square feet are protected from various administrative appeals and legal challenges that might otherwise be brought against the local government’s regulations.²⁵

What Can NY Learn?

California’s many years of refining its ADU statutes show that simply preempting local prohibitions on ADUs, or even requiring localities to impose only “reasonable” restrictions, may not be enough. Local governments can “allow” ADUs, but apply other restrictions that might even pass the low threshold of “reasonableness”—such as minimum parking requirements, minimum lot sizes or maximum ADU sizes, or strict height, side-yard or rear-yard rules—that make ADUs impracticable.²⁶ Localities also can limit the financial feasibility of ADUs by imposing owner-occupancy rules or restricting occupancy to relatives of the owner of the primary house,²⁷ requiring separate metering or water and sewer hookups, or charging the same amount for impact or hookup fees as the jurisdiction charges for larger housing. New York should learn from that experience, and consider either specifying in significant detail the requirements that localities may impose on ADUs and including a catch-all more stringent limit to local authority, such as a prohibition on requirements that would make it financially or logistically impossible to build an ADU of a specified size.

New York also must address its own state regulations that affect the feasibility of ADUs. For example, New York State’s multiple dwelling law defines a “multiple dwelling” as a building “occupied as the residence or home of three or more families living independently of each other.”²⁸ Some configurations of ADUs could fall within that definition (a garage apartment attached to a two-family house, or to a single-family house with another

24. H.B. 1923, 66th Leg., 2019 Sess., § 1(e) (Wash. 2019)), Urban Residential Building Capacity Act, ch. 348, 2019 Wash. Sess. Laws 2181, 2182 (codified at WASH. REV. CODE 36.70A).

25. *Id.* §§4, 6, 2019 Wash. Sess. Laws at 2188-2189 (codified at WASH. REV. CODE 43.21C).

26. See METCALF ET AL., TERNER CENTER FOR HOUSING INNOVATION, *supra* note 22, at 2.

27. E.g., Marcel Negret et al., Regional Planning Association, *Be My Neighbor* (2020), <https://rpa.org/work/reports/be-my-neighbor>

28. N.Y. MULT. RESID. LAW, § 4.33 (McKinney 2022)

internal ADU, for example).²⁹ Multiple dwellings must comply with myriad requirements, such as sprinkler systems, that could pose insurmountable financial barriers to would-be ADU builders. Several states make clear that ADUs need not be sprinklered if sprinklers are not required in the main house.

Further, even if regulations are limited to make ADUs more feasible, the time and cost (as well as just the sophistication needed) to secure permits can be significant deterrents to ADU development.³⁰ As noted above, after seeing the force of delays, California lowered its limits on permitting processes for ADUs built on lots with existing homes from 120 to 60 days. Connecticut's law allows 65.³¹ The New York proposed legislation allows 90 days outside New York City.³²

29. See, e.g., S.B. S4547A, 2021-22 Leg., 244th Sess., § 481(10) (N.Y. 2021) (prohibiting the application of the Multiple Dwelling Law to ADUs, and declaring that "a dwelling otherwise exempt from the provisions of the multiple dwelling law shall not fall under the provisions of such law as a result of the addition of an accessory unit.")

30. See GREENBERG ET AL., TERNER CENTER FOR HOUSING INNOVATION, *supra* note 6, AT 4-5; CHAPPLE ET AL., TERNER CENTER FOR HOUSING INNOVATION, *supra* note 7, at 18.. 31. H.B. 6107, 2021 Leg. Sess., § 6 (Conn. 2021), Act of Oct. 1, 2021, 2021 Conn. Legis. Serv. P.A. 21-29 (West).

31. H.B. 1067, 2021 Leg. Sess., § 6 (Conn. 2021).

32. S.B. S4547A, 2021-22 Leg., 244th Sess., § 1 (N.Y. 2021) (proposing to amend N.Y. Real Property Law § 481.5)

2. Allowing Building or Lot Splits

Allowing owners of single family homes to convert them into two family homes, or to split their lots into two parcels, can facilitate significant new development in lower density neighborhoods. Subdividing an existing lot zoned for single-family or two-family homes can alleviate some of the financing hurdles to both ADU development³³ and denser multi-family development such as duplexes. It also allows homeowners to build wealth through their property.³⁴ Lot splits can facilitate sales of newly-constructed ADUs, encouraging homeowners who are nervous about being a landlord to pursue a second unit, and helping existing homeowners to tap into the asset their home represents.³⁵ Further, converting an existing home or constructing new buildings on a newly-split lot can be cheaper than other ways of adding housing supply, such as teardowns of existing homes or development on “green field” land, and will usually be a more efficient use of the local government’s infrastructure and a cheaper way to provide services to the property.

Building and Lot Split Reforms in Other States

California

In part to augment its effort to facilitate ADUs, and to encourage the development of duplexes, California passed SB 9 in 2019. SB 9 requires local governments to review proposals for two homes on a lot zoned for single family residential use, or to split the lot in two, ministerially (using only objective criteria that do not involve the use of discretion, with no public hearings, and with no environmental review).³⁶ The law requires local governments to allow the subdivision of a lot as long as each of the resulting parcels is at least 1200 square

33. See GREENBERG ET AL., TERNER CENTER FOR HOUSING INNOVATION, *supra* note 6, at 2 (Describing the lot split provision of California’s SB 9 as “open[ing] up...the option of traditional construction financing to build more homes on a property...spurr[ing] public-private partnerships between local governments and banks, nonprofits, and other stakeholders to increase production of ADUs throughout the state.”).

34. Joseph Weil Huennekens, *Learning from Land Use Reforms: the Case of Ramapo, New York* (Oct. 2022)(unpublished working paper); Jake Wegmann, Aabiya Noman Baqai & Josh Conrad, *Houston’s Townhouse Boom: Assessing America’s First De Facto Citywide Single-Family Zoning Repeal* (Nov. 2022) (unpublished working paper).

35. See METCALF ET AL., TERNER CENTER FOR HOUSING INNOVATION, *supra* note 22, at 8.

36. Objective standards are those that “involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” S.B. 9, 2021-22 Leg., § 1 (Cal. 2021), Act of Sept. 16, 2022, ch. 162, 2021 Cal. Stat. 4129, 4132 (codified at CAL. GOV’T CODE § 65852.21(h)(i)(2)). Local governments can deny an application that meets objective standards only “upon written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, ... upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.” *Id.*, 2021 Cal. Stat. at 4134 (codified at CAL. GOV’T CODE § 65852.21(d)).

feet (unless the locality allows smaller lots), and at least 40 percent of the original lot area. Further, while local governments are allowed to apply objective zoning, subdivision, and design standards, the effect of those standards must not physically preclude the construction of up to 2 units of at least 800 square feet each on each of the two resulting lots.³⁷

Neither provision—for two homes per lot or for a lot split—applies in historic districts or properties, to sensitive lands such as wetlands or habitat for endangered species, or may involve demolition or alteration of income-restricted affordable housing, housing subject to rent regulation, or housing that has been occupied by a tenant in the prior three years.³⁸ The law requires owners using SB9 procedures to include protections for existing tenants and future tenants of the ADU.³⁹ Owners seeking lot splits must certify that they intend to occupy one of the homes as their principal residence for at least three years after the split is approved, and cannot have subdivided any adjacent parcels.⁴⁰ Local governments may not require parking for any lot located within ½ mile walking distance of a transit corridor or station or within one block of a car share, and may not require more than one off-street parking space per unit for other lots.⁴¹ Because SB 9 allows development of two residential units on each resulting parcel—one primary residence and one ADU,⁴² it opened up the potential to create up to four units on many single-family parcels in California.⁴³

While the impact of SB 9’s lot split provision is difficult to isolate from the overall impact of California’s many land use reforms over the last few years, a 2021 analysis estimated that SB 9 “enabled approximately 700,000 new, market-feasible homes.”⁴⁴ But because not all owners will choose to develop their lots more intensively, even if the market would support that development, “only a share of that potential is likely to be developed, particularly in the near term....”⁴⁵ Indeed, 2022 data has revealed few lot split applications and new unit permits under SB 9, particularly in cities with relatively high levels of ADU development. However, these same cities report fielding many inquiries about SB 9, and hypothesize that SB 9 lot split applications are currently low because ADU development is supported by more prescriptive state law and more attractive local incentive programs.

37. *Id.* at § 2, 2021 Cal. Stat. 4134, (codified at CAL. GOV’T CODE § 66411.7(a)).

38. *Id.* at § 2, 2021 Cal. Stat. 4133 (codified at CAL. GOV’T CODE § 65852.21(3)).

39. Metcalf et al, *supra* note 22, at 5 (2021).

40. S.B. 9, 2021-22 Leg., § 2 (Cal. 2021), 2021 Cal. Stat. 4133 (codified at CAL. GOV’T CODE § 66411.7(g)).

41. *Id.* § 1, 2021 Cal. Stat. 4132 (codified at CAL. GOV’T CODE § 65852.21(c, e)).

42. *Id.* § 1, 2021 Cal. Stat. 4131(codified at CAL. GOV’T CODE § 65852.21(a)).

43. Metcalf et al., *supra* note 22, at 9 (2021).

44. *Id.* at 14.

45. *Id.*

Oregon

In 2021, Oregon adopted S.B. 458, which requires localities to approve all divisions of “a lot or parcel on which the development of ‘middle housing’ is allowed” under state law.⁴⁶ “Middle housing” refers to duplexes, triplexes, quadplexes, townhouses, and cottage clusters. Because a law Oregon adopted in 2019—A.B. 2001—requires that medium sized cities (with a population of 10,000 or more) to permit duplexes on lots zoned to allow single-family detached homes, and requires large cities (with a population of 25,000 or more) to allow all middle housing types in areas zoned for single-family detached homes,⁴⁷ the effect of S.B. 458 is to allow lot splits on parcels previously zoned for single-family homes in many jurisdictions. Localities must approve lot splits allowing for the development of such “middle housing” without any additional approval criteria, such as parking minimums.⁴⁸ SB 458 limits development to one dwelling unit on each resulting lot and allows localities to prohibit future division of the resulting lots.⁴⁹ The lot split requirement does not allow more homes than A.B. 2001 already required local governments to permit, but facilitates the construction of middle housing by enabling owners to sell the resulting housing in the same legal form as traditional single family homes, rather than being limited to renting the housing or organizing multiple homes as a condominium.

What Can NY Learn?

Both Houston, Texas and Ramapo, New York have allowed lot splits, and both are seeing considerable new housing as a result.⁵⁰ Lot splits can facilitate many types of new development, including ADUs. Indeed, some land use experts in California believe that the lot splits SB 9 allows have been critical to the upsurge in ADU development there. New York accordingly should carefully review whether the success of any land use reforms it adopts will require similar legislation. California’s experience also suggests that any legislation requiring local governments to permit lot splits or subdivisions of existing housing must spell out exactly

46. S.B. 458, 81st Leg. Assemb., 2021 Reg. Sess. § 2 (Or. 2021), Act Relating to Manufactured Dwellings, ch. 31, 2021 Or. Laws (West)(codified at OR. REV. STAT. ANN. § 458.352). 47. H.B. 2001, 80th Leg. Assemb., 2019 Reg. Sess. § 8 (Or. 2019), Act of Aug. 8, 2019, ch. 639, 2021 Or. Laws (West) (codified at OR. REV. STAT. ANN. § 197.758).

47. H.B. 2001, 80th Leg. Assemb., 2019 Reg. Sess. § 8 (Or. 2019); Or. Rev. Stat. Ann. § 197.758 (West 2019).

48. S.B. 458, 81st Leg. Assemb., 2021 Reg. Sess. § 2 (Or. 2021), Act Relating to Manufactured Dwellings, ch. 31, 2021 Or. Laws (West) (codified at OR. REV. STAT. ANN. § 458.352).

49. *Id.*

50. See Nolan M. Gray & Adam A. Millsap, *Subdividing The Unzoned City: An Analysis of the Causes and Effects of Houston’s 1998 Subdivision Reform*, J. OF PLAN. EDUC. & RSCH. (2020), <https://doi.org/10.1177/0739456X20935156>; Joseph Weil Huennekens, Learning from Land Use Reforms: the Case of Ramapo, New York (Oct. 2022)(unpublished working paper); Jake Wegmann, Aabiya Noman Baqai & Josh Conrad, Houston’s Townhouse Boom: Assessing America’s First De Facto Citywide Single-Family Zoning Repeal (Nov. 2022)(unpublished working paper).

what conditions localities can impose on the permits, and make clear that any such conditions must make it possible to split a lot or existing building into multiple parcels that meet the state-mandated minimum size unless the local government allows an even smaller lot.

3. Increasing By-Right Development in Low-Density Districts

Many suburban localities across New York use a variety of strategies to exclude multifamily housing and limit development to detached single family housing on large lots. The Wharton Residential Land Use Regulatory Index rates the New York region as the area with the second-strictest zoning in the country.⁵¹ That is driven not by a small number of extremely restrictive communities, but rather, by exclusionary regulation across almost all of New York's suburbs.⁵² Such regulations often explicitly or constructively ban duplexes, townhouses, and other modest, affordable homes. In addition to zoning an area for single-family detached residential uses only, for example, many localities impose onerous minimum lot sizes, height, setback and sideyard restrictions, and extensive subdivision, infrastructure, and parking requirements. Many use opaque and multi-layered discretionary review processes that make new multifamily housing development financially and practically infeasible.⁵³ New York could increase by-right development in low-density areas by addressing both explicit bans on, and such regulatory barriers to, multiple dwelling units.

Other States' Efforts to Increase By-Right Development

As just described, California's SB 9 allows a lot zoned for single family use to be developed instead with either a duplex, or two housing units of at least 800 square feet each. Maine and Oregon also have adopted creative statewide strategies that provide other examples of workable approaches for increasing the availability of housing types that households of different sizes, composition, ages, and stages in life need.

51. Joseph Gyourko, Jonathan Hartley & Jacob Krimmel, *The Local Residential Land Use Regulatory Environment Across U.S. Housing Markets: Evidence from a New Wharton Index*, NBER Working Paper No. 26573, at 61 (Dec. 2019), <https://www.nber.org/papers/w26573.pdf>.

52. *Id.* at 22.

53. See KAZIS, *supra* note 2, at 14-16 (describing case studies on Bellerose and Bronxville).

Maine

Maine recently passed House Paper 1489, which requires all municipalities to allow at least two dwelling units on all lots zoned for residential use that do not contain an existing unit, and at least four units on such lots that are also served by a centrally-managed water system and certain types of sewer systems.⁵⁴ In addition, local governments must allow the owner of a lot that already contains one existing unit to add one ADU within or attached to an existing structure, one detached dwelling unit, or one of each. H.P. 1489 prohibits municipalities from imposing setbacks or other dimensional requirements for such units that are greater than those required of single-family housing units.⁵⁵

Oregon

As noted in the discussion of lot splits, in 2019 Oregon adopted HB 2001, which required all cities with a population over 25,000 to allow duplexes, triplexes, quadplexes, townhouses, and cottage clusters (collectively referred to as “middle housing”) on land zoned for single-family dwellings.⁵⁶ Cities with a population between 10,000 and 25,000 are required to allow duplexes on such land. While the law prohibits all localities from imposing owner-occupancy or parking requirements on new units, it otherwise allows regulations that “do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay.”⁵⁷ In a form of “soft” pre-emption, Oregon gives local governments some time to adopt an ordinance regulating middle housing; if a local government has not met that deadline, the state’s “model” ordinance will apply until the local government adopts its own.

HB 2001 also requires local governments to allow existing single family buildings to be converted into up to 4 residences, and requires localities to grant or deny applications for conversion within 15 days of receipt.

54. H. Paper 1489, 130th Leg., 2d. Reg. Sess., § 5 (Me. 2022), Act of April 27, 2022, 2022 Me. Legis. Serv. Ch. 672 (West) (codified at ME. REV. STAT. ANN. 30-A § 4364-A)

55. *Id.*

56. H.B. 2001, 80th Leg. Assemb., 2019 Reg. Sess. § 2 (Or. 2019), Act of Aug. 8, 2019, ch. 639, 2021 Or. Laws (West) (codified at OR. REV. STAT. ANN. ch. 197)

57. *Id.*

A Note About Minneapolis

In 2018, Minneapolis made news by “ending single family zoning” through a zoning change that allowed any lot zoned for single family use to be used as well for a duplex or triplex, and allowed existing single family homes to be converted to add one or two new units.⁵⁸ The measure has produced only about 100 new units thus far, in part because the law left in place restrictions such as height limits and side and rear yard requirements.⁵⁹

What Can NY Learn?

Even in the densest areas of New York State, large amounts of urban land are put off limits to most renters, and many homeowners by single-family zone restrictions. In New York City, for example, single family and two family homes constitute less than a quarter of the City’s housing stock, but take up sixty-five percent of the City’s land.⁶⁰ The experiences of places that have encouraged modest increases in density show that it takes some time for missing middle housing to open neighborhoods up to more families. Nevertheless, that gradual change can be an important means of ensuring adequate housing and meeting local governments’ obligations to ensure that the land use system is fair and inclusive.⁶¹ Because much of the land devoted to single family homes is near public transportation, even greater increases in the density allowed in those areas would add to the housing stock, help reduce auto-dependency, and support investment in transit, as detailed in the brief on transit oriented development in this series outlines.

58. While this brief focuses on state-level reforms, Minneapolis warrants a note because its leadership garnered widespread media attention and prompted subsequent similar reforms in other cities. See Erick Trickey, *How Minneapolis Freed Itself From the Stranglehold of Single-Family Homes*, POLITICO (July 11, 2019), <https://www.politico.com/magazine/story/2019/07/11/housing-crisis-single-family-homes-policy-227265/>; Justin Fox, Opinion, *What Happened When Minneapolis Ended Single Family Zoning?*, BLOOMBERG NEWS (Aug. 20, 2022), [bloomberg.com/opinion/articles/2022-08-20/what-happened-when-minneapolis-ended-single-family-zoning](https://www.bloomberg.com/opinion/articles/2022-08-20/what-happened-when-minneapolis-ended-single-family-zoning). More recently, Austin, Vancouver, and Portland, Oregon also have passed notable reforms. Michael Anderson, *Portland Just Passed the Best Low-Density Zoning Reform in US History*, SIGHTLINE INSTITUTE (Aug. 11, 2020), <https://www.sightline.org/2020/08/11/on-wednesday-portland-will-pass-the-best-low-density-zoning-reform-in-us-history/>; Christian Britschgi, “Portland Legalized ‘Missing Middle’ Housing. Now It’s Trying to Make It Easy to Build,” REASON, June 13, 2022, <https://reason.com/2022/06/13/portland-legalized-missing-middle-housing-now-its-trying-to-make-it-easy-to-build/>

59. Fox, *supra* note 71; Wegmann, et al., *supra* note 50.

60. Negret et al., *supra* note 27.

61. *Id.* at 16.

4. Prohibiting Downzoning

“Upzoning” legislation allowing ADUs, middle housing, lot splits, and other by-right development actively relaxes exclusionary zoning practices to allow new housing to spring up. Prohibiting downzonings, which impose more restrictive zoning to reduce the amount of housing that can be built, may also help to increase New York housing supply. Local governments may seek to work around state land use reforms by, for example, rezoning land from single family residential to non-residential uses such as agriculture. Even the threat of such a downzoning can discourage housing proposals by increasing the risk of the development process and the time it takes. By prohibiting downzonings, the state can stymie local governments’ attempts to avoid development, while preserving some local control (a prohibition does not impose specific statewide zoning requirements, it just sets the floor at each jurisdiction’s specific zoning restrictions at a given point in time).

Restrictions on Downzoning in Other States

California

SB 330 (2019) prohibits urban counties and cities from rezoning any parcel of property to a less intensive use, such as “reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements,” or anything else that may similarly limit the number of housing units that may be permitted and constructed.⁶² This prohibition applies only to those zoning changes that would reduce use to a level below the jurisdiction’s ordinances in effect on January 1, 2018. The law also prohibits these localities from approving housing developments that would demolish more residential units than they would create.⁶³ Recognizing that zoning should not necessarily be frozen in time for long periods without an opportunity for review, the law is scheduled to sunset in 2030.⁶⁴

62. S.B. 330, 2019-20 Leg. § 13 (Cal. 2019), Act of Oct. 12, 2019, ch. 654 Cal. Stat. 5608, 5630 (codified at CAL. GOV’T CODE § 66300).

63. *Id.*

64. Cal. Gov’t Code § 65589.5(h)(9)(i).

What Can NY Learn?

Prohibiting downzonings may prevent localities from imposing more restrictive rules on development, but may also disincentivize local efforts to relax their restrictions on their own accord. If local jurisdictions find themselves held to any upzoning they adopt, the fact that they can't change that zoning if it results in unforeseen problems may deter them from relaxing restrictions. Blanket prohibitions on downzonings also may prevent localities from addressing some circumstances that arise, such as the need to channel development to areas well served by transit or other infrastructure. To provide more flexibility, New York could prohibit downzoning below the level in place when the state prohibition is enacted (thereby allowing a return to that level if upzonings after that date turn out to have unexpected consequences). New York also could establish standards for exempting downzonings that are necessary to prevent certain kinds of harm or to encourage the development of more efficient housing. While prohibiting localities from downzoning may prevent further restrictions on new development, it does not open new opportunities for development, so the state would need to pair this strategy with other policies requiring local governments to allow development of a broader range of housing types, such as ADUs, transit oriented housing or middle housing.

5. Making Non-Residential Zones Available for Residential Development or Conversions

In addition to allowing more development on land already zoned for residential use, the state can also open up space for housing on land currently zoned for other uses. For example, land that is zoned for commercial or light industrial use may be appropriate in many circumstances for new residential construction. Allowing land zoned for a non-residential use to be repurposed for new residential buildings without having to go through a rezoning, which is time-consuming and triggers expensive and litigation-prone environmental impact review, can make significant amounts of land available for housing. Further, allowing residential development on certain non-residential lands, like those held by not-for-profit institutions, may both help increase the supply of housing and help the owner achieve other socially desirable goals.

Land already in use as commercial buildings such as offices or hotels also can be repurposed through conversions of the buildings to apartments. As COVID-19 shuttered many commercial establishments, and businesses have continued the flexible work-from-home policies they adopted during the pandemic, the empty spaces left behind may provide an opportunity for new housing across the state. Under-used hotels and office buildings in New York City, for example, have attracted political attention as a potential source for new residential units.⁶⁵ However, local land use regulations often pose barriers to adaptive reuse of those buildings for housing. New York City’s zoning code, for example, prevents longer-term housing in hotels located in manufacturing districts;⁶⁶ building envelope requirements for residential buildings prevent many commercial buildings from converting to

65. ELIZABETH APPEL, NOAH KAZIS, & MATTHEW MURPHY, FURMAN CENTER, THE LANDSCAPE FOR COMMERCIAL PROPERTY CONVERSIONS IN NEW YORK CITY (2022), <https://furmancenter.org/research/publication/commercial-property-conversions>

66. *Id.* at 2 (“36% of newer hotels built outside Manhattan” are “in manufacturing districts”).

residential use;⁶⁷ and a significant renovation for a change in use triggers requirements that an older building undergo costly renovations to meet current building code and accessibility rules.⁶⁸ Any conversion of office space to housing requires near-total renovation,⁶⁹ and may be virtually impossible in buildings with large floorplates that make providing sufficient light and air to all areas geometrically challenging.⁷⁰ A 2022 Furman Center analysis found that of 162,299 hotel units in New York City, just 46,520 are even potentially eligible for conversion to apartment units under current city regulations, and many of those would not actually convert because of their financial situation, practical constraints, or regulatory issues that would only become obvious once an engineering and architectural analysis of exactly what the conversion would require is undertaken.⁷¹ The Furman Center’s interactive map of office buildings⁷² provides information about the features that likely determine the feasibility of office conversions and suggests, consistent with the most rigorous analyses by market experts,⁷³ that the potential is limited, but may be significant in neighborhoods with older, smaller, less valuable office buildings.

In 2022, Governor Hochul proposed to allow any Class B hotel located in or within 800 feet of a residential district to use its existing certificate of occupancy for permanent residences.⁷⁴ She also proposed facilitating office-to-residential conversions by removing the state-imposed maximum residential floor-area ratio in New York City and easing conversion through waiver of certain regulations.⁷⁵ The Governor’s 2023 State of the State, however, mentioned only that she would propose legislation to “expand the universe of commercial buildings eligible for conversion to residential use and provide necessary regulatory relief for such conversions.”⁷⁶

67. *Id.*

68. *Id.* at 5.

69. *Id.* at 8.

70. *Id.*

71. *Id.* at 4.

72. CoreData.nyc, FURMAN CENTER, <https://app.coredata.nyc/>.

73. See, e.g., Jeffrey Havsy, Xiaodi Li, and Kevin Fagan, Why Office-to-Apartment Conversions are Likely a Fringe Trend at Best, MOODY’S (April 7, 2022), <https://cre.moodyanalytics.com/insights/cre-trends/office-to-apartment-conversions/>; Suzannah Cavanaugh, “Stars Aligning For Resi Conversions,” THE REAL DEAL (Dec. 8, 2022, 5:04 PM), <https://therealdeal.com/2022/12/08/city-official-warns-against-overcorrecting-on-office-conversions/>.

74. 2022 STATE OF THE STATE, *supra* note 5, at 133.

75. *Id.*

76. 2023 STATE OF THE STATE *supra* note 12, at 42.

Other States Efforts to Open Non-Residential Zones to Housing

California

California passed AB 2011 last September to require local governments to allow housing development on land zoned for office, retail, or parking.⁷⁷ The law makes housing on such land as-of-right (without needing a rezoning, without environmental review, and subject only to a streamlined ministerial process) under two different pathways. Housing that is 100 percent affordable must be allowed on land zoned for office, retail or parking.⁷⁸ Mixed income housing that includes at least 15 percent of the units affordable to low income households (or 13 percent for even lower income households) must be allowed on such lands that abut a commercial corridor (adjacent to certain highways).⁷⁹ For either option, the parcel must adjoin areas developed with “urban uses” and cannot be a site, or adjoin a site, for which more than one-third of the area is dedicated to industrial uses.⁸⁰ The laws specify the density, height, and setback requirements that local governments must apply, prohibit parking requirements for the projects, and limit subdivision or design reviews to objective standards.⁸¹ Under both options, the development must meet certain wage and labor standards.⁸²

California’s SB 6 (2022) deems housing to be an allowable use on any parcel in a zone where office, retail, or parking are a principally permitted use, located in a city with boundaries including some urban area, that is not on a site or adjoined to any site where more than one-third of the square footage is dedicated to industrial use.⁸³ The law eliminates the need to seek a rezoning in order to convert a property, but leaves other local requirements in place, and does not provide a ministerial review process for conversion projects. SB 6 also requires that a developer provide relocation assistance to certain displaced commercial tenants and imposes a number of other labor, workforce training, and wage standards.⁸⁴

77. A.B. 2011, 2021-22 Leg., § 3 Art. 2 (Cal. 2022), Act of Sept. 28, 2022, Cal. Legis. Serv. Ch. 647 (West)(codified at CAL. GOV’T CODE § 65912.111(a)).

78. *Id.*, § 3 Art. 2 (codified at CAL. GOV’T CODE § 65912.112).

79. *Id.*, § 3 Art. 3 (codified at CAL. GOV’T CODE § 65912.122).

80. *Id.*, § 3 Art. 2 (codified at CAL. GOV’T CODE § 65912.111(d)(1)).

81. *Id.*, § 3 Art. 3 (codified at CAL. GOV’T CODE § 65912.123(d, e)).

82. *Id.*, § 3 Art. 4 (codified at CAL. GOV’T CODE § 65912.130.)

83. S.B. 6, 2021-22 Leg. § 1 (Cal. 2022), Act of Sept. 28, 2022, Cal. Legis. Serv. Ch. 659 (West) (codified at CAL. GOV’T CODE 65852.24(b)).

84. *Id.* (codified at CAL. GOV’T CODE 65852.24(c)). For a helpful chart summarizing the various provisions of AB 2011’s two options and SB 6, see Daniel R. Golub, Chelsea MacLean, William E. Sterling, & Emily Warfield, *California Legislature Creates Pathways for Residential Development on Commercially Zoned Land*, HOLLAND & KNIGHT, Sept. 1, 2022 <https://www.hklaw.com/en/insights/publications/2022/09/california-legislature-creates-pathways-for-residential-development>.

Oregon

In 2021, Oregon’s legislature passed SB 8, which requires local governments to allow affordable housing development (in which all units are rented or sold at levels affordable to households making less than 80 percent of the area’s median income (AMI), the average unit is affordable to households making 60 percent of AMI, and affordability is restricted for at least 30 years), without a rezoning or conditional use permit, on any property zoned for commercial, religious assembly, or public use, or if the affordable housing will be owned by a public entity or a non-profit religious corporation⁸⁵ The law goes even further to require local governments to allow affordable housing as of right on any publicly owned property zoned for industrial uses that is adjacent to land zoned for residential uses or schools and not specifically designated for heavy industrial uses.⁸⁶ Some parcels are exempted (those without adequate sewer, water, stormwater drainage or streets; with steep slopes; in 100-year floodplains; or constrained to serve state goals in avoiding natural disasters or hazards or protecting natural resources).

The law also allows property that is zoned for houses of worship to be used for housing, if fifty percent of the housing is restricted to be affordable to households making sixty percent or less of AMI, the property is in an area zoned for residential use, and the housing complies with applicable land use regulations for residential development in the area’s underlying zone.⁸⁷

What Can NY Learn?

Allowing new residential construction on lands that are now zoned to allow only commercial uses, or on faith-owned or non-profit-owned land, could open significant new opportunities for housing. But any blanket allowance of residential use on such land would need to be carefully tailored to ensure that the areas covered would provide an environment for housing that is safe, well-served by amenities needed for residential tenants or owners, and livable. At the same time, such a strategy would need to carefully weigh how residential use of the land would affect a locality’s efforts to use commercial zones to attract jobs, provide a diverse tax base, and prevent conflicts among the uses in a neighborhood.

85. S.B. 8, 81st Leg. Assemb., 2021 Reg. Sess. § 1 (Or. 2021), 2021 Or. Laws Ch. 385 (West).

86. *Id.*

87. *Id.*

Many religious and non-profit organizations hold significant amounts of land across the state, and many both need to leverage the value of that land to help pay the expenses of building and maintaining houses of worship or non-profit facilities, and are anxious to provide more affordable housing to their members and to lower income households or households with special needs. Allowing the use of that land for housing may help both the institution and the community as a whole.⁸⁸ To ensure that housing development on faith-owned or non-profit owned land is compatible with the surrounding uses but not rendered infeasible by regulatory barriers, the state should consider California's strategy of specifying in detail what regulations local governments would be allowed to impose.

As for conversions, it is still too early to assess California's efforts to encourage conversions, which may contain too many restrictions, and too little regulatory relief, to be effective. The potential for conversion is often overstated. Further, even if an office building or hotel may be converted to residential use, some will be isolated among commercial buildings in neighborhoods that do not provide the services that residents need. Ensuring that such units actually result in desirable housing supply may require coordinating a number of adaptive reuse projects across neighborhoods.

State laws, especially the multiple dwelling law, limit the potential for office to residential conversions, so a good starting place for New York State would be amending that law to facilitate those conversions, as it did last year to encourage hotel to residential conversions. There are a number of other strategies New York could pursue instead or as well. State legislation also could also override or restrict specific regulations that pose particularly difficult barriers to conversion, such as allowing higher-than-permitted densities in the converted building.⁸⁹

On the other hand, it's not clear why state intervention (other than amending its own barriers to conversion) is necessary when local governments already are actively working to facilitate conversions. Local governments may be the better judge of how many, and which, hotels or office buildings may be needed to meet future demand for those uses, and be able to tailor conversion regimes more precisely than a state-wide approach. The state should therefore carefully consider whether encouraging localities to identify opportunities for targeted rezonings to allow commercial conversions in areas where significant

88. Measures to allow the use of land owned by religious organizations for housing must be carefully designed to avoid privileging religious uses over other landowners in violation of the Free Exercise protections in the federal and state constitutions.

89. Appel et al., *supra* note 65, at 8-9.

numbers of buildings could be efficiently converted and where residents would then have good access to infrastructure, parks, schools and other amenities, may be a better longer-term strategy than a state-wide one-size-fits-all-localities conversion strategy.⁹⁰

Implementation Considerations

Strategies for making more land available for a wider range of housing types than traditional single-family housing have to be carefully designed, as the lessons learned described above show. But the strategies also have to be carefully implemented to ensure success.

Support for local governments

First, where local governments are required to adopt rezonings and other regulations, or to revise their processes, to comply with a state mandate, the kinds of changes required are often complex and will require significant retooling by local governments. Adequate staffing and training resources at the local level will be needed to ensure that the changes succeed. Further, state and local resources will have to be dedicated to making the changes understandable and usable to homeowners and developers. A survey of Californians in 2020—the year after ADUs were allowed statewide—found that many City and County staffers were “overwhelmed because they did not have the capacity needed to process and implement the new legislation, including: interpreting the aforementioned sections of the legislation, incorporating these changes into the jurisdiction’s codes, and then communicating changes to homeowners with ADU permits in the pipeline.”⁹¹

Support for homeowners and developers

Surveys also show that homeowners or other would-be developers may be deterred from constructing new residences by a variety of factors including lack of awareness, and most commonly, the lack of financing options.⁹² Public education initiatives may be needed to increase awareness of new opportunities to build housing. Homeowners may not develop ADUs if they must start their design from scratch, so offering publicly accessible pre-approved plans or pre-approved vendor lists can help streamline this process.⁹³ Perhaps

90. *Id.* at 11.

91. KAREN CHAPPLE, AUDREY LIEBERWORTH, DORI GENETSOS, ERIC VALCHUIS, ANDREW KWANG, & RACHEL SCHTEN, ADUS IN CA: A REVOLUTION IN PROGRESS (2020) <https://www.aducalifornia.org/wp-content/uploads/2020/10/ADU-Progress-in-California-Report-October-Version.pdf>.

92. *Id.* at 18.

93. *Id.* at 23.

most importantly, obtaining financing poses a significant barrier to many would-be developers, but has particularly inequitable effects on communities with access to fewer financing options—often communities of color.⁹⁴

California and Oregon have adopted legislation recognizing the need for financial and logistical support. California’s AB 69 (2020) created an ADU financing pilot, which provides partial loan guarantees and other credit enhancements for homeowners to induce private lenders to issue loans for ADU construction.⁹⁵ Connecticut’s Housing Finance Authority (CHFA) similarly offers some ADU financing via its Apartment Conversion for the Elderly (ACE) program, subject to CHFA funding.⁹⁶ ACE loans are available to homeowners over age 62 occupying a single-family home.⁹⁷

Oregon’s HB 3335 (2021) authorized its Housing and Community Services Department to issue grants to nonprofits funding ADU community pilot programs.⁹⁸ These pilot programs were required to assess the suitability of an eligible homeowner’s property for ADU construction; assist with financing, documentation, siting, and construction of the ADU; identify, screen, and enter into lease agreements with tenants for the ADUs; and provide property management services for the eligible homeowner.⁹⁹

Similarly, Vermont’s Housing Improvement Program (VHIP) offers homeowners grants up to \$50,000 to create an accessory dwelling unit on their property.¹⁰⁰ In exchange, VHIP participants agree to match at least 20% of the grant funds and rent out the ADU at or below fair market value for at least five years.¹⁰¹

Both financing and design and construction innovations will take some time, as lenders and others in the industry learn, and as the market matures.

94. GREENBERG ET AL., TERNER CENTER FOR HOUSING INNOVATION, *supra* note 6, at 2.

95. A.B. 69, 2019-20 Leg., § 2 (Cal. 2021) https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB69.

96. CONNECTICUT HOUSING FINANCE AUTHORITY, HOME MORTGAGE PROGRAMS OPERATING MANUAL, § 10 [https://www.chfa.org/assets/1/6/Operating_Manual_-_Section_10_Apartment_Conversion_For_The_Elderly_\(ACE\)_Program.pdf](https://www.chfa.org/assets/1/6/Operating_Manual_-_Section_10_Apartment_Conversion_For_The_Elderly_(ACE)_Program.pdf) (describing eligibility requirements, application processes, terms and conditions, and construction requirements for the Apartment Conversion for the Elderly Program).

97. *Id.* at § 10.1.

98. H.B. 3335, 81st Leg. Assemb., 2021 Reg. Sess., § 1 (Or. 2021), Act of July 19, 2021, 2021 Or. Laws. Ch. 553 (West).

99. *Id.*

100. Vermont Housing Improvement Program (VHIP), VT. AGENCY COM. & CMTY. DEV., <https://accd.vermont.gov/housing/vermont-housing-improvement-program>

101. *Id.*

Reporting and Enforcement

While the kinds of reform strategies discussed above aim to remove common barriers to new development, the experience of the leading reform states shows that many new and unforeseen barriers may arise. Date-specific milestone checks by the legislature or the state housing agency are important to ensure that any necessary course corrections are made quickly. Thoughtful periodic reviews will require a mechanism to collect data about how the laws are being used that is available to legislators, local governments, researchers, and the media. California's SB 477 (2019) requires the state's Department of Housing & Community Development (HCD) to provide an annual report to the legislature on actions taken by local governments towards compliance with various land use reforms; it also requires HCD to collect and report on data like the number of development applications received and approved, and number of units produced each year. California's AB 215 (2021) also required HCD to report violations to the Attorney General's office and expanded the Attorney General's authority to enforce state housing law.¹⁰² Attorney General Bonta launched a Housing Strike Force pursuant to AB 215 in November 2021, which has notified several cities of their violations of state housing law and led to higher compliance.¹⁰³ New York should consider similar strategies for monitoring the implementation of any reforms it passes.

Reform-wide eligibility rules or exemptions

In adopting policies to reduce restrictive zoning, New York must also carefully consider the eligibility criteria or exemptions to such policies. Ideally, those criteria or exemptions would be standardized across the reforms as much as possible. Many communities may argue for such exemptions, but it is important to remember that critical wetlands, habitats, and other environmentally sensitive areas, existing publicly owned parkland or open space, and lands already designated as historically significant, for example, may already be excluded from development (or restricted to very modest development) by virtue of their characteristics and existing state (and federal) law. Proposed exemptions that go beyond existing law may seriously undermine the value of state land use reforms, and introduce concerns about the fairness of the reforms. Several California reforms have excluded smaller cities and counties to preserve rural areas, but similar exclusions could allow suburbs close to New York City, where many local governments are extremely small, to escape responsibility

102. A.B. 215, 2021-22 Leg., § 1 (Cal. 2021), Act of Sept. 28, 2021, Ch. 342 Cal. Stat. 5609, 5612(codified at CAL. GOV'T CODE § 65585).

103. State of California Department of Justice, *Housing*, <https://oag.ca.gov/housing> (last visited Jan. 19, 2023); see also Louis Hansen, *New California Task Force Focused on Housing Laws*, MERCURY NEWS (Nov. 3, 2021) <https://www.mercurynews.com/2021/11/03/california-attorney-general-launches-housing-enforcement-unit/>.

for absorbing the metropolitan area's growth.¹⁰⁴ Exempting smaller communities also can and reward areas that have avoided growth by further exempting them from development. Some communities in New York have argued that areas without comprehensive municipal sewer service should be exempted from development, which could significantly reduce the reach of any reforms, because significant parts of Long Island and the Hudson Valley do not have municipal sewers.¹⁰⁵ While there may be specific physical characteristics of parcels (such as access to roads and utilities, topography, and hydrology), or other unusual factors not under the control of the local government that could be reasonable grounds for an exemption from by-right development, such exemptions can quickly undermine any reforms and should be considered transparently, fairly and rigorously.

In Sum

New York lags behind peer states in addressing some of the root causes of the housing shortage and resulting affordability crisis that leaves 53 percent of New Yorkers paying more than an appropriate share of their income for housing expenses. One of the fundamental barriers to resolving that crisis is the often exclusionary, costly and time-consuming land use regulations local governments impose on proposed new development. While several proposals to require local governments to reform their land use systems were introduced in the state legislature last year, the legislature has another opportunity in the coming session to learn from the strategies other states have adopted to craft land use reforms that will allow more homes to be built and ensure a diversity of housing types to meet the needs of different households.

By Vicki Been, Helen Zhang and Noah Kazis

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104. VICKI BEEN, ALEX JONLIN, & NOAH KAZIS, FURMAN CENTER, ENCOURAGING TRANSIT-ORIENTED DEVELOPMENT 11 (2023) https://furmancenter.org/files/publications/1_Encouraging_Transit-oriented_Development_Final.pdf.

105. *Id.*