NLC NATIONAL LEAGUE OF CITIES

CENTER FOR CITY SOLUTIONS

Local Tools to Address Housing Affordability:

A STATE-BY-STATE ANALYSIS

2022 UPDATE

NATIONAL LEAGUE OF CITIES
CENTER FOR CITY SOLUTIONS

About the National League of Cities

The National League of Cities (NLC) is the voice of America's cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions.

NLC's Center for City Solutions provides research and analysis on key topics and trends important to cities, creative solutions to improve the quality of life in communities, inspiration and ideas for local officials to use in tackling tough issues, and opportunities for city leaders to connect with peers, share experiences and learn about innovative approaches in cities.

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Foreword

SAFE AND QUALITY housing is an essential need of life. But for too many people across the country, housing is not accessible, affordable, or in many cases, available. The impacts of the housing crisis have been made worse by the COVID-19 pandemic, as residents have experienced significant financial and emotional hardships. The National League of Cities (NLC) has made it a priority to support local leaders' efforts to identify and implement local housing solutions for the residents of America's cities, towns and villages.

Local Tools to Address Housing Affordability: A State-by-State Analysis is an important part of this work. Developed and published in collaboration with the 49 state municipal leagues, the report provides an in-depth look at the intersection of state policies and local housing markets. While no two communities face the exact same set of challenges, this research provides insight into several policies that can improve housing affordability across the U.S., especially when used in tandem with one another.

All Americans deserve access to safe and affordable housing and NLC is committed to providing resources, best practices, on-the-ground technical assistance and advocacy at the federal level to continue to support local leaders in their efforts to address housing issues in their communities. I look forward to our continued partnership with the state leagues to provide in-depth research, uplift effective solutions and build a stronger America from the ground up.

Clarence E. Anthony

CEO and Executive Director, NLC

NATIONAL OVERVIEW SUMMARY

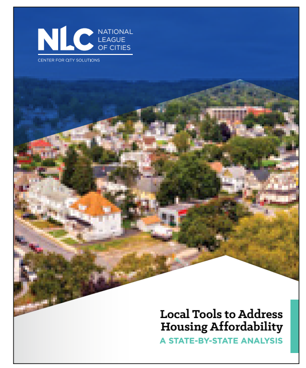
● EXPANDS LOCAL CONTROL ▲ INCENTIVIZES ◆ PREEMPTS

State	ADUs and Single Family Zoning	Development Incentives TOD	Development Incentives-Parking	Housing Trust Funds	Land Banks	Single Family Restrictions & Multifamily Requirements	State Tax Incentives
Alabama	●	●	●		●	●	
Alaska	●	●	●	●		●	
Arizona	●	●	●	▲		●	▲
Arkansas	●	●	●			●	▲
California	◆	◆	◆	▲		●	▲
Colorado	●	▲	●	●		●	▲
Connecticut	●	▲	●	●	●	▲	▲
Delaware	●	●	●		●	●	
District of Columbia	●	●	◆	●		●	▲
Florida	▲	▲	●	▲		●	
Georgia	●	●	●	●	●	●	▲
Hawaii	●	▲	●			▲	▲
Idaho	●	●	●			●	
Illinois	●	▲	●	●		●	▲
Indiana	●	●	●	▲	●	●	
Iowa	●	●	●	▲		●	
Kansas	●	●	●	●		●	
Kentucky	●	●	●	●		●	
Louisiana	●	●	●	●		●	
Maine	▲	▲	●	●		●	▲
Maryland	●	▲	●	●	●	●	
Massachusetts	●	▲	●	▲		●	▲
Michigan	●	●	●	●	●	●	
Minnesota	●	◆	●	▲		●	
Mississippi	●	●	●	●		●	
Missouri	●	●	●	▲	●	●	▲
Montana	●	●	●	●		●	
Nebraska	●	▲	●		●	●	▲
Nevada	●	●	●	●		●	▲
New Hampshire	◆	▲	●			●	
New Jersey	●	▲	●	▲	●	●	
New Mexico	●	●	●	●		◆	▲
New York	●	◆	●	●	●	●	▲
North Carolina	●	●	●	●		●	
North Dakota	●	●	●			●	
Ohio	●	●	●	●	●	●	
Oklahoma	●	●	●			●	▲
Oregon	◆	◆	◆	▲		●	
Pennsylvania	●	▲	●	▲	●	●	▲
Rhode Island	◆	●	●			●	
South Carolina	●	●	●	▲		●	▲
South Dakota	●	●	●			●	
Tennessee	●	●	●	●	●	●	
Texas	●	●	●	●		●	
Utah	◆	◆	●	●		●	▲
Vermont	◆	●	●	●		●	▲
Virginia	●	◆	●	●	●	●	▲
Washington	◆	◆	●	▲		●	▲
West Virginia	●	●	●		●	●	
Wisconsin	●	●	●	▲		●	▲
Wyoming	●	●	●			▲	

Introduction

AFFORDABLE, QUALITY AND safe housing is the key to thriving communities and a top priority for local governments regardless of municipal size or socioeconomic composition.[1] Existing housing prices are the highest in a decade and rents are increasing, exacerbating the economic hardship onset by the COVID-19 pandemic. Municipalities need every tool available to address the affordable housing crisis. Although local governments alone cannot solve every affordable housing barrier, local authority over land use and zoning provides an opportunity for cities, towns and villages to improve access to housing now, without waiting for federal or state action.

This report serves as an update to the National League of Cities' (NLC's) 2019 report, *Local Tools to Address Housing Affordability: A State-By-State Analysis*, and explores how states and localities interact in several policy areas related to housing affordability (Figure 1). This 2022 analysis revisits two policies highlighted in the previous report and investigates four new policies related to housing affordability: single-family and multi-family restrictions, development incentives, Accessory Dwelling Units (ADUs) and land banks.



To learn more about additional affordable housing policies, check out NLC's 2019 report *Local Tools to Address Housing Affordability: A State-by-State Analysis*

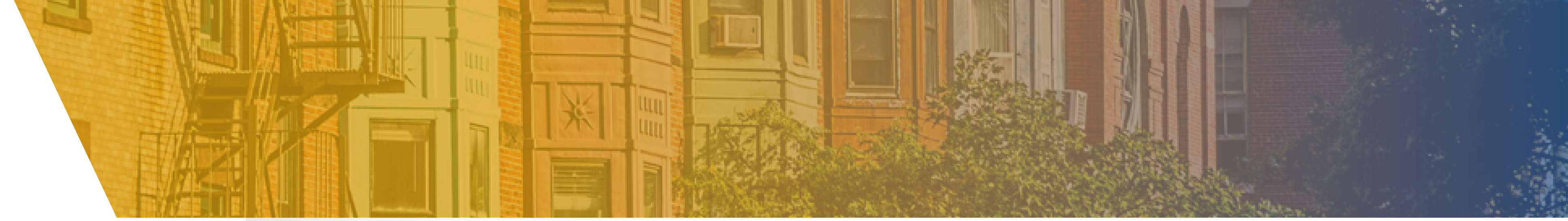
Figure 1: Affordable Housing Policies in 2019 and 2022 Reports

AFFORDABLE HOUSING MEASURE	2019 REPORT	2022 REPORT
Accessory Dwelling Units		X
Development Incentives		X
Housing Trust Funds	X	X
Housing Vouchers	X	
Inclusionary Zoning	X	
Land Banks		X
Rent Control	X	
Single- and Multi-Family Restrictions		X
State Tax Incentives	X	X

Data was collected for each policy through literature review, survey of state municipal leagues, reviews of state legislation and relevant court decisions. The analysis finds that **states should encourage, incentivize and authorize local governments to**:

- **Equitably increase housing density options** beyond detached single-family houses to include duplexes, townhomes, cottage courts and more "middle density" housing options that are affordable to a wide spectrum of households.
- **Allow and encourage ADUs** to flexibly add units to existing properties.
- **Create development incentives near public transit and incentive reduced parking requirements** to promote affordable, accessible development that is compact and efficient.
- **Provide local governments the authority to create land banks** to address housing needs while reducing vacancy in neighborhoods that have endured disenfranchisement.
- **Implement state tax incentives for developers** to encourage private sector investment and leverage federal incentives to build equitable, affordable housing.
- **Create and consistently contribute to local and state housing trust funds** to guarantee permanent, affordable housing investments.

The intersection of racism and housing is a key concern that needs to be addressed and rectified due to the long-standing impact of redlining, restrictive covenants, discriminatory zoning, and other purposeful impediments that negatively affected social and economic outcomes for communities of color across the country.[2] As such, this report will center racial equity considerations and offer positive policy prescriptions for equitable housing policy outcomes.



The analysis of these **six different policies for all 50 states and the District of Columbia** found that:

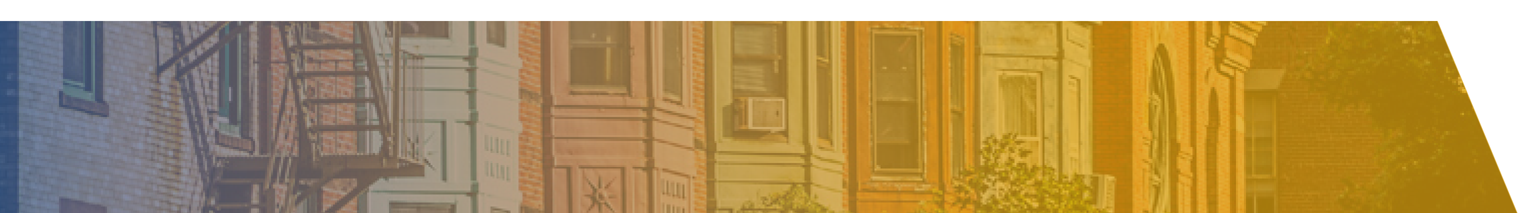
39 states and D.C. **do not impose barriers to multi-family housing on local governments**, granting municipalities full authority to determine allowable housing types and development codes.

41 states **have no regulation on ADU development**, allowing municipalities to take advantage of this low-cost, low barrier affordable housing solution.

12 states **expressly incentivize or permit transit-oriented development (TOD) through state legislation**, providing local governments the authority to encourage TOD in areas of need.

48 states **do not impose parking requirements on local governments**, allowing municipalities to incentivize reduced parking requirements and promote affordable housing development.

16 states **have passed comprehensive state-enabling land bank legislation**, providing local governments with a suite of powers that allow for effective acquisition, maintenance, holding and disposition of vacant land in line with community needs.



23 states and D.C. **provide affordable housing tax incentives for new construction or rehabilitation**, occurring through a state Low-Income Housing Tax Credit (LIHTC) program or separate program. Since 2019, six states have created new state-level affordable housing tax incentive programs.

36 states and D.C. **have a state housing trust and at least one municipality with a local housing trust fund**, providing flexible funding to affordable housing development. Since 2019, eight states added state housing trust funds, 14 states encouraged local governments to create a housing trust fund and nine cities created new housing trust funds.

This report provides a brief overview of

- How the six policy areas influence housing affordability
- How the policies act as affordable housing solutions
- The equity implications of the policies
- How each state and the District of Columbia respond to the policies

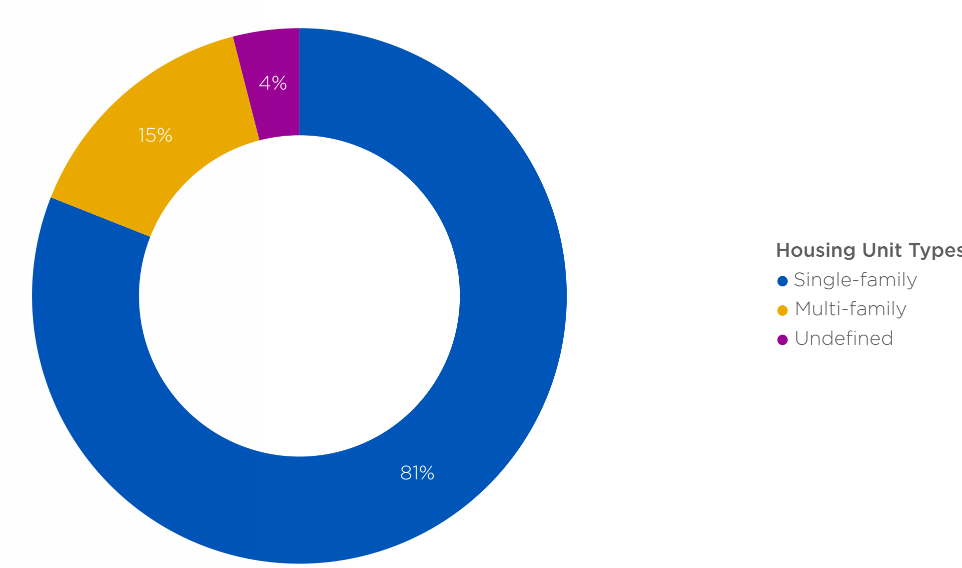
The report finds that **local governments can implement these policies and improve equitable affordable housing outcomes for households** of a spectrum of incomes and demographics.

Single-Family Restrictions & Multi-Family Density Requirements

SOLUTION DEFINED

Increasing housing density, or the number of residential units designated to a building or area, is one of the most impactful ways that local governments can influence housing affordability. Unfortunately, multi-family housing (a high-density housing type) makes up only 15 percent of housing units in the US (Figure 2). This challenge, often referred to as "missing middle housing," is a significant driver of affordability concerns. Missing middle housing especially impacts smaller households, single people, young adults, moderate- or low-income households and other demographic groups who desire homeownership but cannot access, or want other options besides, single-family or high-rise housing.

Figure 2: Distribution of Housing Types in the US[3]



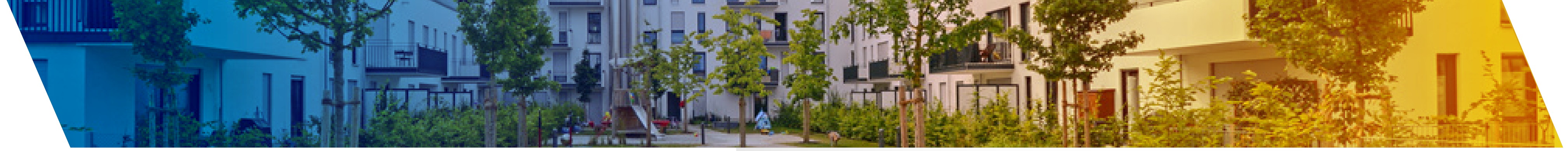
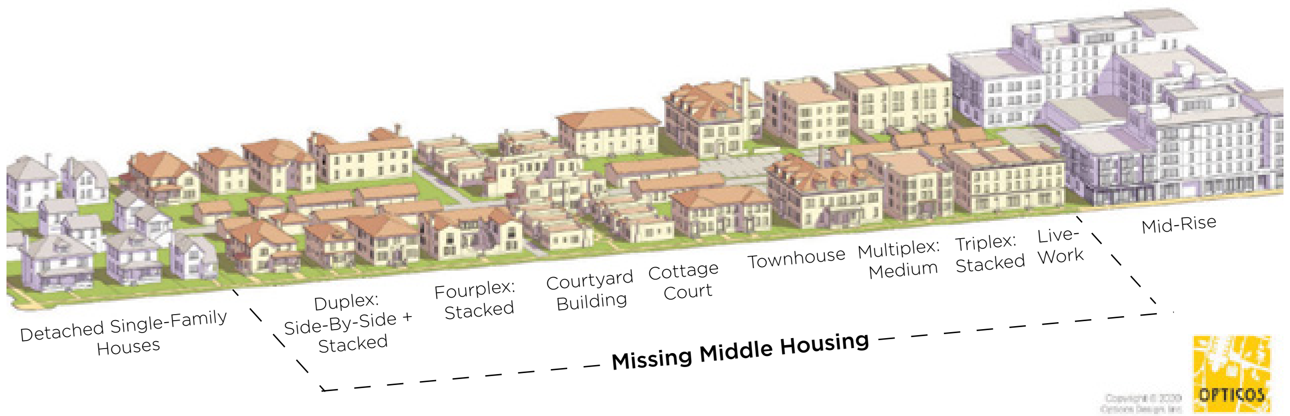


Figure 3: Examples of Housing Types That Encompass Missing Middle Housing[4]



Most states give municipalities the authority to determine the allowable housing types in their jurisdiction. In many places, static or inflexible zoning ordinances do not meet the needs of changing community demographics, leading to many municipalities limiting useful multi-family housing options (e.g., duplexes, courtyards, townhouses, triplexes, mixed-use developments, etc.) in favor of conventional single-family detached dwellings. Housing density influences the overall aesthetic, demographics, resources, property values and affordability of a neighborhood. While states hold the authority to regulate housing options, many states expand local authority by allowing municipalities to determine the specific housing types permitted in their jurisdictions. The broad flexibility of residential zoning laws has not met the new and evolving housing needs of residents. Instead, it has produced a landscape of predominantly low-density, single-family detached dwelling units that can exacerbate unaffordability, and increase costs to local governments. Some state governments view municipalities as not taking aggressive enough action in reducing affordable housing barriers, leading states to set policy floors to address potential gaps. Other state governments are taking the opposite approach by preempting local ordinances aimed at fair and inclusive housing. In both cases, local control is being challenged and sometimes curtailed due to the current housing and homelessness crises. Changes to state and local housing density policies can increase multi-family housing investments, which can mitigate affordability challenges while providing pathways to homeownership for residents.[5]

Higher density housing's efficient use of infrastructure relays cost savings to residents by spreading costs across numerous households, compared to low-density single-family development where fewer property owners share a larger portion of the costs.[6] Single-family housing also requires more infrastructure for every household to have access to services. More piping infrastructure is necessary to connect every single-family house to water and sewer treatment plants under sprawl conditions, for instance. Higher density housing is compact development that facilitates more efficient use of public infrastructure services and household connections to local utilities.[7]

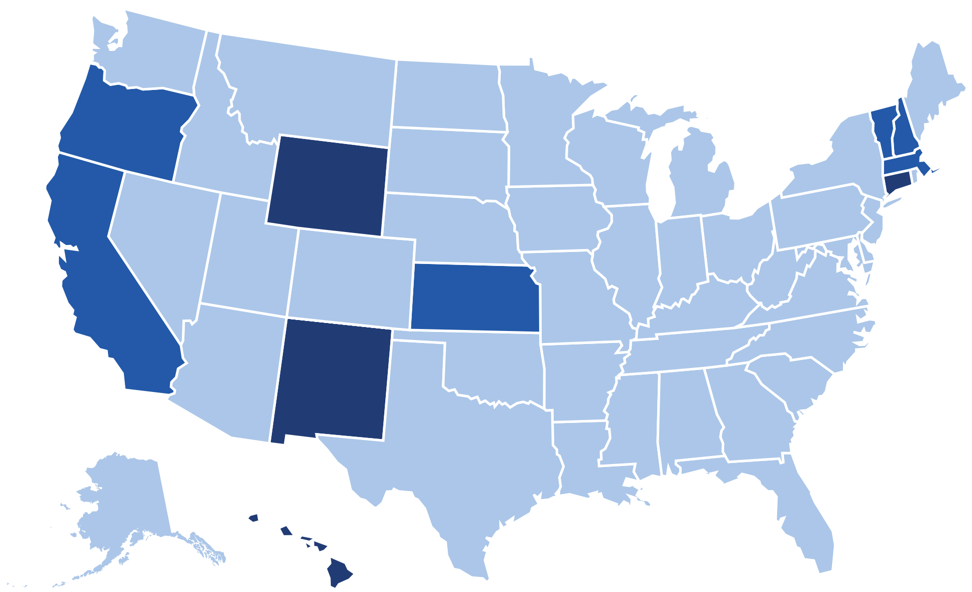
EQUITY IMPLICATIONS

To foster economic opportunity for all residents, it is critical to consider the equity, economic, social and health implications of land use and zoning regulation changes, especially for residents of low-income status and/or Black, Indigenous, and People of Color (BIPOC) residents who are often excluded from or priced out of the housing market.[8] The exclusion of BIPOC was intentional and America's historical zoning practices shows that community leaders used zoning laws to create segregated neighborhoods. The federal government and banking system reinforced these patterns through the discriminatory practice of redlining, which made it all but impossible for BIPOC to purchase homes except for in specific areas.[9] The long-term effect of this is still being felt by communities of color due to the diminished ability for housing to be used as a wealth creation tool and intergenerational economic steppingstone. Homeownership pathways for BIPOC and people of low-income status reduces displacement, such as through down payment and closing cost assistance, pre- and post-housing counseling or subsidizing housing costs.[10] Governments can ensure affordable housing meets residents' social needs, such as through mixed-use development that incorporates green spaces and community spaces. Increasing walkability and promoting social activity can foster social cohesion.[11] Higher density housing investments comingled with these spaces can mitigate physical and mental health disparities, such as by increasing the likelihood of physical activity, improving pregnancy outcomes and lowering the risk of multiple chronic diseases.[12] These higher density development patterns also support the environment by reducing urban heat islands and offsetting greenhouse gas emissions.[13]

NATIONAL LANDSCAPE

Nearly all states leave discretion to municipalities to determine the housing densities and development patterns. Although New Mexico limits municipal authority for multi-family housing, some municipalities within the state have home rule authority and can enact multi-family housing requirements at the local level. Municipalities, as a result, can specify how they restrict single- and multi-family housing options, devising land use and zoning patterns to where and what type of housing can be built.

Figure 4: Local Authority to Shape Housing Density



39 states and D.C. have no barriers on local authority

6 states allow or mandate multi-family housing

Key Findings

State policies play a critical role in municipalities' ability to shape housing density and meet their residents' housing needs. Single- and multi–family housing restrictions were reviewed in three categories:

- The state permit and/or mandates all forms of multi–family housing through state legislation (6 states)
- The state limits municipalities by state law, but no statute explicitly mandates multi-family housing (4 states)
- Municipalities in each state have home authority, which grants them the authority to enact mandatory multi–family housing (39 states and District of Columbia)

CASE STUDY:

Oregon

The Oregon State Legislature passed Oregon House Bill (HB) 2001 in 2019 to expand middle housing options and housing affordability. Introduced by Representative Tina Kotek, the bill creates opportunities for higher-density housing types. Areas zoned for single-family detached dwelling units in municipalities with over 25,000 residents would be required to allow duplexes beginning in June 2022, and areas zoned as residential would be required to allow zoning for triplexes, quadplexes, townhomes and cottage clusters.

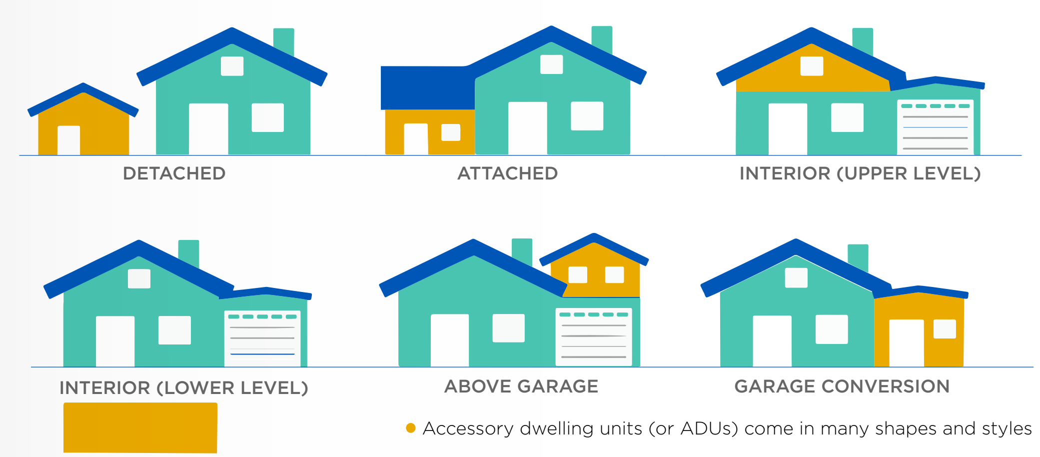
The prospective June start date allows localities to update their development code to account for the necessary land use and policy modifications and for the state to adopt administrative rules. If municipalities do not adopt compliant code by the deadline, Oregon's Land Conservation and Development Commission model ordinance would apply and preempt local standards on duplex development. The bill states that local governments could not assume residential capacity above density increases by more than three percent. This was determined as a model to accommodate housing needs for a 20-year planning period.[14]

ADUs and Single-Family Zoning

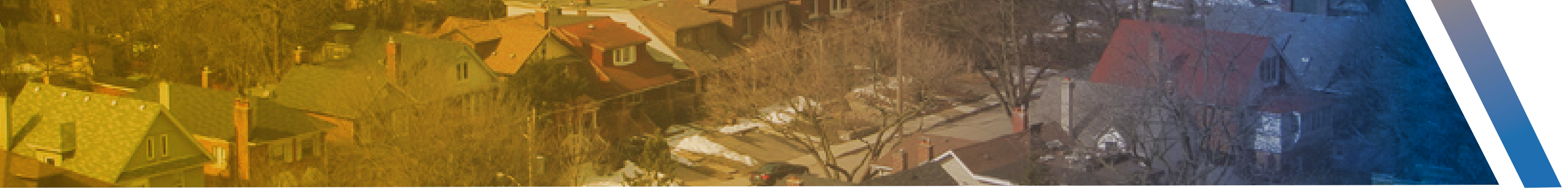
SOLUTION DEFINED

State and local governments have rediscovered a need and use for Accessory Dwelling Units (ADUs) to expand affordable housing. Traditionally, ADUs have been known as granny flats, garage apartments, in-law suites, carriage houses or basement rentals.[15] ADUs essentially add an extra unit of independent living space to a property.[16] ADUs can either be attached or internal (a basement rental) or detached (a standalone unit) to a single-family home.[17] ADUs were historically popular on properties before the 1900s when multi-generational families lived together; however, their popularity declined after this period as suburbanization and zoning codes discouraged ADU development.[18] The trend of multi-generational families living together has increased in the last several decades to levels not seen since before 1950.[19, 20] Changing demographics are creating pressure for more housing in already developed lots.

Figure 5: ADU Configuration for Single-Family Structures



Source: American Planning Association.

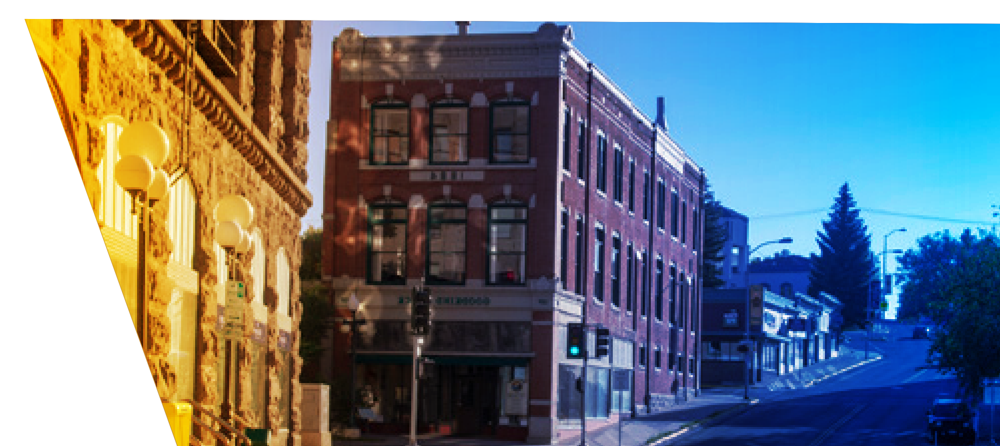


ADUs are a solution to increase the affordability of neighborhoods without significant disruptive change. While not a large-scale solution to housing affordability, ADUs act as a decentralized way to add additional housing units without up-zoning, adding government cost or subsidies, or changing the overall look or feel of a neighborhood.[21] ADUs also increase the diversity and density of a community's housing stock, which can lower neighborhood rental costs. Researchers at the University of California, Berkeley found that ADUs typically rent for an average of 58 percent below market-rate rentals.[22] This can lead to more available units for households with lower incomes. ADUs may also increase property values, leading to increased local government revenue through property taxes.[23]

The State of California experienced an 11-fold increase in the number of ADUs between 2016 to 2019. A majority (51%) of homeowners with ADUs in California are using them for additional income generation.[24]
California property owners with ADUs face common challenges, such as stringent local jurisdiction zoning or regulatory standards, lack of experience as developers or landlords, and the availability of financing for ADUs. Half of California homeowners found it difficult to obtain an ADU permit required by their local government, and 50 percent expressed difficulty in building their ADU to their jurisdiction's standards.[25] These overbearing zoning requirements can include unnecessary lot size and parking minimums, occupancy limits and permitting fees.[26] Some state governments have preempted what local governments can regulate when it comes to ADU development to address these complaints. Alternatively, local and state government leaders can work together to find a balance between eliminating barriers and maintaining safety and quality of life standards for residents.

EQUITY IMPLICATIONS

Although ADUs can add more affordable rental units into the housing market and increase the income of homeowners, over time, BIPOC and residents of low-income status have not widely utilized them as an income stream. A study that reviewed ADUs in California found that ADUs were more likely to be on properties of more affluent homeowners (70% of respondents held incomes of $100,000 or more, compared to 40% of all Californians) and homeowners who were less likely to identify as Hispanic or Latino.[27] Additionally, very few of these ADUs housed school-age children or seniors.[28] If local leaders want their ADUs to be used for senior residents, they may want to consider how an ADU ordinance can comply with the Americans with Disabilities Act (ADA). Although ADUs do not require any government spending, local and state leaders may want to consider awareness campaigns or financing support for residents of low-income status or BIPOC homeowners. Programs such as those on ADU literacy could benefit residents by providing guidance on how to build ADUs on their property or rent an ADU as a landlord. In New Hampshire, the state offers annual ADU tours as an opportunity for community members to view completed ADUs and inspire others to build their own.[29] In Multnomah County, OR, the A Place for You Program covers ADU construction costs if the homeowners agree to house tenants transitioning out for homelessness for the first five years after the ADU's development.[30]

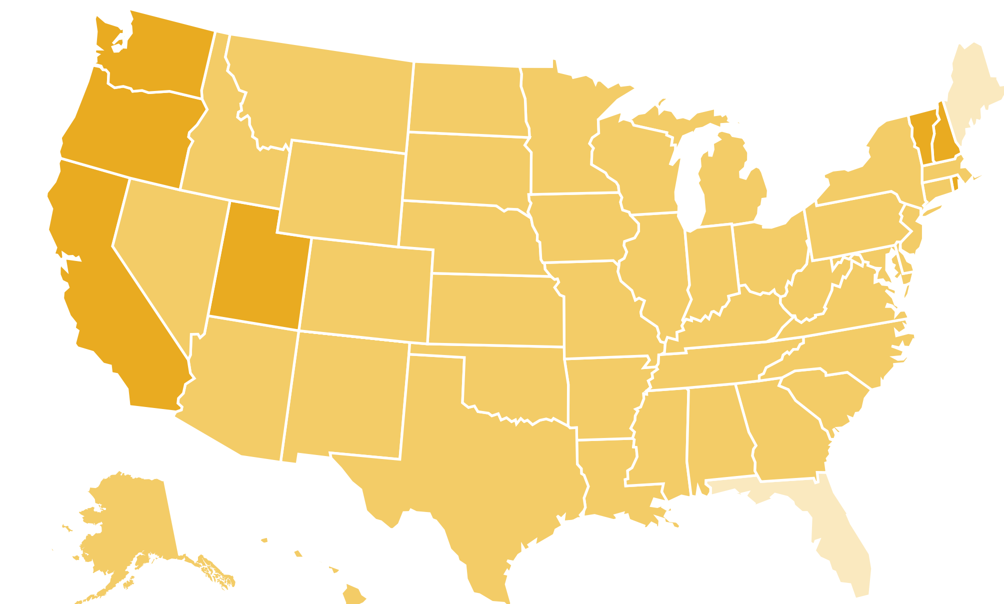


NATIONAL LANDSCAPE

Every state currently permits local governments to allow ADUs on their properties. Since 1981, Hawaii has allowed counties to permit two dwelling units on all single-family lots. Two states, Florida (2004) and Maine (2019), have laws that encourage local governments to authorize ADUs. Seven states have preempted how localities can regulate ADUs: California (2016), New Hampshire (2017), Oregon (2017), Rhode Island (2017), Utah (2021), Vermont (2005) and Washington (2000). California, Oregon and Vermont have since amended their original legislation to further reduce localities' authority when regulating ADU construction.

Figure 6: Local Authority to Regulate ADUs

Legend Encouraged No barriers Preemption Exist



2 states and D.C. incentivize ADUs

7 states limit local authority on ADUs

41 states allow ADUs

Key Findings

State ADU regulation falls into one of three categories:

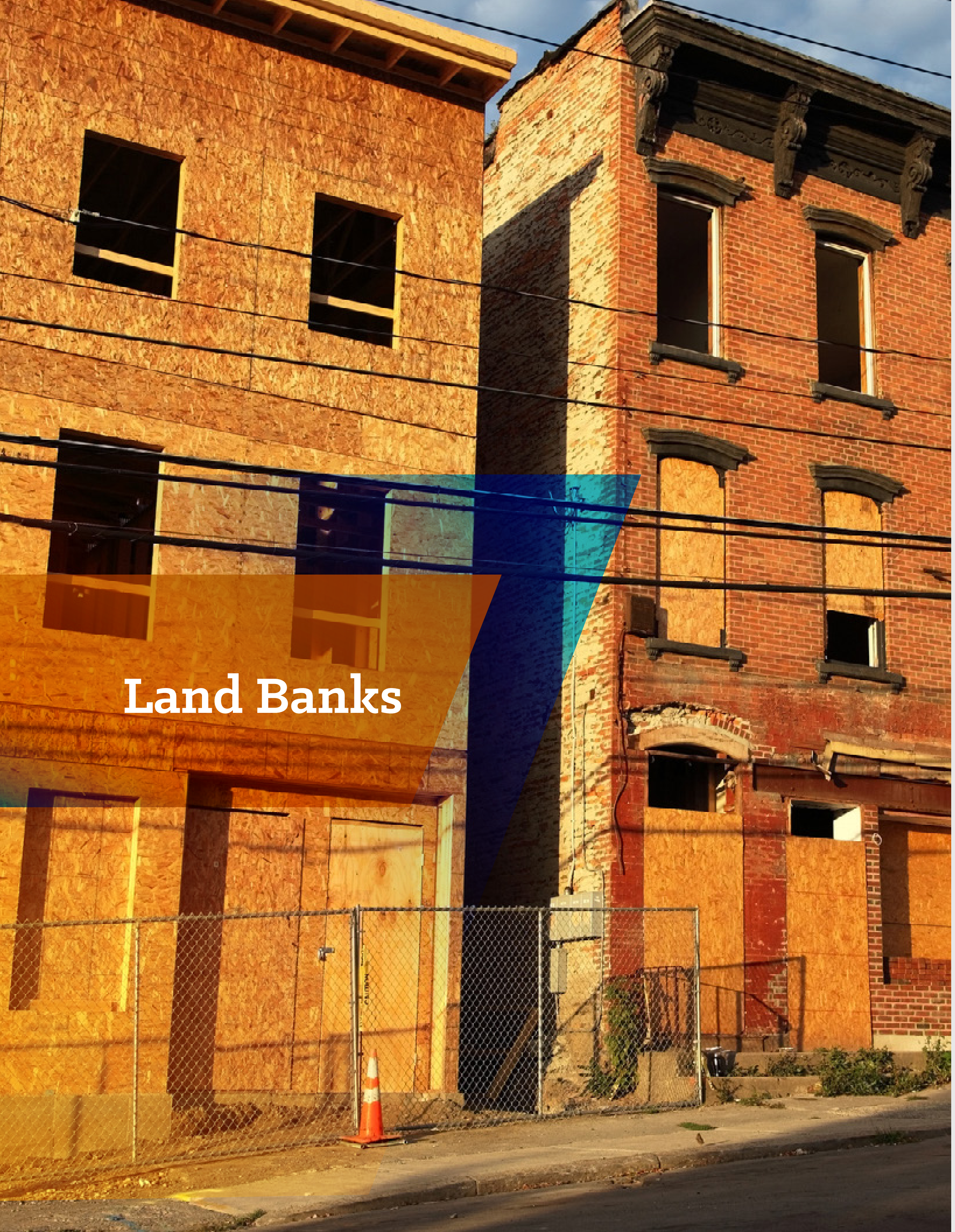
- The state does not regulate ADUs (41 states)
- The state has chosen to enact ADU regulation that preempts what municipalities can do (7 states)
- The state has chosen to enact ADU regulation that encourages ADU development within municipalities (2 states and the District of Columbia)

CASE STUDY:

Utah

The Utah State Legislature passed HB 82, sponsored by Representative Ray Ward in 2021.[31] The law limits local authority by mandating that municipalities zone 75 percent of their residential areas for internal ADU use. For municipalities with a state or private university and a student population of 10,000 or more, this is reduced to 67 percent. This preemptive law is a part of Utah's larger ongoing measures to update the state's affordable housing policy to meet increasing demand due to rapid population growth over the last decade. Utah's affordable housing policy reform began in 2019 with Senate Bill (SB) 34, which requires municipalities over a certain population threshold to create an affordable housing plan and implement three affordable housing strategies offered in the law. Since the law passed, the most popular affordable housing tool used by municipalities has been ADU reform. HB 82 sought to build on that movement by making internal ADUs available and uniform in one sweeping bill. Housing developers are now using this uniformity to offer internal ADUs in basic new housing packages.

The Utah League of Cities and Towns (ULCT) was initially opposed to HB 82 until municipalities were given the authority to license and regulate internal ADUs in specific ways, such as setting parking standards and collecting impact fees.[32] HB 82 also provided an exemption to municipalities with colleges and universities that lowered the amount of residential zoned areas that require internal ADUs. The ULCT found that internal ADUs are most efficient when implemented statewide and localities can continue responding to their unique needs. This is especially true for municipalities with small lot sizes as there may not be room for internal or external ADUs. Additional support for HB 82 came from municipalities that were already reforming or implementing ADU ordinances since the law simplifies how municipalities regulate internal ADUs. HB 82 also gives local officials the tools to bring landowners into compliance and stop property owners from creating duplexes or short-term rentals (STRs) on properties that are zoned for single-family and will now include an ADU.

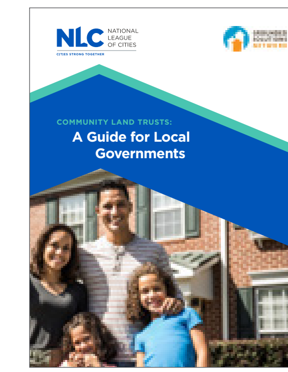


Land Banks

SOLUTION DEFINED

Many municipalities and states across the US are confronted with the issue of high vacancy rates, which is predominantly a symptom of depopulation, high occurrences of foreclosures and weak real estate markets. While some regions, municipalities and neighborhoods may have a surplus of housing, they are often still confronted with the challenge of providing housing that meets residents' constraints and needs. Land banks are government entities that can help "address vacant and abandoned properties" by preparing and activating properties that align with the needs and desired outcomes of community members.[33] Land banks' primary responsibilities include acquiring and aggregating vacant properties, maintaining vacant properties, identifying interim and end uses for vacant properties and ensuring the eventual disposition of these properties for the highest and best use that aligns with community needs.

Land banks are not designed solely to expand housing opportunities in a community. However, they are a critical tool that can drive redevelopment in weak markets and meet the needs and wants of residents, such as new housing development. Land banks can play a particularly impactful role as it relates to housing when paired with other policy mechanisms and programs with goals of generating equitable, long-term housing opportunities, such as community land trusts (CLTs). While land banks are government entities, CLTs are non-profit community-based organizations that acquire, own and steward land permanently for the common good.[34] When partnered together, land banks and CLTs "can help reverse the trajectory of disinvestment and unlock a pipeline of [vacant, abandoned, and deteriorated] properties to provide much-needed quality, affordable housing for future generations that prioritizes community ownership and control."[35]

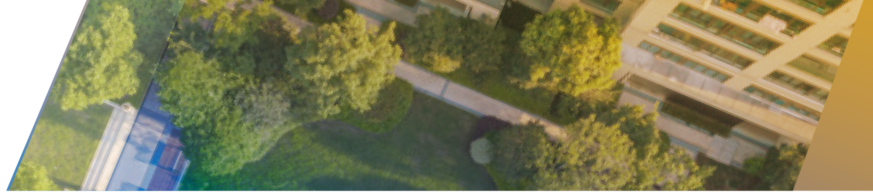


To learn more about the CLT model for housing and the benefits CLTs bring to both residents and cities, check out NLC's report, *Community Land Trusts: A Guide for Local Governments.*

While the primary role of land banks is not residential development, some landbanks play a direct role in creating housing by rehabbing vacant structures. These rehab programs often look through a land bank's existing inventory of vacant structures, identify those in the best condition, and rehab or renovate these structures so that they can reenter the market. For example, the Detroit Land Bank Authority's Rehabbed and Ready Program leverages philanthropic dollars to rehab and renovate homes and sell them for market value.[36] Since its inception in 2015, this program has rehabbed and sold 85 homes and currently has 40 additional homes in the pipeline for renovation.[37]

EQUITY IMPLICATIONS

While regional vacancy rates are generally driven by macroeconomic, global and regional forces, high vacancy rates on a neighborhood level are often a product of historic policy choices driven by racist ideologies. Neighborhoods with the highest vacancy rates often align with historically redlined areas in which Black families were denied access to homeownership, resulting in the compounded loss of generational wealth.[38]



NATIONAL LANDSCAPE

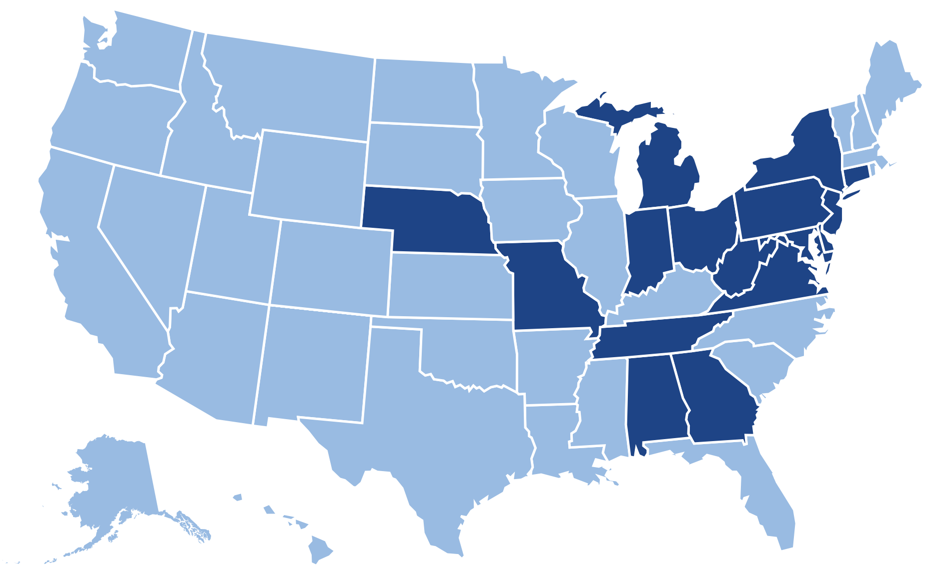
Landbanks can exist at various levels of government, ranging from the municipal, county, regional or state level, and are typically created as public entities by a local ordinance.[39] To establish landbanks locally, municipal governments must have the authority to create such entities, which generally requires state-enabling legislation. State legislation permits effective acquisition, maintenance, holding and disposition of vacant land by allowing local governments to:

1. Acquire property at low or no cost through the foreclosure process
2. Clear titles or eliminate unpaid taxes
3. Hold land tax-free
4. Lease properties for temporary uses
5. Negotiate the sale of properties without the need for approval from other local governments

There are currently an estimated 251 land banks operating in 28 states, with 29 percent operating at the municipal level.[40] Sixteen states passed comprehensive state enabling land bank legislation, including New York, Michigan, Ohio, Georgia, Nebraska, Missouri, Tennessee, Alabama, Delaware, Virginia, West Virginia, Indiana, Pennsylvania, Connecticut, New Jersey and Maryland. Thirteen states contain operating land banks without state enabling legislation, including Alaska, Arkansas, Illinois, Kansas, Kentucky, Louisiana, Mains, Minnesota, Mississippi, North Carolina, Oregon, Rhode Island, Texas and Vermont. While state, country, regional and municipal land banks can exist in some states without enabling legislation, they are far less prevalent as 80 percent of land banks operate in states with enabling legislation. Maryland is the only state with enabling legislation and no existing land banks.

Figure 7: Local Authorities Supported by Comprehensive Land Bank Enabling Legislation

Legend ● Does not have land bank enabling legislation ● Has comprehensive enabling legislation



16 states allow land banks

26% of states without legislation have land banks

Key Findings

This assessment classifies states on whether there is state enabling land bank legislation or not:

- The state passed comprehensive land bank enabling legislation (16 states)
- The state has not passed comprehensive land bank enabling legislation (34 states and the District of Columbia)

CASE STUDY:

Atlanta, GA Land Bank & Land Trust Partnership

The City of Atlanta has experienced significant increases in home prices over the last two decades, making homeownership increasingly unattainable for low- and middle-income households. The median home value more than doubled between 2000 and 2021, increasing from $119,600 to $290,400.[41] To address the city's affordable housing concerns, the Atlanta Community Land Trust (ACLT) and Metro Atlanta Land Bank (ALB) partnered to increase homeownership and wealth accumulation opportunities for traditionally disenfranchised groups in the Atlanta Metropolitan area. ALB's primary role is to remove barriers to land development (such as clearing liens and deed restrictions and minimizing holding fees) and sell the land at an affordable price.[42] ACLT provides expertise in management and long-term stewardship of the land and initial construction and development.[43]

The two organizations entered a formal partnership through the Catalytic Land Cohort, an initiative led by the Center for Community Progress and Grounded Solutions Network to convert public properties into permanently affordable housing in emerging neighborhoods.[44] Through this initiative, ALB and ACLT launched a pilot to develop 14 permanently affordable homes on formerly vacant properties.[45] To support this program, the Georgia legislature passed a law that provides CLT homeowners with a homestead exemption, which increases ACLT's ability to purchase land for residential development by exempting the land from property taxes.[46] Over the next four years, this partnership will contribute to Mayor Bottom's "One Atlanta" initiative to create or preserve 20,000 affordable units by leveraging vacant public land, expanding housing affordability tools and revising local zoning codes.[47]

Affordable Housing Development Incentives

SOLUTION DEFINED

States and municipalities have several regulatory tools at their disposal to expand, diversify or accelerate the production of affordable housing units. Examples of regulatory mechanisms that incentivize development include transit-oriented development (TOD) incentives, reduced parking requirements, density bonuses, flexible design standards, accelerated approvals, by-right development and more. Due to changes in consumer preferences, many local governments are shifting their focus from requiring space for personal vehicles to incentivizing housing development near public transit.[48] All levels of government can enhance these efforts by changing transportation policies and investing in strategies that promote the development of accessible communities, especially through TOD and reduced parking incentives.[49]

Definitions for TOD range per state statute; however, TOD can be defined as compact development that is within walking distance of transit stations (typically a half-mile radius) and commonly mixes with housing, shopping, entertainment, offices and dining.[50] Although affordable housing is not always required for TOD to function, states and local governments can use TOD as a tool to incentivize affordable housing development. For example, the state of Minnesota requires developers to incorporate one or more public transit options when building commercial, residential and mixed-use development, which may not inherently lead to affordable housing options.[51] Comparatively, the Commonwealth of Virginia requires the creation of a TOD plan for municipalities with populations greater than 20,000 when updating their comprehensive plan, which includes strategies for locating new affordable housing developments closer to public transit options.[52] Local governments can leverage TOD as an incentive for building affordable housing options that bridge it to necessary municipal services, such as employment opportunities, food access and medical care.

Reducing parking requirements is another development incentive that can promote affordable housing. Historically, many local governments incorporated parking minimums into residential and commercial zoning requirements to allow for personal vehicles. However, when parking spaces are not in use, they leave empty space, contribute to urban sprawl and can impact housing affordability.[53] To combat the impact parking has across municipalities, many local governments have revisited their state and local zoning requirements and introduced regulatory incentives, like reduced parking requirements or parking maximums, into residential and commercial development. Reduced parking requirements allow developers to implement fewer on-site parking options, which can expand a development's overall housing supply and increase revenue potential.[54] Many municipalities are implementing reduced parking requirements as incentives for developers to construct or set aside a percentage of units for affordable housing. For example, in 2018, Arlington, MA revisited their zoning by-laws for the first time in 40 years to incorporate incentives for affordable housing development. The town reduced the number of off-street parking requirements by up to 10 percent per development depending on the number of affordable housing units constructed.[55]

EQUITY IMPLICATIONS

TOD and reduced parking requirements are tools that municipalities can use to promote affordable housing options, municipal services access and overall health and wellbeing.[56] Lack of access to public transportation disproportionately impacts those who rely on it, such as residents with low-income status, BIPOC, seniors and individuals with disabilities. A study found that women, younger adults, Black workers and workers of low-income status are the majority of public transit users who commute to economic opportunities or municipal services.[57] Public transportation is associated with significantly lower harmful emissions than single-occupancy vehicles. Increasing opportunities for individuals to choose public transportation over driving can grant residents the opportunity to have better health outcomes from less exposure to harmful air pollutants. Public transportation also improves health by expanding mobility options to health services as well as access to healthier food, recreational opportunities and other vital services.[58, 59]

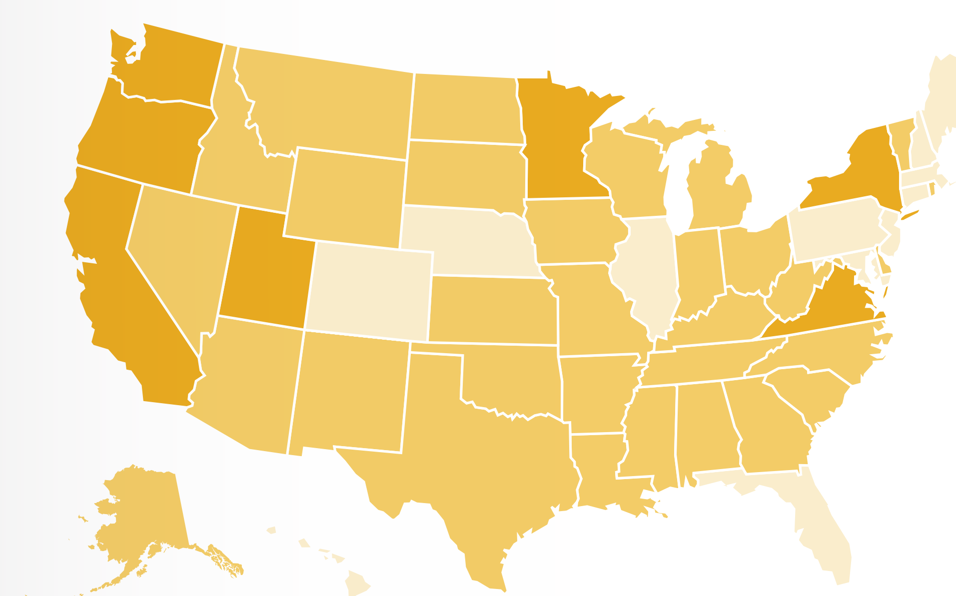
NATIONAL LANDSCAPE

As of 2022, all state governments allow municipalities to implement TOD in their communities. However, the level to which state laws regulate or incentivize TOD varies. Currently, 32 states allow local governments to regulate TOD locally. Of those states, 78 percent of them have existing or planned TOD. Twelve states have laws that expressly incentivize or permit local governments to implement TOD (Colorado, Connecticut, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey and Pennsylvania). Maine notably has legislative incentives for local governments to construct affordable housing development near transit, including tax increment financing options to cover associated development costs.[60] Seven states have preempted how localities can develop TODs, including California, Minnesota, New York, Oregon, Utah, Virginia and Washington.

Across the US, two states and the District of Columbia (CA, OR and DC) require set parking requirements for localities. Forty-eight states have no barriers for municipalities to set their parking requirements.

Figure 8: Local Authority to Incentivize TOD

Legend Incentivizes or permits • No incentive or regulation • Requires or heavily regulates TOD



32 states expressly allow TOD

78% with legislation have TOD

12 states incentivize TOD

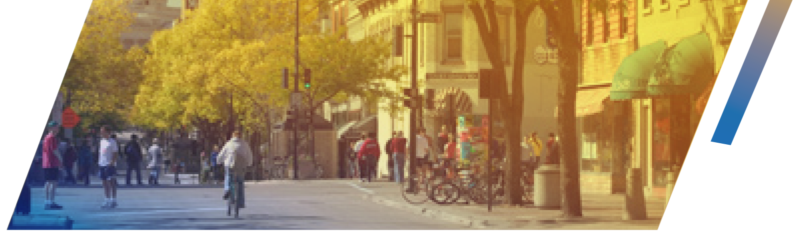
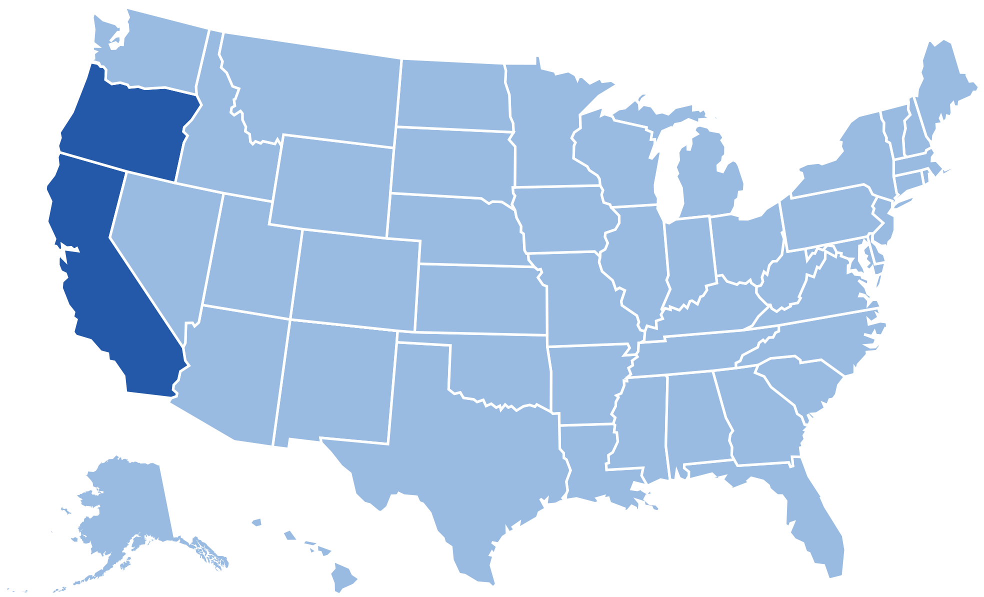


Figure 9: Local Authority to Reduce Parking Requirements for New Developments

Legend ● No barriers ● Requires



48 states have no barriers to local authority for parking requirements

Key Findings

State TOD regulation falls into one of three categories:

- The state does not regulate or incentivize TOD (32 states and the District of Columbia)
- The state expressly incentivizes or permits local governments to implement TOD (12 states)
- The state requires or heavily regulates TOD (7 states)

State parking requirement regulation falls into one of two categories:

- The state has no barriers for municipalities to regulate or incentivize reduced parking requirements (48 states)
- The state requires municipalities to regulate or incentivize reduced parking requirements (2 states and the District of Columbia)

CASE STUDY:

The MassWorks Infrastructure Program and the City of Beverly

In 2004, the Massachusetts legislature created a TOD bond program that provided grants to housing developers who allocated a portion of their development to affordable housing units. Developers could receive up to $2.5 million if they designated a minimum of 25 percent of units as affordable housing and positioned them in mixed-use areas within a quarter mile of a transit station. In 2012, the legislature combined the bond program with similar initiatives to create the MassWorks Infrastructure Program (MassWorks).[61] MassWorks is a grant program that issues public infrastructure funds to municipalities for capital projects that "support and accelerate housing production, spur private development, and create jobs throughout the Commonwealth."[62] The program emphasizes developing multi-family housing in walkable, mixed-use districts while spurring job creation and economic development in weak or distressed areas.[63]

In 2020, the City of Beverly was one of more than 30 recipients to receive funding through the MassWorks program. The $1.75 million award will lead to streetscape enhancements through repairs to sidewalks, pedestrian crossings and bike lanes. The project is designed with mixed-use priorities, emphasizing a full spectrum of comingled services and amenities. The streetscape improvements are near a 77-unit affordable housing development, two local public schools, a hospital and an office park with over 500 businesses. The affordable housing development, Anchor Point, will consist of two- and three-bedroom apartments for families, with 20 percent of its units for families experiencing homelessness. Anchor Point is less than half a mile from bus transit and will have on-site daycare, outdoor and recreational spaces, resident and case management services, and space for after-school, adult education and health programming.[64] By increasing the walkability and bike-ability of the neighborhood through the MassWorks grant, Anchor Point residents will be better equipped to access services across the City of Beverly while improving their economic, social and health outcomes.

Affordable Housing State Tax Incentives

SOLUTION DEFINED

States frequently utilize tax credits to incentivize affordable housing development. The Federal Low-Income Housing Tax Credit (LIHTC) is the most common source of low-income housing tax credits. LIHTC provides state and local LIHTC-allocating agencies approximately $8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation or construction of new rental housing targeted to households of low-income status.[65] Some states additionally appropriate funds through their budgetary processes to increase available affordable housing development incentives. Common state policies include tax-exempt housing bonds, reduced state tax liability for developers and tax credits to property owners with full or partial low-income units.

While municipal governments do not typically have direct control of state LIHTC and other states' affordable housing tax incentives, these programs encourage private developers to increase the affordable housing supply, resulting in substantial affordable housing development in urban centers.[66] However, municipalities do have the opportunity to reduce the cost of affordable housing developments by providing funding or financing for LIHTC projects that need to fill funding gaps or secure capital at a reasonable interest rate. In 2019 alone, 2.8 million properties were financed through LIHTC in over 9,000 municipalities, representing a two percent growth in properties from the prior year.[67]

EQUITY IMPLICATIONS

Individuals with household incomes well below the national median or BIPOC predominantly occupy units subsidized by LIHTC. Of the properties that reported demographic information of occupants (roughly 89% reporting), about 72 percent of occupants identified as non-white, nearly 31 percent of which identified as Black or African American.[68] In 2019, the median household income for LIHTC residents was $18,200 annually, which is $44,600 less than the national median.[69] While LIHTC-funded development serves some of the nation's lowest-income individuals and houses predominantly BIPOC, some research demonstrates that LIHTC programs have contributed to spatial concentrations of poverty in urban areas and do not necessarily promote mixed-income housing.[70] An analysis of LIHTC units and tenants from 12 states found that LITHC units are more likely to be in areas with higher poverty rates, weaker labor markets, more polluted environments and lower-performing schools.[71] While LITHC has been an effective tool to create below market-rate units, municipalities and states need to not only consider how to fund and incentivize affordable housing but where to create affordable housing that increases economic mobility and grows regional prosperity.

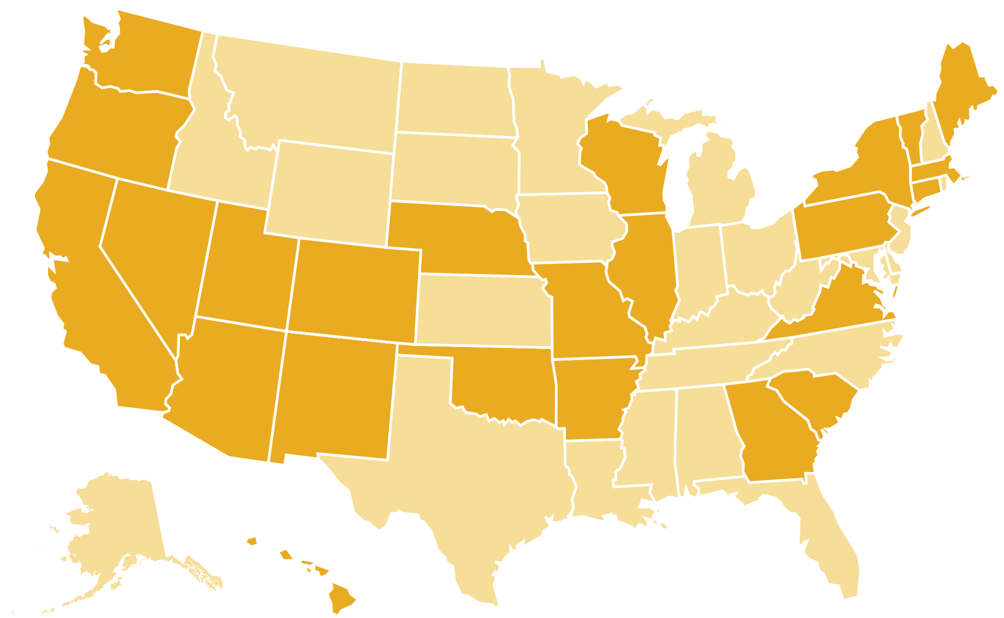
NATIONAL LANDSCAPE

Across the US, 23 states and the District of Columbia have state-level tax incentives for new construction and/or rehabilitation of low-income housing. Of those states, 15 have state-level tax incentives that are bifurcated from federal LIHTC incentives, allowing projects that received a tax credit to assign state credits separate from federal LIHTC credits. [72, 73] Most states bundle the application for both state and federal LIHTC programs. In some instances, state funding is bound to federal funding in the form of a dollar-for-dollar match or percentage of federal funds. Since states distribute these federal funds, the award allocations sometimes overlap. States often leverage their low-income housing tax credits to maximize the impact. For example, New York provides a dollar-for-dollar reduction in state taxes to investors in qualified low-income housing.[74]

Five states do not require applicants to first apply for federal funding and have a separate application process (New Mexico, New York, Oregon, Washington and Wisconsin). While many of these programs mirror the eligibility requirements and benefits, these funds are not tied to federal funding applications. Four states recently proposed state LIHTC programs that have yet to be enacted (Montana, Iowa, Indiana and North Carolina).[75]

Figure 10: State Tax Incentives for New Construction and Rehab of Affordable Unit

Legend ● No State Tax Incentives for New Construction or Rehab ● State Tax Incentives for New Construction or Rehab



23 states and D.C. incentivize construction

65% of states that incentivize construction leverage state and federal funding

Key Findings

The state assessment classifies whether states have existing state-level tax incentives for new construction or rehabilitation of affordable housing:

- The state has tax incentives to support affordable housing development through new construction or rehab projects, either through a state LIHTC program or separate programs (23 states and the District of Columbia)
- The state has no state tax incentives to support affordable housing development and renovation (27 states)

CASE STUDY:

Colorado's State Affordable Housing Tax Program

The State of Colorado experienced significant growth over the past decade. Between 2009 and 2019, the state's population grew over 14 percent, and the Denver metro area grew over 19 percent.[76] Although the population continues to grow, the housing supply and the number of affordable units have not met community demand. Over the past decade, there has been a 40 percent decrease in housing unit construction.[77] Additionally, there is an estimated shortage of 113,110 affordable and available rental homes for residents with extremely low income, representing 21 percent of renter households.[78]

To combat the shortage of affordable housing units, Colorado made significant investments to help grow the supply of housing. Modeled after the federal government's LIHTC program, Colorado launched its affordable housing tax credit program in 2001.[79] In 2019, the state legislature doubled the program size to $10 million in annual tax credits allocated by the Colorado Housing and Finance Authority.[80] The state awards these tax credits to developers, which they can then sell to investors to raise capital for qualified projects. This added capital incentivizes developers to borrow less for project costs, allowing them to offer more affordable rents.[81] Between 2015 and 2021, the program directly supported the development of nearly 8,300 housing units and spurred $1.07 billion in private sector investment.[82] In 2021 alone, Colorado's $10 million state tax credit leveraged $19 million in federal housing tax credits and raised $232 million in private sector investment.[83]

SOLUTION DEFINED

Housing trust funds continue to expand in popularity as a tool for state and local governments to address affordable housing challenges. Housing trust funds are publicly funded sources of affordable housing and must be established by local ordinances and state legislation. Since they are created and administered at the municipal, county or state level, housing trust funds offer flexible spending to address local needs and priorities. Compared to other policies, housing trust funds are not subject to restrictions that often come with federal subsidies. When creating a housing trust fund, elected officials want to consider long-term funding sources, program and policy administration and funding eligibility for different groups.[84]

EQUITY IMPLICATIONS

When building a housing trust fund, there are several ways to consider including equity in the program. Local leaders can consider how the funds from the trust will be used, such as by targeting specific income groups, geographic areas and populations, like those experiencing homelessness or first-time homeowners.[85] The equity challenges and needs of the community will determine which groups to allocate housing trust fund dollars. In a survey conducted by the Housing Trust Fund Project, roughly half of city respondents were using their housing trust funds to build long-term, lasting affordability for individuals earning no more than 80 percent average median income (AMI), with the most common responses for rental programs at 60 percent AMI and homeowner programs at 120 percent AMI.[86] Other equity considerations when building a housing trust fund are who will administer the trust and how the funds will be raised.[87]

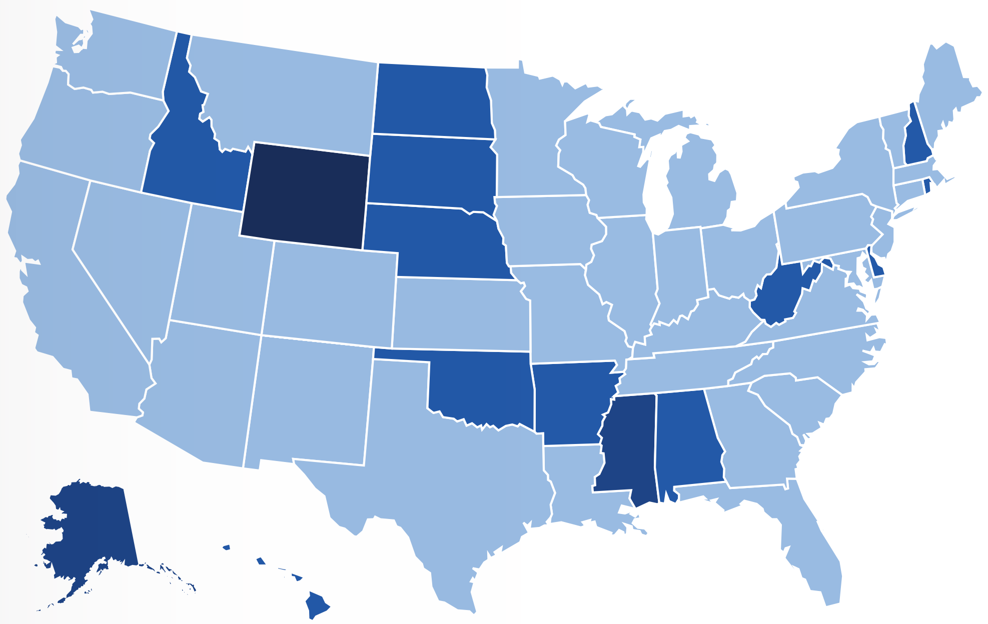
NATIONAL LANDSCAPE

Currently, 47 states and the District of Columbia have housing trust funds. Since 2019, Alabama, Idaho and Rhode Island have not allocated funds to their state housing trusts. Eight states created one additional housing trust fund since the 2019 analysis (Connecticut, Illinois, Massachusetts, Nebraska, Nevada, New Jersey, Oregon and Washington). Additionally, 14 states passed legislation that encourages and/or enables local governments to allocate public funds to housing trusts (Arizona, California, Florida, Indiana, Iowa, Massachusetts, Minnesota, Missouri, New Jersey, Oregon, Pennsylvania, South Carolina, Washington and Wisconsin).[88]

The number of cities, towns and villages with housing trust funds has increased over the past few years. In 2019, there were 109 municipalities in 33 states and the District of Columbia with housing trusts. Two years later, in 2021, there were 118 housing trust funds in 36 states and the District of Columbia.[89] By including the combined state and local programs in Massachusetts and New Jersey, there is a total of 605 municipalities across the US with housing trust funds.[90] Funding levels for state and local housing trust funds have not changed substantially in the last few years.[91] Wyoming continues to be the only state in the country without a state or local level housing trust fund.

Figure 11: State and City Housing Trust Funds

Legend ● Has a local housing trust fund ● Has a state housing trust fund ● Has both a state and local housing trust fund ● No state or local housing trust fund



47 states with housing trust funds

8% more housing trust funds since 2019

605 municipaliies with housing trust funds

Key Findings

The state assessment categorized state and local housing trust fund policies into four categories:

- The state has a housing trust fund and municipalities within that state also have a fund (36 states and the District of Columbia)
- The state has a housing trust fund, but the municipalities do not (11 states)
- The state does not have a housing trust fund, but at least one municipality does (2 states)
- Neither the state nor the municipalities within the state have a housing trust fund (1 state)

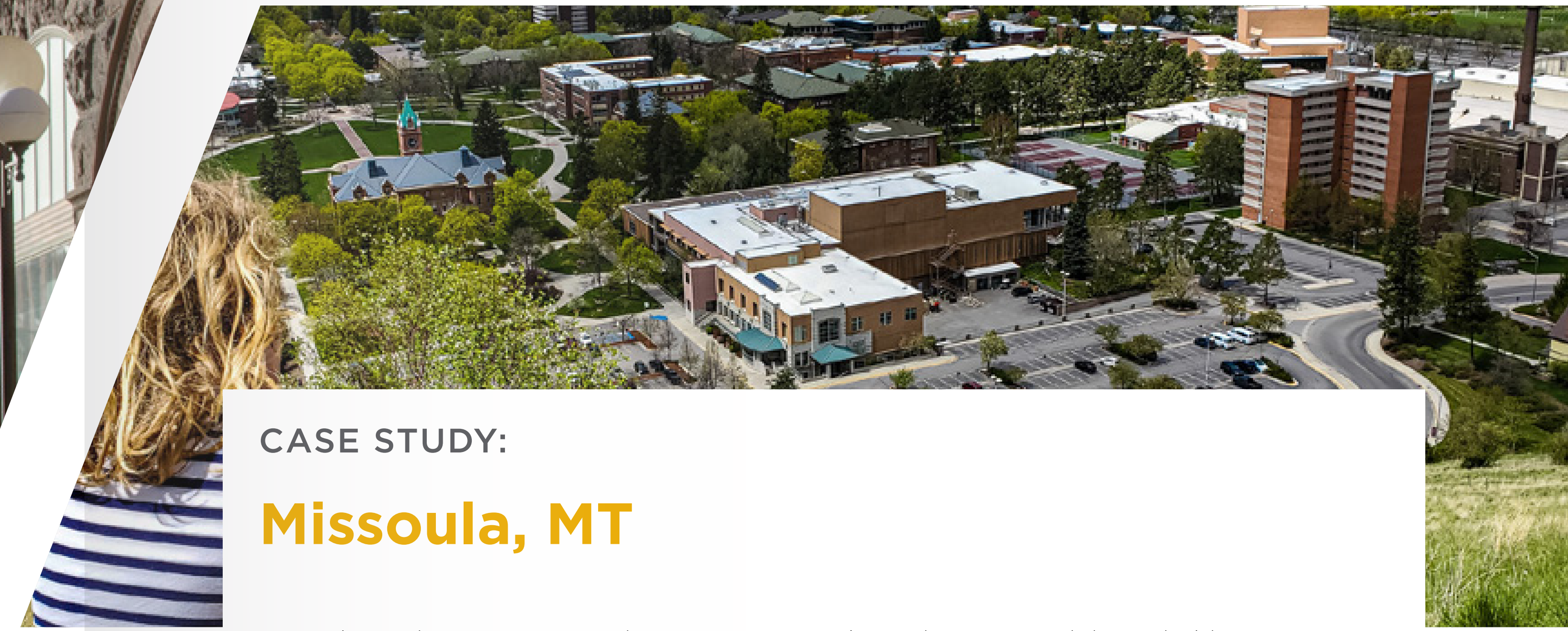
CASE STUDY:

Helena, MT

With the State of Montana allowing for the creation of housing trust funds, the City of Helena decided to create the Helena Affordable Housing Trust Fund (HAHTF) in 2020. The decision to create a housing trust fund came from the city's latest Area Need Assessment and City Growth Policy, which highlighted housing as a top issue.[92]

The goal of the HAHTF is to support and increase the flexibility of constructing, demolishing, rehabbing and developing affordable housing.[93] Non-profit, for-profit and public organizations all have access to funds through the HAHTF. Eligible HAHTF beneficiaries include household incomes that do not exceed 80 percent of the Lewis and Clark County AMI.[94] For the 2022 application year, the HAHTF has set aside $250,000 for single-family housing development, which will be placed in a land trust until the 2023 application cycle.[95] Of the HAHTF funding, $100,000 is allocated for unanticipated housing-related emergencies that may arise.[96]

During the development of their program, Helena city staff looked at the Housing Trust Fund Project's manual on creating and operating a trust fund.[97] The city plans to continue diversifying the program's funding sources to avoid potential impacts from losing a funding stream.

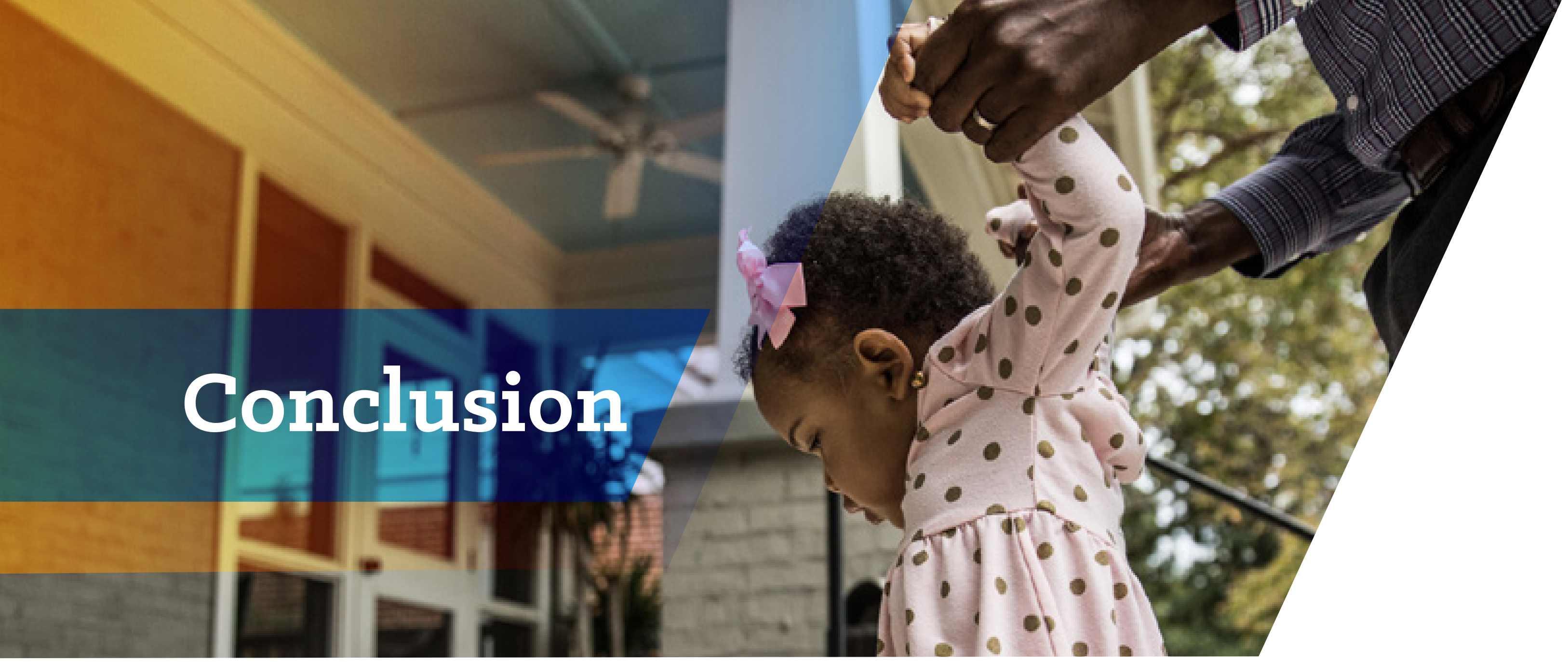


CASE STUDY:

Missoula, MT

Missoula, MT began creating a housing trust fund after adopting a citywide housing policy, *A Place to Call Home: Meeting Missoula's Housing Needs,* in June 2019.[98] In July 2020, Missoula adopted an Affordable Housing Trust Fund (AHTF) and seeded the program with $750,000 from the city's 2021 general fund.[99] For the fiscal year 2022, Missoula allocated $2.7 million ($700,000 from the American Rescue Plan Act and $2 million from the sale of city-owned land) into the AHTF. Community stakeholders supported AHTF's development through continual conversations with the city on state funding limitations, onerous bureaucratic processes and restrictions to fund affordable housing.

The City of Missoula hopes the housing trust will meet residents' needs by investing in projects that create and preserve housing opportunities for Missoulians with low- and moderate-income statuses. For the construction of new rental units, funds are limited to units with household incomes at or below 80 percent AMI and new ownership construction is limited to households with income at or below 120 percent AMI. The AHTF is the first step in Missoula's larger housing policy goals that will allow the city to be innovative and creative in working with new and existing partners to meet residents' needs. Missoula hopes the housing trust fund will allow them to respond to Montana's rapidly changing and complex housing needs. Since August 2021, the city began leveraging additional policies, such as Source of Income Discrimination Protection, Displacement/Relocation Protection and Assistance, Tenant Selection Plans and Affirmative Marketing to support residents and tenants.[100] For Missoula, the city's AHTF is not just an opportunity to bring new revenue and resources to affordable housing but is a method to establish a community-wide baseline and practice of focusing on equity, housing and innovative partnerships.



Conclusion

THE TOOLS AVAILABLE to municipalities to address residents' housing needs are not only determined by regional market conditions, but also by the authorities and resources granted to municipalities by their state. Our assessment of zoning restrictions, development incentives for parking and TODs, ADU regulations, land banking, state tax incentives and housing trust funds finds that:

- Municipalities within California and Oregon experience the most preemption related to housing affordability and land use from their state government.
- Municipalities within Connecticut, Florida, Hawaii, Maine, Massachusetts and Pennsylvania have access to the most incentives related to affordable housing development.
- Municipalities within Georgia, Maryland, Michigan, New York, Ohio, Tennessee and Virginia have the most local control to address their communities' housing affordability needs.

Recent federal legislation provides local and state governments with an opportunity to make significant investments in housing and the infrastructure needed to support safe, healthy and thriving communities.

AMERICAN RESCUE PLAN ACT

Over the last two years, cities, towns and villages have faced the extraordinary challenge of addressing the COVID-19 pandemic. Municipalities faced not only a public health crisis and an economic recession but also a worsening housing crisis that has dramatically debilitated renters, individuals experiencing homelessness and homeowners. The American Rescue Plan Act (ARPA) presents a significant opportunity for municipalities and states to address their residents' housing needs. The legislation includes 70,000 emergency housing vouchers, $5 billion in HOME grants, $350 billion in State and Local Fiscal Recovery funds (SLFRF) and significant investments to preserve and protect housing on tribal lands.

Both municipalities and states have tremendous flexibility on how to use SLFRF allocations, such as opportunities to design programs and policy interventions that meet regional housing needs. Localities and states can assist renters and homeowners by:

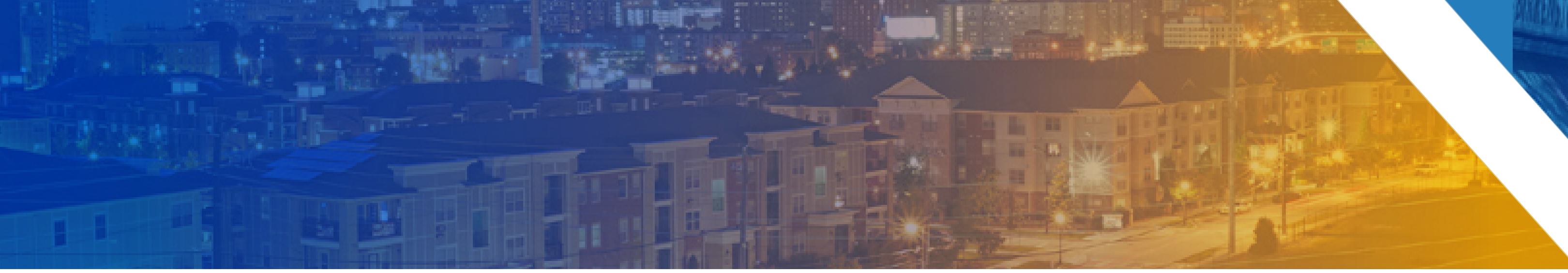
- Providing rent, mortgage and utility aid
- Reducing eviction by supporting at-risk renters and local landlords
- Fund new affordable housing development in areas of need

Buffalo, NY, for instance, plans to allocate $12.3 million in SLFRF to their city's affordable housing trust funds, and Missoula, MT will contribute $700,000 from its SLFRF allocation to its newly established housing trust fund.[101] Municipalities and states must work collaboratively as they strategize on how to use ARPA dollars to craft comprehensive affordable housing measures.

70,000
emergency housing vouchers

$5 billion
in HOME grants

$350 billion
in State and Local Fiscal Recovery funds



BIPARTISAN INFRASTRUCTURE LAW

The recent passage of the Bipartisan Infrastructure Law (BIL) presents state and local governments with the opportunity to consider how improving infrastructure can relate to local housing needs and development. BIL allows governments to connect or reconnect neighborhoods and make homes healthier and more resilient to social, economic and environmental challenges. Although BIL does not directly allocate money to develop or preserve affordable housing, funds within BIL can be used to repurpose and upgrade existing housing stock. Municipal officials at every level must consider where they allocate funding, who will receive the benefits and how expanding or creating new infrastructure will impact affordable housing. It may be useful to tie development to affordable housing or consider how expanding housing development can be paired with expanding infrastructure systems.

Cities, towns and villages will want to work with their state governments to determine how BIL dollars can best be allocated to ensure affordable housing remains affordable while also expanding and connecting opportunities to the residents who live there. For a full list of BIL funds that are available to cities, towns and villages, visit NLC's website.

RECOMMENDATIONS

The growing housing crisis and extraordinary challenges presented by the COVID-19 pandemic are compelling municipalities and states to rethink how they work collaboratively to meet affordable housing needs. Municipalities can take several steps to achieve the careful balance of local flexibility and mutual housing affordability goals, including:

- **DEVELOP POLICY INTERVENTIONS WITH EQUITY IN THE FOREFRONT:**
  State and local leaders have a responsibility to integrate equity values and tangible actions within policies that allow residents of various social identities and financial circumstances to acquire housing. The policy measures highlighted in this report can mitigate racial and social inequities. Development and tax incentives detailed can increase the spectrum of housing options and the likelihood of housing attainment for demographic groups who have historically struggled to achieve affordable homeownership or rentals, such as young adults, BIPOC, people of low or moderate socioeconomic status, single people and more. Land banks, ADUs and CLTs can reduce the risk of displacement, increase housing flexibility options, address vacancies and empower residents in land development and preservation decision-making.

- **USE, OR CREATE, A LOCAL HOUSING TOOLBOX BEFORE STATES CONSIDER PREEMPTION:**
  With housing and rental prices increasing across the country, there is pressure on state lawmakers to step in and solve the crisis. Municipal leaders know that housing prices depend on local conditions and can be addressed at the local, not state, level.

- **REVIEW, STRENGTHEN AND UPDATE LOW-HANGING FRUIT POLICY INTERVENTIONS:**
  Municipal and state governments can begin by reviewing their current laws and finding reform that can easily increase the number of affordable housing units, such as by allowing for localities to regulate ADUs and expanding development incentives.

- **DEVELOP LONG-TERM FUNDING STRUCTURES TO ADDRESS COMMUNITY NEEDS:**
  Municipalities must continue contributing to long-term funding sources, such as housing trust funds, to address local affordable housing access. If there are no long-term funding structures in place, municipalities can develop funding sources for local neighborhoods and communities most in need. Additionally, municipalities must leverage state programs when available for local investment, such as state tax credits and state housing trust funds.

Both municipalities and states have a tremendous opportunity to leverage recent federal investment to address today's housing crisis. However, these opportunities are once in a lifetime and will not be available to solve all housing issues in the long-term. State and local governments must work together to address the housing crisis facing the nation and should look to neighboring and peer communities to identify and implement best practices. State and local leaders have a responsibility to reconsider their policies and programs to guarantee all households have access to safe, quality affordable housing.

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