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PANDEMICS AND HOUSING INSECURITY: A BLUEPRINT FOR LAND USE LAW REFORM

John R. Nolon*

INTRODUCTION: FOUR PANDEMICS AND HOUSING INSECURITY	423
I. HOUSING INSECURITY AND SOCIAL DETERMINANTS OF HEALTH .	426
II. TRADITIONAL AFFORDABLE HOUSING	430
<i>A. Mandatory Affordable Housing</i>	431
<i>B. Incentives for Affordable Housing</i>	433
<i>C. Off-Site and Buy-Out Options</i>	434
III. OTHER AFFORDABLE HOUSING STRATEGIES.....	435
<i>A. Flexible Large-Scale Multifamily Housing</i>	435
<i>B. Floating Zones</i>	435
<i>C. Overlay Zones</i>	436
<i>D. Infill Development</i>	436
<i>E. Adaptive Reuse</i>	438
IV. REFORMING SINGLE-FAMILY ZONING	442
<i>A. Missing Middle</i>	442
<i>B. Accessory Dwelling Units</i>	445
V. SUPPORTIVE HOUSING.....	450
<i>A. New York City's Supportive Housing Program</i>	452
VI. DISTRESSED PROPERTY REMEDIATION	454
<i>A. Enforce Existing Housing or Property Maintenance Codes</i> ..	454
<i>B. Regulate Vacant and Substandard Properties</i>	455
<i>C. Abating Public Nuisances in Buildings</i>	456
<i>D. Taking Title to Distressed Buildings</i>	457
<i>E. Disposing of Title to Acquired Properties</i>	457
VII. ANTI-DISPLACEMENT	458
CONCLUSION.....	460

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INTRODUCTION: FOUR PANDEMICS AND HOUSING INSECURITY

During its first century, land use law changed in response to serious, usually singular, challenges. First, it responded to the Great Depression, then World War II, then urban sprawl's threat to local economics and environments, then the challenge of developing sustainably in the face of emerging climate change.¹ As land use law's second century progresses, a quartet of "pandemics" pose unprecedented challenges. These pandemics are the worsening of climate change, the appearance of COVID-19 and its variants, the dawning realization of the tragedy of racial inequity, and the national housing crisis that causes housing insecurity for many. All of these catastrophes are worrisome threats to public health.

These pandemics have aroused widespread concern. In response, many in the nation are calling on local land use advocates and officials to reform land use law. This Article introduces these four pandemics and describes in detail what local governments are doing to combat one of them: housing insecurity. It reviews recent progress with traditional inclusionary zoning requirements, such as mandatory affordable housing; discusses the move toward greater density in single-family zoning; touches on the *housing first* approach to reducing homelessness through supportive housing; lists strategies being used to remediate distressed housing; and notes the importance of affordable housing as a necessary strategy for preventing lower-income household displacement caused by gentrification.

The lack of affordable housing exacerbates the detrimental effects of the other catastrophes. We are building most of our housing outside denser urban areas—increasing vehicle miles travelled for those seeking shelter—and on lands that sequester CO₂, both of which worsen climate change.² We cannot prevent gentrification induced displacement of lower-income households without affordable housing

¹ John R. Nolon, *Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control*, 23 PACE ENV'T L. REV. 821, 829–32 (2006), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1098&context=pehr>.

² *Rethinking Urban Sprawl: Moving Towards Sustainable Cities*, OECD 6, 11 (June 2018), <https://www.oecd.org/environment/tools-evaluation/Policy-Highlights-Rethinking-Urban-Sprawl.pdf>.

needed to address racial inequity.³ Placing most of our housing in *greenfields* increases the exodus of residents from cities in response to COVID-19 and its variants.⁴

The reciprocal impacts of these four pandemics are clear; local land use leaders should examine how mitigating one issue can ameliorate the others. The critical public health threat of these four pandemics is a central concern for local leaders—they are called upon to react quickly to issues that move slowly through the state and federal policy reform processes. Local engagement with these problems and local need for technical and financial support put positive pressure on officials at higher governmental levels to respond more quickly.

Even since 2020, we have seen an influx of state and local responses to the housing crisis. While efforts continue to require and incentivize new housing developments to include affordable housing, we have witnessed a sea change in our understanding of single-family zoning and focused on the potential to develop more dwelling units (for example, by allowing small-scale development of accessory dwelling units and multifamily residences in single-family zones).⁵ Familiar tools such as infill development and adaptive reuse are also being employed to allow mixed-use development, including multifamily housing.⁶ The increase in homelessness in many markets is fueling interest in supportive housing, in lieu of shelters, as a more

³ Sandra Feder, *Stanford Professor's Study Finds Gentrification Disproportionately Affects Minorities*, STAN.: NEWS (Dec. 1, 2020), <https://news.stanford.edu/2020/12/01/gentrification-disproportionately-affects-minorities/>.

⁴ U.S. EPA, RESIDENTIAL CONSTRUCTION TRENDS IN AMERICA'S METROPOLITAN REGIONS: 2012 EDITION iii (2012), https://www.epa.gov/sites/default/files/2014-03/documents/residential_construction_trends.pdf.

⁵ Robert Liberty, *3 Zoning Changes That Make Residential Neighborhoods More Affordable*, PLAN. MAG. (Feb. 1, 2021), <https://www.planning.org/planning/2021/winter/3-zoning-changes-that-make-residential-neighborhoods-more-affordable/>.

⁶ OFF. OF SUSTAINABLE CMTYS., U.S. EPA, EPA 230-R-15-001, ATTRACTING INFILL DEVELOPMENT IN DISTRESSED COMMUNITIES: 30 STRATEGIES 1, 6 (2015), https://www.epa.gov/sites/default/files/2015-05/documents/fresno_final_report_042215_508_final.pdf.

effective solution.⁷ These new strategies help address the tragedy of displacing lower-income households due to gentrification.

This Article is an early response emanating from the Land Use Law Center's Land Use, Human Health, and Equity Project that addresses four pandemics plaguing public health: COVID-19, housing insecurity, racial inequity, and climate change. Pandemics are commonly understood to refer to infectious diseases, but the Land Use, Human Health, and Equity Project uses the term to refer to catastrophes significantly affecting public health.⁸

This is not the first, nor is it the last, reference to a pandemic that is not explicitly disease-related; for example, headlines frequently refer to the "opioid epidemic." The widespread nature of the housing insecurity crisis, in combination with its harmful effects on public health, allow the use of "pandemic" as a descriptor. New York City declared racism a public health emergency in October 2021.⁹ These pandemics are regarded and responded to locally because they are local hazards that pose extraordinary health risks.

⁷ See *Permanent Supportive Housing*, NAT'L. ALL. TO END HOMELESSNESS, <https://endhomelessness.org/ending-homelessness/solutions/permanent-supportive-housing/> (last updated Mar. 2021) (arguing that "permanent supportive housing a permanent solution to homelessness").

⁸ Dara Grennan, *What Is a Pandemic?*, JAMA NETWORK (Mar. 5, 2019) <https://jamanetwork.com/journals/jama/fullarticle/2726986>; see, e.g., WHO Characterizes COVID-19 as a Pandemic, PAN AM. HEALTH ORG., https://www3.paho.org/hq/index.php?option=com_content&view=article&id=15756:who-characterizes-covid-19-as-a-pandemic&Itemid=1926&lang=en (last visited May 16, 2022); 'We Are Living in a Racism Pandemic,' Says APA President, AM. PSYCH. ASS'N (May 29, 2020), <https://www.apa.org/news/press/releases/2020/05/racism-pandemic>; *Housing, a Crucial Determinant of Health*, GREENLAW: BLOG OF THE PACE ENV'T L. PROGRAMS, PACE UNIV. SCH. OF L. (Aug. 12, 2021), <https://greenlaw.blogs.pace.edu/2021/08/12/housing-a-crucial-determinant-of-health/>; Bruce Jennings, *The COVIDs of Our Climate*, CTR. FOR HUMS. & NATURE (Mar. 12, 2021), <https://humansandnature.org/the-covids-of-our-climate/>.

⁹ Karen Zraick, *Racism Is Declared a Public Health Crisis in New York City*, N.Y. TIMES (Oct. 19, 2021), <https://www.nytimes.com/2021/10/19/nyregion/nyc-racism-healthcare-system.html>.

I. HOUSING INSECURITY AND SOCIAL DETERMINANTS OF HEALTH

Housing insecurity is a nationwide crisis. The United States Census Bureau estimates 29.8% of the over 122 million households in the United States are cost-burdened, spending 30% or more of their monthly income on housing.¹⁰ Equaling over 36 million households, this is a problem a large portion of Americans face.¹¹ The limited supply of housing is contributing to this national problem. The available housing stock is dwindling, with the 2010s seeing the fewest houses built in the United States of any decade since the 1960s.¹² The National Association of Realtors estimates that the housing supply is 5.5 million units short of meeting long-term demand.¹³ There are few housing units available to meet the growing needs of the United States' changing demographics. The Census Bureau projects that the United States population will increase by 65 million by 2050, further exacerbating the supply-and-demand imbalance.

In 2019, 46% of renters were cost-burdened and 24% were severely cost-burdened.¹⁴ While this weighs on all, the burden falls

¹⁰See *American Community Survey: S2503 Financial Characteristics*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=housing%20United%20States&tid=ACSST1Y2019.S2503> (last visited May 16, 2022) (aggregating percentages of households across all income categories which spent 30% or more of their monthly income on housing in 2019).

¹¹ *Id.*

¹² Jerusalem Demsas, *COVID-19 Caused a Recession. So Why Did the Housing Market Boom?*, VOX (Feb. 5, 2021), <https://www.vox.com/22264268/covid-19-housing-insecurity-housing-prices-mortgage-rates-pandemic-zoning-supply-demand>.

¹³ KENNETH T. ROSEN ET AL., HOUSING IS CRITICAL INFRASTRUCTURE: SOCIAL AND ECONOMIC BENEFITS OF BUILDING MORE HOUSING iv (Rosen Consulting Grp. ed., June 2021), <https://cdn.nar.realtor/sites/default/files/documents/Housing-is-Critical-Infrastructure-Social-and-Economic-Benefits-of-Building-More-Housing-6-15-2021.pdf>.

¹⁴ 2020 *State of the Nation's Housing Report*, HABITAT FOR HUMANITY: COST OF HOME, <https://www.habitat.org/costofhome/2020-state-nations-housing-report-lack-affordable-housing> (last visited May 16, 2022).

more heavily on minority groups.¹⁵ The National Low Income Housing Coalition estimates that “[t]hirty-eight percent of AIAN [American Indian or Alaska Native] renter households, 35% of black renter households, and 28% of Hispanic households have extremely low incomes, compared to 22% of white non-Hispanic households.”¹⁶ These disproportionate impacts of the housing crisis highlight the need for a greater supply of affordable housing.

The United States is in the midst of a significant demographic shift. In contrast to the mid-late twentieth century’s nuclear family, one in four households today is a single-person household.¹⁷ One in three adults has never married.¹⁸ The birth rate is dropping.¹⁹ All of these factors contribute to the increasing need for housing variety. The emphasis of historical zoning practices on single-family zones greatly limits the production of different types of housing.

Housing quality, stability, and affordability all play a substantial role in human health. Housing insecurity is “associated with increased adjusted odds of adverse health and material hardship compared with stable housing.”²⁰ Poor-quality housing plays a substantial role in infectious diseases, chronic illnesses, injuries, poor

¹⁵ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *THE STATE OF THE NATION’S HOUSING* 2021, 1, 35 (Marcia Fernald ed., 2021), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.

¹⁶ AURAND ET AL., NAT’L LOW INCOME HOUS. COAL., *THE GAP: A SHORTAGE OF AFFORDABLE HOMES* 10 (2019), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf.

¹⁷ David Brooks, *The Nuclear Family Was a Mistake*, ATLANTIC, Mar. 2020, <https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/>; Samuel Stebbins, *Here Are the Cities Where the Most People Live Alone*, USA TODAY: MONEY (Nov. 2, 2018), <https://www.usatoday.com/story/money/personalfinance/2018/11/02/cities-where-the-most-people-live-alone/38255689/>.

¹⁸ Stebbins, *supra* note 17.

¹⁹ Sabrina Tavernise, *The U.S. Birthrate Has Dropped Again. The Pandemic May Be Accelerating the Decline*, N.Y. TIMES (May 5, 2021), <https://www.nytimes.com/2021/05/05/us/us-birthrate-falls-covid.html>.

²⁰ Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 PEDIATRICS 1, 7 (2018).

nutrition, and mental disorders.²¹ Experts typically examine healthy housing in quality, stability, and affordability categories.²² Quality, for example, substantially impacts physical health.²³ Approximately 24 million housing units—4 million of which house children—contain significant amounts of lead-based paint.²⁴ Lead exposure can cause damage to organs and impair cognitive and socioemotional development.²⁵ It can also lead to lower IQ and test scores, and in severe cases, coma and death.²⁶ Additionally, poor housing quality is strongly and independently associated with asthma.²⁷ Instability, on the other hand, negatively impacts the emotional, behavioral, and academic success in children; in teens, it is related to increased risk of

²¹ James Krieger & Donna L. Higgins, *Housing and Health: Time Again for Public Health Action*, 92 AM. J. PUB. HEALTH 758, 758–59 (2002).

²² Lauren Taylor, *Housing and Health: An Overview of the Literature*, HEALTH AFFS. (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/> (adding neighborhood as a fourth pathway, where research suggests health correlates with broader access to public transport, grocery stores, green spaces, and safe spaces for exercise); Milwaukee Habitat for Humanity, *Housing as a Prescription for Children's Health – Dr. Megan Sandel*, YOUTUBE (May 8, 2019), <https://www.youtube.com/watch?v=5TZtRhkfYtU>.

²³ Taylor, *supra* note 22 (finding that poor housing safety and quality can lead to irreversible damage from lead poisoning, asthma, adverse cardiovascular events, infectious disease, and psychological distress); Milwaukee Habitat for Humanity, *supra* note 22 (citing research suggesting people who move multiple times, are behind on rent, or experience homelessness demonstrate greater levels of maternal depression, food insecurity, energy insecurity, health care trade-offs, and poor child health).

²⁴ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 15, at 35.

²⁵ *About Lead-Based Paint*, U.S. DEP'T OF HOUS. & URBAN DEV., https://www.hud.gov/program_offices/healthy_homes/healthyhomes/lead (last visited May 16, 2022).

²⁶ See generally Kim T. Ferguson et al., *The Physical Environment and Child Development: An International Review*, 48 INT'L J. PSYCH. 437, 437–68 (2013) (discussing various studies documenting a relationship between body lead level burdens and IQ reductions, which holds true even when controlling for other factors like social class); see also *Lead Poisoning*, WORLD HEALTH ORG. (Oct. 11, 2021), <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health> (explaining that severe exposure to lead attacks the brain and the central nervous system, causing intellectual disability and behavioral disorders).

²⁷ Helen K. Hughes et al., *Pediatric Asthma Health Disparities: Race, Hardship, Housing, and Asthma in a National Survey*, 17 ACAD. PEDIATRICS 127, 128 (2017).

teen pregnancy, early drug use, and depression.²⁸ In adults, longer residence is associated with lower levels of depression.²⁹ Relatedly, affordability significantly impacts both physical and mental health. When households face high housing costs, they often make cuts to other budget areas, including child-enrichment activities, medical care and filling prescriptions, and food.³⁰ One survey even found that homeowners in default or foreclosure were 13 times more likely to suffer from serious psychological distress compared to homeowners with no housing strain.³¹

When a lack of affordable housing forces people to the street, they also face negative health impacts. Unhoused individuals face shorter life expectancies, higher rates of traumatic brain injuries, disproportionate risk of morbidity, and greater risk of physical and sexual violence.³² Housing is a crucial determinant of health. “[H]ousing is the first rung on the ladder [of] economic

²⁸ PAULA BRAVEMAN ET AL., ROBERT WOOD JOHNSON FOUND., EXPLORING THE SOCIAL DETERMINANTS OF HEALTH: HOUSING AND HEALTH 5 (2011), https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2011/rwjf70451.

²⁹ See *id.* at 6 (reporting that adults who obtained housing in low-poverty areas experienced significant improvements in neighborhood satisfaction and lower rates of psychological distress and depression).

³⁰ See SANDRA J. NEWMAN & C. SCOTT HOLUPKA, MACARTHUR FOUND., AFFORDABLE HOUSING IS ASSOCIATED WITH GREATER SPENDING ON CHILD ENRICHMENT AND STRONGER COGNITIVE DEVELOPMENT 1–2 (July 2014), https://www.macfound.org/media/files/hhm_-_affordable_housing_-_stronger_cognitive_development.pdf (explaining that housing costs are inversely related to spending on child enrichment activities); Craig E. Pollack et al., *Housing Affordability and Health Among Homeowners and Renters*, 39 AM. J. PREVENTIVE MED. 515, 515–16, 519 (2010).

³¹ Carolyn C. Cannuscio et al., *Housing Strain, Mortgage Foreclosure, and Health*, 60 NURSING OUTLOOK 134, 138 (2012).

³² David L. Maness & Muneeza Khan, *Care of the Homeless: An Overview*, 89 AM. ACAD. FAM. PHYSICIANS 634, 634–36 (2014); Colette L. Auerswald et al., *Six-Year Mortality in a Street-Recruited Cohort of Homeless Youth in San Francisco, California*, PEERJ 8 (Apr. 14, 2016), <https://peerj.com/articles/1909.pdf>; Lisa Goodman et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women*, VAWNET 1–3 (Sept. 2006), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SAHomelessness.pdf.

opportunity”³³ In youth, stable housing is related to higher educational attainment and greater test scores.³⁴ Housing near high-performing schools is 2.4 times more expensive than housing near low-performing schools, tying housing affordability into the educational success of residents.³⁵ Redlining has forced minority communities into less economically developed areas and compounded the health risks they face—housing affordability is therefore an important factor in determining the social, academic, and economic outcomes for those communities. While also improving the socioeconomic health of municipalities, affordable housing solutions counteract the effects of racial inequity on public health, educational attainment, and more.

II. TRADITIONAL AFFORDABLE HOUSING

The vocabulary of affordable housing, for the purpose of this Article, is as follows. *Affordable housing* refers to dwelling units that rent or sell for below-market prices.³⁶ The U.S. Department of Housing and Urban Development (HUD) defines affordable housing with reference to area median income (AMI) and focuses subsidy programs on housing for households earning at or below 80% of the AMI so the housing can be afforded using 30% or less of the household income.³⁷ *Exclusionary zoning* refers to restrictions in local land use laws that are unconstitutional because they prevent private developers from building the types of housing that can be made available at below-market prices.³⁸ The term generally is associated with judicial

³³ Veronica Gaitán, *How Housing Can Determine Educational, Health, and Economic Outcomes*, HOUS. MATTERS (Sept. 19, 2018), <https://housingmatters.urban.org/research> (search “Veronica Gaitán”; then select “How Housing Can Determine Education, Health, and Economic Outcomes”).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Matthew Yglesias, *Everything You Need to Know About the Affordable Housing Debate*, VOX (May 11, 2015), <https://www.vox.com/2014/4/10/18076868/affordable-housing-explained>.

³⁷ *Understanding Affordable Housing*, E. BAY HOUS. ORGS., <https://ebho.org/resources/what-is-affordable-housing/> (last visited May 16, 2022).

³⁸ Cecilia Rouse et al., *Exclusionary Zoning: Its Effect on Racial Discrimination in*

decisions in very few states requiring local governments to amend their zoning codes to require more types of buildings, such as multifamily structures.³⁹ *Inclusionary zoning* is defined as any effort taken by a municipality to amend land use laws to provide any type of housing that is affordable.⁴⁰ Exclusionary zoning decisions required defendant municipalities to adopt inclusionary zoning measures.⁴¹

Affordable housing is the crux of the housing insecurity crisis. There are not enough affordable units to meet the needs of the country's growing lower and middle classes, changing demographic groups, and expanding cost-burdened population. There are several land-use solutions to address affordable housing head-on.

A. Mandatory Affordable Housing

Mandatory affordable housing ordinances require private market residential developments to include a certain percentage of affordable units for low- and moderate-income households as a condition of approval.⁴² For example, Burlington, Vermont passed an ordinance applicable to any development of five or more dwelling units.⁴³ Escalating with the price of the housing to be developed, projects must contain 15, 20, or 25% of the AMI.⁴⁴

the Housing Market, WHITE HOUSE: BLOG (June 17, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/06/17/exclusionary-zoning-its-effect-on-racial-discrimination-in-the-housing-market/>.

³⁹ See generally John R. Nolon, *A Comparative Analysis of New Jersey's Mount Laurel Cases with the Berenson Cases in New York*, 4 PACE ENV'T L. REV. 3, 3–5, 7, 23 (1986).

⁴⁰ HUD Archives: *Glossary of Terms to Affordable Housing*, U.S. DEP'T OF HOUS. & URB. DEV., <https://archives.hud.gov/local/nv/goodstories/2006-04-06glos.cfm> (last visited May 16, 2022).

⁴¹ Brian R. Lerman, *Mandatory Inclusionary Zoning—The Answer to Affordable Housing Problem*, 33 B.C. ENV'T AFFS. L. REV. 383, 387 (2006), <https://center4affordablehousing.org/wp-content/uploads/2019/08/Mandatory-Inclusionary-Zoning-The-Answer-to-Affordable-Housing-P.pdf>.

⁴² *Mandatory Inclusionary Housing*, N.Y.C. COUNCIL, <https://council.nyc.gov/land-use/plans/mih-zqa/mih/> (last visited May 16, 2022).

⁴³ BURLINGTON, VT., CODE OF ORDINANCES § 9.1.5 (2019).

⁴⁴ *Id.* § 9.1.8.

Inclusionary zoning ordinances can be intricate and raise constitutional questions about their validity. In response to a citywide affordable housing shortage, San Jose, California adopted an inclusionary zoning ordinance—with several requirements, options, and incentives—which was challenged in state court by a building industry group.⁴⁵ The affordable housing requirement applies to all residential developments within the City that create 20 or more dwelling units; the ordinance contains the following additional provisions:

- “[Fifteen] percent of the proposed on-site for-sale units in the development shall be made available at an ‘affordable housing cost’ to households earning no more than 120 percent of the area median income for Santa Clara County adjusted for household size.”⁴⁶
- The ordinance provides alternative compliance options. When an option is elected by the developer, “the inclusionary housing requirement increases to no less than 20 percent of the total units in the residential development.”⁴⁷ The options available to the developer are:
 - “(1) constructing off-site, affordable, for-sale units”;
 - “(2) paying an in-lieu fee based on the median sales price of a housing unit affordable to a moderate-income family”;
 - “(3) dedicating land equal in value to the applicable in-lieu fee”; or
 - “(4) acquiring and rehabilitating a comparable number of inclusionary units that are affordable to low or very low income households.”⁴⁸
- The ordinance provides several incentives to build on-site, including:

⁴⁵ See *Cal. Bldg. Indus. Ass’n v. City of San Jose*, 351 P.3d 974, 978, 1006 (Cal. 2015) (holding that requiring a developer to sell 15% of their for-sale units at affordable housing price was not a taking).

⁴⁶ *Id.* at 983.

⁴⁷ *Id.*

⁴⁸ *Id.*

- (1) an increase in the number of dwelling units allowed under the zoning bonus;
- (2) a reduction in the number of parking spaces required under other ordinances;
- (3) reduced minimum set-back requirements; and
- (4) assistance and monetary subsidies from the city government for the sale of the affordable housing units.⁴⁹

The plaintiff builders' association charged that this mandatory, city-wide affordable housing requirement violated the takings clause of the California and federal constitutions and should be considered an exaction that requires analysis under the unconstitutional conditions doctrine.⁵⁰ The California Supreme Court disagreed. As the requirement offered developers two options, the court held that the provision was a valid land use regulation within the scope of a local government's police power.⁵¹ The U.S. Supreme Court denied plaintiff's request to review the decision.⁵²

B. Incentives for Affordable Housing

Some inclusionary zoning ordinances are not mandatory, but provide incentives to encourage developer buy-in. Mandatory approaches—like San Jose's—can encourage developers to provide more affordable, or less expensive units. These ordinance approaches include height, density, floor-area ratio, and parking bonuses, among others.⁵³ For example, in Pinellas County, Florida where 20% of units must be affordable to households at or below 60% of the AMI, numerous incentives are provided to developers, such as: expedited

⁴⁹ *Id.* at 983–84.

⁵⁰ *Id.* at 978.

⁵¹ *Id.* at 979.

⁵² *Id.*, cert. denied, 577 U.S. 1179, 1179 (2016).

⁵³ Heidi Desch, *Whitefish Looks to Make Affordable Housing Program Voluntary*, WHITEFISH PILOT (June 23, 2021), <https://whitefishpilot.com/news/2021/jun/23/whitefish-looks-make-affordable-housing-program-vol/> (providing an example of voluntary incentives for developers, including “a reduction in the minimum lot size, an increase in density, a reduction in minimum lot width and an increase in the maximum lot coverage”).

permit processing, review fee relief, reduced parking requirements, housing permitted in commercial zones, donation of publicly owned land, identification of qualified renters or buyers, density bonuses, permitted accessory uses, reduced setback requirements, street design modifications, and zero lot lines.⁵⁴ These incentives are designed to make the more restrictive requirements financially palatable. Similarly, Chipley, Florida grants density bonuses of up to 25% when affordable units are included in housing developments.⁵⁵ The units must remain affordable for 30 years and have an annual rent at 33% of the AMI.⁵⁶

C. Off-Site and Buy-Out Options

Off-site and buy-out options are used where affordable units in the development itself are impossible or impractical.⁵⁷ In Chapel Hill, North Carolina, developers may utilize a number of off-site and buy-out options in lieu of developing affordable units.⁵⁸ These options include land dedication, existing unit dedication, applicant-proposed alternatives, payment in lieu of affordable housing units, and more.⁵⁹ The city determines whether affordable housing goals are better achieved with these alternatives.⁶⁰

⁵⁴ PINELLAS CNTY. PLAN. DEP'T, AFFORDABLE HOUSING OFFERED THROUGH THE PINELLAS COUNTY LAND DEVELOPMENT CODE, <https://www.pinellascounty.org/community/pdf/AffordableHousingGuide.pdf> (last visited May 16, 2022).

⁵⁵ CHIPLEY, FLA., CODE OF ORDINANCES § 44-125(c)(1) (2021).

⁵⁶ *Id.* §§ 44-125(d)(2)(b), 44-125(d)(4)(a).

⁵⁷ *Build Affordable Housing in All Communities Across the Region*, THE FOURTH REGIONAL PLAN, <http://fourthplan.org/action/affordable-housing-everywhere> (last visited May 16, 2022).

⁵⁸ Chapel Hill, N.C., Ordinance Amending the Chapel Hill Land Use Management Ordinance to Establish Inclusionary Zoning Regulations for Residential Development §§ 1–2 (June 21, 2010), <https://www.townofchapelhill.org/home/showpublisheddocument/6988/635485371912800000> (amending § 3.10.3(d) of the prior Chapel Hill Land Use Ordinance to provide alternatives for complying with the requirement that residential developers devote 15% of units in developments of five or more to be affordable for low- and moderate-income households).

⁵⁹ *Id.* § 2 (amending § 3.10.2(d) of the prior Chapel Hill Land Use Ordinance).

⁶⁰ *Id.* (amending § 3.10.3(b) of the prior Chapel Hill Land Use Ordinance).

III. OTHER AFFORDABLE HOUSING STRATEGIES

A. Flexible Large-Scale Multifamily Housing

The most straightforward of inclusionary zoning techniques is to zone more land for multifamily development and provide leeway to developers incorporating mixed-use, infill, or other creative designs. Flexible large-scale, multifamily housing is implemented to create greater multifamily housing stock. Portland, Oregon, for example, amended its zoning code to provide more density through expanded Floor Area Ratio (FAR) provisions, flexibility for the required number of units, bonuses for affordable housing development, and set more liberal development standards for formerly redlined neighborhoods.⁶¹ It designates Neighborhood, Corridor, and Urban Center multifamily zones, allowing for different scales of multifamily development in each zone according to the context.⁶²

B. Floating Zones

A *floating zone* is a district in the zoning code that “floats” above the existing zoning districts; it is not applied to any parcel upon creation.⁶³ The floating zone does not apply to a parcel until an application is made and approved. Once approved, the zoning map is updated, applying the floating zone to the parcel.⁶⁴ For example, New Rochelle, New York established a Planned Unit Development (PUD) floating zone that may apply to a parcel if it is located in both a designated higher density residential area and an urban renewal area.⁶⁵ This area may include residential, medical, and accessory uses.⁶⁶ The units must be affordable.⁶⁷ Once a parcel meets these criteria and the

⁶¹ PORTLAND, OR., ZONING CODE §§ 33.120.210–33.120.213 (2021).

⁶² See *id.* §§ 33.120.030(A)–(E) (describing the characteristics of the various zones).

⁶³ Dorothy Ariail, *Property Topics and Concepts*, AM. PLAN. ASS’N (2007), <https://www.planning.org/divisions/planningandlaw/propertytopics.htm>.

⁶⁴ *Id.*

⁶⁵ NEW ROCHELLE, N.Y., ZONING CODE art. X, § 331-80(B) (2022).

⁶⁶ *Id.* §§ 331-80(E)(1)–(2).

⁶⁷ *Id.* § 331-80(E)(6).

floating zone is approved, the parcel is now officially in the PUD zone.⁶⁸

C. Overlay Zones

An *overlay zone* is a district that may be applied to preexisting districts and impose additional restrictions or requirements.⁶⁹ The requirements can reflect conservation, development, or affordability goals, among other things.⁷⁰ Denver, Colorado, for example, enacted an affordable housing bonus overlay zone to encourage affordable development within a certain area.⁷¹ In Denver, roughly one in three households are cost-burdened and one in five are severely cost-burdened.⁷² The city estimates that 99,722 affordable units are needed to meet the affordable housing demand.⁷³ In response, Denver created an overlay zone that allows for a bonus of up to double the height when affordable units are provided.⁷⁴

D. Infill Development

Infill development refers to developing on vacant or underused land in areas that have already been developed to a fair extent.⁷⁵ A broader definition refers to any development within cities that provide

⁶⁸ *Id.* §§ 331-80(F)–(G).

⁶⁹ CTR. FOR LAND USE EDUC., PLANNING IMPLEMENTATION TOOLS: OVERLAY ZONING 1 (2005), https://www.uwsp.edu/cnr-ap/clue/documents/planimplementation/overlay_zoning.pdf.

⁷⁰ *Id.*

⁷¹ CITY OF DENVER, AFFORDABLE HOUSING ZONING INCENTIVE 16 (Mar. 18, 2020), https://wp-denverite.s3.amazonaws.com/wp-content/uploads/sites/4/2020/08/Affordable_Housing_Zoning_Incentive_Background_Report.pdf.

⁷² *Id.* at 11.

⁷³ *Id.*

⁷⁴ *Id.* at 16.

⁷⁵ Tyler Adams, *Encourage Infill Development*, SUSTAINABLE DEV. CODE: CHAPTER 3.2 DEV. DENSITIES (Jonathan Rosenbloom & Christopher Duerksen eds.), <https://sustainablecitycode.org/brief/encourage-infill-development-2/> (last visited May. 16, 2022).

most of the infrastructure that new development needs.⁷⁶ Using the more focused definition for this Article, we identified land use law reform that provides much more flexible zoning provisions to allow and incentivize developing vacant or underused land.⁷⁷ By pursuing infill development, a municipality may increase housing stock and provide needed missing middle housing options.

Tacoma, Washington launched the Residential Infill Pilot Program 2.0 to address housing through infill development.⁷⁸ The program allows Planned Infill housing in single-family zoning districts, two-family or townhouse development, small-scale multifamily development, and cottage housing across five council districts.⁷⁹ Montpelier, Vermont amended its zoning code to create a mixed-use residential district to promote infill while also maintaining community character.⁸⁰ This technique allows for much of the zoning code, and therefore community, to remain the same while certain aspects are changed to promote missing middle development.⁸¹ The city targets affordable housing as a major factor in this development.⁸² Similarly, the Bellingham, Washington city code includes a chapter to implement goals related to infill development.⁸³ This infill development is permitted in all zones except single-family.⁸⁴ It sets

⁷⁶ *Id.*

⁷⁷ See CITY OF TACOMA, RESIDENTIAL INFILL PILOT PROGRAM 2.0 1 (Dec. 2020), https://www.cityoftacoma.org/UserFiles/Servers/Server_6/File/cms/Planning/Residential%20Infill%20Pilot%20Program/Handbook%202020.pdf.

⁷⁸ *Id.*; TACOMA, WASH., LAND USE REGUL. CODE § 13.05.060 (Jan. 2022), https://www.cityoftacoma.org/UserFiles/Servers/Server_6/File/cms/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.pdf.

⁷⁹ CITY OF TACOMA, *supra* note 77.

⁸⁰ MONTPELIER VT., UNIFIED DEV. REGULS. § 2107.A (Feb. 24, 2021).

⁸¹ See *Missing Middle Housing*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com> (last visited May 16, 2022) (defining missing middle housing as “a range of house-scale buildings with multiple units—compatible in scale and form with detached single-family homes—located in a walkable neighborhood”).

⁸² MONTPELIER, VT., UNIFIED DEV. REGULS. § 3401.A.

⁸³ BELLINGHAM, WASH., MUN. CODE § 20.28.010 (2021).

⁸⁴ *Id.* § 20.28.020.

flexible site size, setback, parking, and open space requirements for each type of multifamily development.⁸⁵

Infill can also benefit the environment by “helping to protect lands . . . and reducing greenhouse gas emissions.”⁸⁶ This is particularly true with the more expansive definition of infill, as that which takes place in more highly developed cities thereby responding to market demands that otherwise would be fulfilled in suburban and more remote greenfields.⁸⁷

E. Adaptive Reuse

Finding new uses for underutilized buildings through adaptive reuse⁸⁸ can help:

- Remove blighted properties and the accompanying crime from communities,
- Preserve natural resources and the environment
- Pursue historic preservation, and
- Protect important intangibles like the community’s sense of place.⁸⁹

While older buildings, underutilized structures, and vacant lots can be detrimental, they can also provide opportunity for creative re-

⁸⁵ *Id.* § 20.28.050.

⁸⁶ U.S. EPA, SMART GROWTH AND ECONOMIC SUCCESS: INVESTING IN INFILL DEVELOPMENT 1 (2014), <https://www.epa.gov/sites/default/files/2014-06/documents/developer-infill-paper-508b.pdf>.

⁸⁷ *Infill Development*, MUN. RSCH. & SERVS. CTR. OF WASH. (MRSC) (Jan. 6, 2022), <https://mrsc.org/home/explore-topics/planning/development-types-and-land-uses/infill-development-completing-the-community-fabric.aspx>.

⁸⁸ Sophie F. Cantell, *The Adaptive Reuse of Historic Industrial Buildings: Regulation Barriers, Best Practices and Case Studies 2* (May 2005) (M.A. thesis, Virginia Polytechnic Institute and State University) (on file with the Virginia Polytechnic Institute and State University).

⁸⁹ Jonathan Cote, *Recycling America: Adaptive Reuse in the 21st Century 1* (2013) (white paper, Duke Law School) (on file with Duke Law School), <https://law.duke.edu/sites/default/files/clinics/cec/boudreau.pdf>.

imagining of spaces.⁹⁰ “Reuse strengthens a community feel by positively linking a city’s past to its future, and offering cheap and robust infrastructure to emerging needs, which can spark wholesome renewal processes.”⁹¹ Adaptive reuse can be a tool to promote affordable housing.⁹²

Municipalities should consider amending their zoning ordinances to allow for more adaptive reuse in their towns and communities.⁹³ A strong adaptive reuse ordinance (ARO) was enacted in Santa Ana, California.⁹⁴ The ordinance allows for the adaptive reuse of nonresidential buildings to residential units in four designated “project incentive area[s],” if the building was either “constructed in accordance with building and zoning codes in effect prior to July 1, 1974” or “has been determined to be a historically significant building.”⁹⁵ One noteworthy development resulting from the ordinance is the Santa Ana Arts Collective, a former bank which has been converted into affordable artist housing containing “58 studios and

⁹⁰ See Stefanie Waldek, *Explore 10 of the Coolest Adaptive Reuse Projects Across America*, ARCHITECTURAL DIG. (May 27, 2020), <https://www.architecturaldigest.com/story/michel-arnaud-adaptive-reuse-projects> (providing photographic examples of creative reimagining of spaces); Jennifer B. Lagdameo, *9 Inspirational Examples of Adaptive Reuse*, DWELL (Feb. 20, 2020), <https://www.dwell.com/article/adaptive-reuse-architecture-b383e4b5> (displaying creative ways in which adaptive reuse can transform buildings and outdoor spaces).

⁹¹ Matteo Robiglio, *The Adaptive Reuse Toolkit: How Cities Can Turn Their Industrial Legacy into Infrastructure for Innovation and Growth*, GERMAN MARSHALL FUND U.S., no. 38 (2016) 1, 5, https://www.gmfus.org/sites/default/files/Robiglio_AdaptiveReuseToolkit_Sept16_complete.pdf.

⁹² Peter S. Reinhart, *Op-Ed: Adaptive Reuse Can Help Towns with Affordable Housing, Property Taxes*, NJ SPOTLIGHT NEWS (Oct. 16, 2014), <https://www.njspotlightnews.org/2014/10/14-10-15-op-ed-adaptive-reuse-can-help-municipalities-with-affordable-housing-property-taxes/>.

⁹³ See *Municipal Corner Planning Toolbox: Adaptive Reuse*, CHESTER CNTY. PLAN. COMM’N, <https://www.chescoplanning.org/MuniCorner/eTools/02-AdaptiveReuse.cfm> (last visited May 16, 2022) (providing an example of a zoning ordinance allowing for adaptive reuse).

⁹⁴ SANTA ANA, CAL., ZONING ORDINANCES § 41-1650(2021).

⁹⁵ *Id.* § 41-1651(b).

one-, two-, and three-bedroom apartments in the existing building.”⁹⁶ St. Petersburg, Florida adopted a similar ARO.⁹⁷ Los Angeles is considered one of the preeminent adaptive reuse examples, especially downtown Los Angeles where over 14,000 residential units have been created by converting historic and underutilized buildings.⁹⁸ Recent initiatives have been proposed in Los Angeles to expand the scope of adaptive reuse and promote housing affordability.⁹⁹

Adaptive reuse is often considered environmentally sustainable. It can help foster community density and fight urban sprawl, and some older buildings are built with seasoned materials that are often better quality and not even available today.¹⁰⁰ One report found that “[b]uilding reuse almost always yields fewer environmental impacts than new construction when comparing buildings of similar size and functionality,” and “that it takes 10 to 80 years for a new building that is 30 percent more efficient than an average-performing existing building to overcome, through efficient operations, the

⁹⁶ Tatiana Walk-Morris, *How Adaptive Reuse Can Help Solve the Housing Crisis*, AM. PLAN. ASS’N (May 1, 2021), <https://www.planning.org/planning/2021/spring/how-adaptive-reuse-can-help-solve-the-housing-crisis/>.

⁹⁷ See ST. PETERSBURG, FLA., LAND DEV. REGULS. § 16.30.020.2 (2022) (denoting common purpose and features in the St. Petersburg ordinance to the Santa Ana ordinance).

⁹⁸ PRESERVATION GREEN LAB, NAT’L TRUST FOR HIST. PRES., UNTAPPED POTENTIAL: STRATEGIES FOR REVITALIZATION AND REUSE 35 (2017), <https://ohp.parks.ca.gov/pages/1054/files/Untapped%20Potential%20Green%20Lab%20ULI.pdf>.

⁹⁹ *The Adaptive Reuse of Commercial Space as Housing in California*, POL’Y DEV. & RSCH. EDGE (Mar. 7, 2022), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-030822.html>.

¹⁰⁰ Ennis Davis, *Ten Benefits of Adaptive Reuse*, MODERN CITIES (July 9, 2019), <https://www.moderncities.com/article/2019-jul-ten-benefits-of-adaptive-reuse>; Sara B. McLaughlin, *Large Scale Adaptive Re-Use: An Alternative to Big-Box Sprawl* 73–74, 93 (Jan. 2008) (M.S. thesis, University of Pennsylvania) (on file at https://repository.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1112&context=hp_theses); Jackie Craven, *Giving Old Buildings New Life Through Adaptive Reuse*, THOUGHTCO. (Aug. 29, 2019), <https://www.thoughtco.com/adaptive-reuse-repurposing-old-buildings-178242>.

negative climate change impacts related to the construction process.”¹⁰¹

The potential for reuse to fight housing insecurity was explored as a necessary public health resource during the COVID-19 crisis. California, Oregon, Vermont, and Hennepin County, Minnesota—which includes Minneapolis—all took steps to house unhoused individuals in rehabilitated hotels, motels, and other structures that could quickly be converted into non-congregate housing and eventually permanent housing.¹⁰² California had great success with these conversions, starting with Project Roomkey which allowed the use of federal funds to acquire hotel rooms to provide non-congregate shelter for unhoused people to prevent the spread of COVID-19.¹⁰³ The success of Roomkey prompted the creation of Homekey, which followed a similar template but was broadened towards creating permanent housing.¹⁰⁴ Homekey allocated \$846 million, combining federal and state funds, to allow for the purchase and conversion of hotels and other structures into supportive and affordable housing.¹⁰⁵

¹⁰¹ PRESERVATION GREEN LAB, NAT’L TRUST FOR HIST. PRES., *THE GREENEST BUILDING: QUANTIFYING THE ENVIRONMENTAL VALUE OF BUILDING REUSE* vi, viii (2011).

¹⁰² *Project Roomkey/Housing and Homelessness COVID Response*, CAL. DEP’T OF SOC. SERVS., <https://www.cdss.ca.gov/inforesources/cdss-programs/housing-programs/project-roomkey> (last visited May 16, 2022); MARY TINGERTHAL, NAT’L ALL. TO END HOMELESSNESS, *PROJECT TURNKEY: OREGON’S STATEWIDE HOTELS-TO-HOUSING INITIATIVE 1* (2021); MARY TINGERTHAL, NAT’L ALL. TO END HOMELESSNESS, *VERMONT HOUSING & CONSERVATION BOARD CORONAVIRUS RELIEF FUND: VERMONT’S STATEWIDE INITIATIVE 1* (2021); *COVID-19 Community Incentives*, HENNEPIN CNTY. MINN., <https://www.hennepin.us/residents/emergencies/covid-19> (last visited May 16, 2022); *It Works: Converting Motels and Hotels into Affordable Housing*, NAT’L HOUS. CONF. (June 17, 2021), <https://nhc.org/event/it-works-converting-motels-and-hotels-into-affordable-housing/>; *How it Works: Financing and Servicing of Motel and Hotel Conversions (Part II)*, NAT’L HOUS. CONF. (July 21, 2021), <https://nhc.org/event/how-it-works-financing-and-servicing-of-motel-and-hotel-conversions-part-ii/>.

¹⁰³ *Project Roomkey/Housing and Homelessness COVID Response*, *supra* note 102.

¹⁰⁴ *Background*, CA.GOV: HOMEKEY, <https://homekey.hcd.ca.gov/content/background> (last visited May 18, 2022).

¹⁰⁵ MARY TINGERTHAL, NAT’L ALL. TO END HOMELESSNESS, *HOMEKEY: CALIFORNIA’S STATEWIDE HOTELS-TO-HOUSING INITIATIVE 1* (2021).

Between July and December of 2020, California was able to “create more than 6,000 housing units in 94 separate properties, 5,000 of which are destined to become permanent housing units.”¹⁰⁶ In addition to the speed, the average cost of Homekey conversions was \$129,254 per unit, compared to “the typical cost per unit to develop new housing in California rang[ing] from roughly \$380,000–\$570,000.”¹⁰⁷ One of the keys to Homekey’s success was a provision in the statute which allowed Homekey projects as-of-right in whatever zone the purchased property sat in without further review.¹⁰⁸

IV. REFORMING SINGLE-FAMILY ZONING

A. Missing Middle

Missing Middle Housing is a range of mid-cost, multi-family units that provide housing for a variety of income levels.¹⁰⁹ The zones in which missing middle is implemented permits two-, three-, and four-family housing and smaller-scale multifamily buildings to provide the variety of housing choices called for by the country’s changing demographics.¹¹⁰ It is a “range of house-scale buildings with multiple units—compatible in scale and form with detached single-family

¹⁰⁶ *Id.*

¹⁰⁷ CAL. DEP’T OF HOUS. & CMTY. DEV., HOMEKEY: A JOURNEY HOME 8 (Apr. 1, 2021), https://www.hcd.ca.gov/policy-research/plans-reports/docs/hcd100_homekeyreport_v18.pdf.

¹⁰⁸ See LAND USE L. CTR., PACE UNIV. SCH. OF L., BEGINNER’S GUIDE TO LAND USE LAW 6, 42 (defining *as-of-right* as those which “are permitted as the principal and primary uses of land”), <https://law.pace.edu/sites/default/files/LULC/LandUsePrimer.pdf>; Anne Olson, *Old Tools to Fight Housing Insecurity: Adaptive Reuse and Infill Development*, GREENLAW: BLOG OF THE PACE ENV’T L. PROGRAMS, PACE UNIV. SCH. OF L. (Aug. 25, 2021), <https://greenlaw.blogs.pace.edu/2021/08/25/old-tools-to-fight-housing-insecurity-adaptive-reuse-and-infill-development/>.

¹⁰⁹ *What Is Missing Middle Housing?*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/about> (last visited May 18, 2022).

¹¹⁰ *Id.*

homes—located in a walkable neighborhood.”¹¹¹ These units provide housing for young professionals, seniors, and low-to-moderate income individuals.¹¹² Missing Middle Housing may include duplexes, triplexes, townhomes, tiny homes, small-apartment buildings, and more.¹¹³ Missing Middle Housing addresses the disproportionate effects of the housing insecurity crisis on minority communities while also combating economic disparities between traditional single- and multi-family zones.

One method of creating Missing Middle Housing is to amend current zoning codes to allow mixed-use or Planned Unit Development (PUD) while maintaining single-family zones. Both Auburn, Maine and North Brunswick, New Jersey, have recently amended their zoning codes to allow for PUD to encourage creation of a diverse housing stock, including duplex, triplex, townhouse, and garden-apartment housing.¹¹⁴ PUDs are overlay districts that often allow mixed-use in an otherwise single-use zone, including residential and commercial units permitted as-of-right.¹¹⁵ Montpelier, Vermont, also amended its zoning code to create a mixed-use residential district to promote infill development while also maintaining community character.¹¹⁶ This will allow much of the zoning code, and therefore community, to remain the same while certain aspects are amended to promote Missing Middle Housing development.

Another zoning method to alleviate housing pressures and promote Missing Middle Housing development is to eliminate single-family zones altogether. In Berkeley, California, the zoning code was amended to eliminate all single-family zones and replace them with

¹¹¹ *One House at a Time Project*, WOODSTOCK CMTY. TR. VT., <https://www.woodstockcommunitytrust.com/onehouseatatime#:~:text=Missing%20Middle%20Housing%20is%20a,located%20in%20a%20walkable%20neighborhood> (last visited May 18, 2022).

¹¹² MISSING MIDDLE HOUS., *supra* note 109.

¹¹³ *Id.*

¹¹⁴ AUBURN, ME., CODE OF ORDINANCES § 60-359 (2017); NORTH BRUNSWICK, N.J., NORTH BRUNSWICK TWP. ORDINANCE art. XX, § 205-82 (amended 1985).

¹¹⁵ S. BURLINGTON PLAN. & ZONING, CITY OF S. BURLINGTON, S. BURLINGTON PUD STRATEGIES: PHASE I PROJECT REPORT 7 (2016).

¹¹⁶ MONTPELIER, VT., UNIFIED DEV. REGUL. § 2107 (Jan. 3, 2018) (effective Mar. 18, 2021).

multi-family zones, allowing for development of duplexes, triplexes, and fourplexes to alleviate the city's housing strain.¹¹⁷ Similarly, Accessory Dwelling Units (ADUs) and duplexes are permitted as-of-right in all residential zones in Olympia, Washington, while cottage houses, triplexes, fourplexes, and townhouses are permitted as-of-right in most residential zones.¹¹⁸ Both of these jurisdictions have successfully updated their zoning codes and exemplify the steps municipalities can take to address the affordable housing pandemic.

Oregon enacted similar legislation in 2019. The Oregon legislature enacted Oregon House Bill 2001 (HB 2001) to create more diverse and affordable housing options.¹¹⁹ In Oregon, more than 25% of households are single-person, and housing options must grow to reflect that.¹²⁰ HB 2001 requires all residential districts in medium-sized cities to allow for duplex housing and all large cities to allow for duplexes, triplexes, fourplexes, cottage clusters, and townhouses.¹²¹ Oregon sets minimum standards for each housing type in order to ensure the diverse affordability goals are being met.¹²² The Bill also provides \$3.5 million to local governments to improve infrastructure to create these housing options.¹²³

Redbrook in Plymouth, Massachusetts “has a variety of housing types in a 1,000+ unit development project with 10% of units designated as affordable.”¹²⁴ There are single-family, condominium,

¹¹⁷ Supriya Yelimeli, *Berkeley Votes for Historic Housing Change: An End to Single-Family Zoning*, BERKELEYSIDE (Mar. 25, 2021), <https://www.berkeleyside.org/2021/03/25/berkeley-single-family-zoning-city-council-general-plan-change>.

¹¹⁸ OLYMPIA, WASH., UNIFIED DEV. CODE art. II, §§ 18.04.040–18.04.060 (2022).

¹¹⁹ See H.B. 2001, 80th Gen. Assemb., Reg. Sess. (Or. 2019) (setting benchmarks to address affordability through data-driven zoning and planning).

¹²⁰ *Household Types in Portland, Oregon*, STATISTICAL ATLAS, <https://statisticalatlas.com/place/Oregon/Portland/Household-Types> (last visited May 18, 2022).

¹²¹ H.B. 2001 § 2.

¹²² *Id.* §§ 3, 5.

¹²³ *Id.* § 15.

¹²⁴ *Redbrook: Gaining Ground Information Database*, PACE L. SCH.: LAND USE L. CTR. FOR SUSTAINABLE DEV., <https://appsrv.pace.edu/GainingGround/?do=viewFullResource&resID=RR84A082421082814> (last visited May 18, 2022).

townhome, twin home, cottage, and apartment-housing options.¹²⁵ “Redbrook is zoned for mixed-use to provide residents with a walkable space in which they may live, work, and recreate,” with a conservation area of more than 400 acres inside.¹²⁶

Prairie Queen in Papillon, Nebraska “has no single-family housing and instead has apartments, fourplexes, townhouses, carriage houses, and retail and commercial space.”¹²⁷ “The neighborhood is walkable and provides opportunities for a variety of income levels. Developments within the neighborhood must have at least two uses.”¹²⁸

B. Accessory Dwelling Units

ADUs are units that are incidental and subordinate to a principal dwelling on a lot.¹²⁹ They are above-garage apartments, basement units, house additions with a separate kitchen and bathroom, and more.¹³⁰ ADUs provide additional income to the homeowner and increase housing stock within the municipalities in which they are located.¹³¹ They provide more affordable housing, aid communities with infill and transit-oriented development, are better for the environment, seamlessly complement neighborhood character, and

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Gaining Ground Information Database: Prairie Queen Development*, PACE L. SCH.: LAND USE L. CTR. FOR SUSTAINABLE DEV., <https://appsrv.pace.edu/GainingGround/?do=viewFullResource&resID=9PDC7082421084729> (last visited May 18, 2022).

¹²⁸ *Id.*

¹²⁹ *See* OFF. OF POL’Y DEV. & RSCH., U.S. DEP’T OF HOUS. & HUM. DEV., ACCESSORY DWELLING UNITS: CASE STUDY A-1 (June 2008) (quoting TOWN OF LEXINGTON, MASS., ZONING BYLAW OF THE TOWN OF LEXINGTON, MASS., art. V, § 135-19 (amended 2005)) (defining *accessory apartments* as “a second dwelling subordinate in size to the principal dwelling unit on an owner-occupied lot”).

¹³⁰ *Id.* at 1, C-1 (quoting PORTLAND, OR. ZONING CODE, § 33.205.30 (2021)) (outlining requirements for accessory dwelling units).

¹³¹ Michael Andersen, *A Portland ADU Program Pairs Lower-Wealth Homeowners and Low-Income Tenants*, SIGHTLINE INST. (Dec. 13, 2019), <https://www.sightline.org/2019/12/13/a-portland-adu-program-pairs-lower-wealth-homeowners-and-low-income-tenants/>.

provide a variety of housing options for differing ages and needs.¹³² Local land-use laws that allow ADUs open the vast single-family-zoned urban landscape to additional housing development.¹³³ In many communities, however, neighborhood opposition has poisoned the promise of the ADU solution by raising concerns that have the potential to limit what kinds of ADUs might be permissible.

Not In My Backyard, or NIMBYism, discourages new development, including ADUs, to protect existing neighborhood character.¹³⁴ Many of NIMBY's proponents—often middle- and upper-class households—see affordable housing development as bringing an undesirable change into the community and argue that this change will depress property values and increase crime, litter, and violence in the neighborhood.¹³⁵ The result of NIMBY opposition to ADU development limits the embrace of ADUs as a response to the need for affordable residences in safe neighborhoods.

Where NIMBY provides the political opposition, *poison pills* provide the legal means to prevent affordable-housing development.

¹³² Martin John Brown, *Do ADU's Provide Affordable Housing?*, ACCESSORY DWELLINGS (Aug. 7, 2014), <https://accessorydwellings.org/2014/08/07/do-adus-provide-affordable-housing/>; Shumaker, Loop & Kendrick, LLP, *Client Alert: Accessory Dwelling Units- An Up-and-Coming, Yet Well Known, Housing Option*, JDSUPRA (Dec. 9, 2020), <https://www.jdsupra.com/legalnews/client-alert-accessory-dwelling-units-15489/>; Martin J. Brown, *Are ADUs Green Housing?*, ACCESSORY DWELLINGS (July 9, 2014), <https://accessorydwellings.org/2014/07/09/are-adus-green-housing/>; Jessica Hanlon, *Accessory Dwelling Units in Historic Districts: A Denver Case Study*, NAT'L TR. FOR HIST. PRES.: PRES. LEADERSHIP F. (Oct. 18, 2018), <https://forum.savingplaces.org/blogs/special-contributor/2018/10/18/accessory-dwelling-units-in-historic-districts>; AARP, *ADUs Are Good for People and Places*, in AARP, THE ABCS OF ADUS 4 (2d. ed. 2021).

¹³³ See Martin, *Accessory Dwelling Units: What They Are and Why People Build Them*, ACCESSORY DWELLINGS, <https://accessorydwellings.org/what-adus-are-and-why-people-build-them/> (last visited May 18, 2022) (explaining the ability of ADUs to house family members or rent out for additional income).

¹³⁴ NIMBY, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/NIMBY> (last visited May 19, 2022).

¹³⁵ See NIMBY (*Not in My Backyard*), HOMELESS HUB: ACCOMODATIONS & SUPPORTS, <https://www.homelesshub.ca/solutions/affordable-housing/nimby-not-my-backyard> (last visited May 19, 2022) (describing NIMBY as a phenomenon of opposition to affordable or transitional housing in neighborhoods that assume certain characteristics of the new population).

Municipalities are incorporating ADU barriers in the zoning code to appease these NIMBY groups and are significantly limiting the expansion of affordable housing within their districts.¹³⁶ These barriers are called *poison pills*.¹³⁷ Planners began referring to ADU restrictions as poison pills to showcase how the regulations can “effectively kill” ADU developments.¹³⁸ There are many types of poison pills used to prevent and limit ADU construction. The most common poison pills, with examples, include:

- Owner occupancy requirements: SeaTac, Washington, requires the primary residence or ADU to be occupied by the homeowner in order to build and rent out an ADU.¹³⁹ The city allows ADUs to maximize the use of existing housing stock, improve cost efficiency of existing infrastructure, increase opportunities for homeowners, and provide housing options for a wide range of incomes and statuses—yet imposes these restrictions to limit overall development.¹⁴⁰ Biddeford, Maine, requires the owner of the primary dwelling unit and ADU reside in one of the units, but does not specify the requisite time period.¹⁴¹
- Maximum size requirements: Most ADUs cannot exceed 800 square feet.¹⁴² The code also sets maximum occupancy, height, design, and parking requirements.¹⁴³ The ADU may not exceed 900 square feet or 35% of the primary-dwelling-unit

¹³⁶ Rocio Sanchez-Moyano & Carol Galante, *Small Houses, Big Impact: Accessory Dwelling Units in Underutilized Neighborhoods*, UC BERKELEY TERNER CTR. FOR HOUS. INNOVATION: RSCH. & POL'Y (Aug. 3, 2016), <https://turnercenter.berkeley.edu/research-and-policy/small-houses-big-impact-making-the-case-for-accessory-dwelling-units-in-und/>.

¹³⁷ Alan Naditz, *The ADU Equation*, GREEN BUILDER (June 18, 2019), <https://www.greenbuildermedia.com/blog/the-adu-equation>.

¹³⁸ *Id.*

¹³⁹ SEATAC, WASH., ZONING CODE § 15.465.100(D)(2) (2015).

¹⁴⁰ *Id.* § 15.465.100(A).

¹⁴¹ BIDDEFORD, ME., ZONING ORDINANCE, CITY OF BIDDEFORD, ME. part III, art. VI § 78(D) (2017).

¹⁴² SEATAC, WASH., ZONING CODE § 15.465.100(F).

¹⁴³ *Id.* §§ 15.465.100(G)–(J).

size.¹⁴⁴ Biddeford sets moderately strict requirements for stairways, balconies, parking, entrances, exterior materials, lot orientation, and number of occupants.¹⁴⁵

- Off-street parking requirements: In addition to preexisting parking for the primary unit, SeaTac, Washington, additionally requires two off-street parking spaces for ADUs over 600 square feet.¹⁴⁶
- Occupant restrictions: In West Hartford, Connecticut, only domestic employees or guests of the primary-residence owner were permitted to reside in the ADU.¹⁴⁷ West Hartford passed a new ADU ordinance, setting size, material, and parking requirements.¹⁴⁸ The restrictive occupancy requirements were removed.¹⁴⁹
- Age and disability requirements: ADUs in Fairfax County, Virginia, are only permitted in single-family detached zones where approved by the Board of Zoning Appeals.¹⁵⁰ If one of the residents of the ADU is more than 55 years old or has a disability, the occupant must provide additional documentation.¹⁵¹ The city addressed proposed changes to the plan to remove the age and disability requirements, which were approved July 1, 2021.¹⁵²
- Restrictions on the number of occupants. Newton, Massachusetts, sets a maximum number of residents per

¹⁴⁴ BIDDEFORD, ME., ZONING ORDINANCE, CITY OF BIDDEFORD, ME. part III, art. 6 § 78(C)(1)(g).

¹⁴⁵ *Id.* §§ 78(C)–(D).

¹⁴⁶ SEATAC, WASH., ZONING CODE § 15.465.100(J).

¹⁴⁷ Ronni Newton, *West Hartford Town Council Approves Accessory Dwelling Units for All Single-Family Zones*, WE-HA.COM (Jan. 13, 2021), <https://we-ha.com/west-hartford-town-council-approves-accessory-dwelling-units-for-all-single-family-zones/>.

¹⁴⁸ *See* WEST HARTFORD, CONN., CODE part 2, § 177-23.1 (2021).

¹⁴⁹ Newton, *supra* note 147.

¹⁵⁰ FAIRFAX, VA., ZONING ORDINANCE art. 4, § 4102.7.B (2021).

¹⁵¹ *Id.* art. 8, §§ 8101.3.E(1)(d)–(e).

¹⁵² *Accessory Living Units (ALUs): Frequently Asked Questions*, FAIRFAX CNTY. ZMOD, <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zmod/adopted-alu-faqs.pdf> (last visited May 19, 2022).

principal dwelling unit; this unit does not change with the construction of an ADU.¹⁵³

- As-of-right designations. Raleigh, North Carolina, previously prohibited ADUs from being permitted as-of-right in residential zones, significantly limiting ADU development.¹⁵⁴ Raleigh amended its code and now permits one ADU as-of-right on residential lots.¹⁵⁵

To eliminate some of these poison pills, municipalities such as Raleigh, North Carolina, have recently reduced ADU restrictions to address the affordable housing crisis.¹⁵⁶ Raleigh had previously restricted ADU construction to one specific overlay zone, did not allow ADUs as-of-right in any residential zone, and required residents to petition their neighbors for approval when seeking to develop ADUs on their property.¹⁵⁷ Now, Raleigh allows ADUs as-of-right in all residential zones without any significant restriction on their construction or subsequent use.¹⁵⁸ This promotes affordable housing and encourages diversity in both housing stock and occupancy.

Seattle, Washington, recently enacted zoning legislation that removes significant barriers to ADU development to address the city's housing crisis.¹⁵⁹ The new code removes off-street parking and owner-occupancy requirements while also streamlining the approval process

¹⁵³ NEWTON, MASS., ZONING ORDINANCE ch. 30, § 6.7.1(c)(4) (2017).

¹⁵⁴ Leigh Tauss, *You Finally Have the Right to Build an ADU in Raleigh*, INDY WEEK (July 7, 2020), <https://indyweek.com/news/wake/you-can-finally-build-an-adu-in-raleigh/>.

¹⁵⁵ *Permitting an Accessory Dwelling Unit (ADU)*, CITY OF RALEIGH, (Dec. 15, 2021), <https://raleighnc.gov/business/content/PlanDev/Articles/Zoning/AccessoryDwellingUnits.html>.

¹⁵⁶ Tauss, *supra* note 154.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Kamaria Hightower, *Mayor Durkan Signs Legislation To Create Path for More In-Law Apartments and Backyard Cottages by Reducing Regulatory Barriers, Also Signs Executive Order To Do More To Address Financial and Permitting Barriers*, SEATTLE.GOV (July 9, 2019), <https://durkan.seattle.gov/2019/07/mayor-durkan-signs-legislation-to-create-path-for-more-in-law-apartments-and-backyard-cottages-by-reducing-regulatory-barriers-also-signs-executive-order-to-do-more-to-address-financial-and-permittin/>.

for ADU development.¹⁶⁰ Seattle also created a user-friendly website to simplify the process for its residents by connecting homeowners considering ADUs to designers and builders, and it even addresses the high cost of ADU development through access to low-interest financing.¹⁶¹ Techniques such as this will provide much needed momentum in the ADU process, effectively addressing the housing-insecurity pandemic.

On a larger scale, states such as Connecticut and Oregon have enacted statewide bills to encourage ADU development within their borders. Connecticut recently passed a bill that promotes ADU development.¹⁶² This bill legalizes ADUs in the state and removes off-street parking requirements.¹⁶³ It allows ADUs as-of-right on all properties that contain at least one single-family home.¹⁶⁴ This bill also prohibits municipalities from implementing several restrictions on ADU development, including minimum-age and occupant-relationship requirements.¹⁶⁵ Oregon also recently passed HB 2001, addressing ADU creation.¹⁶⁶ The state now requires cities with populations greater than 2,500 or counties with populations greater than 15,000 to allow ADUs in all single-family zones.¹⁶⁷

V. SUPPORTIVE HOUSING

Supportive Housing provides affordable-housing options and services for homeless, disabled, addicted, senior, and other

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See 2021 Conn. Acts 29 (Reg. Sess.) (codified as amended in scattered sections of CONN. GEN. STAT. § 8).

¹⁶³ *Id.* §§ 6(6)(D)–(E) (codified as amended in CONN. GEN. STAT. § 8-2).

¹⁶⁴ *Id.* § 6(1).

¹⁶⁵ *Id.* § 6(6).

¹⁶⁶ *Housing Choices (House Bill 2001)*, OREGON.GOV: URB. PLAN., DEP'T OF LAND CONSERVATION & DEV., <https://www.oregon.gov/lcd/UP/Pages/Housing-Choices.aspx> (last visited May 19, 2022).

¹⁶⁷ *Id.*; OR. DEP'T OF LAND CONSERVATION & DEV., GUIDANCE ON IMPLEMENTING THE ACCESSORY DWELLING UNITS (ADU) REQUIREMENT 2 (2019), https://www.oregon.gov/lcd/Publications/ADU_Guidance_updatedSept2019.pdf.

populations.¹⁶⁸ Supportive Housing residences are owned and operated by nonprofits and tenants pay roughly a third of their monthly income on rent.¹⁶⁹ This addresses homelessness while providing needed services to historically underrepresented and less-fortunate populations.¹⁷⁰ Additionally, this reduces the burden on homeless shelters, hospitals, psychiatric centers, and jails by providing an alternative with much-needed built-in support for populations that might need it.¹⁷¹ Supportive Housing can be temporary or permanent. Permanent Supportive Housing is created with the intention of tenants staying more than 24 months and includes vocational- and educational-counseling services.¹⁷²

There are three main types of Supportive Housing: *purpose-built* or *single-site housing*, *scattered-site housing*, and *unit set-asides*.¹⁷³ *Purpose-built* or *single-site housing* is apartment-building-style housing units with on-site support services.¹⁷⁴ *Scattered-site housing*, on the other hand, consists of privately-leased apartments in which staff may visit and provide support services.¹⁷⁵ Similarly, *unit set-asides* are privately-owned affordable units that owners set aside for supportive purposes and partner with support services for tenants.¹⁷⁶

Important characteristics of Supportive Housing revolve around the principles of rehabilitation and support. To begin, services must be permanent and affordable.¹⁷⁷ Tenants should have the same

¹⁶⁸ *What Is Supportive Housing?*, SUPPORTIVE HOUS. NETWORK OF N.Y., <https://shnny.org/supportive-housing/what-is-supportive-housing/> (last visited Apr. 24, 2022).

¹⁶⁹ *Id.*

¹⁷⁰ *Supportive Housing*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Aug. 15, 2018), <https://www.usich.gov/solutions/housing/supportive-housing/>.

¹⁷¹ *Id.*

¹⁷² *Connect with Permanent Supportive Housing*, N.Y. OFF. OF ADDICTION SERV. & SUPPORTS, <https://oasas.ny.gov/recovery/connect-permanent-supportive-housing> (last visited Apr. 24, 2022).

¹⁷³ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 170.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ EHREN DOHLER ET AL., SUPPORTIVE HOUSING HELPS VULNERABLE PEOPLE LIVE AND THRIVE IN THE COMMUNITY 2 (2016).

rights as traditional renters and should not pay more than 30% of their income on rent, essentially requiring that they not be cost-burdened. They should have access to public transportation, public works, grocery stores, and all other amenities granted to traditional renters.

The provided services should be housing-oriented and aim at keeping tenants housed, while also addressing larger issues. These should include physical and mental health, substance abuse, and more, while also providing access to professionals to assist in these areas. The services should be voluntary but highly encouraged.

A. New York City's Supportive Housing Program

New York City has a Supportive Housing Initiative called the NYC 15/15 Initiative (the Initiative), through which the city has a goal of developing 15,000 units of supportive housing over the course of 15 years.¹⁷⁸ One of the main purposes of the Initiative is to provide “affordable housing with supportive services, including both mental and physical healthcare access, connection to alcohol and substance abuse programs, and other social services” to “New Yorkers struggling with mental illness, homelessness, and substance use.”¹⁷⁹ Another main purpose of the initiative is to “reduce usage of homeless shelters, hospitals, mental health institutions, and jails/prisons.”¹⁸⁰ Prior to creating the Initiative, previous initiatives involving NYC had succeeded in developing approximately 14,000 units of supportive housing.¹⁸¹ At the beginning of the Initiative, Mayor De Blasio “assembled a Task Force of 28 experts . . . to assess the current state of existing supportive housing programs in the city and formulate innovative solutions and recommendations for the future.”¹⁸² The Task

¹⁷⁸ *New York City 15/15 Supportive Housing Initiative*, N.Y.C. HUM. RES. ADMIN., <https://www1.nyc.gov/site/hra/help/15-15-initiative.page> (last visited Apr. 24, 2022).

¹⁷⁹ SUPPORTIVE HOUSING TASK FORCE, N.Y.C. HUM. RES. ADMIN., NYC 15/15 INITIATIVE 3 (2016).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 4.

Force collected and analyzed data regarding the City's homeless populations staying in shelters and living on the streets.¹⁸³

The City's Department of Health and Mental Hygiene coordinated with residents of existing supportive housing to get feedback on their experiences living in supportive housing.¹⁸⁴ The City then used this data to formulate a plan for the Initiative. Based on its findings, the Task Force developed a set of recommendations to be used in deciding which facets of the population to target and how to use available resources. These recommendations were grouped under four main topics: (1) data and evaluation; (2) referrals; (3) service models; and (4) streamlining development.¹⁸⁵ Recommendations included:

- using a vulnerability index to assess which individuals or families exhibited a greater need;
- identifying which individuals and families requiring services provided by multiple systems of care;
- having healthcare professionals conduct mental-health evaluations of supportive-housing applicants;
- “[c]reat[ing] a standardized assessment tool that matches tenants to appropriate housing options;”
- developing an assessment to determine which individuals would be most successful in a scattered-site housing program; and developing a process that allows individuals to shift between supportive-housing programs based on their changing needs; and
- developing incentives for landlords to participate in scattered-site supportive housing.¹⁸⁶

New York City is currently working with several providers to meet the goals of the Initiative.¹⁸⁷

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ N.Y.C. HUM. RES. ADMIN., *New York City 15/15 Supportive Housing Initiative*, *supra* note 178.

¹⁸⁶ SUPPORTIVE HOUSING TASK FORCE, *supra* note 179, at 7–9.

¹⁸⁷ N.Y.C. HUM. RES. ADMIN., *New York City 15/15 Supportive Housing Initiative*, *supra* note 178.

VI. DISTRESSED PROPERTY REMEDIATION

Distressed Property includes substandard, unsafe, vacant, abandoned, and blighted properties.¹⁸⁸ Generally, there are a few legal tools local governments can use to enact or enforce remediation laws. Municipal Home Rule Laws provide local governments with the inherent power, under their police power, to protect the public, health, and welfare.¹⁸⁹ Protecting the public from nuisances, including distressed properties, is part of that power. Beyond that, many states provide local governments with template Uniform Building Codes.¹⁹⁰ They typically codify common-law nuisance principles. There are additional mechanisms like foreclosure and maintenance laws that add to local governments' power.¹⁹¹ By enacting or enforcing local laws to remediate distressed properties, local governments can take meaningful steps towards improving equity and health, decreasing housing insecurity, and supporting climate equity.

A. Enforce Existing Housing or Property Maintenance Codes

¹⁸⁸ Anne Olson & Gabriella Mickel, *Remediating Distressed Properties To Improve Public Health*, GREENLAW: BLOG OF THE PACE ENV'T L. PROGRAMS, PACE UNIV. SCH. OF L. (July 29, 2021), <https://greenlaw.blogs.pace.edu/2021/07/29/remediating-distressed-properties-to-improve-public-health/?sbe-followsubs=true>; see also Jessica Bacher & Meg B. Williams, *A Local Government's Strategic Approach to Distressed Property Remediation*, 46 THE URB. LAW. 877, 877 (2014).

¹⁸⁹ *Purpose of Home Rule*, ILL. MUN. LEAGUE, <https://iml.org/homerule> (last visited Apr. 24, 2022); see, e.g., ILL. CONST. art. VII, § 6(a) (stating "a home rule unit may exercise any power and perform any function . . . including . . . the power to regulate for the protection of the public health, safety, morals and welfare.").

¹⁹⁰ See *Uniform Building Code Explained*, DOITYOURSELF (Dec. 12, 2009), <https://www.doityourself.com/stry/uniform-building-code-explained> ("Uniform Building Code[s] [are] a systematic body of rules that have been enacted to ensure that all buildings within a certain area maintain the safety and health standards to safeguard the lives of users and their neighbors from hazardous building.").

¹⁹¹ See Bacher & Williams, *supra* note 188, at 882, 891.

In Philadelphia, Pennsylvania, all vacant properties must be maintained in a safe and sanitary state.¹⁹² Entryways must be in good repair and secured rather than boarded.¹⁹³ Failure to maintain the premises in an adequate state will prompt the City Building Department to declare the building unsafe and serve notice to the owner.¹⁹⁴ If the owner cannot comply immediately, they must submit the steps they will take to comply within ten days of notice.¹⁹⁵ The Department will impose penalties for continued noncompliance, and may correct the property's conditions itself and collect costs from the owner.¹⁹⁶

B. Regulate Vacant and Substandard Properties

Municipalities seek to address the safety of vacant, substandard, or distressed properties by regulating their maintenance.¹⁹⁷ Thus, the common goal of regulating such properties is mandating property owners to secure their premises. However, municipalities may vary in their approaches to establishing consequences for chronically vacant property. Typically, owners are required to secure, insure, register, and post contact information on their property within a set time after vacancy.¹⁹⁸ Often, the request for such action is served to the owner by a city official.¹⁹⁹ In instances where the owner does not secure the property, the city often does so itself and may charge the owner for costs of boarding up windows and

¹⁹² PHILA, PA., CODE tit. 4, § PM-301.3 (2021); *City of Philadelphia Property Maintenance Code: Gaining Ground Information Database*, LAND USE L. CTR., PACE UNIV. SCH. OF L., <https://appsrv.pace.edu/GainingGround/?do=viewFullResource&resID=8RNED041517024325> (last visited Apr. 25, 2022).

¹⁹³ PHILA, PA., CODE tit. 4, § PM-301.3.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ OFF. OF POL'Y DEV. & RSCH., U.S. DEP'T OF HOUS. & URB. DEV., *Vacant and Abandoned Properties: Turning Liabilities Into Assets*, HUD USER (2014), <https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html> [hereinafter *Vacant and Abandoned Properties*].

¹⁹⁸ *Id.* at 8.

¹⁹⁹ *Id.* at 9.

doors.²⁰⁰ Thus, costs of these regulations to the owner deter vacancy beforehand and increase the cost of continued vacancy due to registration fees.²⁰¹ In instances where the owner does not comply for extended periods, or the property is severely deteriorated, some municipalities may demolish structures on the property.²⁰²

C. Abating Public Nuisances in Buildings

Municipalities typically address public nuisances in buildings by first notifying the property owners of the substandard conditions of their property.²⁰³ Notices from municipal officials detail the repair or demolition steps necessary and may also outline appeals processes.²⁰⁴ Municipalities differ, however, in what they do when owners do not address a notice that their property is a nuisance. In Newark, New Jersey, a property that does not abate its nuisance in the prescribed time may be appointed a custodian who then directs city funds for repair.²⁰⁵ In Hartford, Connecticut, property owners are given a specified time period to abate their property after notice is served.²⁰⁶ If an owner does not comply, they are fined \$250 for each day they go over the prescribed time frame.²⁰⁷ In Toledo, Ohio, noncompliant owners may even be subject to criminal misdemeanor charges if their properties are

²⁰⁰ *Id.* at 7.

²⁰¹ *Id.* at 8.

²⁰² *Id.* at 7.

²⁰³ See *Building and Property Nuisances*, MUN. RSCH. SERVS CTR. OF WASH. (MRSC), <https://mrsc.org/Home/Explore-Topics/Legal/Regulation/Nuisances-Regulation-and-Abatement/Building-Nuisances.aspx#attractive> (showing the Washington State statute Ch. 35.80 RCW that requires notifying property owners of the condition of their property) (last visited Apr. 25, 2022).

²⁰⁴ *Id.*

²⁰⁵ BOROUGH OF EAST NEWARK, N.J., MUN. CODE § 18-2.4 (2007).

²⁰⁶ Conn. Gen. Stat. § 19a-206 (2012).

²⁰⁷ *Id.*

particularly dangerous.²⁰⁸ However, some municipalities, such as Hartford, may provide assistance to, and refrain from pursuing charges against, owners who successfully repair their properties.²⁰⁹ There, the property-value assessment for taxes will not reflect the enhanced post-rehabilitation value for the first five years after application.²¹⁰

D. Taking Title to Distressed Buildings

In some municipalities, the local government may attempt to take title of distressed buildings that come to the government via tax liens and seek to redevelop, renovate, or demolish them.²¹¹ Often the mayor or a designated official may seek to condemn, take possession of, or take title to abandoned properties. In Washington D.C., if the fair-market value of a condemned property is determined to be less than the cost of public charges, taxes, and other assessments regarding the abandoned property, the District is entitled to judgment for the difference of the sum of those charges and the estimated value of the property.²¹² The municipality would then appoint a party to take title and manage the property.²¹³

E. Disposing of Title to Acquired Properties

²⁰⁸ *City of Toledo Starts Process of Declaring Greenbelt Place Apartments a Public Nuisance*, WTOL11, <https://www.wtol.com/article/news/local/greenbelt-place-apartments-declared-public-nuisance-by-city-toledo/512-c8d550e7-bb90-4dbd-aa37-ee524f6ecbe7> (last updated Oct. 7, 2021).

²⁰⁹ Conn. Gen. Stat. § 19(a)-343 (2013); *Single Family Housing Repair Loans & Grants in Connecticut*, U.S. DEP'T OF AGRIC. RURAL DEV., <https://www.rd.usda.gov/programs-services/single-family-housing-programs/single-family-housing-repair-loans-grants/ct> (last visited Apr. 25, 2022).

²¹⁰ Conn. Gen. Stat. §§ 12-65c–12-65e (2012) (describing the potential to defer property valuations for rehabilitated properties, which occur in five-year cycles).

²¹¹ *Vacant and Abandoned Properties*, *supra* note 197.

²¹² ALAN MALLACH, NAT'L HOUS. INST., MAYORS' RESOURCE GUIDE ON VACANT AND ABANDONED PROPERTIES 4 (2006).

²¹³ *Id.* at 6.

St. Louis, Missouri, leverages a non-profit strategy for distressed property remediation.²¹⁴ Local governments can transfer temporary or permanent possession of vacant and problem properties to non-profit organizations through tax foreclosure or receivership.²¹⁵ They can also give owners the option to transfer their properties voluntarily, helping to prevent the same properties from repeatedly cycling through tax-foreclosure sales under different owners.²¹⁶ The St. Louis Development Corporation (SLDC) is a not-for-profit corporation with a Land Reutilization Authority (LRA) subsidiary group. Real-property owners in St. Louis have the option to convey title by warranty deed to the LRA if the property is free of any encumbrances or liens.²¹⁷ The LRA then manages, maintains, markets, and sells the properties in its possession.²¹⁸

VII. ANTI-DISPLACEMENT

Gentrification is a common term used to refer to the socioeconomic change a community undergoes when wealthier people and businesses move to an area, often displacing current inhabitants.²¹⁹ Alone, this socioeconomic shift is a powerful aid in community development. Displacement, however, hurts the low-income—often minority residents—that inhabit the areas being gentrified, creating a substantial hurdle in affordable housing development. Displaced peoples are more likely to have negative health outcomes, including more exposure to pollutants and negative mental-health effects, while also reducing access to transportation, healthy food, and more.²²⁰ The

²¹⁴ *About the St. Louis Dev. Corp. (SLDC)*, STLOUIS-MO.GOV, <https://www.stlouis-mo.gov/government/departments/sldc/about-SLDC.cfm> (last visited Apr. 25, 2022).

²¹⁵ Olson & Mickel, *supra* note 188.

²¹⁶ *Id.*

²¹⁷ *Id.*; STLOUIS-MO.GOV *supra* note 214.

²¹⁸ Olson & Mickel, *supra* note 188.

²¹⁹ JASON RICHARDSON ET AL., SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES 1 (2019), <https://ncrc.org/gentrification/>.

²²⁰ *Health Effects of Gentrification*, CDC, <https://www.cdc.gov/healthyplaces/healthtopics/gentrification.htm> (last visited Apr. 25, 2022).

above strategies aimed at providing affordable housing also create solutions to displacement.

Community engagement is an important tool in fighting displacement. By garnering support from local residents, community groups may raise awareness and get the attention of city officials. For example, in Austin, Texas, residents in the Guadalupe Neighborhood established the Guadalupe Neighborhood Development Commission (GNDC) to strategically purchase distressed properties in the area to support long-term efforts of preventing displacement.²²¹ The GNDC also created a community land trust, which will provide affordable units to those placed on a waitlist.²²² In response to the GNDC's efforts, the city established an Anti-Displacement Task Force and hired a Displacement Enforcement Officer, the first of its kind in the city.²²³ Similarly, North and Northeast Portland, Oregon, has received \$100 million to counteract displacement pressures caused by the development of a shopping center.²²⁴ These neighborhoods have lost nearly 8,000 Black residents since 2000, which in 2013 prompted public protests against the development and gained monetary support from the city.²²⁵

Local governments may also enact zoning changes with the intention of reducing displacement. Dallas, Texas, and Seattle, Washington, for example, created a Neighborhood Stabilization Overlay District, which restricts building height to promote preservation of affordable houses.²²⁶

Municipalities can also enact Right-to-Purchase programs. In Washington, D.C., tenants have the right of first refusal if their apartment complexes will be sold.²²⁷ This program provides financial support mechanisms, technical assistance, and capacity-building

²²¹ HEATHER K. WAY, UPROOTED PROJECT AT THE UNIV. OF TEX. AT AUSTIN, TEXAS ANTI-DISPLACEMENT TOOLKIT 85 (2019).

²²² *Id.*

²²³ *City of Austin Hires First Community Displacement Prevention Officer*, AUSTINTEXAS.GOV (Apr. 14, 2021), <http://www.austintexas.gov/news/city-austin-hires-first-community-displacement-prevention-officer>.

²²⁴ WAY, *supra* note 221, at 40, 87.

²²⁵ *Id.* at 87.

²²⁶ *Id.* at 67–68.

²²⁷ *Id.* at 19–20, 83.

within tenant groups.²²⁸ Organizations such as ROC USA are similarly establishing funding programs to assist mobile-home residents in purchasing their homes.²²⁹

No-Net-Loss Policies are also being enacted to incorporate anti-displacement into the planning process. In California, Governor Gavin Newsom enacted a statewide bill requiring its regional housing need allocation be met for all income levels throughout the entire planning process.²³⁰ Additionally, municipalities may not reduce density levels in any new development without first evaluating its compatibility with the Regional Housing Needs Allocation.²³¹

Anti-displacement is a significant issue in the midst of the increasingly disparate socioeconomic upheaval in which we are currently involved. In addition to the above strategies to combat housing insecurity, there are many solutions in the anti-displacement toolkit.

CONCLUSION

The housing-insecurity crisis is pervasive throughout the United States, and municipalities are taking action. With almost 30% of American households cost-burdened, there is increasing pressure to do so.²³² Through traditional strategies such as mandatory-affordable housing, voluntary-affordable housing, off-site and buy-out options, flexible large-scale multi-family housing, floating zones, overlay zones, and infill development, municipalities can get significant traction for creating affordable housing. Larger-scale zoning strategies, such as zoning for Missing Middle Housing or allowing Accessory Dwelling Units as-of-right, provides for broader change and provides a new opportunity for a substantial increase in housing stock.

²²⁸ *Id.* at 20.

²²⁹ *Id.*

²³⁰ Memorandum from Zachary Olmstead, Deputy Dir., Ca. Dep't of Hous. and Cmty. Dev., Div. of Hous. Pol'y Dev., to Planning Directors and Interested Parties 1 (Oct. 2, 2019) (on file with Department of Housing and Community Development), <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-166-final.pdf>.

²³¹ *Id.*

²³² HABITAT FOR HUMANITY, *supra* note 14.

Supportive housing for disadvantaged groups can provide housing for those that are especially vulnerable to housing insecurity. Stemming displacement due to gentrification depends on more expansive affordable-housing provisions.

With the last decade providing the lowest number of housing units built since the 1960s and substantial increases in population projected, this is a crisis that must be addressed using every tool in the land use toolbox.²³³ When combined with the four pandemics of climate change, the shifting demographics of the twenty-first century, racial inequity, and COVID-19, it is clear that these strategies must be emulated wherever possible. It is also clear that many communities are affected by more than one of the pandemics, and these communities must learn how they interrelate and how to address them comprehensively.

Environmentally-friendly goals for affordable housing can be achieved through adaptive reuse and distressed property remediation. Affordable housing can address climate-change mitigation. Boston requires city-funded projects to meet higher construction standards as part of an initiative to reduce greenhouse-gas emissions. The city's Zero Emissions Building Standards follow the city's announced \$34 million in funding for 14 affordable housing projects. The goal with these affordable housing developments is to create efficient, low-carbon, low-energy, well-designed buildings and power them with renewable energy sources. Portland has adopted and combined several strategies that address several threats. The city's "right to return" policy was adopted to allow displaced tenants to move back to their neighborhoods. Poison pills were removed from the code to make Missing Middle Housing more effective. Distressed properties are required to be rehabilitated, removed, or destroyed. Portland implemented green design standards for trees, green infrastructure, and more. Complete streets are also used to improve accessible transportation systems.

As municipal leaders have in the past, today they are using these integrated and effective recipes for protecting public health from its several challenges. Portland and Boston are instinctively reacting to on-the-ground, in-your-face, perturbations and responding in kind.

²³³ Demsas, *supra* note 12.

These innovative actors, along with many of their peers, are providing needed strategies that serve as models for others to adapt to their unique and critical challenges.