



State of Maine
130th Legislature, First Regular/Special Session

**Commission to Increase Housing
Opportunities in Maine by
Studying Zoning and Land Use
Restrictions**

December 2021

Office of Policy and Legal Analysis



**STATE OF MAINE
130th LEGISLATURE
FIRST REGULAR/SPECIAL SESSION**

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Studying Zoning and Land Use
Restrictions**

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Executive Summary

The 130th Legislature established the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions (referred to in this report as the “commission”), with the emergency passage of Resolve 2021, chapter 59 (Appendix A). Pursuant to the resolve, 15 members were appointed to the commission: two members of the Senate appointed by the President of the Senate; two members of the House of Representatives appointed by the Speaker of the House of Representatives; the Director of the Maine State Housing Authority, or the director's designee; one member representing the Office of the Governor appointed by the Governor; four public members appointed by the President of the Senate including: one representing a statewide municipal association, one representing a statewide organization that advocates for affordable housing, one representing statewide agricultural interests, and one who is in the building trades; and five public members appointed by the Speaker of the House, including: one representing a regional planning association or a statewide organization that advocates for smart growth policies and projects, one representing the real estate industry, one who is a residential developer, one representing an organization that advocates for low-income or middle-income renters or homeowners, and one representing a local or statewide organization promoting civil rights that has racial justice or racial equity as its primary mission. A list of commission members can be found in Appendix B.

Pursuant to Resolve 2021, chapter 59, the commission was charged with the following duties:

1. Review data on housing shortages in the State for low-income and middle-income households;
2. Review state laws that affect the local regulation of housing;
3. Review efforts in other states and municipalities to address housing shortages through changes to zoning and land use restrictions;
4. Consider measures that would encourage increased housing options in the State, including but not limited to municipal incentives, state mandates, eliminating or limiting single-family-only zones and allowing greater housing density near transit, jobs, schools or neighborhood centers; and
5. Review and consider the historical role of race and racism in zoning policies and the best measures to ensure that state and municipal zoning laws do not serve as barriers to racial equality.

Over the course of seven meetings the commission developed the following recommendations:

Recommendation #1. Allow accessory dwelling units by right in all zoning districts currently zoned for single-family homes.

Recommendation #2. Eliminate single-family zoning restrictions in all residential zones across the State by allowing up to four residential units on all lots, in compliance with

any health and safety requirements such as minimum septic and lot sizes, with a sunrise clause to provide adequate time for municipalities to prepare for this change.

Recommendation #3. Prohibit municipal growth caps on the production of new housing.

Recommendation #4. Provide technical and financial assistance for all communities seeking support in making zoning improvements and in identifying opportunities for increasing affordable housing.

Recommendation #5. Create density bonuses in all residential zones throughout the State, giving low to middle-income housing projects 2.5 times the density of the existing zone, with a parking requirement of no more than .66 spaces per unit for the additional units, and with the requirement that those units be protected as affordable for a specific period of time.

Recommendation #6. Create a three-year statewide incentive program for municipalities as follows: in Year 1, a qualifying community must make a commitment to reviewing zoning and land use restrictions. In Years 2 and 3, adopt zoning and land use policies to promote housing opportunities; qualifying communities would receive a state financial reward for up to three years, so long as they remain in good standing with the program requirements.

Recommendation #7. Create a system of priority development areas, where multi-family housing is permitted with limited regulatory barriers.

Recommendation #8. Strengthen Maine’s Fair Housing Act by eliminating the terms “character,” “overcrowding of land,” and “undue concentration of population” as legal bases for zoning regulations.

Recommendation #9. Create a state-level housing appeals board to review denials of affordable housing projects made at the local level.

I. Introduction

The 130th Maine Legislature established the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions (referred to in this report as the “commission”) with the emergency passage of Resolve 2021, chapter 59, sponsored by Speaker of the House of Representatives, Ryan Fecteau of Biddeford (Appendix A).

Pursuant to the resolve, 15 members were appointed to the commission: two members of the Senate appointed by the President of the Senate; two members of the House of Representatives appointed by the Speaker of the House of Representatives; the Director of the Maine State Housing Authority, or the director's designee; one member representing the Office of the Governor appointed by the Governor; four public members appointed by the President of the Senate including: one representing a statewide municipal association, one representing a statewide organization that advocates for affordable housing, one representing statewide agricultural interests, and one who is in the building trades; and five public members appointed by the Speaker of the House, including: one representing a regional planning association or a statewide organization that advocates for smart growth policies and projects, one representing the real estate industry, one who is a residential developer, one representing an organization that advocates for low-income or middle-income renters or homeowners, and one representing a local or statewide organization promoting civil rights that has racial justice or racial equity as its primary mission.

The chairs designated the first-named member of the Senate as the Senate chair and the first-named member of the House of Representatives as the House Chair. As such, Senator Craig Hickman served as the Senate Chair, and Speaker Ryan Fecteau served as the House Chair. A copy of the commission membership is attached (Appendix B).

The resolve authorized the commission to meet six times,¹ and set forth the following duties for the commission:

1. Review data on housing shortages in the State for low-income and middle-income households;
2. Review state laws that affect the local regulation of housing;
3. Review efforts in other states and municipalities to address housing shortages through changes to zoning and land use restrictions;
4. Consider measures that would encourage increased housing options in the State, including but not limited to municipal incentives, state mandates, eliminating or limiting single-family-only zones and allowing greater housing density near transit, jobs, schools or neighborhood centers; and

¹ Although the resolve authorized only six meetings, the commission requested, and was approved by Legislative Council, for an additional meeting and an extension of the report date until December 15, 2021.

5. Review and consider the historical role of race and racism in zoning policies and the best measures to ensure that state and municipal zoning laws do not serve as barriers to racial equality.

Over the course of seven meetings, the commission received several presentations relevant to its duties from state government agencies, municipal leaders, national experts, and stakeholders. The commission also heard from members of the public through public comment periods at each of its meetings, except the last meeting, and through the submission of written testimony.²

Maine is facing an affordable housing crisis, and this commission was established to undertake an extensive review of how to tackle the barriers to producing more affordable housing in this State, including the web of various zoning and land use ordinances and state laws that are preventing sensible projects – large and small – from coming to fruition. However, it is important to note that changes to zoning alone will not address the challenges of housing Maine residents. Zoning is one important aspect of an overall housing policy, but there are other important aspects as well. Zoning changes will help with affordability and equity, but they are only one policy initiative among many that will address these challenges. Throughout its work, the commission intentionally focused on the specific duties with which the commission was charged, but any discussion of zoning and land use restrictions necessarily includes discussion of broader issues of land use policy, regulations, and factors outside of zoning and land use restrictions that affect the availability of affordable housing in this State. Some of these additional issues, while not formally part of the commission’s recommendations, are included as additional considerations for the Legislature in Part V of this report.

The enabling legislation charged the commission with submitting a report of its findings and recommendations, including any suggested legislation, to the Joint Standing Committee on Labor and Housing by November 3, 2021, although this deadline was extended at the request of the commission and with the approval from Legislative Council to December 15, 2021.

II. Commission Process

The commission held meetings on August 12, September 9, September 16, September 30, October 7, October 28, and December 2, 2021. All meetings were held in either a hybrid (remote and in-person) format or fully remote format and were open to the public. Each meeting also included a public comment period. Each meeting of the commission was also livestreamed via the Legislature’s YouTube page and the Legislature’s audio streaming service.

² Written public comments submitted to the commission are available here: <https://legislature.maine.gov/presentation-materials>.

A. First Meeting, August 12, 2021³

The first meeting of the commission was held on August 12, 2021. The meeting began with commission member introductions, opening remarks, and comments and suggestions on some of the challenges and barriers to increasing housing opportunities in Maine. Each member of the commission also identified what that member would like to see accomplished through the commission's work. Legislative staff then provided an overview of the enabling legislation (Resolve 2021, chapter 59 in Appendix A), covering the duties, process and timeline for the commission's work.

During the remainder of the first meeting, the commission focused on the current state of housing in Maine, including by hearing from two presenters who provided a review of current data on housing shortages for low-income and middle-income households in the State. Peter Merrill, Deputy Director of Maine State Housing Authority, who served on the commission for the first meeting only as the Director of Maine State Housing Authority's designee, provided an overview of housing and rental affordability in Maine, which as a largely rural, sparsely populated state with modestly sized urban or service centers,⁴ has seen flat population growth since 2000. Handouts from MaineHousing's presentation are included as Appendix C. Greg Payne, who at the time was serving as the Director of the Maine Affordable Housing Coalition, provided a closer look at the shortage of rental homes that are both affordable and available to extremely low-income households in Maine and provided statistics regarding income-to-cost ratios for housing in each county across the State. Handouts from Greg Payne's presentation are included as Appendix D. Additional background information on the overall state of housing in Maine is included in Section III of this report.

At times during this meeting, commission members referenced helpful resources, news articles, and reports that other commission members might find interesting and helpful to the commission's work. Staff assisted in compiling and updating the list of these resources throughout the commission's work, which is included as Appendix E.

The commission then held a public comment period during which members of the public were invited to provide input on current challenges and barriers to increasing housing options in the State. The commission heard from: Mal Carey; George Rheault; Deborah Ibonwa, Maine Equal Justice; Doug Dunbar; Bridget Quinn, American Association of Retired Persons; Nick Murray, Maine Policy Institute; and Roberta Manter.

³ The archived YouTube video of the August 12th meeting is available at the following link:

https://www.youtube.com/watch?v=Z6uF_o32ycg; the audio archive is available at:
<https://legislature.maine.gov/Audio/#228?event=84846&startDate=2021-08-12T13:00:00-04:00>

⁴ A service center community means a municipality or group of municipalities identified by the Department of Agriculture, Conservation and Forestry according to a methodology established by rule that includes 4 basic criteria, including level of retail sales, jobs-to-workers ratio, the amount of federally assisted housing and the volume of service sector jobs. 30-A MRSA §4301(14-A)

Topics of discussion at this meeting varied considerably as members of the public and commission members raised several areas of interest, goals, concerns, and barriers to increasing housing opportunities in Maine. Topics included, but were not limited to:

- Impacts of COVID-19 on housing availability and affordability;
- The rise in the average median housing cost from 2020 to 2021;
- The rate of housing costs and rent increases as compared to the rate of income increases;
- The racial history and impact of the law and policies that resulted in zoning laws and the availability of affordable housing;
- Reduction of housing supply and household size;
- Wait times and ability to utilize affordable housing vouchers;
- Credit score, background, and income barriers to housing;
- The relationship between local housing authorities and landlords;
- Data on seasonal housing versus year-round housing;
- Preferences for renting versus homeownership;
- How zoning can delay or block housing developments from being considered;
- Financing and infrastructure issues related to housing; and
- The impact of tax credits on housing affordability.

B. Second Meeting, September 9, 2021⁵

The second meeting of the commission was held on September 9, 2021. The commission heard from a panel of municipal decision-makers on their experiences with affordable housing challenges and efforts in their respective municipalities to address housing shortages through changes to zoning and land use restrictions. The commission felt it was important to hear from a variety of municipalities covering both the urban and rural parts of the State, as well as southern and northern regions, as the needs of municipalities vary throughout the State. Accordingly, the panel consisted of:

- Jean-Marie Caterina, Councilor, Scarborough;
- Jason Levesque, Mayor, Auburn;
- Andrea Powers, Manager, Fort Fairfield; and
- Christine Grimando, Planning and Urban Development Department, Portland.

Key points of the presentations and questions from the commission included:

- The lack of affordable housing in Southern Maine;
- The need for monetary incentives for the production of affordable and workforce housing, as there are developers who want to build affordable housing, but cannot afford to do so;

⁵ The archived YouTube video of the September 9th meeting is available at the following link: <https://www.youtube.com/watch?v=GSzDeEHSYKq>; the audio archive is available at: <https://legislature.maine.gov/Audio/#228?event=84857&startDate=2021-09-09T13:00:00-04:00>

- Recent initiatives discussed or implemented in Auburn, such as changing the definition of housing from “affordable” to “attainable,” eliminating commercial parking requirements, and eliminating exclusive zoning that segregated multi-unit housing into one area;⁶
- Manufactured scarcity, and how changing “affordable” to “attainable” wouldn’t prioritize the people most impacted in the housing crisis;
- A proposal to amend Maine’s Municipal Revenue Sharing formula to shelter the value of new affordable housing units;
- Recent initiatives discussed or implemented in Portland, such as adjusting dimensional standards for certain residential and business zones, exploring inclusionary zoning requirements, a new ordinance for accessory dwelling units, adopting more flexible parking standards, establishing density and height bonuses and permit fee reductions, and creating mechanisms to fund housing trusts;⁷
- What housing shortages and the “housing crisis” look like and how that can differ in different parts of the state (for example, in areas with limited space for building new affordable housing and in areas with aging properties);
- The importance of home rule authority, the balance of state mandates and local control, and a recognition that municipalities cannot be relied upon to implement policy changes without resources and funding;
- That no single tool will address all municipal needs and there must be a multiplicity of options proposed for addressing each issue;
- How to encourage diversity in housing, which is just as essential as dedicated affordable and workforce housing projects; and
- The need for community education and ongoing, robust community dialog about the need for change.

The commission also received a memorandum from the Maine Municipal Association’s Affordable, Senior and Workforce Housing Working Group, which highlights the fact that municipal leaders are keenly aware of the housing crisis and the opportunities that exist to amend local ordinances, state statutes, and rules to make zoning more inclusive and accessible.⁸ The memorandum also noted the challenges, resources and solutions, which should be considered in attempting to solve the housing crisis.

Following the panel discussion, the commission held a public comment period. The commission heard from the following: Cynthia Dill; Eamonn Dundon, Portland Regional Chamber of Commerce; and George Rheault.

⁶ For more information on Auburn’s work to increase affordable housing, *see* Jason Levesque’s written testimony, included as Appendix F.

⁷ For more information on Portland’s work to increase affordable housing, *see* Christine Grimando’s written testimony included as Appendix G.

⁸ See Appendix H for the memorandum from the Maine Municipal Association’s Affordable, Senior and Workforce Housing Working Group.

C. Third Meeting, September 16, 2021⁹

The third meeting of the commission was held on September 16, 2021. The focus of this meeting was to review and consider the role of race and racism in zoning policies and the best measures to ensure that state and municipal zoning laws do not serve as barriers to racial equality. Prior to the meeting, the commission reached out to experts in this field, many at the suggestion of commission members. Ultimately, the commission heard presentations from:

- Matt Mleczo, Graduate Research Assistant, The Eviction Lab at Princeton University;¹⁰
- Yonah Freemark, Senior Research Associate, The Urban Institute;¹¹
- Andy O'Brien, Communications Director, Maine AFL-CIO;¹² and
- Morgan Williams, General Counsel, National Fair Housing Alliance.¹³

During these presentations, the commission heard how zoning is a key tool that governments use to regulate land use and building form and about the following main elements of zoning: the zoning map and text, requirements and incentives, flexibility measures, administration, and procedures. The commission also heard that, in context, these elements fit inside broader state and federal regulations, the real estate market, and societal trends as a whole.

The commission also heard about the history of the earliest zoning laws, which segregated by race, and how exclusionary zoning disproportionately affects people of color. There is also evidence that exclusionary zoning inflates housing prices, exacerbates regional income inequality, and helps establish and maintain segregation. Limited evidence shows that “upzoning,” which typically amends zoning codes to increase density, relax height restrictions, or both, can result in higher densities and more housing supply but can also lead to higher short-term housing costs and increase the odds that a neighborhood becomes less diverse.

The commission also received information about the use of inclusionary zoning and impact fees to combat exclusionary zoning. As heard during the presentation, some economists view inclusionary zoning and impact fees as a tax on development, which raises housing prices and reduces supply, but can also produce more affordable housing and be a mechanism to increase residential integration via mixed-income developments.

In addition to the national experts, the commission received a brief history on racism and discrimination in Maine, including the examples of the forcible eviction of the mixed-race community of Malaga Island and the free black farming communities formed by Black Revolutionary War Veterans in Warren and Machias in the 1780s.

⁹ The archived YouTube video of the September 16th meeting is available at the following link: <https://www.youtube.com/watch?v=C-Nh9e1JgZM>; the audio archive is available at: <https://legislature.maine.gov/Audio/#228?event=84887&startDate=2021-09-16T13:00:00-04:00>

¹⁰ Matt Mleczo’s presentation materials are included as Appendix I.

¹¹ Yonah Freemark’s presentation materials are included as Appendix J.

¹² Andy O’Brien’s presentation materials are included as Appendix K.

¹³ Morgan Williams’ presentation materials are included as Appendix L.

In the search for solutions, suggestions from presenters included: cutting bureaucratic red tape by streamlining municipal review and reducing discretion, allowing increased density, considering measures such as inclusionary zoning, density bonuses, eliminating parking requirements, and disposition of public land.

To ensure that state and municipal zoning laws do not serve as barriers to racial equality, presenters also recommended recentering race in zoning policy through rigorous enforcement of state and federal fair housing laws; renewed commitment to public subsidies; robust community engagement; regional approaches and state oversight; improved data, metrics and accountability; and the implementation of a state-level fair housing agency, board or other entity.

The final presenter, Morgan Williams, in particular focused specifically on four potential solutions:

- Affirmatively furthering fair housing;¹⁴
- Zoning and land use measures;
- Race-conscious housing programs; and
- Fair Housing Centers.¹⁵

These presentations also touched on some of the efforts in other states and municipalities to address housing shortages through changes to zoning and land use restrictions, including those in California (SB9),¹⁶ Connecticut (Public Act 21-29),¹⁷ Oregon (SB 2001),¹⁸ Massachusetts (40B)¹⁹ and Minneapolis, Minnesota.

¹⁴ The federal Fair Housing Act includes a mandate that executive agencies and departments of the federal government and recipients of federal funds from the U.S. Department of Housing and Urban Development (“HUD”) further the Fair Housing Act’s policies and purposes. “Generally, in administering programs and activities relating to housing and community development, the federal government, HUD, and its recipients must: determine who lacks access to opportunity and address any inequity among protected class groups; promote integration and reduce segregation; and transform racially or ethnically concentrated areas of poverty into areas of opportunity.” https://www.hud.gov/program_offices/fair_housing_equal_opp/affh, HUD’s 2015 Affirmatively Furthering Fair Housing rule was indefinitely suspended in 2018, but an interim final rule was published on June 10, 2021. *See* <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications>.

¹⁵ The Fair Housing Initiative Program (FHIP), provides funding to organizations and other nonprofits to assist people who believe they have been victims of housing discrimination. The FHIP includes four initiatives, three of which provide funds through competitive grants to eligible organizations. The four initiatives of the FHIP are the Fair Housing Organizations Initiative, The Private Enforcement Initiative, the Education and Outreach Initiative, and the Administrative Enforcement Initiative. *See* https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHIP. Mr. Williams noted that full service fair housing centers are those that provide the full service of fair housing investigations and enforcement, but specified that he did not think that Pine Tree Legal provides that full service; however, in 2021 Pine Tree Legal was the recipient of grant funding under the Private Enforcement Initiative of the FHIP. Mr. Williams also provided a link with a list to all of the other states with Fair Housing centers: <https://nationalfairhousing.org/get-local-help/>.

¹⁶ *See* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9

¹⁷ *See* <https://www.cga.ct.gov/2021/act/pa/pdf/2021PA-00029-R00HB-06107-PA.pdf>

¹⁸ *See* <https://www.oregon.gov/lcd/UP/Pages/Housing-Choices.aspx>

¹⁹ *See* <https://www.mass.gov/chapter-40-b-planning-and-information>

Following the presentations, the commission held a public comment period. The commission heard from the following: Zuri Rashad; Lado Lodoka; Timothy Wells, Greater Portland Community Land Trust; and Joby Thoyalil, Maine Equal Justice Partners.

D. Fourth Meeting, September 30, 2021²⁰

The fourth meeting of the commission was held on September 30, 2021. After commission member introductions, legislative staff provided the commission a general overview of the laws governing zoning and land use regulation, including but not limited to those contained in Title 30-A of the Maine Revised Statutes, the state's Mandatory Shoreland Zoning laws,²¹ an overview of the federal Fair Housing Act²² and its Maine counterpart,²³ and a brief summary of some of the major court decisions regarding exclusionary zoning and other fair housing laws.²⁴

The commission also invited representatives of state agencies whose purview includes zoning and land use issues to answer questions from the commission, including:

- Nick Livesay, Director, Bureau of Land Resources, Maine Department of Environmental Protection;
- Judith East, Executive Director, Land Use Planning Commission, Maine Department of Agriculture, Conservation, and Forestry;²⁵
- Michael Allen, Associate Commissioner for Tax Policy, Department of Administrative and Financial Services;
- Deborah Johnson, Director, Maine Department of Economic and Community Development; and
- Richard McCarthy, Assistant State Fire Marshal, Department of Public Safety, Office of State Fire Marshall.

Commission member and Director of MaineHousing, Dan Brennan also provided the commission with a memorandum describing the demographic and housing profile of the State.²⁶

Following the presentations provided by staff and the commission's opportunity to ask questions of the state agency representatives, the commission held a public comment period. The

²⁰ The archived YouTube video is available at the following link: <https://www.youtube.com/watch?v=maOaqHj6lfk>; the audio archive is available at: <https://legislature.maine.gov/Audio/#228?event=84903&startDate=2021-09-30T13:00:00-04:00>

²¹ See 38-A MRSA §§435-448.

²² An overview of the federal Fair Housing Act (FHA) published by the Congressional Research Service in 2016 can be found here: <https://crsreports.congress.gov/product/pdf/RL/95-710>

²³ See 5 MRSA §§ 4581-4583.

²⁴ A copy of legislative staff's presentations is included as Appendix M.

²⁵ On November 3, 2021, Judith East was announced as the new director of the Department of Agriculture, Conservation and Forestry's Bureau of Resource Information and Land Use Planning.

²⁶ A copy of the demographic and housing profile is included in Appendix N.

commission heard from the following: Kristina Egan, Greater Portland Council of Governments;²⁷ and George Rheault.

Prior to the conclusion of the fourth meeting, the commission chairs requested that each commission member compile and submit a list of proposed recommendations for discussion and review at the fifth meeting.

E. Fifth Meeting, October 7, 2021²⁸

The fifth meeting of the commission was held on October 7, 2021. After commission member introductions, Senator Hickman opened the meeting for a public comment period. The commission heard from: Julia Basset Schwerin, Agents for the Built Environment; Eamonn Dundon, Portland Regional Chamber of Commerce; and George Rheault.

Following public comment, staff reviewed the commission's activities to date. At the September 30th meeting, the commission had been tasked with providing suggested lists of recommendations, which were then compiled into a single document by topic. This list was not intended to represent the entire universe of suggestions open for discussion, but rather an outline to help guide the commission's discussions and help the commissioners see how others were approaching the commission's work. Suggested recommendations and clarifications on certain recommendations that were provided during and after the October 7th meeting were also incorporated into the final, comprehensive list of potential recommendations, which is included as Appendix P.

The commission discussed many of the suggested recommendations submitted by members including, but not limited to those relating to accessory dwelling units, single and multi-family zoning, fair housing practices, and technical assistance for municipalities.

Over the course of the commission's discussion, it became clear that commission members were not comfortable voting on any of the suggested recommendations. Instead, they decided that they needed an additional meeting to complete their duties. Speaker Fecteau moved that the commission request authorization from Legislative Council for an additional meeting and extended deadline which was seconded by Commissioner Pingree. The commission unanimously voted in favor of the motion, and the request was ultimately granted by Legislative Council.

²⁷ During Kristina Egan's comments, Senator Hickman requested that the Greater Portland Council of Governments work with regional agency colleagues across the state to develop a proposal and budget regarding how the state can support municipalities with technical assistance. That proposal was provided to the commission for their October 28th meeting and is included as Appendix O. This proposal is discussed more fully in Part III, Recommendation # 6.

²⁸ The archived YouTube video of the October 7th meeting is available at the following link:

https://www.youtube.com/watch?v=nUcD8IRKN_I; the audio archive is available at:

<https://legislature.maine.gov/Audio/#228?event=84921&startDate=2021-10-07T13:00:00-04:00>

Following additional discussion of proposed recommendations, the meeting concluded with a discussion of next steps, including moving towards final recommendations and drafting the report.

F. Sixth Meeting, October 28, 2021²⁹

The sixth meeting of the commission was held on October 28, 2021. After commission member introductions, Speaker Fecteau opened the meeting for the final public comment period. The commission received public comment from George Rheault.

Following public comment, Speaker Fecteau resumed the discussion of the suggested recommendations from commission members, focusing on the recommendations that had not been addressed at the previous meeting, including but not limited to: incentive programs such as density bonuses; housing trusts; priority development areas; fees; income requirements; and lot size and parking requirements.

After concluding its overview of the suggested recommendations, the commission also reviewed a proposed recommendation framework submitted by commission members Erin Cooperrider, Jeff Levine, and Dana Totman, which is included as Appendix Q. The commission then began substantive discussion and took preliminary votes on which recommendations the commission wanted to include in its final report.

G. Seventh Meeting, December 2, 2021³⁰

At its seventh and final meeting on December 2, 2021, the commission reviewed a draft commission report as well as comments, questions, and feedback on the draft report that had been submitted by members prior to the meeting. The information regarding the substantive discussions, votes, and recommendations are included in the Recommendations section of this report.

III. Background Information³¹

Maine is currently facing an affordable housing crisis, which has been exacerbated by the recent COVID-19 pandemic. Maine is a largely rural, sparsely populated state, with modestly sized urban or service centers, and while population in the United States is growing, the population growth rate in Maine and New England has been flat since 2000. In most areas of Maine, the population is also aging, with adults over age 65 likely to comprise 30% of the State's population

²⁹ The archived YouTube video of the October 28th meeting is available at the following link: <https://www.youtube.com/watch?v=bF-OQUK3pFA>; the audio archive is available at: <https://legislature.maine.gov/Audio/#202?event=84959&startDate=2021-10-28T11:30:00-04:00>.

³⁰ The archived YouTube video of the December 2nd meeting is available at the following link: <https://www.youtube.com/watch?v=nvDQ2X5Sc7U>; the audio archive is available at: <https://legislature.maine.gov/Audio/#202?event=85025&startDate=2021-12-02T13:00:00-05:00>.

³¹ The data referenced in this section derives from several sources, specifically: the U.S. Census, MaineHousing, or the 2019 American Community Survey (ACS) 1-Year Estimates, and was provided to the commission by MaineHousing. See Appendices C, D, and N.

by 2030. However, some pockets of the State, especially Southern and coastal counties, are growing – some are even getting younger. To further complicate matters, there has been a continued shift toward non-family and smaller family households, with Maine currently ranked the third lowest in average household size and second lowest among owned units in the United States. Due in part to the COVID-19 pandemic, the supply of homes for sale is at a record low and low interest rates and the recent surge in home buying have significantly reduced the supply of affordable homes.³² Maine also has the eighth oldest housing stock in the nation.

Statewide, 72% of occupied housing units are owned and 28% are rented. Prior to the COVID-19 pandemic, growth in rental units was outpacing those that are owned. However, the pandemic has affected housing preferences and home buying has increased sharply. The pandemic has also caused a shift in rental needs, from a pre-pandemic preference for living near urban areas, coastal counties, and the I-95 corridor, to a new preference for increased access to broadband. It is not yet clear whether these are trends that will continue beyond the pandemic.

In 2020, the median home price in Maine was \$256,000, a 14% increase over 2019, and the number of housing units sold in the same year was 19,921, a 10% increase. This median home price is unaffordable for median income households in all Maine counties except Aroostook, Kennebec, Penobscot, Piscataquis, Somerset and Washington counties.

The median rental is also unaffordable for median income households in all Maine counties except Franklin County.³³ Of the renters, 49.1% are cost-burdened, paying more than 30% of their income on housing, and approximately 37,245 renter households are extremely low income. Of those extremely low income renters, 16% are paying more than 50% of their income on housing and 54% have substandard housing, which is defined as lacking complete plumbing or kitchen facilities. Additionally, black or African American households are the only racial identity more likely to rent (70%) than own (30%). In Maine, renter households also have a median household income of \$25,103, 51% below homeowner households at \$71,913 - which helps explain the greater need for rental housing assistance.

Zoning and land use restrictions are key tools that governments use to regulate land use and production of housing, and they have a direct impact on the availability of housing and the ability of states and municipalities to increase housing opportunities. Federal, state, and local laws, regulations, and ordinances all play a role in zoning and land use.

As the commission heard during its third meeting, some of the earliest zoning laws explicitly segregated by race. Other early zoning codes, while purportedly addressing the perception that closely-knit communities were bad for health and that there were negative impacts of living near industrial uses, were actually implemented with racist motivations. Anti-density standards and single-family zoning, and restrictive covenants, were often used to prevent people of color from living in certain neighborhoods.

³² Indeed, on average only 230 new affordable housing units are produced in Maine each year.

³³ The median two-bedroom rental in Maine costs \$1,062 per month.

A common term used to describe some of these practices is “exclusionary zoning,” which relates to restrictive land use and zoning policies meant to exclude certain uses of land and, in effect, persons of low or moderate income from a municipality. The exclusionary zoning policies are often accomplished through low-density regulation, large minimum lot sizes, parking requirements, height restrictions, explicit population growth controls, and sometimes excessive bureaucratic procedures and delays.³⁴ These exclusionary zoning laws have disproportionately affected people of color.

In 1968, the federal government enacted the Fair Housing Act “to provide, within constitutional limitations, for fair housing throughout the United States.” The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin, and applies broadly to all sorts of housing, both public and private, including single family homes, apartments, condominiums, and mobile homes. The Fair Housing Act also includes a mandate that executive agencies and departments of the federal government and recipients of federal funds from the U.S. Department of Housing and Urban Development (“HUD”) further the Fair Housing Act’s policies and purposes. “Generally, in administering programs and activities relating to housing and community development, the federal government, HUD, and its recipients must: determine who lacks access to opportunity and address any inequity among protected class groups; promote integration and reduce segregation; and transform racially or ethnically concentrated areas of poverty into areas of opportunity.” This concept is generally referred to as affirmatively furthering fair housing.

At the state level, the Maine’s Human Rights Act also includes a subchapter on fair housing and provides that “the opportunity for an individual to secure housing in accordance with the individual’s ability to pay, and without discrimination because of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status ... is hereby recognized as and declared to be a civil right.”³⁵ During the last legislative session, the Legislature also enacted Public Law 2021, chapter 270, An Act to Preserve Fair Housing in Maine, effective October 18, 2021, which provides that “[t]he Maine State Housing Authority shall, to the extent consistent with federal law, ensure that any Maine State Housing Authority funding or any state or local funding is used in a manner that will affirmatively further fair housing in this State.” “Affirmatively further fair housing means to engage actively in efforts to address barriers to and create opportunities for full and equal access to housing without discrimination on the basis of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin, familial status or receipt of public assistance.”³⁶

³⁴ See Matt Mleczko’s presentation materials, included as Appendix I. It is important to note that “inclusionary zoning,” which is the provision of below-market rate units alongside market-rate units (usually 20%) through either incentives or mandates is not necessarily the converse of exclusionary zoning.

³⁵ 5 MRSA §4581.

³⁶ P.L. 2021, ch. 270, §3 (enacting 30-A MRSA, §4741(20)). The law also directs Maine State Housing Authority to submit a report to the Joint Standing Committee on Labor and Housing no later than January 15, 2022 on the

While there are other State laws affecting zoning and land use restrictions, including but not limited to minimum lot sizes,³⁷ municipal boards of appeals,³⁸ municipal growth management and zoning,³⁹ enforcement of land use regulations,⁴⁰ and mandatory shoreland zoning,⁴¹ one major principle of local zoning and land use regulation is derived from municipal home rule authority.

In 1969, Maine granted municipal home rule authority by adopting a provision to the Maine Constitution, which provides that “[t]he inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by the Constitution or general law, which are local and municipal in character.”⁴² Accordingly, a municipality may freely adopt ordinances unless the ordinance conflicts with or is preempted by state or federal law.

Accordingly, Maine’s statutory scheme, when read in conjunction with the municipal home rule authority granted by the Maine Constitution, gives municipalities in Maine wide latitude to enact ordinances, so long as these ordinances do not prevent the efficient accomplishment of a defined state purpose.⁴³ However, this does not mean that the State cannot enact legislation requiring municipalities to adopt local ordinances consistent with state policy. One example is the mandatory shoreland zoning laws in the Maine Revised Statutes, Title 38 – this is an instance in which the state required local municipalities to adopt ordinances consistent with state law.

It is under this framework that this commission has been tasked with increasing housing opportunities in the State by studying zoning and land use restrictions, while also acknowledging that access to housing is a right and that everyone should have the right to safe, affordable housing, especially people who have been subject to a history of discriminatory practices.

IV. Recommendations

The commission was charged with studying the impact of zoning and land use restrictions on the availability of housing opportunities in Maine and was required to submit a report with its findings and recommendations, including any suggested legislation, to the Joint Standing Committee on Labor and Housing.

As summarized in Part II of this report, the commission met seven times in the development of these recommendations, engaged in robust discussions on the numerous issues related to, and the

development of a plan to ensure funds are used to affirmatively further fair housing in this State. The full text of P.L. 2021, ch. 270 is included as Appendix R.

³⁷ 12 MRSA §§4807 to 4807-G.

³⁸ 30-A MRSA §2691.

³⁹ 30-A MRSA §§4301-4371.

⁴⁰ 30-A MRSA §§4451-4453.

⁴¹ 38 MRSA §§435-448.

⁴² Me. Const. art. VIII, pt. 2, § 1; see also 30-A MRSA §§2101-2109

⁴³ See *Smith v. Town of Pittston*, 2003 ME 46, ¶ 24, 820 A.2d 1200.

impact of, zoning and land use restrictions on the availability of housing opportunities in Maine, and to hear from experts, state agencies, and members of the public in relation to each duty set forth in the commission's enabling legislation.

One theme that carried throughout these discussions was the necessity of achieving the appropriate balance between state mandates on municipalities and preserving local control under Maine's home rule authority.⁴⁴ However, as evidenced by the Legislature's passage of the enabling legislation of this commission, some zoning and land use restrictions have historically, and continue, to act as barriers to increasing housing opportunities in this State

To achieve the right balance between state mandate and local control, throughout the development of its recommendations, the commission specifically stresses the need to tie mandates on municipalities to the provision of technical and financial assistance to enable municipalities to successfully implement the legal changes, policies, and programs contemplated by the commission. As is discussed more thoroughly in Recommendation #4, it is important that, in considering methods of providing technical and financial assistance for municipalities, the Legislature consider how municipal needs vary and that an approach that works in some municipalities may not be successful in others. Furthermore, based on the complexity of some of these recommendations, the Legislature may wish to consider including sunrise clauses in legislation implementing these recommendations to allow municipalities sufficient time to plan for these critical, but difficult changes.

As has been previously noted, the full list of suggested recommendations proposed and considered by commission members is included in this report as Appendix P.

Recommendation #1. Allow accessory dwelling units by right in all zoning districts currently zoned for single-family homes. (Vote 15-0)⁴⁵

The commission unanimously recommends allowing accessory dwelling units (also known as ADUs) by right in all zoning districts currently zoned for single-family homes. An ADU is currently defined in Maine law as a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land.⁴⁶

In addition to adopting this recommendation, the commission discussed at length whether to move forward with a recommendation related to LD 1312, *An Act to Remove Barriers to Accessory Dwelling Units and Allow Accessory Dwelling Units where Single-family Houses Are*

⁴⁴ Constitution of Maine, Article VII, Part Second, section 1; 30-A MRSA §3001.

⁴⁵ Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Representative Amy Arata, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson

⁴⁶ 30-A MRSA §4301(1-C).

Allowed (Appendix S). which was considered by the Joint Standing Committee on Labor and Housing during the First Special Session of the 130th Legislature.

The Joint Standing Committee on Labor and Housing unanimously voted LD 1312 “Ought To Pass As Amended,” but there was some confusion regarding the version passed in committee and it was subsequently further amended on the floor. LD 1312, as amended by House Amendment “A” to Committee Amendment “A” (Appendix T). was placed on the Special Appropriations Table and carried over to the 130th Legislature, Second Regular Session.

Although commission members generally support increasing the allowances for ADUs, as evidenced by this recommendation, there are concerns about the current language of LD 1312, as it appears on the Special Appropriations Table. One concern is whether LD 1312, as amended, would allow municipalities to essentially block ADUs by circumventing the ADU requirement through minimum lot size or other locally adopted ADU land use restrictions. Some commission members expressed greater support for the bill as originally drafted, rather than the amended version because the original version explicitly lays out the prohibited requirements. Conversely, other commission members are concerned that this bill will impose a mandate on local municipalities and ultimately function as a greater restriction on municipalities. These commission members would prefer to give communities wider latitude to implement land use regulations that impact the scale, location and environmental impacts of ADUs.⁴⁷

Accordingly, the commission decided not to endorse LD 1312 specifically, but unanimously agreed that ADUs should be permitted by right in all districts zoned for single-family housing.

The commission also recognizes that there may be overlap between Recommendation #1 and Recommendation #2, which is described below. To the extent the Legislature moves forward with either of these recommendations, the commission encourages the Legislature to consider them in tandem to prevent any overlap. Moving forward with Recommendation #2, for example, could impact the need for requiring ADUs by right. Although, given the unique characteristics of ADUs, the implementation of Recommendation #1 may alternatively complement or augment legislation adopting Recommendation #2.

Recommendation # 2. Eliminate single-family zoning restrictions in all residential zones across the State by allowing up to four residential units on all lots, in compliance with any health and safety requirements such as minimum septic and lot sizes, and with a sunrise clause to provide adequate time for municipalities to prepare for this change. (Vote 13-2)⁴⁸

⁴⁷ The commission also noted, but did not discuss in depth, recently passed legislation regarding accessory dwelling units in New Hampshire, RSA 674:71 through 674:73, which can be found at: <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-LXIV-674.htm>.

⁴⁸ Support: Senator Craig Hickman, Speaker Ryan Fecteau, Representative Amy Arata, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek; Opposed: Senator Matthew Pouliot, Anthony Jackson

A majority of the commission recommends eliminating single-family zoning restrictions in all residential zones across the State by allowing up to four residential units on all lots, as long as the units are built in a way that complies with any health and safety requirements, such as building codes, and when determined to be environmentally sound on properties served by private wastewater and drinking water systems and on properties subject to applicable shoreland zoning laws and regulations. Because of the significance of this change, the commission recommends including a sunrise clause to provide municipalities adequate time to prepare for and adapt to this change.

As is mentioned in Recommendation #1, there is overlap between the proposal in Recommendation #2 to eliminate single-family zoning restrictions in all residential zones and the proposal in Recommendation #1 to allow ADUs by right. Accordingly, the commission recommends that the Legislature consider the impact that implementing both of these recommendations may have on one another.

In developing Recommendation #2, the commission considered several alternatives, including eliminating single-family zoning restrictions entirely, allowing up to two residential units on all lots, and, as ultimately recommended, allowing up to four residential units on all lots. The number of units the commission ultimately voted to support takes into consideration certain practical financial and regulatory implications. While a project of up to four units in the same building is usually considered to be a single family home, a project of more than four units is a multi-family residential property and is subject to different regulations and borrowing requirements.

Nevertheless, the commission recognizes that some factors which limit a lot to one unit of housing are not necessarily within the scope of zoning law, such as health and safety requirements, especially septic/subsurface wastewater disposal requirements, or even historic preservation laws or ordinances. While the commission recognizes the importance of such requirements, it cautions that they should not be used as *de facto* zoning to reduce housing construction. Similarly, zoning that is not directly related to housing, such as environmental or shoreland zoning, may restrict lot sizes or the number of units that are permissible. The commission recognizes adherence to these laws may necessitate exceptions to this recommendation but cautions, again, that such exceptions should not enable municipalities to evade the elimination of single-family zones nor should they be used as loopholes for municipalities to unnecessarily restrict multi-family units.

Commissioner Jackson noted in his opposition to this recommendation that his primary concern is not with the general recommendation to eliminate single-family zoning restrictions in all residential zones across the State, but rather with the ability of municipalities to impose zoning restrictions beyond those required at the State level. These additional restrictions could be used to prevent multi-family units despite the elimination of single-family zoning restrictions at the State level. Commissioner Jackson would have instead supported a version of this

recommendation that provides further guardrails against such manipulation, creating an allowance for creation of multi-family units by right.

Recommendation # 3. Prohibit municipal growth caps on the production of new housing.
*(Vote 14-1)*⁴⁹

A majority of the commission supports the need to prohibit growth caps. Initially the majority was divided about the scope of such a prohibition: whether to recommend a prohibition of caps generally on housing production or whether the prohibition on caps should remain specific to the production of new affordable housing. At the final meeting, a majority of the commission agreed to support a general prohibition against growth caps on housing production. This consensus arose from a recognition that municipalities have many other tools at their disposal to plan for local development and growth more generally, and that growth caps are artificial and cumbersome barriers which are unnecessary. Ultimately, the production of more units will create more affordable housing, and the commission encourages municipalities to use those other tools, perhaps with technical assistance from the State, to responsibly plan for local development and growth without growth caps.

Commissioner Dufour noted in her opposition to this recommendation her concern that it is a one-size fits all approach which may have unequal impacts on certain municipalities, and that Recommendation #2 will limit the ability of communities to appropriately manage growth and plan for and finance adequate infrastructure improvements. Commissioner Dufour instead recommends that the State provide municipalities with the resources and assistance necessary to assess the need for growth limitations and the extent to which they are adopted.

Recommendation #4. Provide technical and financial assistance for all communities seeking support in making zoning improvements and in identifying opportunities for increasing affordable housing. *(Vote 15-0)*⁵⁰

The commission unanimously recommends that the State provide technical and financial assistance to communities seeking the State's support in making zoning improvements and in identifying opportunities for increasing affordable housing. The commission recognizes that local governments will need additional resources to proactively plan for housing production for any of the commission's other recommendations to be implemented successfully and ultimately achieve the goal of increasing housing opportunities in this State. The State should provide funding for technical assistance for all communities seeking support in making zoning

⁴⁹ Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Representative Amy Arata, Dan Brennan, Hannah Pingree, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Kate Dufour

⁵⁰ Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Representative Amy Arata, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson

improvements and implementing other policy changes and programs. However, what that assistance looks like in each municipality may vary greatly depending on the needs of that particular community.

The commission received numerous suggestions on how to best provide this technical and financial assistance. While some of these suggestions are discussed in more detail below, the full list of suggested recommendations submitted by commission members is included in Appendix P.

It will be critical to designate an entity at the state level to provide the technical and financial assistance contemplated in Recommendation #4. The commission identified as potential state agencies to provide the technical and financial assistance the Department of Economic and Community Development and the Department of Agriculture, Conservation and Forestry. While there was general agreement on a need for technical assistance for municipalities, commission members believe further discussion and study should be conducted to determine whom and where that assistance should come from and how that assistance can be provided. Nevertheless, it is clear to the commission that a designated agency must be made responsible and be funded by the State to engage in this work that will be critical for municipalities to successfully implement the State's policy goals.

Some of the proposals deliberated by the commission and which the Legislature may want to consider include:

- Creating a state technical assistance office on housing and zoning, which could administer grants and provide direct technical assistance, or assistance through regional planning organizations or tools such as community land trusts. Alternatively, the technical assistance noted could be provided through an existing state agency, especially if federal funds are available for this purpose;
- Encouraging the creation of housing trusts, which can help leverage other funding sources through direct local investment. Local housing trusts could also be authorized to collect impact fees for housing from commercial development through state legislation, which could be used for reparations or down payment assistance to black homebuyers, and consideration could be given to a state match to local Housing Trust investments;
- Creating a Vacant Apartment Acquisition Program (VAAP);⁵¹
- Requiring municipalities to establish a minimum affordable housing goal on a regular basis;
- Creating a system of priority development areas;⁵²
- Establishing an Equitable Share Housing Plan,⁵³ and

⁵¹ See Commissioner Cheryl Golek's recommendation on VAAP programs included in Appendix P.

⁵² For more information on the creation of a system of priority development areas, see Recommendation #7.

⁵³ See *id.*

- Creating incentives that support a diversity of housing sizes and types, as appropriate based on whether dealing with rural or urban areas, such as reducing the minimum lot size or relaxing parking requirements.⁵⁴

The commission further notes that the Greater Portland Council of Governments also submitted a proposal for a pilot project, included as Appendix O, which the Legislature may want to consider. The proposal tasks a single state entity with establishing three channels of technical assistance: direct state technical assistance, regional technical assistance, and direct municipal technical assistance grants funded by the State. This proposal recognizes that a reliance on one channel of assistance, for example a single regional entity, will not be viable in all areas of the state, and that technical and financial assistance must be available to fill the gaps in areas where other channels would be less successful.

At its final meeting the Commission also noted the close relationship between the proposals in this recommendation and those contained later in this report as Recommendations #5, #6 and #7, each of which propose the establishment of different programs that may be useful in creating incentives and support for municipalities to prioritize the creation of affordable housing. Recommendation, #4, in conjunction with the other statewide policy recommendations within this report, represent important tools to strengthen the partnership between the State and local entities in order to encourage, promote and ultimately increase affordable housing options.

Recommendation #5. Create density bonuses in all residential zones throughout the State, giving low- to middle-income housing projects 2.5 times the density of the existing zone, with a parking requirement of no more than .66 spaces per unit for the additional units, and with the requirement that those units be protected as affordable for a specific period of time. (Vote 14-1)⁵⁵

A majority of the commission recommends creating density bonuses in all residential zones throughout the State, allowing low to middle-income housing projects 2.5 times the density of the existing zones, with a parking requirement of no more than .66 spaces per unit for the additional units. In addition, these units must be protected as affordable for a specific period of time, although the commission does not make a formal recommendation on how long that specific period of time should be. The commission makes this recommendation in recognition of the general principle that a certain threshold number of units needs to be met in a project in order

⁵⁴ The commission originally envisioned this proposal as a standalone recommendation but the majority (14-1) of the commission concluded it was more appropriate to fold the proposal into other recommendations in the report. Commissioner Levine disagreed, and continues to support this as a standalone recommendation because these types of parking requirements limit housing development, either intentionally or unintentionally, and are often excessive with respect to the actual parking need. However, Commissioner Levine does not recommend implementing actual State-wide parking maximums, as developers and communities should still be free to discuss the appropriate parking level without a one-size-fits-all approach.

⁵⁵ Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Representative Arata

to spread out costs sufficiently to make those units affordable and density bonuses have proven to be an efficacious way of achieving that end. The commission recognizes this could be a highly effective tool for municipalities to encourage affordable housing, and believes any concerns about quality of life or segregation of low-income housing can be mitigated by requiring that density bonuses are applicable to all residential zones.

Representative Arata noted in her opposition to this recommendation her concern that focusing solely on density and affordability may result in a lower quality of life for low-income individuals.⁵⁶

Recommendation #6. Create a three-year statewide incentive program for municipalities as follows: in Year 1, a qualifying community must make a commitment to reviewing zoning and land use restrictions. In Years 2 and 3, adopt zoning and land use policies to promote housing opportunities; qualifying communities would receive a state financial reward for up to three years, so long as they remain in good standing with the program requirements. (Vote 14-1)⁵⁷

A majority of the commission recommends creating a three-year statewide program that will provide incentives to municipalities that want to review their zoning and land use restrictions. During the first year, a qualifying community would be required to make the commitment to reviewing its zoning and land use restrictions. During the second and third years, the community would be required to adopt zoning and land use regulations that promote housing opportunities, such as, such as reducing the minimum lot size or relaxing parking requirements.⁵⁸ Qualifying communities would receive a financial award from the State for up to three years, so long as the community remains in good standing with the program's requirements. This final piece is critical to ensuring that there is appropriate accountability for communities receiving the funds to make the desired zoning and policy changes. In considering incentives, the commission encourages that new units be affordable and accessible to people with low incomes and to people from racial and ethnic communities that have historically faced discrimination in housing. And, as it did in Recommendation #4 regarding technical and financial assistance for municipalities, the commission emphasizes that consistent and reliable state funding for incentive programs is

⁵⁶ For example, additional units may be exceedingly small or the lack of parking, may impact a person's ability to commute to work. These factors are particularly concerning if the density bonuses result in the segregation of low-income housing or if there is only partial implementation of the density bonuses and they are not applicable in all residential zones. Additionally, if the density bonuses require that the incomes of those occupying the units remain below a certain level, there could be a risk that some people could lose their housing if they are promoted or obtain a higher paying job.

⁵⁷ Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Representative Arata

⁵⁸ Relaxing parking standards can lower the cost of multi-family housing development, especially in areas that are walkable or near public transportation. The commission heard from Auburn Mayor Jason Levesque during the commission's second meeting about Auburn's efforts to eliminate minimum parking requirements for commercial development and to allow more downtown land to be used as residential property, especially in areas served by sidewalks or with proximity to municipal parking and public transportation.

paramount; partnership between the State and local communities is key to the success of these programs.

Although an earlier proposal would have required MaineHousing to develop and administer the program qualifications, provide oversight and accountability, and create model zoning polices for municipal reference, commission members were concerned that this would create a conflict for MaineHousing. For this reason, the commission recommends that the program be administered by a different agency or entity. While the commission does not formally recommend a specific agency, the commission identified as potential candidates the Department of Economic and Community Development or the Department of Agriculture, Conservation and Forestry, which is the agency that currently includes the Land Use Planning Commission, Municipal Planning Assistance Program, and other planning and land use offices that used to exist under the former State Planning Office. The Governor's Office of Policy, Innovation and the Future may also be a potential administrator for this program.

Representative Arata noted that her opposition to this recommendation is based on reservations about the program's funding source, or lack thereof. Should federal funding sources be identified that could be used for this purpose, there may be greater support for the implementation of this recommendation.

Recommendation #7. Create a system of priority development areas, where multi-family housing is permitted with limited regulatory barriers. (Vote 10-5)⁵⁹

A majority of the commission recommends the creation of a system of priority development areas where multi-family housing is permitted at a significant density with limited regulatory barriers. Under this system, each community would be asked to pick a growth area in which state investment would be focused and in which state review of projects would be expedited if the community updates its local zoning and other ordinances - by, for example, upzoning - to encourage development in the priority development area.

Priority development areas should be reasonably sized and either centrally or otherwise conveniently located near resources such as municipal services, transportation, schools, employment, and amenities. Specific requirements should be developed for an area to qualify as an approved priority development area, such as allowing a certain density of housing on lots and lower parking requirements, as well as specifics on what a community gets in return for having a priority development area.

Depending on how different municipalities have handled development, some communities may find that they already have areas which qualify or could easily be made to qualify as priority

⁵⁹ Support: Speaker Ryan Fecteau, Dan Brennan, Hannah Pingree, Kate Dufour, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Madeleine Hill, Erin Cooperrider; Opposed: Senator Craig Hickman, Senator Matthew Pouliot, Representative Amy Arata, Cheryl Golek, Anthony Jackson

development areas. For example, a likely candidate for a priority development area would be an existing traditional village or town center in those communities that have them. The designation as a priority development area would help put the infrastructure in place to make higher-density development workable in that area. However, any legislation implementing this recommendation should include a reasonable time limit for municipalities to complete any necessary tasks. Priority development areas such as these could also tie in with the financial and technical assistance highlighted in Recommendation # 4 as an additional incentive to municipalities to increase affordable housing opportunities.

Some members of the commission emphasize that a certain level of flexibility for municipalities is important, especially in retaining local authority to designate the location, type (*e.g.* duplexes, triplexes, row houses, multi-story, shared housing, etc.) and the scale of multi-unit development authorized in the priority development areas. But with current construction costs high, and likely to stay high for some time, the production of multifamily housing both for rent and for sale – such as apartments and condominiums, respectively – that are either affordable (subsidized in some way) or market rate will be an important factor in addressing the shortage of housing in Maine. At the same time, however, some commission members also caution that municipalities should be cognizant of the pitfalls of designating an area as a priority development area and creating an unintended consequence of increased segregation of that area.

Commission members who voted against this recommendation note this same concern: that focusing on focusing on specific areas for multi-family development may contribute to segregating renters from homeowners. And, because black or African American households are the only racial identity more likely to rent (70%) than own (30%), could also increase racial segregation.

Commissioner Golek expressed a concern that there is not enough definition in this recommendation about what is implied by the phrase “limited regulatory barriers,” and whether this only refers to the speed with which the State reviews projects, or if it could mean that other regulations would be waived, with the potential for loosening safety and quality requirements. More specificity would be required before Commissioner Golek could support this recommendation.

Commissioner Jackson also expressed concern that the recommendation doesn’t identify affordable housing specifically. Commissioner Jackson may have been more inclined to support this recommendation if it required a certain percentage of housing in priority development areas to be explicitly designated as affordable.

Recommendation # 8. Strengthen Maine’s Fair Housing Act by eliminating the terms “character,” “overcrowding of land,” and “undue concentration of population” as legal bases for zoning regulations. (Vote 13-1)⁶⁰

The commission recommends strengthening Maine’s fair housing laws by eliminating the terms “character,” “overcrowding of land,” and “undue concentration of population” as legal bases for zoning regulations.

As the commission heard in presentations during the third meeting, exclusionary zoning relates to restrictive land use and zoning policies meant to exclude certain uses of land that are often accomplished through low-density regulation, large minimum lot sizes, parking requirements, height restrictions, explicit population growth controls, and sometimes excessive bureaucratic procedures and delays.⁶¹ The terms “character,” “overcrowding of land,” and “undue concentration of population” are often vague terms that are used to restrict the construction of affordable housing. By contrast, consideration of physical site characteristics - not people or their income sources or levels - more appropriately provides guidelines for municipal officials and may still preserve, for example, historic site protection.

“Character,” “overcrowding of land” and “undue concentration of population” are not defined in Maine law, and the commission emphasizes that any reference to them in law should include explicit and clear definitions. Exclusionary zoning has historically been used unfairly, whether intended or not, and these are terms that have been used to underwrite it. Municipalities in particular will need guidance on how removing these vague terms will be implemented and a clear definition is needed so that communities can understand where violations may occur and the penalties for such violations. The commission emphasizes, however, that the recommendation is not intended to impose housing production requirements on municipalities.

Throughout the commission’s presentations, many presenters referenced the work currently being done in Connecticut around this issue. Indeed, the commission’s recommendation to prohibit the use of these specific terms derives from the work of the Desegregate Connecticut Coalition, which includes work on Connecticut’s Public Act 21-29 (HB 6107), requiring that all zoning regulations “affirmatively further fair housing,”⁶² promote housing choice and economic diversity, address significant disparities in housing needs and access to educational, occupational and other opportunities, and expressly require the development of housing in the state’s consolidated plan for housing and community development. In strengthening Maine’s fair

⁶⁰Support: Senator Craig Hickman, Speaker Ryan Fecteau, Dan Brennan, Hannah Pingree, Kate Dufour, Heather Spalding, John Napolitano, Jeff Levine, Dana Totman, Madeleine Hill, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Senator Matthew Pouliot; Absent from vote: Representative Amy Arata

⁶¹ See presentation of Matt Mleczko, Appendix I.

⁶² As noted previously, Public Law 2021, chapter 270 enacted a new provision of law, effective October 18, 2021, which provides that “[t]he Maine State Housing Authority shall, to the extent consistent with federal law, ensure that any Maine State Housing Authority funding or any state or local funding is used in a manner that will affirmatively further fair housing in this State. The full text of this law is attached as Appendix R.

housing laws, the commission suggests that the Legislature may want to explore some of the other policies that have also come out of the Desegregate Connecticut coalition.

Recommendation #9. Create a state-level housing appeals board to review denials of affordable housing projects made at the local level. (Vote 12-2)⁶³

A majority of the commission recommends that the Legislature create a state-level housing appeals board to review denials of affordable housing projects that are made at the local level, especially in situations in which it appears that a community is engaging in exclusionary zoning or is effectively prohibiting or excluding viable affordable housing proposals from being developed. A housing appeals board could also fast-track viable affordable housing proposals that have zoning by right, but are met with costly or unreasonable delays, that are often fueled by local opposition. Although the Legislature would need to examine the details of a state-level housing appeals board, including but not limited to its composition, the scope of the board's authority, and the process by which appeals could be brought and by whom, a majority of the commission believes this board could serve as an effective tool to increase housing opportunities and to discourage local control that is effectively resulting in segregation, discrimination or poverty concentration.

Commissioner Dufour noted in her opposition to this recommendation that it would constitute an erosion of local control and home rule authority and that, with proper state resources and technical assistance in place, communities should be afforded the opportunity to make necessary changes before the Legislature considers a change of this magnitude. Additionally, Commissioner Dufour is concerned about the lack of specificity in this recommendation about who would serve on this board, how the process would be implemented, and under what circumstances and with what standards the board of appeals would operate.

Commissioner Hill opposed this recommendation because in her capacity as a representative of the Maine Association of Realtors, she is not authorized to take positions on issues of agency control or boards of appeals.

V. Additional Considerations

Over the course of the commission's seven meetings, discussions were wide-ranging and included many topics that the commission was either not able to fully explore or felt were beyond the scope of the commission's charge. However, the commission feels that these additional topics merit inclusion in this report as additional considerations for the Legislature to consider as it advances the overall goal of increasing opportunities for quality, affordable housing in Maine.

⁶³ Support: Senator Craig Hickman, Speaker Ryan Fecteau, Senator Matthew Pouliot, Dan Brennan, Hannah Pingree, Dana Totman, Heather Spalding, John Napolitano, Jeff Levine, Erin Cooperrider, Cheryl Golek, Anthony Jackson; Opposed: Kate Dufour, Madeleine Hill; Absent from vote: Representative Amy Arata.

- Fees and Related Costs:** The commission had an extended discussion regarding a potential recommendation, submitted by Commissioner Jackson, to prevent zoning that charges unreasonable or different fees for multi-family affordable housing or land-lease communities, or impose onerous consulting fees on property owners. In support of this potential recommendation, commissioners noted that any *unreasonable* fee is discriminatory on its face, and that fees have been used as a tool to limit affordable housing projects. One example given was a situation in which tree fees⁶⁴ were being assessed on residential properties but not commercial properties. Similarly, some communities require that site improvement costs be bonded, held in escrow, or secured with a line of credit until site work is completed. These are the types of costs that could be waived for developments receiving MaineHousing or other public funding, or in the case of below-market affordable development. However, fees may be legitimately used for purposes related to, for example, the creation of affordable housing, and eliminating them would put costs back on property taxes. For example, a code enforcement program may be financed in part by fees and in part by property taxes; removing the fees would make the program entirely reliant on funds raised through property taxes. Ultimately, the commission felt that it did not receive much information or any substantive presentations on this particular topic, leaving the commission unable to make a full recommendation.
- Short-term rentals:** Short term rentals, such as Airbnb's, are another area of concern that was raised but that the commission believes requires a more in-depth study. Commissioners noted that the rapid growth of short-term rentals in Maine has taken existing housing stock out of the year-round rental pool, putting pressure on rental rates throughout the State. Although long-term impacts may not yet be known, there is evidence that short-term rentals are impacting the housing market. Of particular concern is the rise of non-owner-occupied short-term rentals in strong housing markets. While owners who rent out their own units at times can supplement their household income, non-owner-occupied short-term rentals do not provide the same benefits and can essentially remove a housing unit from the market. While the commission has not made a formal recommendation, this may be a topic that deserves further study to assess the benefits and drawbacks of regulating short-term rentals. Commission members are particularly interested in ensuring that new housing units produced using the recommendations from this report are used primarily as permanent, year-round housing for Maine residents.
- Farmworker housing:** One specific type of housing shortage that the commission did not have time to engage in more fully is workforce housing, and specifically housing for farmworkers. A related issue is the loss of prime agricultural land to development – both residential and commercial. Development and implementation of policies that address Maine's housing crisis should factor in the impacts on the State's farmland.

⁶⁴ The example given is part of a tree planting requirement in Portland, in which if a developer cannot plant a certain number of new trees on a site due to site constraints, the developer can pay a fee-in-lieu to the city for street trees.

Recommendations related to this topic that the Legislature may want to consider are specifically noted on the final page of the commission's suggested recommendations attached in Appendix __.

- **Reconstitution of the State Planning Office:** In its discussions regarding the provision of technical assistance to municipalities, the commission discussed the former State Planning Office, which was eliminated in 2012. Members discussed the advantages and disadvantages of having a centralized office responsible for providing technical and financial assistance, whether that be a full separate agency or a smaller division within an existing state agency. Ultimately, in Recommendation # 4 the commission recommends that technical assistance must be provided to municipalities to encourage changes in zoning and land use regulation, but does not come to consensus or make a formal recommendation on where that technical assistance comes from or the umbrella agency under which it should sit.
- **Energy efficient building materials:** Although not directly related to zoning and land use regulation, one suggested topic that arose out of the discussion of the development of new affordable housing, is the quality of the building materials and the use of energy efficient and environmentally friendly building materials, especially when building new housing or refurbishing older buildings to be used as affordable housing.

VI. Conclusion

The commission recognizes that the plan for addressing Maine's housing shortages must be multi-faceted, and that there is both an immediate need to increase housing opportunities in Maine and a need to plan for increased housing opportunities in the future. The commission also recognizes that the recommendations put forth in this report represent only the beginning of the work towards increasing housing opportunities in Maine. Commission members look forward to working with the Joint Standing Committee on Labor and Housing in refining the details of the recommendations and in crafting legislation that will implement these recommendations and in a way that advances the State's policy goals. The commission urges the Legislature to continue the work that this commission has begun, as continued research and study of these issues is critical.

Finally, the commission would like to thank all of the presenters and members of the public for generously offering their time, expertise, and advice on the complicated issues involved in increasing housing opportunities in this State. Their knowledge and perspectives were invaluable to the commission as it endeavored to develop recommendations on these challenging and complex, but also critical issues. The commission also would like to thank staff for their time and dedication to the commission's work.

APPENDIX A

Authorizing Legislation: Resolve 2021, chapter 59

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 445 - L.D. 609

**Resolve, To Establish a Commission To Increase Housing Opportunities in
Maine by Studying Zoning and Land Use Restrictions**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this resolve establishes the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions; and

Whereas, the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative session; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Commission established. Resolved: That the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions, referred to in this resolve as "the commission," is established.

Sec. 2. Commission membership. Resolved: That, notwithstanding Joint Rule 353, the commission consists of 15 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including a member from each of the 2 parties holding the largest number of seats in the Legislature;
2. Two members of the House of Representatives appointed by the Speaker of the House, including a member from each of the 2 parties holding the largest number of seats in the Legislature;
3. The Director of the Maine State Housing Authority, or the director's designee;
4. One member representing the Office of the Governor, appointed by the Governor;
5. Four public members, one representing a statewide municipal association, one representing a statewide organization that advocates for affordable housing, one

representing statewide agricultural interests and one who is in the building trades, appointed by the President of the Senate; and

6. Five public members, one representing a regional planning association or a statewide organization that advocates for smart growth policies and projects, one representing the real estate industry, one who is a residential developer, one representing an organization that advocates for low-income or middle-income renters or homeowners and one representing a local or statewide organization promoting civil rights that has racial justice or racial equity as its primary mission, appointed by the Speaker of the House.

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission.

Sec. 4. Appointments; convening of commission. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

Sec. 5. Duties. Resolved: That the commission is authorized to meet 6 times and shall:

1. Review data on housing shortages in the State for low-income and middle-income households;
2. Review state laws that affect the local regulation of housing;
3. Review efforts in other states and municipalities to address housing shortages through changes to zoning and land use restrictions;
4. Consider measures that would encourage increased housing options in the State, including but not limited to municipal incentives, state mandates, eliminating or limiting single-family-only zones and allowing greater housing density near transit, jobs, schools or neighborhood centers; and
5. Review and consider the historical role of race and racism in zoning policies and the best measures to ensure that state and municipal zoning laws do not serve as barriers to racial equality.

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the commission, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session.

Sec. 7. Report. Resolved: That, notwithstanding Joint Rule 353, no later than November 3, 2021, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee on Labor and Housing.

Sec. 8. Outside funding. Resolved: That the commission shall seek funding contributions to fully fund the costs of the study. All funding is subject to approval by the

Legislative Council in accordance with its policies. If sufficient contributions to fund the study have not been received within 30 days after the effective date of this resolve, no meetings are authorized and no expenses of any kind may be incurred or reimbursed.

Sec. 9. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

LEGISLATURE

Study Commissions - Funding 0444

Initiative: Allocates funds received from contributions for the costs to the Legislature of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
Personal Services	\$880	\$0
All Other	\$1,370	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,250	\$0

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPENDIX B

Membership list, Commission To Increase Housing Opportunities in Maine By Studying Zoning and Land Use Restrictions

**Commission to Increase Housing Opportunities in Maine by
Studying Zoning and Land Use Restrictions
Resolve 2021, ch. 59**

Membership List

Name	Representation
Senator Craig Hickman – Chair	Member of the Senate – a member from each of the 2 parties holding the largest number of seats in the Legislature
Speaker Ryan Fecteau – Chair	House Member – a member from each of the 2 parties holding the largest number of seats in the Legislature
Senator Matthew Pouliot	Member of the Senate – a member from each of the 2 parties holding the largest number of seats in the Legislature
Representative Amy Arata	House Member – a member from each of the 2 parties holding the largest number of seats in the Legislature
Dan Brennan	Director of the Maine State Housing Authority, or the director’s designee
Hannah Pingree	Member representing the Office of the Governor
Kate Dufour	Representing a statewide municipal association
Dana Totman	Representing a statewide organization that advocates for affordable housing
Heather Spalding	Representing statewide agricultural interests
John Napolitano	Member who is in the building trades
Jeff Levine	Representing a regional planning association or a statewide organization that advocates for smart growth policies and projects
Madeleine Hill	Representing the real estate industry
Erin Cooperrider	Member who is a residential developer
Cheryl Golek	Representing an organization that advocates for low-income or middle-income renters or homeowners
Anthony Jackson	Representing a local or statewide organization promoting civil rights that has racial justice or racial equity as its primary mission

APPENDIX C

**Housing in Maine: An Overview presented by Peter Merrill,
Deputy Director, MaineHousing**

Housing in Maine: An Overview
By Peter Merrill, MaineHousing Deputy Director
August 12, 2021

Commission to Increase Housing Opportunities by Studying
Zoning & Land Use Restrictions

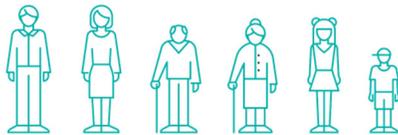
PANDEMIC & FALLOUT

The unprecedented events of 2020 both exposed and amplified the impacts of unequal access to decent, affordable housing. For households with secure employment and good-quality housing, their homes provided a safe haven from the pandemic. However, for the thousands of households that lost income and are still struggling to cover their housing costs, their situations are anything but secure.

These disparities are likely to persist even as the economy recovers, with many lower-income households slow to regain their financial footing and facing possible eviction or foreclosure. (Harvard Center for Housing Policy, adjusted for Maine). Of course, we still have not seen the last of pandemic-related impacts, because the pandemic is not over.

SLOW TO NO GROWTH

Maine is largely rural, sparsely populated, with modestly sized urban or service centers. Population in US is growing, but population in Maine and New England has been flat since 2000.



Most areas in Maine: population is getting older/
declining.

But not everywhere: southern/coastal counties are
growing - some are even getting younger.

Maine cities
& towns: **100** growing population **400+** declining population

The scale of community in Maine, historically, influences our vision of community in the future. Maine is largely a collection of small towns, even our urban centers are small compared to other places. This sense of scale affects our development decisions.

The fastest growing age cohort are those over 65, and older adults will likely comprise 30% of the population by 2030.

SMALLER HOUSEHOLD SIZE

Per the US Census:

- Slow continued shift toward non-family, small family households. Maine is third lowest in average household size and second lowest among owned units in the U.S.
- Higher than average number of homes occupied by older adults partially explains Maine's small overall household size of 2.3. The average household size for owned homes is 2.4 and 2.06 for rented units.

Smaller households and the preference for smaller housing is consumptive of land using traditional development patterns. However, smaller units offer opportunities to increase density more efficiently.

HOMEOWNERS & RENTERS

- 72% of occupied housing units are owned.
- 28% are rented. Prior to the pandemic, growth in rental units outpaced those that are owned.

COVID-19 has affected housing preference with a sharp increase in home buying. It is not clear if this is a temporary shift or a permanent trend. Median home and rental prices have returned to and exceeded pre-recession levels. Affordable rental and owned units are declining, and so are vacancy rates. Tight inventories of both are increasing prices and cost burden. Unless we can reduce the cost of housing, more and more Mainers will be cost burdened.

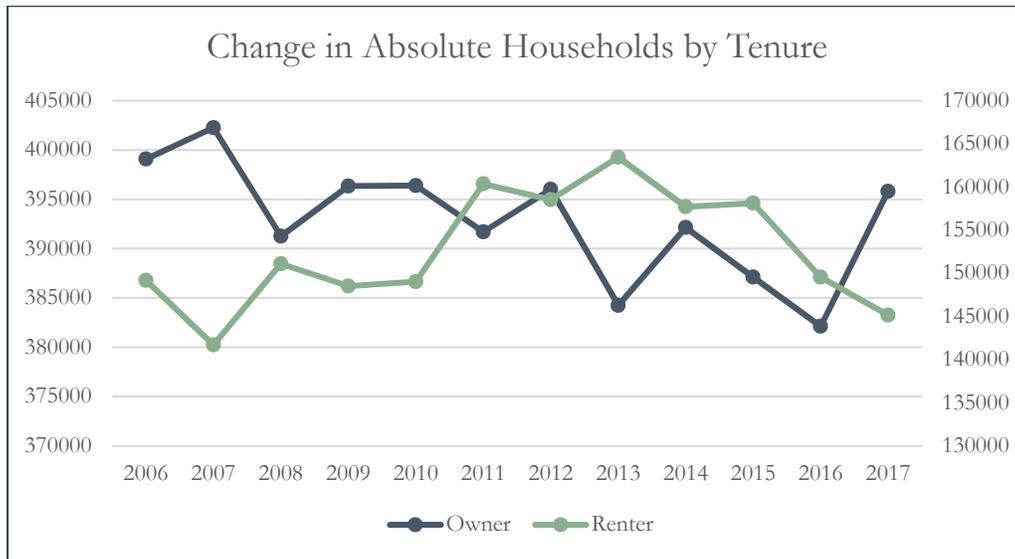
AFFORDABILITY

Affordability and the cost of housing is increasingly burdening Maine residents:

- Maine's poverty rate has dropped to 12%; income has not kept pace with the cost of housing.
- 24% of households earn 50% or less of area median income.
- Renter median income \$29,350 vs. \$64,679 for homeowners: explains the greater need for rental housing assistance.
- 39.3% of homeowners without a mortgage were cost burdened, paying in excess of 30% of income on housing.
- A larger share of older adults own their homes, have lower incomes, and a higher rate of need likely to increase as this segment of the population grows.

HOMEOWNERSHIP AFFORDABILITY

The 2008 mortgage crisis resulted in a reduction in the home ownership rate and a shift to renting. The return to homeownership has been gradual as low interest rates and a supply of homes stimulated purchasing.



The average house price in Maine is unaffordable to the average income household in all Maine counties except Aroostook, Kennebec, Penobscot, Piscataquis, Somerset, and Washington counties. Low interest rates and the recent surge in home buying have significantly reduced the supply of affordable homes pricing many first time homebuyers out of the market. We are seeing a slight decline in our first home loan program reflective of the tightening market and higher purchase prices.

Although the supply of existing homes for sale is at a record low, the subsiding pandemic and resumption of more normal activity could encourage more owners to put their homes on the market. However, COVID variants of course could also change that calculus. An expanded supply of for-sale homes would help to slow the meteoric rise in house prices, but new construction also has to pick up substantially to keep homeownership relatively affordable.

RENTER AFFORDABILITY

Renting is affordable in only one county in Maine – Franklin County.

- 49.1% of renters are cost-burdened, paying more than 30% of their income on housing. Low income renters are of course hit hardest by cost burden.
- Approximately 37,245 renter households are extremely low income.
- Extremely low-income renters paying over 50% of their income on housing comprise 16% of all renters.
- Small family renter household comprise the largest share of extremely low-income households.
- 54% of extremely low-income renters have substandard housing (defined as lacking complete plumbing or kitchen facilities).

- Small single parent and older adult renters face the greatest housing challenges and greatest need. Nearly 15% of households with at least one person over 75 have extremely low incomes. 36% of households with one or more children aged 6 or under have extremely low incomes or low incomes.

The income limits for MaineHousing financed affordable housing for a one person household is \$42,400. Entry-level earnings for many professions are below the low-income threshold, including:

- Firefighters: \$27,490
- Elementary school teachers: \$38,080
- Construction and extraction occupations: \$33,040
- Farming, fishing, and forestry occupations: \$28,940

HOUSING QUALITY

Maine has the eighth oldest housing stock. Maine's housing stock consists of 750,964 houses, of which:

- Houses built before 1939 represent 24% (179,613) of the housing stock.
- Houses built between 1940 and 1979 represent 33% (244,104) of the housing stock.

HOUSING PREFERENCE

We are seeing a move toward Maine people preferring smaller, more energy efficient homes. This preference may be reflective of smaller household sizes.

Pre-pandemic: Maine people showed a preference for living near urban areas, coastal counties, and the I-95 corridor.

Post-pandemic: Access to broadband and more accepting views on telecommuting means that where one lives may not be as strong a factor. However, how COVID influences settlement patterns remains to be seen. Certain impacts of the pandemic on housing markets are potentially temporary – most notably, the drop in high-end urban rental demand. Indeed, early signs suggest that the reopening of offices, universities, restaurants, and other amenities is already bringing renter households back to city centers.

However, the growing demand for suburban and exurban living may be a more enduring shift, particularly if working from home becomes common practice. If freed from the requirement to commute every day, many more households (including those from out of state) will seek out lower-cost housing away from employment centers.

MAINEHOUSING'S ROLE IN ADDRESSING AFFORDABILITY

Our programs help families afford heating, maintaining, and repairing the home they own (or in the case of heating, the home they rent), which also support housing affordability efforts.

Of course, we are known for supporting homeownership opportunities for first home purchasers with an estimated 1,000 loans a year. We are also known for financing affordable multifamily rental housing developments.

Existing Multifamily Housing and Rental Assistance

- USDA Rural Development: 324 properties / 7,810 units
- MaineHousing Financed Development: 761 properties / 19,850 Units
- HUD properties: 8,050 Units
- Supportive Housing (2020): 265 properties / 1,384 units
- Housing Choice Vouchers (HCV): 12,000 households per month statewide, 3,816 served by MaineHousing (25,283 households on the waitlist).

Housing in Maine

Presented to the Commission to Increase Housing Opportunities by Studying
Zoning and Land Use Restriction
August 12, 2021

Maine's Housing Market

- Maine is largely rural, sparsely populated, with modestly sized urban centers, and has an aging population. Unlike the United States, population growth in Maine, as in New England, has been flat since 2000.
- The fastest growing age cohort are those over 65, and older adults will likely comprise 30% of the population by 2030.
- A larger share of older adults own their homes, have lower incomes, and a higher rate of need likely to increase as this segment of the population grows

The Census indicates a slow continued shift toward non-family, small family households. The higher than average number of homes occupied by older adults partially explains Maine's small overall household size of 2.3 compared to 2.6 nationally.

- The average household size for owned homes is 2.4 and 2.1 for rented units.
- Maine Homeowners percentage: 72.3%
- Maine Renters percentage: 27.7%
- On any given day, Maine has approximately 1,000 people who are homeless.

Homeownership

- The median home price in Maine was \$256,000 in 2020, a 14% increase over 2019. The number of housing unit sold was 19,921, a 10% increase.
- The median house price in Maine is unaffordable for the median income household in all Maine counties except Aroostook, Kennebec, Penobscot, Piscataquis, Somerset and Washington counties.
- MaineHousing First Home Loan Program (2020): 930 loans

Rental

- The median rental 2 bedroom in Maine costs \$1,062 per month.
- The median rental is unaffordable for the median income household in all Maine counties except Franklin.
- Nearly 15% of households with at least one person over 75 have extremely low incomes. Nearly 15% of households with at least one person over 75 have extremely low incomes.
- And 36% of households with one or more children aged 6 or under have extremely low incomes or low incomes.

Affordable Housing

In order to address the changes in Maine's housing market, MaineHousing is working with other state and federal agencies to provide more affordable housing. Below is a summary of existing affordable housing in Maine in 2020.

- USDA Rural Development: 324 properties / 7,810 units
- MaineHousing Development: 761 properties / 19,850 units
- HUD properties: 8,050 units (plus 3,964 public housing units)
- Supportive Housing: 265 properties / 1,384 units
- Housing Choice Vouchers (HCV): 12,000 households per month / 25,283 on the waitlist
- First Home Loans: 930 home purchases

Housing Quality

Maine has the 8th oldest housing stock in the nation.

- Maine's housing stock consists of 750,964 housing units
 - Housing units built before 1939 represent 24% (179,613) of the housing stock.
 - Housing units built between 1940 and 1979 represent 33% (244,104) of the housing stock.
 - 54% of the housing units was built before 1980 (rank 19th in the U.S.).
 - 87% of children with lead poisoning live in housing built before 1950.

COVID-19 Emergency Rental Assistance

During the pandemic,

- More than 9,500 households received help paying their rent and utilities
- \$48.5 million invested in rent relief

The data cited in this fact sheet are from the US Census or data collected by MaineHousing



Housing Facts and Affordability Index

Maine - 2020

Homeownership Affordability Index

Maine	Year	Index	Median	Median	Income Needed	Home Price
			Home Price ¹	Income ²	to Afford Median Home Price	Affordable to Median Income
	2016	0.97	\$184,000	\$50,990	\$52,545	\$178,552
	2017	0.93	\$197,000	\$53,190	\$57,089	\$183,546
	2018	0.89	\$212,500	\$56,987	\$64,367	\$188,138
	2019	0.90	\$225,000	\$59,575	\$66,044	\$202,959
	2020	0.91	\$255,000	\$63,340	\$69,691	\$231,762
Androscoggin County		0.94	\$203,500	\$53,843	\$57,288	\$191,262
Aroostook County		1.54	\$106,000	\$46,527	\$30,171	\$163,465
Cumberland County		0.81	\$361,500	\$80,174	\$99,110	\$292,432
Franklin County		0.98	\$193,500	\$51,219	\$52,286	\$189,552
Hancock County		0.85	\$274,000	\$59,959	\$70,827	\$231,955
Kennebec County		1.08	\$194,000	\$57,610	\$53,543	\$208,733
Knox County		0.85	\$265,000	\$60,160	\$70,941	\$224,728
Lincoln County		0.77	\$305,000	\$61,390	\$79,891	\$234,368
Oxford County		0.97	\$197,450	\$51,501	\$53,245	\$190,981
Penobscot County		1.10	\$175,000	\$54,443	\$49,658	\$191,863
Piscataquis County		1.27	\$126,200	\$44,340	\$35,034	\$159,720
Sagadahoc County		0.94	\$271,000	\$68,406	\$72,716	\$254,936
Somerset County		1.13	\$144,500	\$45,791	\$40,523	\$163,283
Waldo County		0.92	\$223,750	\$57,373	\$62,695	\$204,757
Washington County		1.04	\$156,000	\$45,482	\$43,753	\$162,165
York County		0.86	\$330,000	\$75,612	\$88,076	\$283,301

The Homeownership Affordability Index is the ratio of Home Price Affordable at Median Income to Median Home Price. An index of less than 1 means the area is generally unaffordable - i.e., a household earning area median income could not cover the payment on a median priced home (30 year mortgage, taxes and insurance) using no more than 28% of gross income.

Households Unable to Afford Median Home

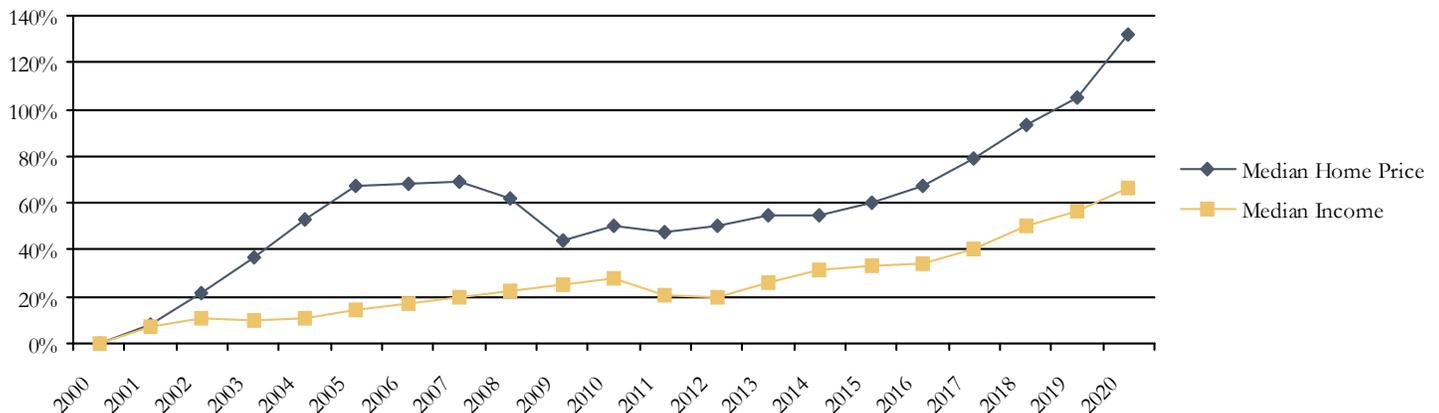
Maine	Year	Households Unable to Afford Median Home		Total Households	Median Home Price ¹	Income Needed to Afford Median Home	
		Percent	Number			Annual	Hourly
	2016	52.5%	296,967	565,157	\$184,000	\$52,545	\$25.26
	2017	54.1%	305,672	565,295	\$197,000	\$57,089	\$27.45
	2018	56.3%	319,595	567,491	\$212,500	\$64,367	\$30.95
	2019	55.7%	317,967	571,087	\$225,000	\$66,044	\$31.75
	2020	55.5%	317,611	572,753	\$255,000	\$69,691	\$33.51
Androscoggin County		53.0%	23,558	44,452	\$203,500	\$57,288	\$27.54
Aroostook County		34.4%	10,009	29,085	\$106,000	\$30,171	\$14.51
Cumberland County		61.4%	76,944	125,365	\$361,500	\$99,110	\$47.65
Franklin County		51.0%	6,547	12,841	\$193,500	\$52,286	\$25.14
Hancock County		57.9%	14,555	25,124	\$274,000	\$70,827	\$34.05
Kennebec County		47.6%	24,725	51,984	\$194,000	\$53,543	\$25.74
Knox County		58.8%	10,378	17,649	\$265,000	\$70,941	\$34.11

Lincoln County	62.2%	9,646	15,496	\$305,000	\$79,891	\$38.41
Oxford County	51.5%	12,765	24,767	\$197,450	\$53,245	\$25.60
Penobscot County	46.3%	29,038	62,676	\$175,000	\$49,658	\$23.87
Piscataquis County	40.5%	3,082	7,613	\$126,200	\$35,034	\$16.84
Sagadahoc County	52.9%	8,277	15,658	\$271,000	\$72,716	\$34.96
Somerset County	45.1%	9,762	21,625	\$144,500	\$40,523	\$19.48
Waldo County	54.2%	9,333	17,211	\$223,750	\$62,695	\$30.14
Washington County	47.6%	6,658	13,973	\$156,000	\$43,753	\$21.03
York County	58.6%	51,077	87,234	\$330,000	\$88,076	\$42.34

Unattainable Homes as a Percentage of Homes Sold

Maine	Percentage of Unattainable Homes	Affordable Homes Sold	Unattainable Homes Sold
2016	52.8%	9,555	10,689
2017	53.9%	9,513	11,139
2018	58.1%	7,534	10,440
2019	56.3%	8,015	10,321
2020	56.4%	8,792	11,370
Androscoggin County	56.4%	543	702
Aroostook County	24.7%	652	214
Cumberland County	72.2%	1,168	3,029
Franklin County	50.2%	282	284
Hancock County	60.4%	417	636
Kennebec County	46.1%	963	823
Knox County	64.1%	251	448
Lincoln County	69.7%	210	483
Oxford County	53.0%	464	523
Penobscot County	41.7%	1,130	807
Piscataquis County	39.2%	276	178
Sagadahoc County	58.1%	213	295
Somerset County	39.6%	448	294
Waldo County	55.4%	279	346
Washington County	46.2%	290	249
York County	66.4%	1,098	2,167

Relative Increases in Income and Home Price ³



Rental Affordability Index

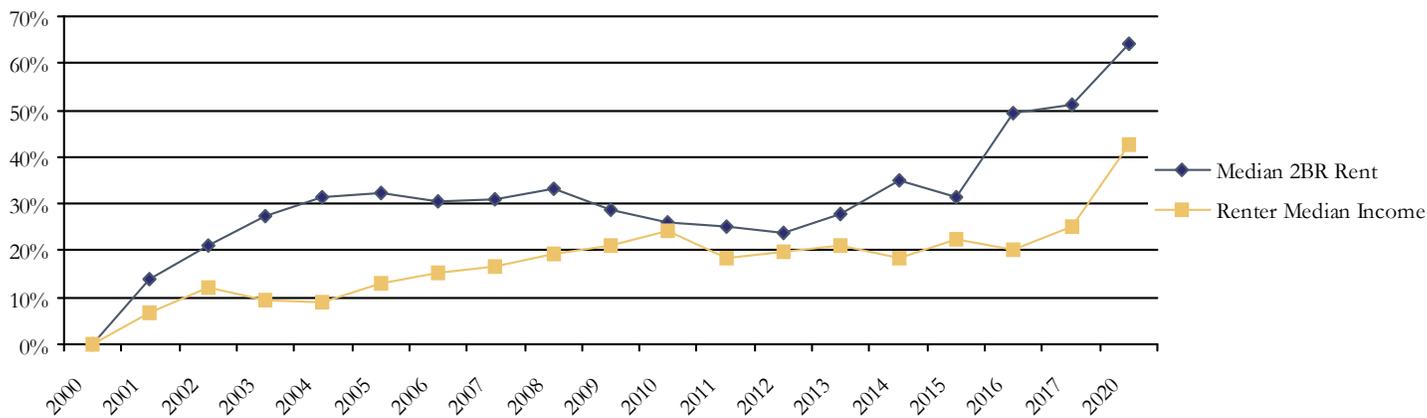
Maine	Year	Index	Median	Renter	Income Needed	2 BR Rent
			2 BR Rent (with utilities) ¹	Household Median Income ²	to Afford Median 2 BR Rent	Affordable to Median Income
	2016	0.77	\$966	\$29,588	\$38,640	\$740
	2017	0.79	\$977	\$30,804	\$39,093	\$770
	2020	0.83	\$1,062	\$35,098	\$42,489	\$877
Androscoggin County		0.84	\$1,029	\$34,541	\$41,177	\$864
Aroostook County		0.84	\$824	\$27,545	\$32,976	\$689
Cumberland County		0.68	\$1,650	\$44,804	\$66,000	\$1,120
Franklin County		1.00	\$729	\$29,220	\$29,159	\$730
Hancock County		0.58	\$1,379	\$32,225	\$55,177	\$806
Kennebec County		0.80	\$986	\$31,533	\$39,423	\$788
Knox County		0.77	\$1,195	\$36,685	\$47,800	\$917
Lincoln County		0.78	\$1,029	\$32,306	\$41,177	\$808
Oxford County		0.75	\$932	\$27,944	\$37,297	\$699
Penobscot County		0.76	\$1,015	\$30,876	\$40,584	\$772
Piscataquis County		0.83	\$808	\$26,710	\$32,325	\$668
Sagadahoc County		0.93	\$1,011	\$37,763	\$40,423	\$944
Somerset County		0.73	\$920	\$26,754	\$36,812	\$669
Waldo County		0.70	\$1,069	\$30,008	\$42,777	\$750
Washington County		0.99	\$701	\$27,629	\$28,040	\$691
York County		0.61	\$1,704	\$41,681	\$68,177	\$1,042

The Rental Affordability Index is the ratio of 2-Bedroom Rent Affordable at Median Renter Income to Median 2-Bedroom Rent. An index of less than 1 means the area is generally unaffordable – i.e., a renter household earning area median renter income could not cover the cost of the median 2-bedroom apartment (including utilities) using no more than 30% of gross income. Note that prior to 2020, average rents were used rather than median rents.

Renter Households Unable to Afford Median 2 Bedroom Rent

Maine	Year	Households		Total Renter Households	Median 2 BR Rent (with utilities) ¹	Income Needed to Afford Median 2 BR Rent	
		Unable to Afford Average 2 BR Rent Percent	Number			Annual	Hourly
	2016	61.2%	98,851	161,601	\$966	\$38,640	\$18.58
	2017	59.6%	96,448	161,746	\$977	\$39,093	\$18.79
	2020	57.2%	93,292	162,967	\$1,062	\$42,489	\$20.43
Androscoggin County		58.1%	9,143	15,746	\$1,029	\$41,177	\$19.80
Aroostook County		56.6%	4,769	8,420	\$824	\$32,976	\$15.85
Cumberland County		66.0%	27,109	41,093	\$1,650	\$66,000	\$31.73
Franklin County		49.9%	1,562	3,129	\$729	\$29,159	\$14.02
Hancock County		70.4%	4,493	6,384	\$1,379	\$55,177	\$26.53
Kennebec County		58.7%	8,661	14,746	\$986	\$39,423	\$18.95
Knox County		61.9%	2,831	4,575	\$1,195	\$47,800	\$22.98
Lincoln County		59.6%	1,758	2,948	\$1,029	\$41,177	\$19.80
Oxford County		62.5%	3,558	5,692	\$932	\$37,297	\$17.93
Penobscot County		60.7%	12,022	19,818	\$1,015	\$40,584	\$19.51
Piscataquis County		60.0%	1,027	1,712	\$808	\$32,325	\$15.54
Sagadahoc County		52.8%	2,024	3,836	\$1,011	\$40,423	\$19.43
Somerset County		63.4%	3,188	5,028	\$920	\$36,812	\$17.70
Waldo County		64.7%	2,400	3,712	\$1,069	\$42,777	\$20.57
Washington County		50.6%	1,733	3,428	\$701	\$28,040	\$13.48
York County		73.0%	16,577	22,700	\$1,704	\$68,177	\$32.78

Relative Increases in Renter Income and Average 2BR Rent



Demographics

	% Change 1990-2020	1990	2016	2017	2018	2019	2020
Population	9.3%	1,227,460	1,330,968	1,329,063	1,332,247	1,339,380	1,341,155
Households	23.1%	465,142	564,989	565,115	567,316	570,917	572,586

Endnotes

¹This data is derived from Maine Real Estate Information System ("MREIS") and MREIS reserves all rights including all proprietary rights in the data set forth herein and any use or publication of this data or any portion thereof without the express written consent of MREIS is prohibited. Any reproduction, sale or exchange of this data, in whole or in part, is likewise prohibited. All rights to the data remain the exclusive property of MREIS to the extent owned by MREIS.

²Source: Claritas Current Year Household Income

³The Y axis is an index defined as the ratio of the annual value to the year 2000 value.

APPENDIX D

**2021 Maine Housing Profile presented by Greg Payne,
Maine Affordable Housing Coalition, March 16, 2021**

2021 MAINE HOUSING PROFILE

Across Maine, there is a shortage of rental homes affordable and available to extremely low income households (ELI), whose incomes are at or below the poverty guideline or 30% of their area median income (AMI). Many of these households are severely cost burdened, spending more than half of their income on housing. Severely cost burdened poor households are more likely than other renters to sacrifice other necessities like healthy food and healthcare to pay the rent, and to experience unstable housing situations like evictions.

SENATORS: Susan Collins and Angus King, Jr.

KEY FACTS

41,454

OR

27%

Renter Households that are extremely low income

\$25,750

Maximum income of 4-person extremely low income households (state level)

-19,031

Shortage of rental homes affordable and available for extremely low income renters

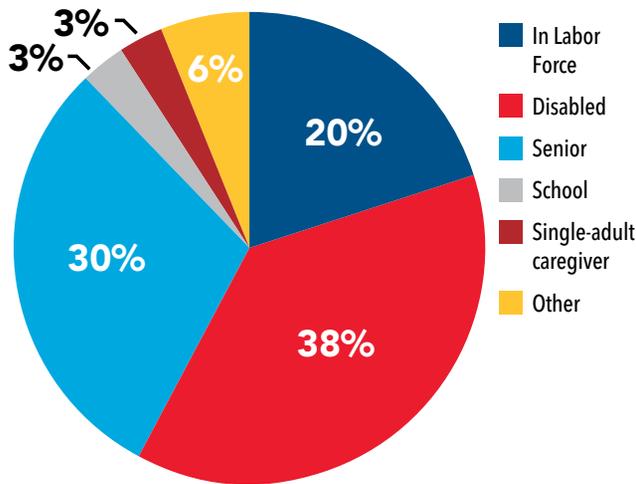
\$41,156

Annual household income needed to afford a two-bedroom rental home at HUD's Fair Market Rent.

58%

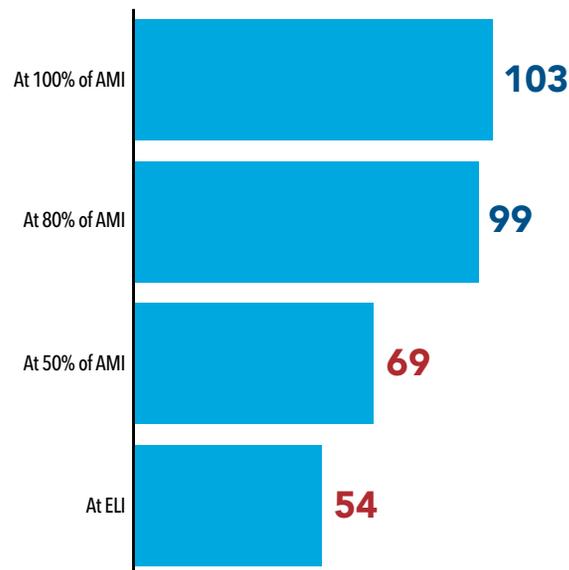
Percent of extremely low income renter households with severe cost burden

EXTREMELY LOW INCOME RENTER HOUSEHOLDS



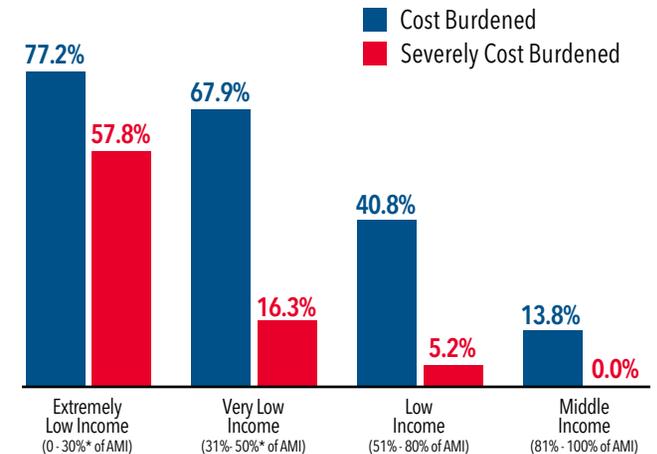
Note: Mutually exclusive categories applied in the following order: senior, disabled, in labor force, enrolled in school, single adult caregiver of a child under 7 or of a household member with a disability, and other. Nationally, 14% of extremely low-income renter households are single adult caregivers, more than half of whom usually work more than 20 hours per week. Source: 2019 ACS PUMS.

AFFORDABLE AND AVAILABLE HOMES PER 100 RENTER HOUSEHOLDS



Source: NLIHC tabulations of 2019 ACS PUMS.

HOUSING COST BURDEN BY INCOME GROUP



Note: Renter households spending more than 30% of their income on housing costs and utilities are cost burdened; those spending more than half of their income are severely cost burdened. Source: NLIHC tabulations of 2019 ACS PUMS.

MAINE

#24*

In **Maine**, the Fair Market Rent (FMR) for a two-bedroom apartment is **\$1,112**. In order to afford this level of rent and utilities — without paying more than 30% of income on housing — a household must earn **\$3,707** monthly or **\$44,488** annually. Assuming a 40-hour work week, 52 weeks per year, this level of income translates into an hourly Housing Wage of:

\$21.39
PER HOUR
STATE HOUSING
WAGE

FACTS ABOUT MAINE:

STATE FACTS	
Minimum Wage	\$12.15
Average Renter Wage	\$12.90
2-Bedroom Housing Wage	\$21.39
Number of Renter Households	155,126
Percent Renters	28%

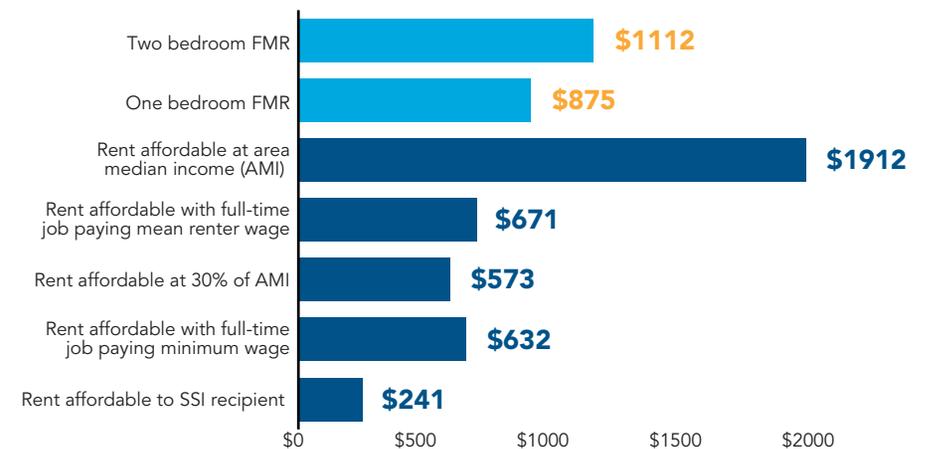
70
Work Hours Per Week At
**Minimum Wage To Afford a 2-Bedroom
Rental Home** (at FMR)

55
Work Hours Per Week At
**Minimum Wage To Afford a 1-Bedroom
Rental Home** (at FMR)

1.8
Number of Full-Time Jobs At
**Minimum Wage To Afford a
2-Bedroom Rental Home** (at FMR)

1.4
Number of Full-Time Jobs At
**Minimum Wage To Afford a
1-Bedroom Rental Home** (at FMR)

MOST EXPENSIVE AREAS	HOUSING WAGE
Portland HMFA	\$30.62
York-Kittery-South Berwick HMFA	\$28.33
Cumberland County (part) HMFA	\$23.27
York County (part) HMFA	\$22.60
Sagadahoc County HMFA	\$20.88



MSA = Metropolitan Statistical Area; HMFA = HUD Metro FMR Area.

* Ranked from Highest to Lowest 2-Bedroom Housing Wage. Includes District of Columbia and Puerto Rico.

FY21 HOUSING WAGE

HOUSING COSTS

AREA MEDIAN INCOME (AMI)

RENTERS

	Hourly wage necessary to afford 2 BR ¹ FMR ²	2 BR FMR	Annual income needed to afford 2 BMR FMR	Full-time jobs at minimum wage to afford 2BR FMR ³	Annual AMI ⁴	Monthly rent affordable at AMI ⁵	30% of AMI	Monthly rent affordable at 30% of AMI	Renter households (2015-2019)	% of total households (2015-2019)	Estimated hourly mean renter wage (2021)	Monthly rent affordable at mean renter wage	Full-time jobs at mean renter wage needed to afford 2 BR FMR
Maine	\$21.39	\$1,112	\$44,488	1.8	\$76,460	\$1,912	\$22,938	\$573	155,126	28%	\$12.90	\$671	1.7
Combined Nonmetro Areas	\$16.32	\$849	\$33,947	1.3	\$64,050	\$1,601	\$19,215	\$480	56,433	25%	\$10.57	\$550	1.5
Metropolitan Areas													
Bangor HMFA	\$20.33	\$1,057	\$42,280	1.7	\$72,700	\$1,818	\$21,810	\$545	14,019	37%	\$12.13	\$631	1.7
Cumberland County (part) HMFA	\$23.27	\$1,210	\$48,400	1.9	\$78,500	\$1,963	\$23,550	\$589	4,703	23%	\$15.61	\$812	1.5
Lewiston-Auburn MSA	\$18.21	\$947	\$37,880	1.5	\$71,200	\$1,780	\$21,360	\$534	16,271	36%	\$13.19	\$686	1.4
Penobscot County (part) HMFA	\$16.67	\$867	\$34,680	1.4	\$59,200	\$1,480	\$17,760	\$444	5,014	20%	\$12.13	\$631	1.4
Portland HMFA	\$30.62	\$1,592	\$63,680	2.5	\$99,900	\$2,498	\$29,970	\$749	34,948	31%	\$15.43	\$802	2.0
Sagadahoc County HMFA	\$20.88	\$1,086	\$43,440	1.7	\$78,300	\$1,958	\$23,490	\$587	4,071	25%	\$13.68	\$711	1.5
York County (part) HMFA	\$22.60	\$1,175	\$47,000	1.9	\$84,200	\$2,105	\$25,260	\$632	15,614	28%	\$12.16	\$632	1.9
York-Kittery-South Berwick HMFA	\$28.33	\$1,473	\$58,920	2.3	\$105,300	\$2,633	\$31,590	\$790	4,053	21%	\$12.16	\$632	2.3
Counties													
Aroostook County	\$14.12	\$734	\$29,360	1.2	\$54,900	\$1,373	\$16,470	\$412	8,270	28%	\$9.56	\$497	1.5
Franklin County	\$14.48	\$753	\$30,120	1.2	\$62,500	\$1,563	\$18,750	\$469	2,438	21%	\$9.20	\$478	1.6
Hancock County	\$17.69	\$920	\$36,800	1.5	\$71,800	\$1,795	\$21,540	\$539	5,605	24%	\$10.86	\$565	1.6
Kennebec County	\$16.19	\$842	\$33,680	1.3	\$68,700	\$1,718	\$20,610	\$515	15,353	29%	\$10.95	\$570	1.5
Knox County	\$18.60	\$967	\$38,680	1.5	\$70,400	\$1,760	\$21,120	\$528	3,874	23%	\$11.70	\$609	1.6
Lincoln County	\$19.63	\$1,021	\$40,840	1.6	\$72,000	\$1,800	\$21,600	\$540	3,188	21%	\$9.75	\$507	2.0
Oxford County	\$16.12	\$838	\$33,520	1.3	\$60,400	\$1,510	\$18,120	\$453	4,096	19%	\$9.83	\$511	1.6
Piscataquis County	\$14.12	\$734	\$29,360	1.2	\$53,900	\$1,348	\$16,170	\$404	1,693	24%	\$9.14	\$475	1.5
Somerset County	\$15.35	\$798	\$31,920	1.3	\$57,200	\$1,430	\$17,160	\$429	5,091	24%	\$10.73	\$558	1.4
Waldo County	\$19.25	\$1,001	\$40,040	1.6	\$66,000	\$1,650	\$19,800	\$495	3,587	21%	\$12.50	\$650	1.5
Washington County	\$15.29	\$795	\$31,800	1.3	\$56,400	\$1,410	\$16,920	\$423	3,238	23%	\$10.03	\$522	1.5

1: BR = Bedroom

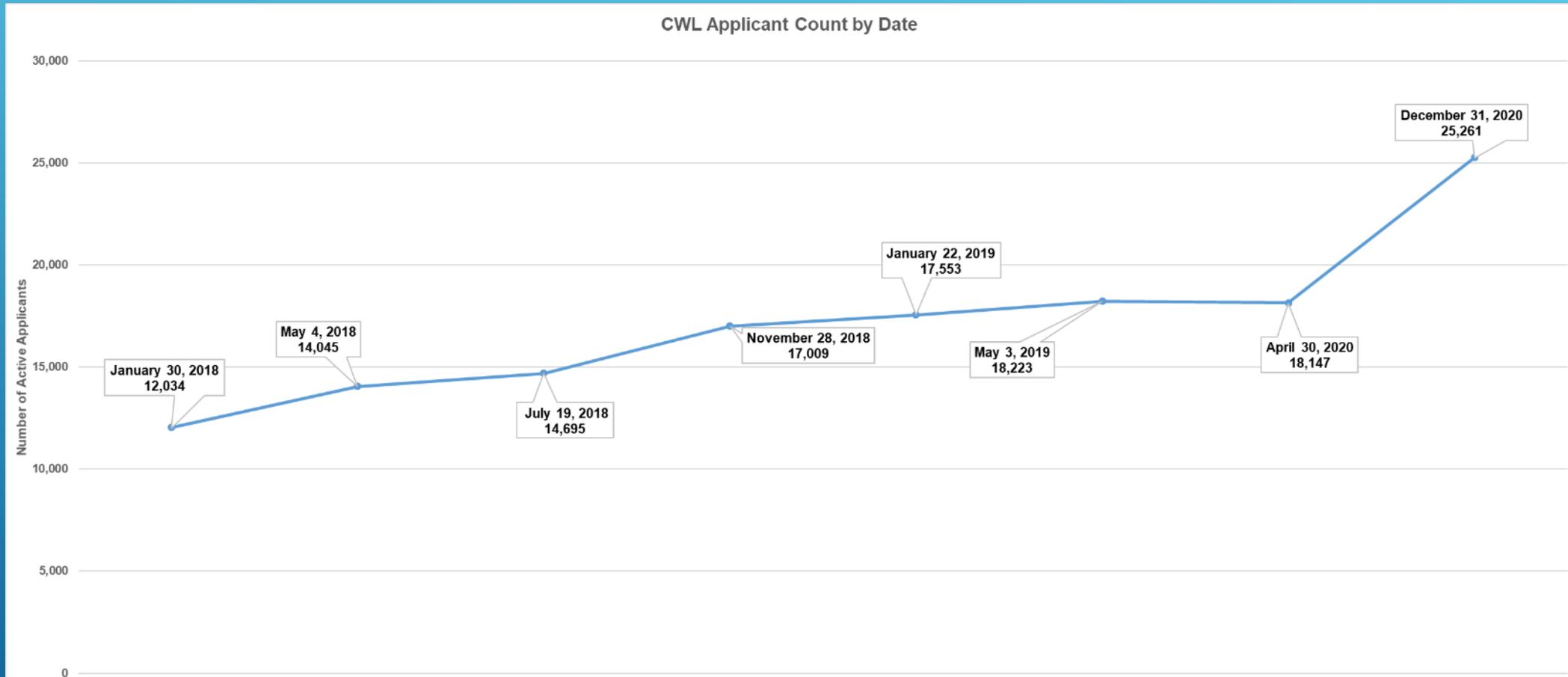
2: FMR = Fiscal Year 2021 Fair Market Rent.

3: This calculation uses the higher of the county, state, or federal minimum wage, where applicable.

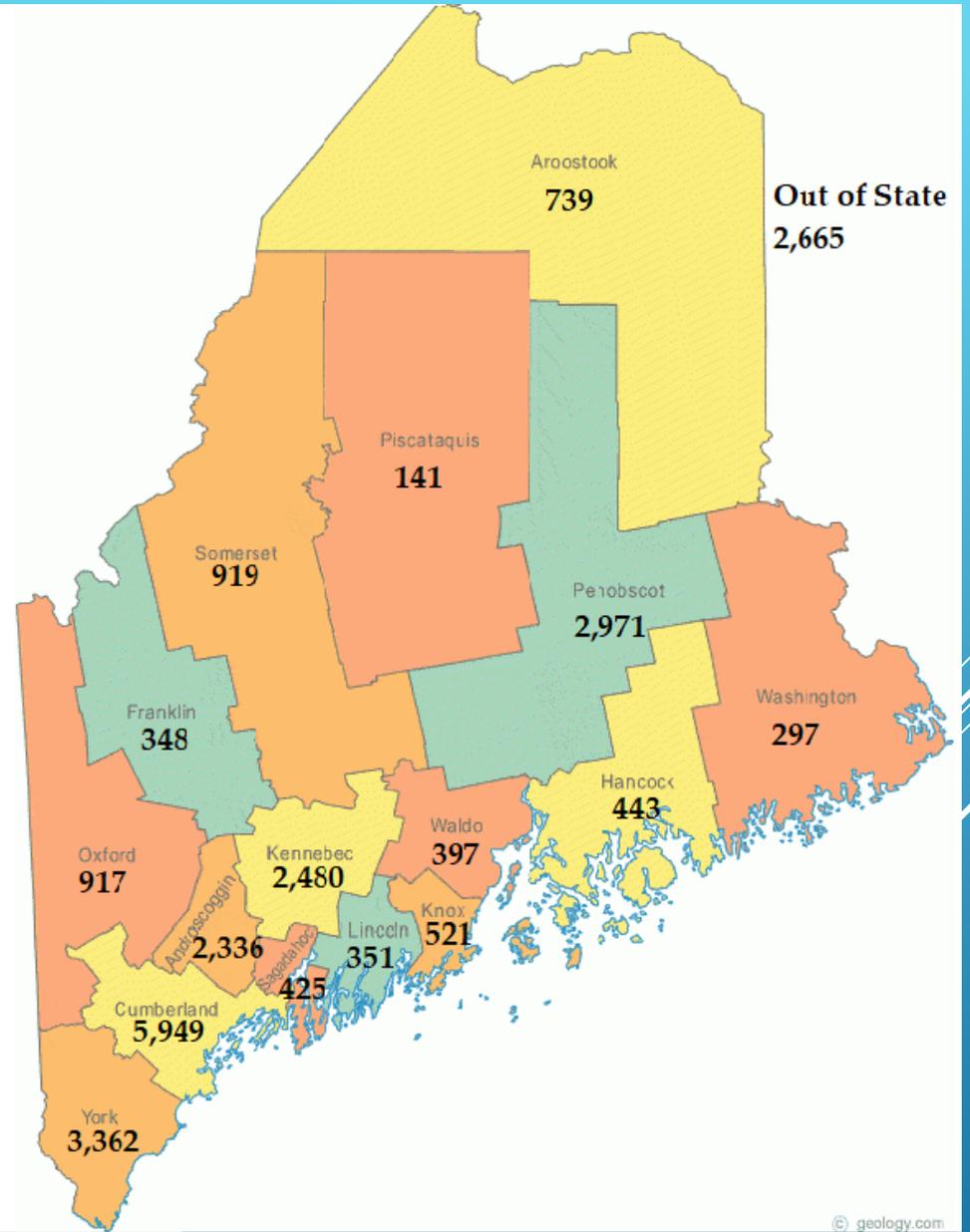
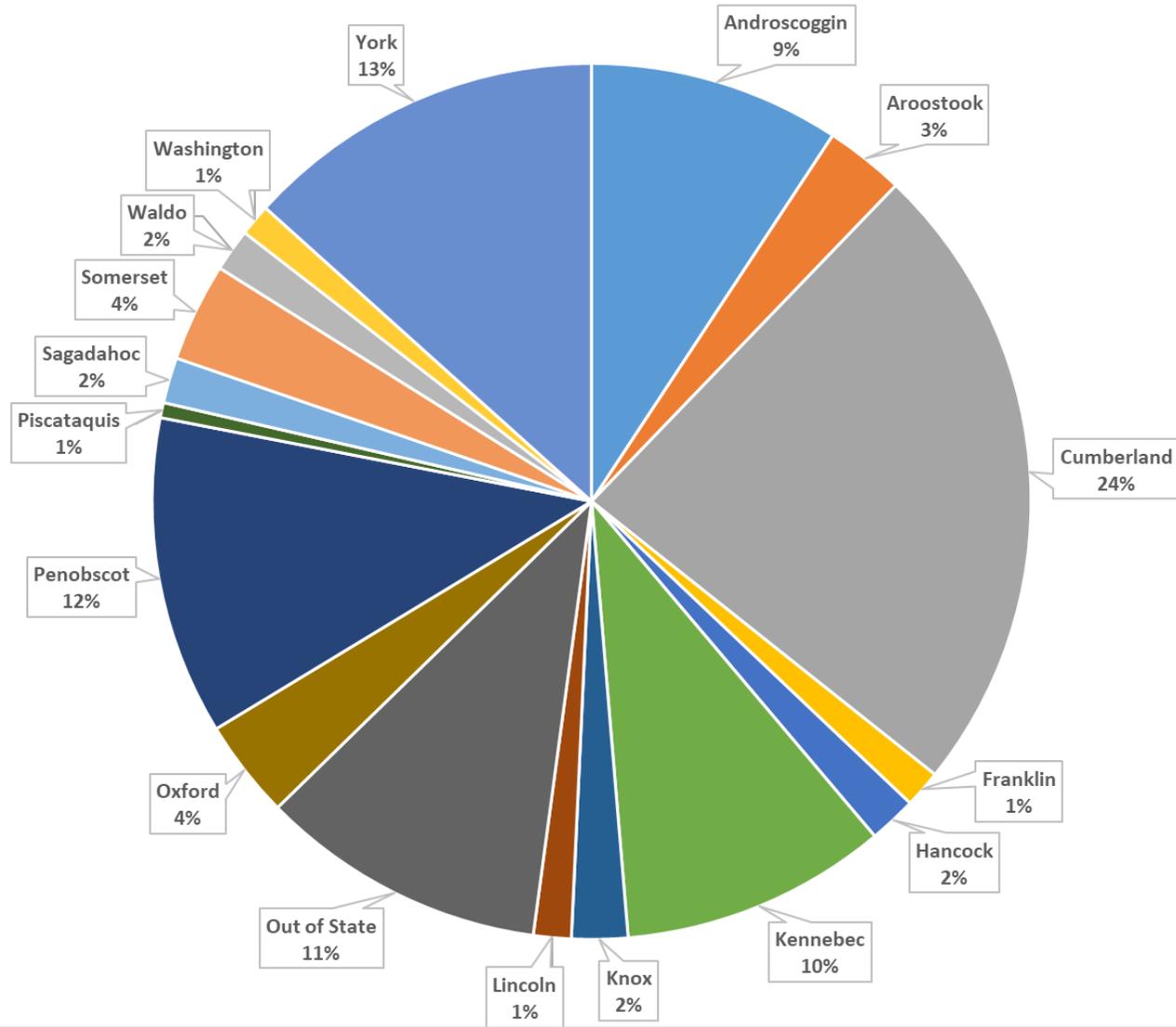
4: AMI = Fiscal Year 2021 Area Median Income

5: Affordable rents represent the generally accepted standard of spending not more than 30% of gross income on gross housing costs.

As of December 31, 2020, there are **25,261** applicants on the Waiting List.

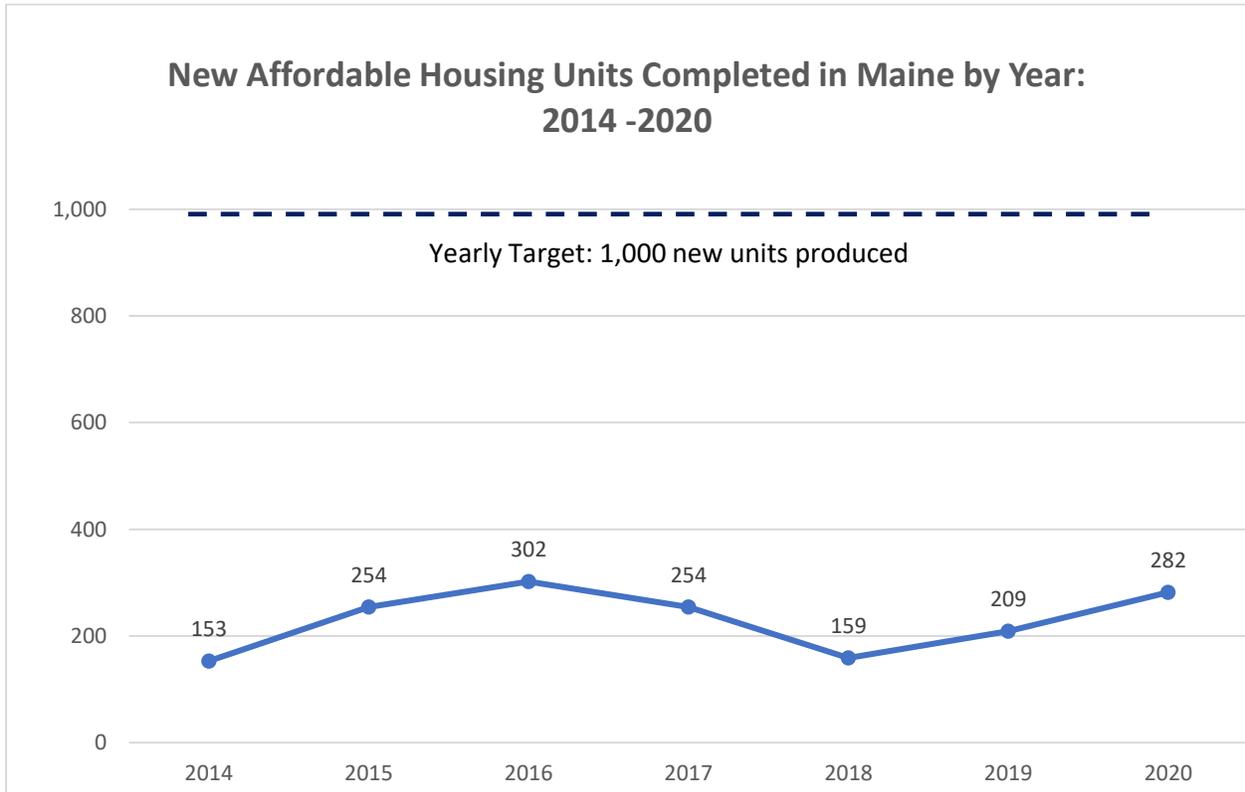


Applicants by County





MAINE AFFORDABLE HOUSING COALITION



Source: Maine State Housing Authority

Average annual production: 230 new affordable units

APPENDIX E

Commission Memo with Suggested Resources

TO: Commission to Increase Housing Opportunities by Studying Zoning and Land Use Restrictions
FROM: Legislative Staff
DATE: September 17, 2021
SUBJECT: Updated resources and links provided by Commission members

Over the past few weeks we have received many suggested articles and resources from members of the Commission to Increase Housing Opportunities by Studying Zoning and Land Use Restrictions. In an effort to make these resources available to everyone, we have compiled the below list for your reference.

News Articles/Opinion Pieces:

- “California advances 2 zoning bills to promote scarce housing.” AP, August 26, 2021 https://apnews.com/article/business-california-9e606c2ee595b658bffa57b2c69eae24?utm_source=National+Conference+of+State+Legislatures&utm_campaign=3e5c9a2be0-NCSL_TODAY_AUG_27&utm_medium=email&utm_term=0_1716623089-3e5c9a2be0-377862012
- “Deregulation can do more for renters than eviction moratoriums.” The Hill, August 25, 2021, <https://thehill.com/opinion/white-house/569358-deregulation-can-do-more-for-renters-than-eviction-moratoriums>
- “How the US made affordable homes illegal.” Vox, August 16, 2021, https://www.youtube.com/watch?v=0Flsg_mzG-M
- “Minnesota lawmakers look to create more affordable housing.” The Center Square, August 10, 2021, https://www.thecentersquare.com/minnesota/minnesota-lawmakers-look-to-create-more-affordable-housing/article_44005512-f9f4-11eb-8b1f-9bb5be9f98e0.html
- “Denser cities could be a climate boon – but nimbyism stands in the way.” The Guardian, August 22, 2021, <https://www.theguardian.com/us-news/2021/aug/22/cities-climate-change-dense-sprawl-yimby-nimby>
- “Five Lessons from California’s Big Zoning Reform.” Sightline Institute, August 26, 2021, <https://www.sightline.org/2021/08/26/four-lessons-from-californias-big-zoning-reform/>
- “Address and Prevent Homelessness: A panel discussion recognizing and empathetically addressing the housing crisis within our Central Maine Community.” Cynergy & ELS Housing Panel, August 18, 2021, <https://www.youtube.com/watch?v=3tkjbMXC9wg>

- “How we rise: Build race equity into rezoning decisions.” Brookings, July 13, 2021 <https://www.brookings.edu/blog/how-we-rise/2021/07/13/build-race-equity-into-rezoning-decisions/>
- “Housing Discrimination and Local Control.” NYU Furman Center, March 2019 <https://furmancenter.org/research/iri/essay/housing-discrimination-and-local-control>
- “Justice Zoning: Without it, We Invite History to Repeat Itself” NYU Furman Center, March 2019 <https://furmancenter.org/research/iri/essay/justice-zoning-without-it-we-invite-history-to-repeat-itself>
- “Closing the Divide: Creating Equitable, Inclusive, and Affordable Communities.” Prepared by the Regional Affordable and Fair Housing Roundtable co-convened by Enterprise Community Partners and the Fair Housing Justice Center, January 2019 <https://wroinc.org/closing-the-divide-creating-equitable-inclusive-and-affordable-communities/>

Book recommendations:

- Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York; London: Liveright Publishing Corporation, 2017.
- Prevost, Lisa. *Snob Zones: Fear, Prejudice, and Real Estate*. Boston: Beacon Press, 2013.

APPENDIX F

**Written testimony presented by Mayor
Jason Levesque, Auburn**

Recap of Testimony
9/9/2021

Thank you for your time, and I appreciate your work on such a monumental problem

I'd like to share what I and the City of Auburn has been doing, to help solve the issue of housing scarcity since 2015. And what challenges and solutions we have addressed or implemented

Since 2016 Auburn has approved and had built over 140 workforce housing units in partnership with Maine State Housing, Auburn Housing, and private developers.

Since 2019 Auburn's planning board has approved with some completed, others under construction approximately 250 market rate apartments, and 80 new single family homes.

We also expect another 150 single family homes and apartments to be presented for approval before June 30, 2022.

Over the next three years Auburn will also administer over 5 million in federal funds to remediate lead paint and rehabilitate over 150 existing housing units.

While we are excited by the growth and mix of affordable and market rate, much more needs to be done, not just for Auburn residents but residents throughout southern Maine who are flocking here for housing as soon as they are built.

The following is a list of issues that we identified that are contributing to the high cost of housing that we are trying to address.

1. Parking requirements
2. Exclusionary/low density zoning
3. Artificial scarcity for buildable land
4. Archaic watershed and corresponding septic ordinances (local watershed and water district managed)
5. Income requirements for residential building in Agriculture zone
6. State rev share penalties for adding new residential valuation
7. Restrictive zoning
8. Lack of contractors
9. Lack of downtown owner occupied multi units
10. Lack of building 'missing middle' housing units (2, 3 and 4 unit properties)
11. Excessive permitting and associated fees
12. Excessive and redundant codes and approval process for rehabilitation and new construction.
13. Cost of providing and maintaining utilities due to age of existing units.

Auburn has, or is in the process of implementing the following policy changes.

1. Focus on 'Attainable' housing. Housing that can be built by private developers that will attract residents in a variety of income ranges now and in the future.

2. Conducting a cost of service analysis, showing that we are properly sized and operating fixed infrastructure and services that can handle an additional 2,000 housing units, which will decrease property taxes by approximately 20%, thereby making housing more affordable for all residents.
3. Implemented form based codes in all of our downtown and urban areas.
4. Created an Efficiency Maine matching grant for energy efficiency upgrades that will lower operating costs of Low to moderate income families, thereby making them more affordable and climate friendly.
5. Elimination of commercial parking requirements- allowing more downtown land to be used for residential especially in areas served by sidewalks, proximity to municipal parking and public transportation.
6. Secondary dwelling units-no restrictions on size or use, any area in which residential units are allowed.
7. Waiving all build/rehab fees for veterans.
8. Approved zoning that allows creation of multi family housing in all residential zones, based on zoning density.
9. Focus on developing infill
10. Eliminating over 50% of all permits, fees, impact fees etc...
11. Minimizing the income requirements to build farm related housing within our Agriculture & resource protection zone. (Dropped from 50% of family income to 30%)
12. Aggressive use of TIF's on large residential developments to shelter value increase.
13. New comprehensive plan utilizing guidance from the Mercatus Institute to evaluate the best way to increase housing stock and livability of our City. Proposed massive increases to density some zones are going from 2 units per acre to 8 and from 4 to 16
14. Commissioned a comprehensive study of Lake Auburn watershed so that we can implement best practices to allow for low impact development, ecological protection and maintain purity of our drinking water source. By using science we can accomplish all three goals.

SUGGESTIONS

Focus on subsidizing new market rate construction on a per affordable unit basis. For example if a developer is building 50 new market rate units, pay the difference in market rate rent and affordable rent for a period of 10 years on 25% of the units. This allows the developer to use the subsidy to offset upfront costs and locks in affordable rents for a period of time. The overall increase in units, whether subsidized or not, increase supply.

Invest in missing middle housing that can be used as infill while providing opportunities for owner occupied. For example, identify moderate income owner occupiers, and provide grants of \$30k to 40k per unit built up to 4 with commitment that for each unit subsidized they will be rented to someone who falls within the LMI range for a period of x amount of years.

Pass legislation that prohibits income requirements tied to any type of municipal zone. For example Auburn's agriculture zone requires that you derive 30% of your income from farming in order to build a residence. This was put into place in 1964 with the sole intent of stopping new

development and preventing minorities and low income individuals from moving to the historically high income areas of Auburn.

Rethink state revenue share and other unintended penalties for municipalities who increase value through housing. Modify state revenue share formulas so they do not discourage residential development. Municipalities are enacting policies that are anti growth in order to maximize state revenue share.

Change narrative on growth. Smart growth is good, we need it and we should welcome it. For example the 2002 State of Maine Comprehensive Planning guide quotes unsubstantiated data and promotes a narrative that is anti residential development. Unified messaging throughout all State departments and training on 'smart growth is OK'.

Ensuring that current state fire and safety ordinances are not counter productive such as current requirements for sprinklers and additions to existing buildings which make rehabilitation not cost effective. Good intent, poor execution

Best regards,

Jason Levesque
Mayor of Auburn Maine

Mayor Levesque's Housing Development Shelter Proposal

The incentive program would:

Shelter the value of new residential housing units developed in the previous year and located in communities with populations that exceed 10,000.

Provided the municipality eliminates onsite parking requirements for new housing developments and designates as affordable at least 25% of the units in a development of four or more units.

FY 2022 Projected Municipal Revenue Sharing

Auburn	Sheltered Value of Housing Investment				
	Current	\$50M Investment	50% Incentive	75% Incentive	100% Incentive
Tax Commitment	\$ 43,735,218	\$ 43,735,218	\$ 43,735,218	\$ 43,735,218	\$ 43,735,218
100% Assessed Value	2,175,900,000	2,225,900,000	2,200,900,000	2,188,400,000	2,175,900,000
Mil Rate	20.10	19.65	19.87	19.99	20.10
Revenue Sharing	4,346,995	4,225,664	4,285,667	4,316,163	4,346,995.47
Difference		(121,332)	(61,329)	(30,833)	-

APPENDIX G

**Written Testimony presented by Christine Grimando,
City of Portland, Director of Planning and Urban
Development**



CITY OF PORTLAND
Planning & Urban Development
Christine Grimando, AICP, Director

To: Senator Hickman, Speaker Fecteau and Members of the Commission.

From: Christine Grimando, AICP, City of Portland, Director of Planning & Urban Development

Date: September 30, 2021

RE: Summary of Testimony

The following is a written summary of my comments to the Commission on September 9th regarding Portland's local housing tools, policies, and priorities. Following a summary of my comments I also summarize the questions asked by Commission members.

For years the City of Portland has documented the need for more affordable housing more housing supply overall to meet the needs of current and future residents of the city to support Portland's own goals for growth, for equity, and to encourage a population that can support a strong local economy, support transit, and support complete neighborhoods. Though Portland has built approximately 1400 units of housing since mid-2017, housing affordability and supply issues have only been exacerbated since the onset of the pandemic. Portland has implemented a multifaceted suite of housing policies to both encourage new housing creation and require affordability. The below briefly summarizes Portland's current suite of policies, and considers initial considerations for additional, future strategies:

- *Portland's Plan 2030*, the City of Portland's 2017 comprehensive plan and the foundation for the city's land use and other policy areas, foregrounds housing as one of the city's most pressing issues, and one connected to all facets of the city's vision - equity, sustainability, and security among them. Though many of the housing initiatives below precede 2017, the plan supports new and ongoing initiatives in this area.
- The city's land use code has included provisions since the early 2000s that require that any development proposals that would remove existing housing replace those units, either within the same geographic area or by contributing to the city's Housing Trust Fund.
- Portland has implemented changes in several zoning districts to allow for greater housing creation, including adjusting the dimensional standards in several neighborhoods and corridors, to allow for smaller lots and higher residential densities. These provisions have generally been targeted towards

higher density residential zones and mixed-use zones well-served by transit, on the grounds that they create opportunities for housing development in areas of the city that are particularly well-prepared for them. These include areas of Portland's peninsula, but also strategic locations throughout the entire city.

- In late 2020, Portland adopted expanded Accessory Dwelling Unit standards, making it substantially easier to create small increments (up to two ADUs per lot) of new housing on residential properties across the city.
- The city's land use code has long included a great deal of flexibility when it comes to parking, including exemptions in certain zones, shared parking provisions, and off-site parking allowances. As of December 2020, the city's land use code offers an off-street parking exemption to any use within a ¼ mile of a transit, essentially freeing much of the city from parking requirements, expanded the suite of tools available to reduce parking requirements, and lowered the minimum parking required per residential dwelling city-wide.
- Density and height bonuses, as well other dimensional flexibility such as reduced setbacks, are given to affordable and workforce housing proposals in some zones. Extent of bonuses and fee reductions are scaled to the proportion and extent of affordability for each project.
- Affordable housing projects have been eligible for a reduction in fees and priority application review since the mid-2000s. With the passage of an impact fee ordinance in 2018, these affordable housing fee reductions were extended to include impact fees.
- As of 2015, the city adopted inclusionary zoning, which requires that projects of 10 or more dwelling units provide a share of workforce housing either on-site or as a contribution to the City's Housing Trust Fund. A second inclusionary zoning policy was adopted in 2019 for hotels.
- The City of Portland has made the potential for affordable housing creation a priority when considering disposition of city-owned property.
- The creation and funding of the City's Housing Trust, through tools such as Inclusionary Zoning, is itself a strong tool for helping to directly finance affordable housing proposals.
- The City's Housing division administers HOME, CDBG programs, Housing TIFs and a number of other programs that provide critical financial assistance for affordable housing creation.
- As part of Portland's ReCode initiative, an evaluation and rewriting of our local regulations, we're in the midst of evaluating our codes for ways to further our housing goals, particularly through a lenses of sustainability, climate change and equity, including the lingering impact of discriminatory zoning practices from the 20th c. This builds directly on 2017 comprehensive plan goals.

We recognize that there is more to do on this topic and continue to actively pursue better and more ways to create equitable housing opportunities. There will not be one single housing policy or initiative that can sufficiently address this issue, and Portland's suite of housing tools are in recognition of this. The sum of Portland's policies also affirm that encouraging housing creation and diversity of types of housing is as essential to the overall health and accessibility of our housing supply as ensuring that we have dedicated affordable and workforce housing projects. Mixing both requirements and incentives continues to be central to our housing policy. Portland, like any community, has its diversity of neighborhoods and scales and infrastructure and opinions, and having proposals that recognize those different contexts is also critical to the

work we do, and critical to our prospects for successfully implementing change, and having the community understand and support the need for that change.

As a member of MMA's working group I have enjoyed speaking with my colleagues from across the state about our both our challenges in common, and not in common, and how we might work together toward positive change. I look forward to continuing that discussion. Thank you.

Several questions were asked by the Commission following my remarks that I've summarized below:

- One had to do whether Portland had single family zoning. There are two zones on mainland Portland, as well as zones on the City's islands, that only permit single family homes. These comprise a relatively small part of the City's land area. However, through Portland's Accessory Dwelling Unit provisions, there is no zone in the City that does not allow for more than one housing unit per lot, so in practice, all zones that permit residential uses, permit more than single family homes (I will note that the September 16th EVICTION LAB presentation to the Commission, which I found overall very interesting and valuable, indicated areas where multi-family was prohibited that did not accurately represent our actual regulations in this regard). As part of Portland's ReCode process, we are examining what areas of the City could benefit from changes to dimensional and use standards.

It's worth mentioning that the question of single family zoning is a compelling one to prompt communities to reflect on what the impacts of zoning are, but eliminating single family zoning is not itself a full response to a community's housing needs. There are zones in the City of Portland with no residential density limits at all, and a wide range of possible housing densities and lot sizes and height configurations in-between. There are also zones where multi-family housing is permitted but still relatively difficult to build due to other requirements beyond the allowed uses. Other standards, such as a minimum lot sizes, have as much impact not only on housing creation but walkability and sustainability as the category of single family v. multi-family housing types (a duplex on an acre lot v. a dozen houses + ADUs on small lots on a walkable street, for instance).

- Another question had to do with the impacts of recent citizen referendums, including changes to the Inclusionary Zoning ordinance that required a significantly greater percentage of housing projects to be affordable and at deeper levels of affordability. It is not yet a year since these changes went into effect, and too early to gauge the full impacts, since many projects that have been approved in the past year were ones that had begun prior to the new regulations going into effect. There are housing projects that we were anticipating to move forward that have not since the referendum changes, and also that we are seeing a small number of new proposals come in under the new regulations.
- The last question had to do with the impact of historic districts on housing. Historic designation is intended to retain the existing building stock, and so it by design reduces demolitions to facilitate new construction. It does not, however, reduce the maximum residential density – historic buildings have the same zoning allowances or restrictions as non-historic structures – so that buildings can be

repurposed from a non-residential use or a single family home to a multi-family home, for instance. New construction is permitted in new districts (where demolition is not the precursor), as are additions. In selective cases, such as structural deterioration, or a building in a district that is determined to not have historic significance, demolition may also occur. Districts can also help to retain existing multi-family development. However, the full impact of historic districts on housing costs and creation, neighborhood stability, and the local economy is the subject of a study that Portland is undertaking this year and early next which will provide more data and insight on this topic.

APPENDIX H

**Maine Municipal Association Workgroup
August 30th Memo**



Memorandum

To: Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Regulations

From: MMA's Affordable, Senior and Workforce Housing Working Group

Date: August 30, 2021

Re: Municipal Perspectives on Housing Development Efforts

The Maine Municipal Association has formed a 25-member municipal housing working group to collect data and information regarding local level efforts and challenges associated with increasing access to housing. The group will continue to meet as the Commission completes its work and to that end held its first meeting on August 17.

At that meeting, municipal officials discussed: (1) locally implemented housing programs and efforts; (2) resources necessary to successfully address Maine's housing shortages; and (3) the barriers State statutes, regulations, programs and mandates place on the development and implementation of municipal housing programs and initiatives.

What follows is a summary of the ensuing discussion. If you have any questions about the information provided in this memo or our efforts, please contact Kate Dufour, MMA's Director of State and Federal Relations (kdufour@memun.org).

Thank you for your interest in and consideration of the municipal perspective. Municipal leaders look forward to working collaboratively in the implementation of mutually beneficial outcomes.

Opportunities

Municipal leaders are keenly aware of the housing crisis impacting their residents, businesses and economies. Volunteers in all areas of the state are meeting, studying and implementing changes to ensure communities have the housing stock necessary to support economic development and community health and vitality. Municipal leaders, planners, and code enforcement officers recognize that changes in the way in which communities plan for and implement housing development initiatives will enable greater opportunities for low income residents, families and seniors.

Of greatest priority among municipal leaders is the need to amend local ordinances and State statutes and rules to make zoning more inclusive and accessible. Among the several recommendations, municipalities believe that significant zoning changes, such as form-based zoning, reductions in minimum lot sizes and other changes to dimensional requirements, relaxed parking requirements, as well as the adoption of ordinances allowing for accessory dwelling units will help expand the state's housing inventory.

Challenges & Resources

Home Rule, Partnerships & Collaboration. However, implementation of policies that veer from the norm will take time, investment and assistance from State partners. Key among the first steps is the need to honor home rule authority through the development of state/local/private partnerships to ensure that municipalities have access to resources and tools necessary to implement locally designed and state incentivized solutions. Furthermore, as recommendations are designed the Commission is encouraged to turn to local officials for feedback on the feasibility of implementing particular solutions.

Education. Messaging is vital to the ability to create new housing opportunities. Municipalities need the technical assistance to not only clarify what “affordable, workforce or senior” housing is, but to educate residents of the importance and value of a community with a diverse socioeconomic mix. Residents of varied backgrounds and experiences volunteer in their respective communities, contribute to economic growth, and are integral to the social fabrics of the villages, towns, and cities where they live.

Additionally, while accessory dwelling units may be seen as a logical element of a package of solutions, not all residents want to be landlords, and this should be viewed as one tool among many that could help with the availability and diversity of housing options in a community. As an example, programs geared toward assisting residents in managing a rental unit could be helpful.

State Policies. State policies also have an impact on a community’s ability to expand access to housing. The Maine Uniform Building and Energy Code has increased building costs, which has frustrated developers. While the new energy standards further valuable sustainability goals, how to balance those requirements with the need for additional housing is worth consideration. In addition, the state’s septic and subsurface wastewater rules play a role in the development of ordinances with large lot size requirements, especially in rural areas.

Economy. The economy also plays a role, as the current market is driving the cost of building materials and home sales prices.

Retaining Affordability. In an effort to retain affordability, changes in ownership of housing need to be managed at the State or regional level or through assistance to communities with limited capacity or resources to accomplish this task. Without sufficient oversight, municipal leaders fear that owners and developers that benefit from affordable housing programs may maximize their investments by selling currently affordable units at the market rate. Municipalities often do not have the resources, time or expertise necessary to manage the portfolio of affordable housing stock.

Solutions & Resources

Access to Data. In order to successfully implement housing strategies, municipalities will need access to data. Questions regarding the type of housing needed in a community today and into the future, the role mixed-use developments have on a community’s value and ability to generate

property tax revenue, and impacts on infrastructure, including roads, water, sewer and broadband need to be answered.

Assessment of State Role. To some, the abolishment of the State Planning Office signaled a lack of interest in planning at the state level. The State must be willing to once again provide the resources and guidance communities need to implement housing strategies, whether through a state planning office, the creation of equivalent financial and technical support for the implementation of planning goals, or greater financial investment in regional planning commissions and councils of governments. It is unacceptable to rely solely on the property taxpayers to fund these programs and initiatives.

Incentive Based Policy. Not only should the Commission's recommendations rely on programs incentivizing municipal planning approaches, but also the housing decisions made by residents. For example, enabling residents to age in their community of choice is important. However, municipal officials question whether incentives could be put in place to encourage residents to move into smaller units within the community, thereby making larger homes available for multiple unit development or to accommodate the needs of growing households. This would not only support aging-in-place, but our existing downtowns, residential neighborhoods, and sustainable development patterns.

Home Rule/Local Control. Lastly and most importantly to municipal leaders, the solutions offered by the Commission should focus on issuing guidance, resources and incentives in lieu of regulation and providing municipalities the flexibility necessary to address the unique needs of each community. In the event the State implements requirements that communities meet housing creation and affordability goals, there should be flexibility in how they are able to meet those requirements, reflecting their scale, resources, and affordability challenges.

A list of proven options for local implementation is a good first step.

Other Materials

Attached as Appendix A is a table summarizing the MMA working group's discussion. A list of members is attached as Appendix B.

Summary of MMA’s Affordable, Senior and Workforce Housing Working Group Meeting
August 17, 2021

<p>Opportunities</p>	<ul style="list-style-type: none"> • Honor home rule authority by providing communities with a list of options to consider, including form-based zoning to encourage mixed-use development or relatively higher density residential development that also supports and protects community character. • Reduce minimum lot sizes and other dimensional and use impediments to housing creation. • Relax parking space requirements. • Encourage adoption of accessory dwelling unit ordinances.
<p>Challenges & Needs</p>	<ul style="list-style-type: none"> • Ensure municipalities have access to resources and tools necessary to implement solutions. • Facilitate needed State/municipal/private partnerships. • Clarify affordable, workforce and senior housing thresholds in housing policy deliberations and recommendations, as well as the role of increased housing supply (not deed restricted for affordability) has in making housing more accessible for all. • Develop the resources necessary to help residents understand why change is necessary. • Develop programs encouraging homeowners to consider renting out accessory dwelling units. • Review State policies that may impede growth and development, including the Maine Uniform Building and Energy Code, and septic and subsurface wastewater rules • Assess the impact the market (e.g., labor, materials, national housing market trends, etc.) has on housing development. • Develop programs to assist communities administer affordable housing programs, either through a State or regional body, or through additional financial and technical assistance to communities.
<p>Tools & Resources</p>	<ul style="list-style-type: none"> • Provide municipalities with access to housing data and best practices necessary to make short-term and long-term housing development decisions. • Solidify and emphasize the State’s role as providing guidance and technical and financial assistance to help

	<p>communities achieve their planning goals. Many on the working group emphasized the appropriateness of this approach rather than mandates.</p> <ul style="list-style-type: none">• Create programs and incentives that rely on State resources rather than property taxes and other local revenue for implementation.• Develop incentives to positively impact residents' housing decisions.• Develop solutions that rely on local ingenuity, creativity and flexibility to meet the community's needs.• In the event the State requires that communities meet housing certain and affordability goals, there should be flexibility in how they are able to meet those requirements, reflecting their scale, resources affordability challenges and context.
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Appendix B

Members of MMA’s Affordable, Senior and Workforce Housing Working Group

Name	Title	Municipality
Butler, Robert	Selectboard	Waldoboro
Caler, Audra	Town Manager	Camden
Caterina, Jean-Marie	Councilor, Chair of Ordinance Committee, Liaison to the Scarborough Affordable Housing Committee and founder of Ad hoc Group on Work Force Housing	Scarborough
Crockett, Larissa	Manager	Wells
Davis, Mary	Acting Director of Housing & Economic Development	Portland
Drexler, Kyle	Town Planner	Orono
Drost, Matthew	CEO (Chesterville, Vienna, Chelsea) Selectperson, Randolph	Randolph
Farr, Vanessa	Senior Planner	Greater Portland Council of Governments
Feldman, Lee Jay	Director of Land Use & Planning	Southern Maine Planning & Development Commission
Gilliam, Werner	Director of Planning and Development	Kennebunkport
Grimando, Christine	Planning & Urban Development Director	Portland
Hepler, Allison	Selectperson and Legislator	Woolwich
Humphrey, April	Council Chair	Yarmouth
Jenkins, Priscilla	Councilor	Winthrop
Jones, Dusty	Selectperson	Wiscasset
Jordan, Penny	Councilor	Cape Elizabeth
Levesque, Jason	Mayor	Auburn
Moison, Cathy	Councilor	Lincoln
Piekut, Elena	City Planner	Ellsworth
Powers, Andrea	Town Manager	Fort Fairfield
Smith, Laurie	Town Manager	Kennebunkport
Sturgis, Matthew	Town Manager	Cape Elizabeth
Towne, Terry	Elected Assessor	Lamoine
Tudor, Bronwen	Selectperson	Georgetown
Ward, William	Selectperson	Kennebunk

APPENDIX I

**Land use Policy and Zoning: A History and Policy Review –
Presentation materials from Matt Mleczko, September 16, 2021**

Land use policy and zoning: what we know and how we can do better

Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions

Matt Mleczko

The Eviction Lab

September 16, 2021



Outline

- History of land use policy and zoning
- How land use and zoning policy has evolved over time
- What does the evidence say?
 - ▶ What are the effects of exclusionary zoning?
 - ▶ What contributes to exclusionary zoning?
- How widespread is exclusionary zoning?
 - ▶ A brief look at exclusionary zoning in Maine
 - ▶ Why is it so entrenched?
- What has been done to combat exclusionary zoning?
- What else can be done?

What does zoning and land use policy entail?

- Zoning is the division of community into zones in which certain activities are permitted or prohibited (Fischel 2015)
- The three universal elements of zoning laws and land use policy
 - ▶ Minimum lot sizes
 - ▶ Use restrictions
 - ▶ Height restrictions
- Other common elements
 - ▶ Parking requirements
 - ▶ Minimum setbacks
 - ▶ Soil quality
 - ▶ Shape of lots
 - ▶ Open space
- Zoning can discriminate by age, but not income, ethnicity, or race
 - ▶ Also can limit number of unrelated people sharing a home

Terms

- Exclusionary zoning: restrictive land use and zoning policies meant to exclude certain uses of land
 - ▶ Often accomplished through low-density regulations (e.g. single-family zoning), large minimum lot sizes, parking requirements, and height restrictions or explicit population growth controls
 - ▶ Also accomplished through excessively bureaucratic procedures and delays
 - ▶ Often ends up excluding low-income households and people of color
- Inclusionary zoning: the provision of below-market rate units alongside market-rate units (usually 20%) through either incentives or mandates
 - ▶ Not necessarily the converse of exclusionary zoning

History of land use policy and zoning

- Earliest zoning laws explicitly segregated by race (Trounstine 2018; Fischel 2015)
 - ▶ Baltimore often cited as the first, but there is evidence that San Francisco's anti-Chinese zoning policies came even earlier (Nightingale 2012)
- New York City passes first comprehensive zoning ordinance in 1916 (Fischel 2015)
 - ▶ Many cities follow suit shortly thereafter
 - ▶ Hoover's Standard State Zoning Enabling Act in 1921 is a major reason why (Nightingale 2012)

How land use and zoning policy has evolved over time

- Despite *Euclid v. Ambler* (1926), exclusionary zoning didn't become common until 1970s (Gyourko et al. 2018; Fischel 2015)
 - ▶ Municipalities had other means of segregating ethnoracial groups up until that point, all of which were increasingly struck down, especially with the Fair Housing Act of 1968
- End of the Great Migration, Civil Rights movement, white flight, and suburbanization align with this growth in exclusionary zoning
 - ▶ Municipalities could no longer segregate explicitly by race or ethnicity, so they turned to more class-based methods (Trouistine 2018, Sahn 2020)

What does the evidence say?

Plenty of evidence that exclusionary zoning inflates housing prices (Gyourko et al. 2018; Glaeser and Gyourko 2018; Glaeser, Gyourko, and Saks 2005)

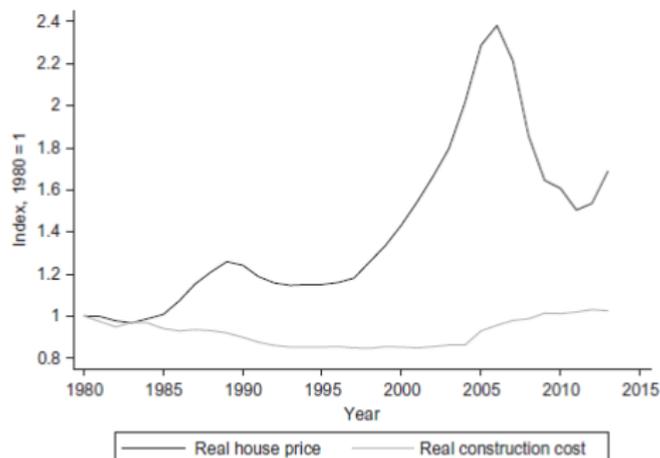


Figure 19.1 Real construction costs and house prices over time. *Note:* Construction costs are the cost of an economy-quality home from RSMeans deflated by the consumer price index. House prices are the repeat-sales index published by CoreLogic deflated by the price index for personal consumption expenditures excluding housing services. The deflator was calculated by the authors from data published by the Bureau of Economic Analysis.

Figure: Gyourko et al. (2018)

What does the evidence say?

Exclusionary zoning hasn't just led to higher housing prices, but has also exacerbated regional income inequality (Ganong and Shoag 2017)

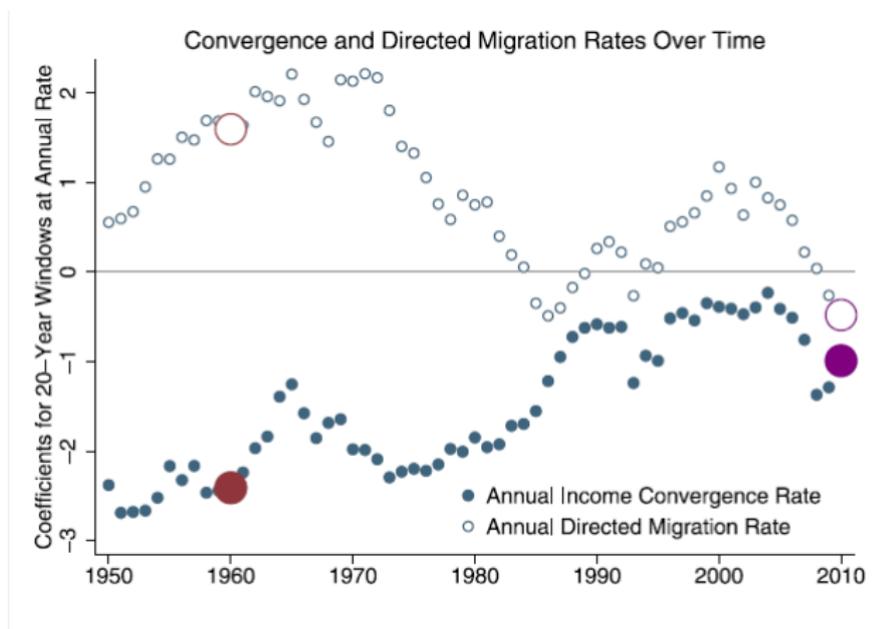


Figure: Ganong and Shoag (2017)

What does the evidence say?

By restricting where people can move because housing is too expensive, exclusionary zoning has led to dramatic declines in economic growth (Hsieh and Moretti 2019)

- If metros like SF and NYC reduced zoning and land use restrictions to the median, US GDP output would be 3.7 percent higher (\$3,685 increase in average wages for all workers)

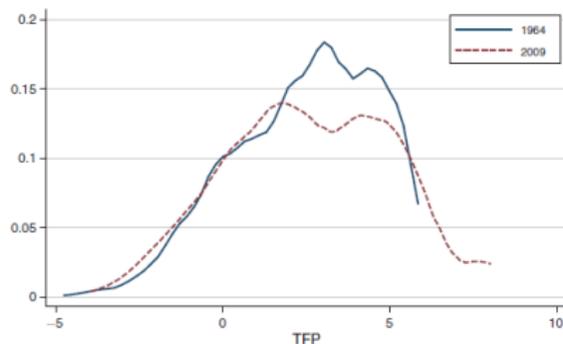


FIGURE 3. SPATIAL DISTRIBUTION OF LOCAL TFP

Notes: Local TFP is defined as $A_i^{1-\alpha} T_i^\alpha$. The graph shows the distribution of de-meaned log local TFP weighted by MSA employment in the relevant year. The sample includes 220 metropolitan areas observed in both 1964 and 2009.

Figure: Hsieh and Moretti (2019)

What does the evidence say?

But beyond economic impacts, exclusionary zoning both helped established segregation and maintains it (Rothwell 2011; Rothwell and Massey 2009; Troustine 2018, 2020; Pendall 2000)

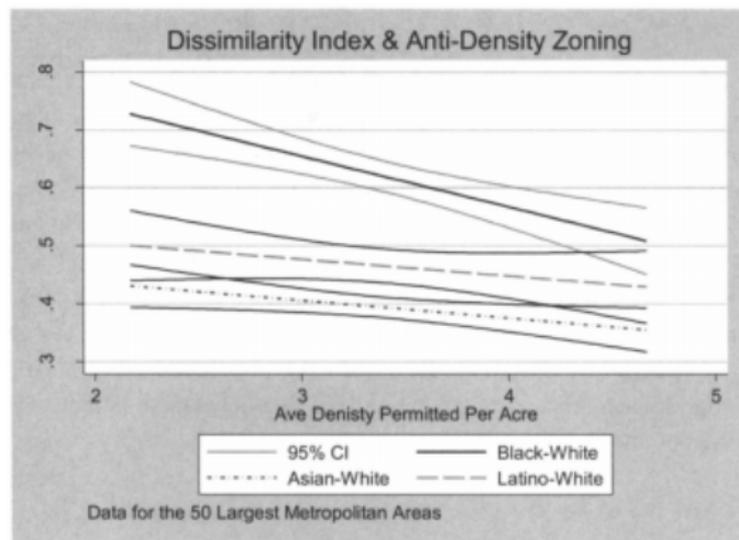


Figure 4. Dissimilarity Index and Anti-density Zoning.

Figure: Rothwell (2011)

What about the effect of upzoning?

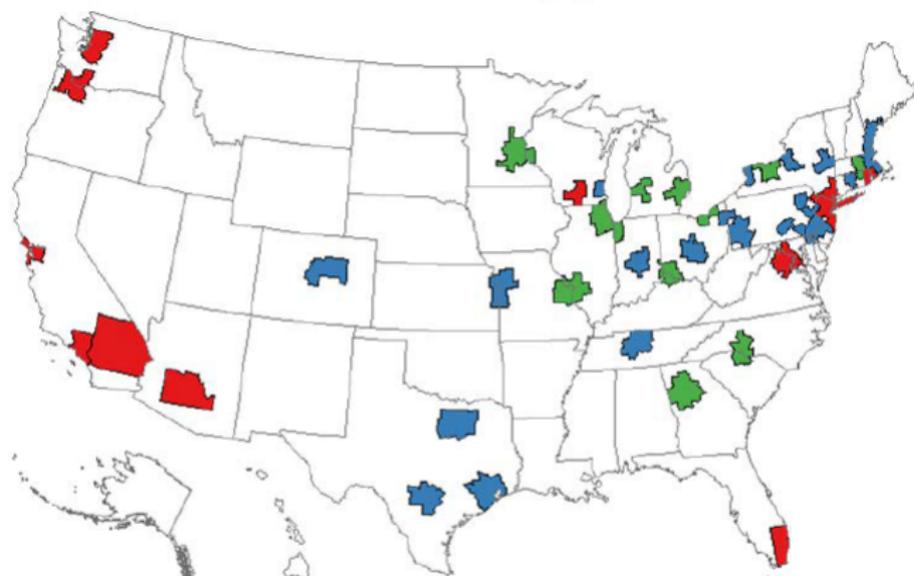
- Some recent research finds that upzonings in Portland resulted in higher densities and more housing supply (Dong 2021)
 - ▶ Related, preliminary work suggests that additional housing construction leads to lower housing costs (Li 2019; Asquith, Mast, and Reed 2019)
- Other research suggests that upzonings can lead to higher short-term housing costs (Freemark 2020) and increase the odds that a neighborhood becomes whiter, at least in the short term (Davis 2021)
- Ultimately, more research is needed since many upzonings have only recently taken place

What contributes to exclusionary zoning?

- Percentage of white residents strongly associated with support for exclusionary zoning (Troustine 2020)
 - ▶ Wealth, homeownership, per-capita expenditures, and property taxes also associated with support for or administration of exclusionary zoning (Troustine 2018; 2020)
- Dramatic increases in diversity - via phenomena like the Great Migration - led to an increase in exclusionary zoning (Sahn 2020)
 - ▶ A 1 percent increase in Black population share due to Great Migration led to 1 percent more land zoned for single family housing in 2019
 - ▶ In cities with greater increase in share of Black population due to Great Migration, permits for multifamily housing decreased from 1975-2005
 - ▶ Housing stock also grew older (less building)

How widespread is exclusionary zoning?

Figure 1: Regional Variation in Land Use Regulation
44 CBSAs with ≥ 10 Obs



Red – Top 11 WRLURI2018 Values

Blue – Middle 22 WRLURI2018 Values

Green – Bottom 11 WRLURI2018 Values

Figure: Gyourko, Hartley, and Krimmel (2019)

Zoning in Maine

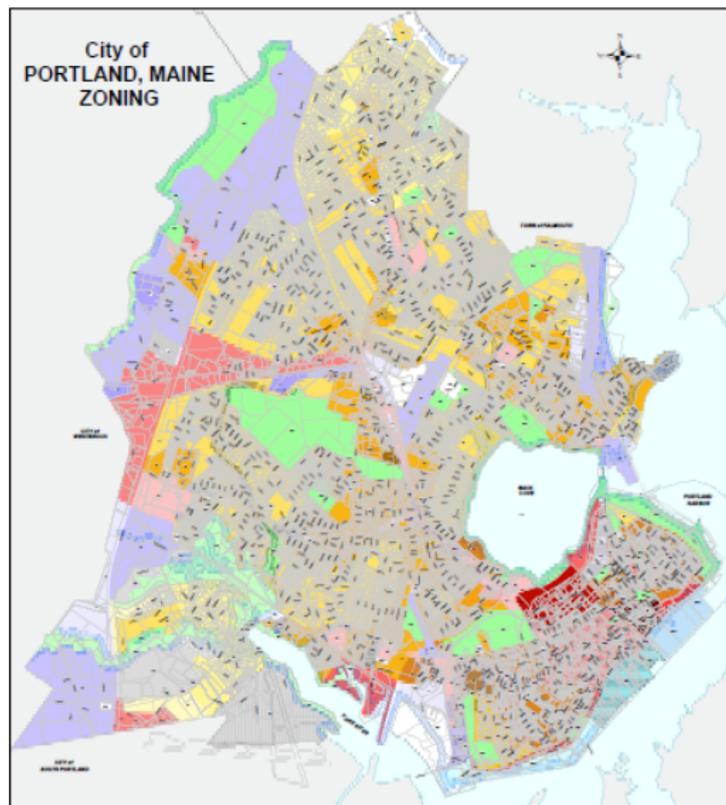
Wharton Residential Land Use Regulatory Index (WRLURI)

Statistic	U.S. 2006	Maine 2006	U.S. 2018	Maine 2018*
Mean	-0.13	0.6	-0.09	-0.56
Min	-2.15	-1.11	-2.64	-2.55
50 percentile	-0.25	0.6	-0.18	-1.23
75 percentile	0.44	1.3	0.53	-0.82
Max	4.8	2.45	4.86	2.35

*2018 sample includes different municipalities and entails a different methodology

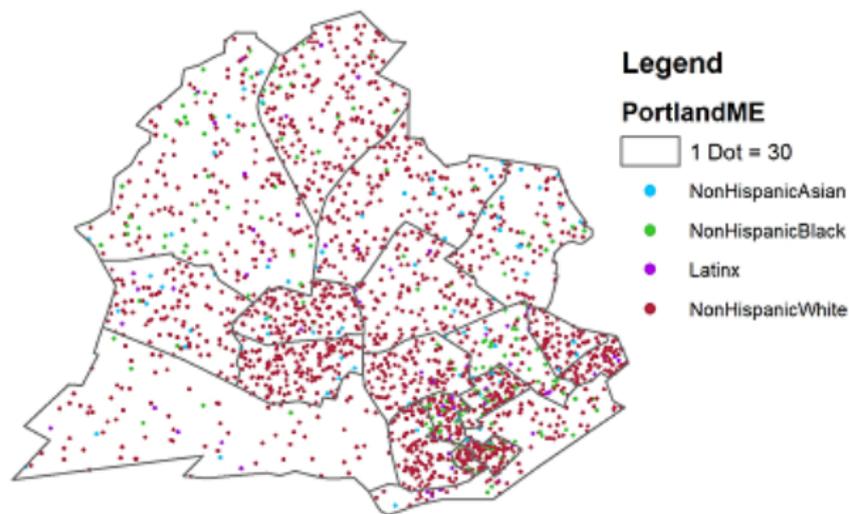
*Portland-South Portland, ME CBSA 2018 index is 0.13 (25/44 measured CBSAs)

A glance at Portland, ME



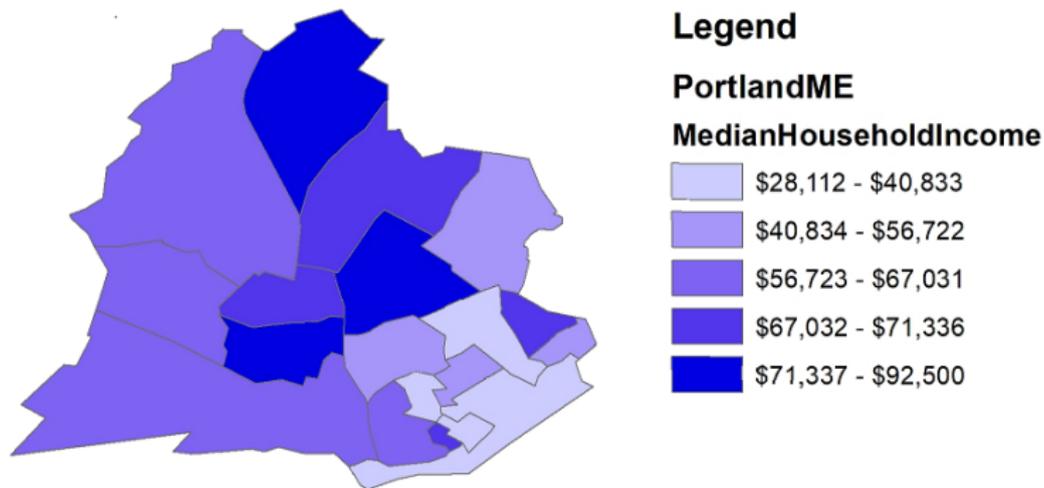
A glance at Portland, ME

Ethnoracial dot map by census tract in Portland, ME



A glance at Portland, ME

Median household income by census tract in Portland, ME



A glance at Portland, ME

Apartments available in Portland, ME at or below \$1,285 as of 09/16/2021

Buy Rent Sell Home Loans Agent finder



Portland, ME



For Rent

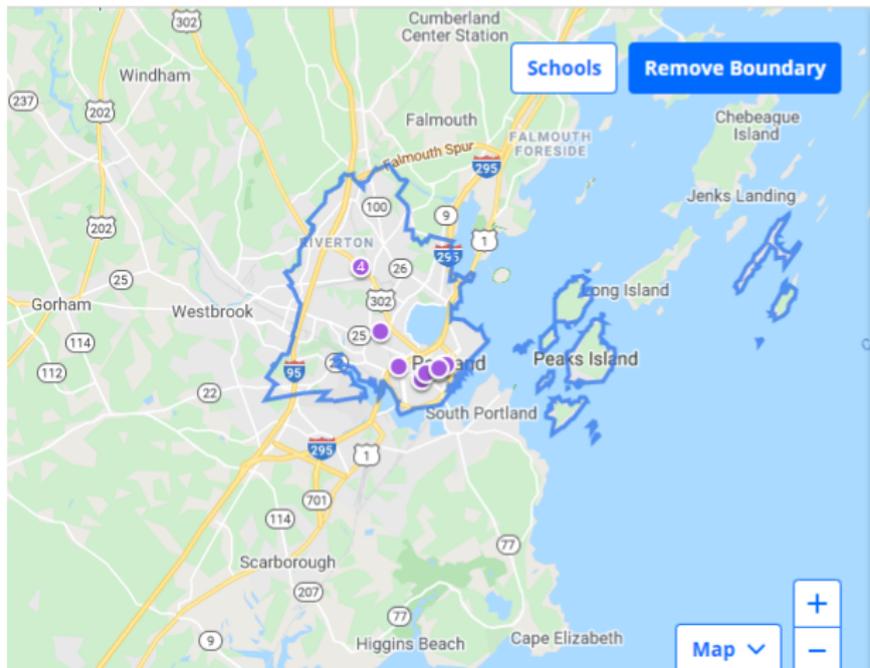
Up to \$1.3k

Beds & Baths

Home type

More

Save search



Portland ME Rental Listings

9 results

Updated today



\$1,100/mo

Studio 1 ba 300 sqft - Apartment for rent
37 Casco St #606, Portland, ME 04101

A glance at Portland, ME

Homes for sale in Portland, ME at or below \$374,900 as of 09/16/2021

Buy Rent Sell Home Loans Agent finder



Portland, ME



For Sale

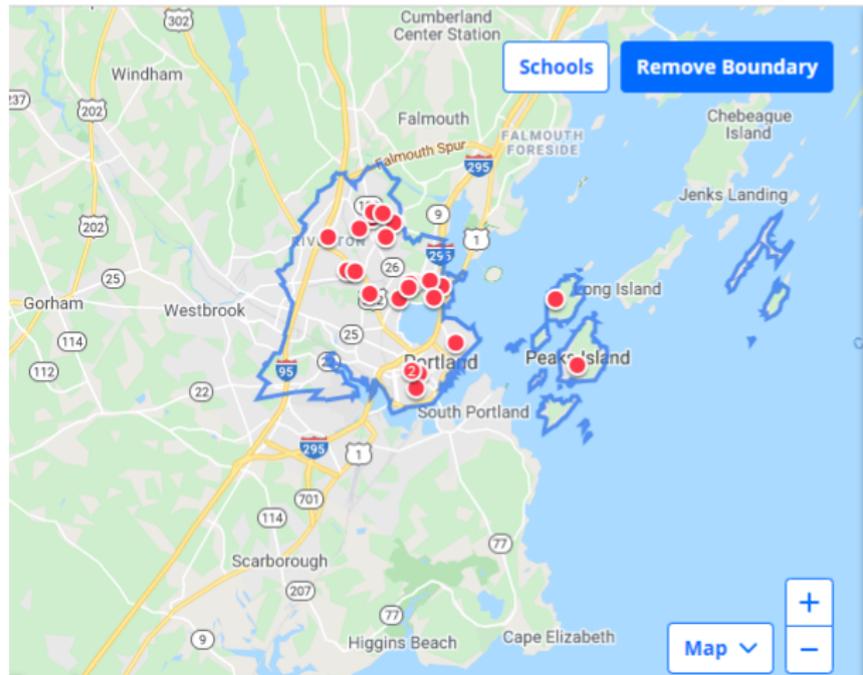
Up to \$374.9k

Beds & Baths

Home type

More

Save search



Portland ME Real Estate & Home

25 Agent listings

10

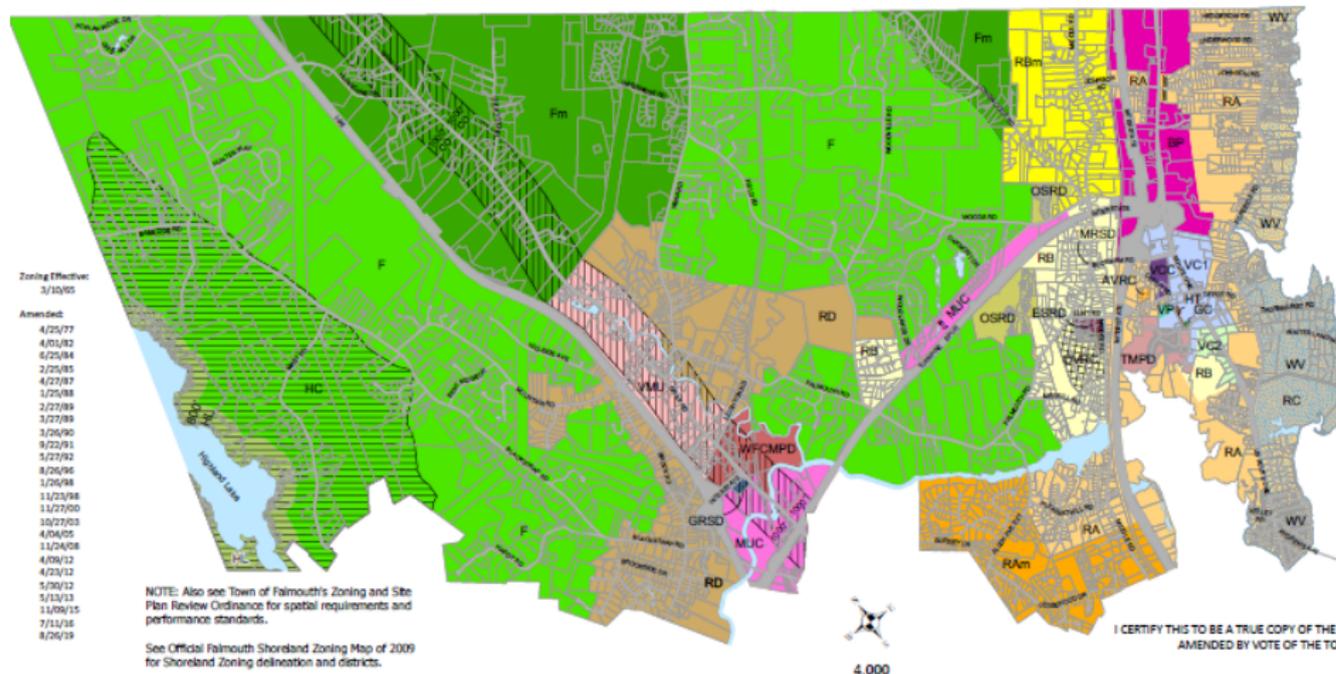


\$250,000

2 bds 1 ba 1,008 sqft - Active
41 Illsley St #6, Portland, ME 04103
RE/MAX SHORELINE

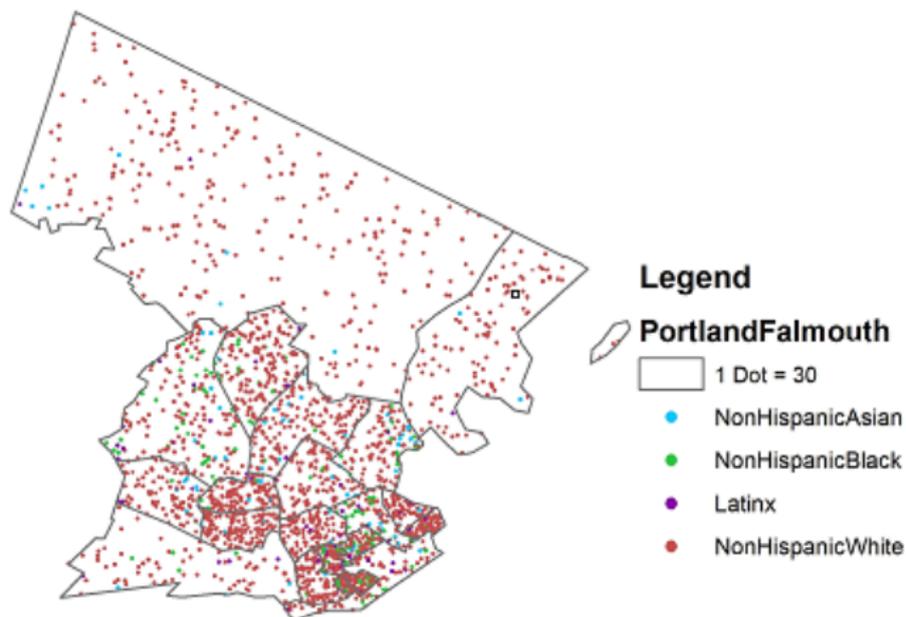


A glance at the Portland, ME region



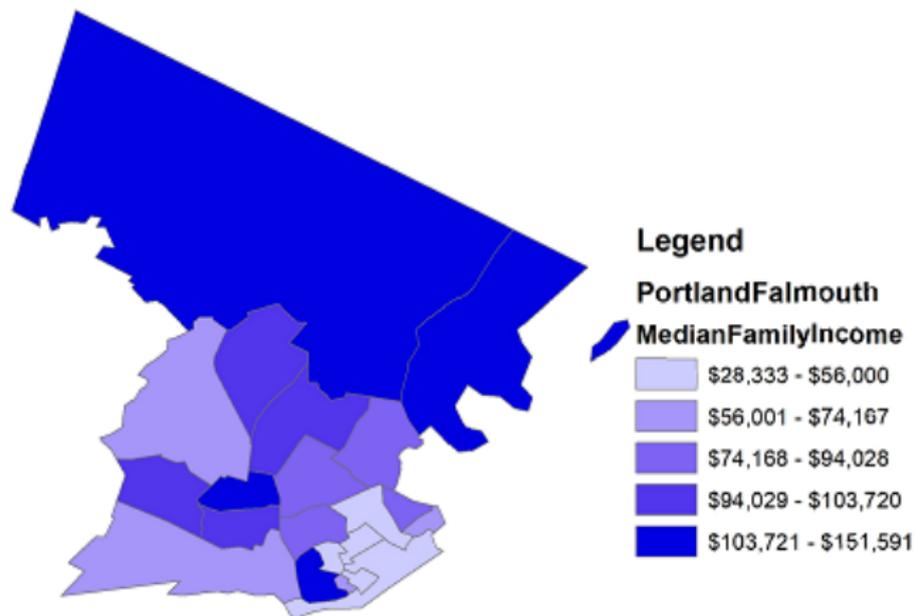
A glance at the Portland, ME region

Ethnoracial dot map by census tract in Portland, ME and Falmouth, ME



A glance at the Portland, ME region

Median household income by census tract in Portland, ME and Falmouth, ME



A glance at the Portland, ME region

Apartments available in Falmouth, ME at or below \$1,285 as of 09/16/2021

Buy Rent Sell Home Loans Agent finder



Falmouth, ME



For Rent

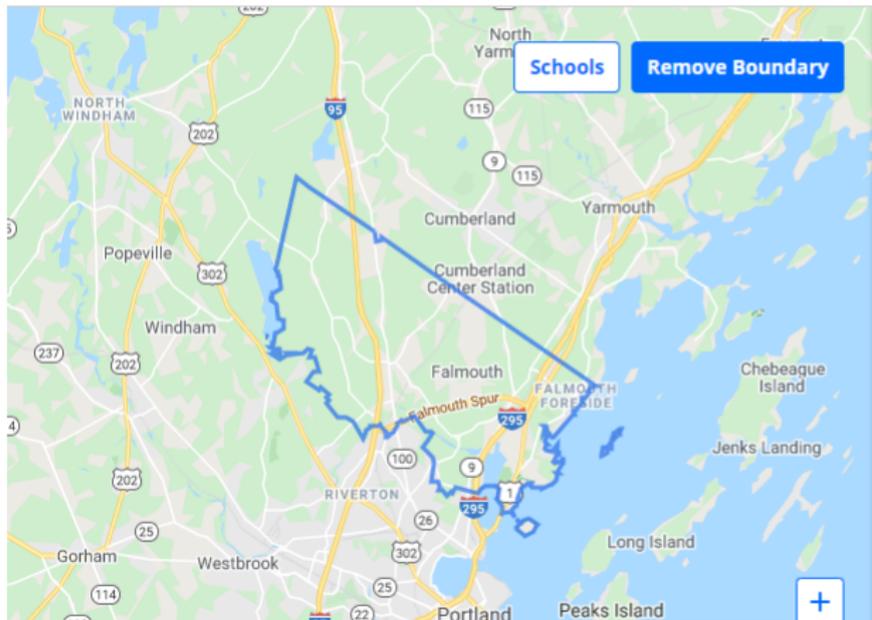
Up to \$1.3k

Beds & Baths

Home type

More

Save search



Schools

Remove Boundary

Falmouth ME Rental Listings

No matching results

Edit or remove these filters for best results.

Remove all filters

Price (7) X

Similar results nearby

Results within 2 miles

Updated today



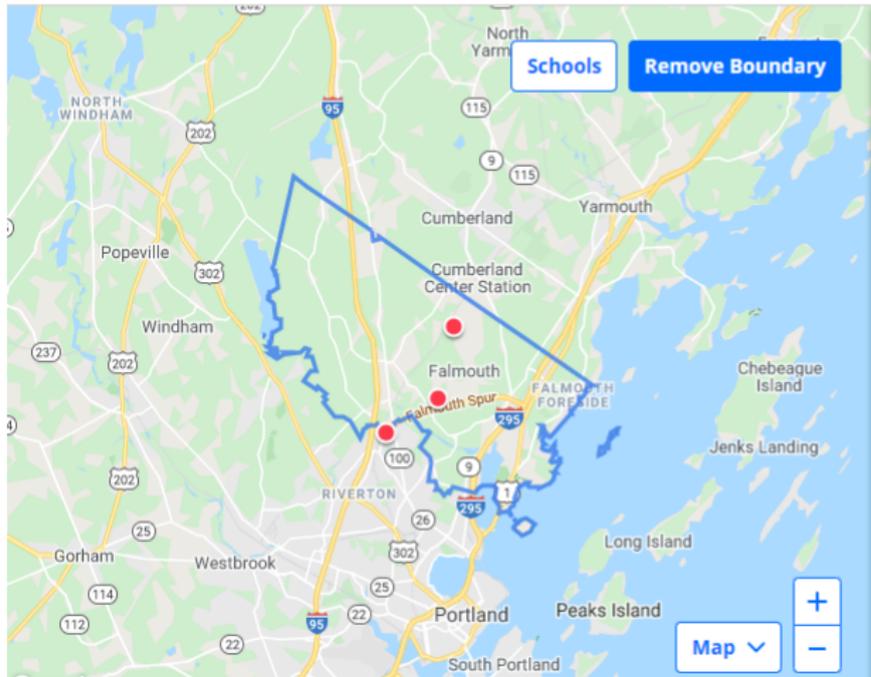
A glance at the Portland, ME region

Homes for sale in Falmouth, ME at or below \$374,900 as of 09/16/2021

Buy Rent Sell Home Loans Agent finder



Falmouth, ME



Falmouth ME Real Estate & Home

3 Agent listings



\$275,000

5.02 acres lot - Active

0 Woodville Rd #20, Falmouth, ME 04105

THE REAL ESTATE GROUP

Why is exclusionary zoning so entrenched?

- Because property values represent a significant portion of wealth holdings and determine public goods provision, homeowners have very strong incentives to restrict development and exclude certain developments (Fischel 2005, 2015)
- Local governing bodies and practices are overwhelmingly biased in favor of homeowners (Einstein, Glick, and Palmer 2020)
 - ▶ People who attend city council, planning, and zoning board meetings are disproportionately white, wealthy, and older property owners who are also active voters
 - ▶ Data from MA indicates what many already believe: most public comments at these meetings are anti-development
 - ▶ Usual complaints are about parking, density, neighborhood character and the like

What has been done to combat exclusionary zoning?

- New Jersey: Mt. Laurel I and II
- Massachusetts: Chapter 40B
 - ▶ Connecticut, Illinois, and Rhode Island have similar provisions (Reid, Galante, Weinstein-Carnes 2016)
- California: fair-share housing allotments without any enforcement
 - ▶ SB9 pending governor's signature
- Connecticut: modest upzoning reforms
- Notable places that have ended single-family zoning (or signaled intent)
 - ▶ Oregon
 - ▶ Minneapolis
 - ▶ Portland
 - ▶ Sacramento
 - ▶ Berkeley

What has been done to combat exclusionary zoning?

Inclusionary zoning and impact fees

- On the one hand, some economists view inclusionary zoning and impact fees as a tax on development, which raises housing prices and reduces supply
 - ▶ There is some empirical support for this (Bento et al. 2009; Means and Stringham 2015)
 - ▶ Other research produces more mixed results (Schuetz, Meltzer, and Been 2007; Soltas 2020; Mukhija et al. 2015)
- On the other hand, inclusionary zoning can produce more affordable housing and be a mechanism to increase residential integration via mixed-income developments (Schwartz et al. 2012; Jacobus 2015; Sturtevant 2016; Urban Institute 2012; Williams 2016) and impact fees often fund affordable housing trust funds (Mukhija et al. 2010)

What else can be done?

- Federal initiatives
 - ▶ Biden administration proposal to incentivize zoning reform¹
 - ▶ Tying infrastructure payments to zoning reforms (Glaeser 2021)
 - ▶ Tying mortgage interest deductions to zoning reform (Boger 1993)
- State upzoning reforms: Oregon, Connecticut
- Public meeting reforms
- Zoning budgets (Hills and Schleicher 2011)
- Compile more/better data
- Build support for housing by counteracting anti-development tendencies
 - ▶ Desegregate CT

¹FACT SHEET: The American Jobs Plan. The White House.

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>

Conclusion

Thank you for your attention. I will be happy to answer questions, either during the meeting or at mmleczko@princeton.edu



The Eviction Lab is funded by the JPB, Gates, and Ford Foundations as well as c3.AI and the Chan Zuckerberg Initiative.

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APPENDIX J

**The Role of Race in Zoning: A History & Policy Review –
Presentation materials from Yonah Freemark, September 16, 2021**

Presentation for Legislative Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions

The Role of Race in Zoning: A History & Policy Review

September 16, 2021



Metropolitan Housing and Communities Policy Center

Introductions



Yonah Freemark
*Senior Research Associate,
Metropolitan Housing and Communities
Urban Institute
yfreemark@urban.org*

About the Urban Institute

- The Urban Institute is the trusted source for unbiased, authoritative insights that inform consequential choices about **the well-being of people and places** in the United States. We are a nonprofit research organization that believes decisions shaped by facts, rather than ideology, have the power to improve public policy and practice, strengthen communities, and transform people's lives for the better.
- The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

OUR MISSION IS TO OPEN MINDS,
SHAPE DECISIONS, AND OFFER
SOLUTIONS THROUGH ECONOMIC
AND SOCIAL POLICY RESEARCH.

Agenda

- What is zoning?
- Why was zoning developed?
- What are the consequences of zoning—especially in terms of racial equity?
- How can zoning policy serve as a mechanism for positive change?
- Q&A

What is zoning?

Zoning is a key tool by which governments can regulate land use and building form

Zoning map

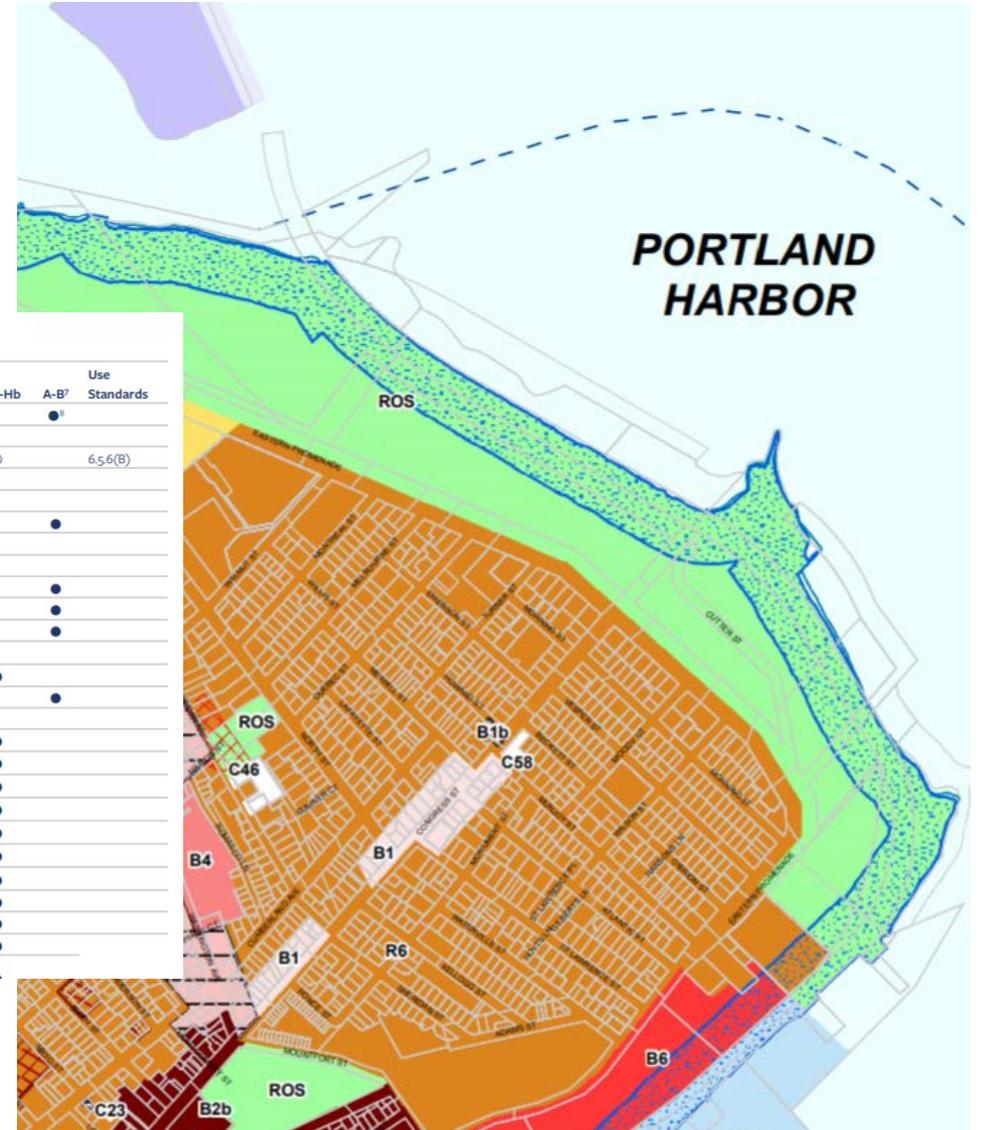
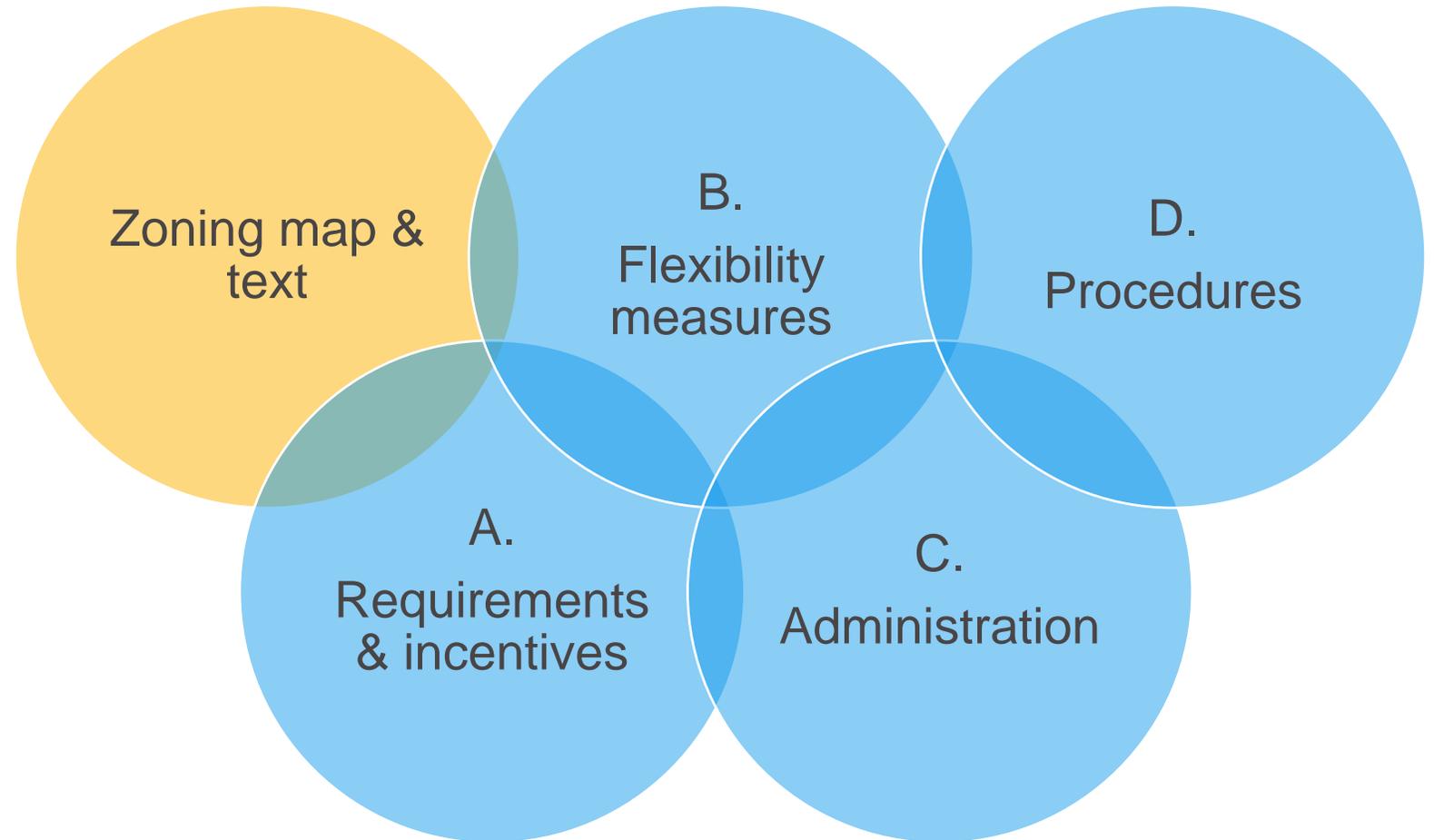


TABLE 6-E: PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

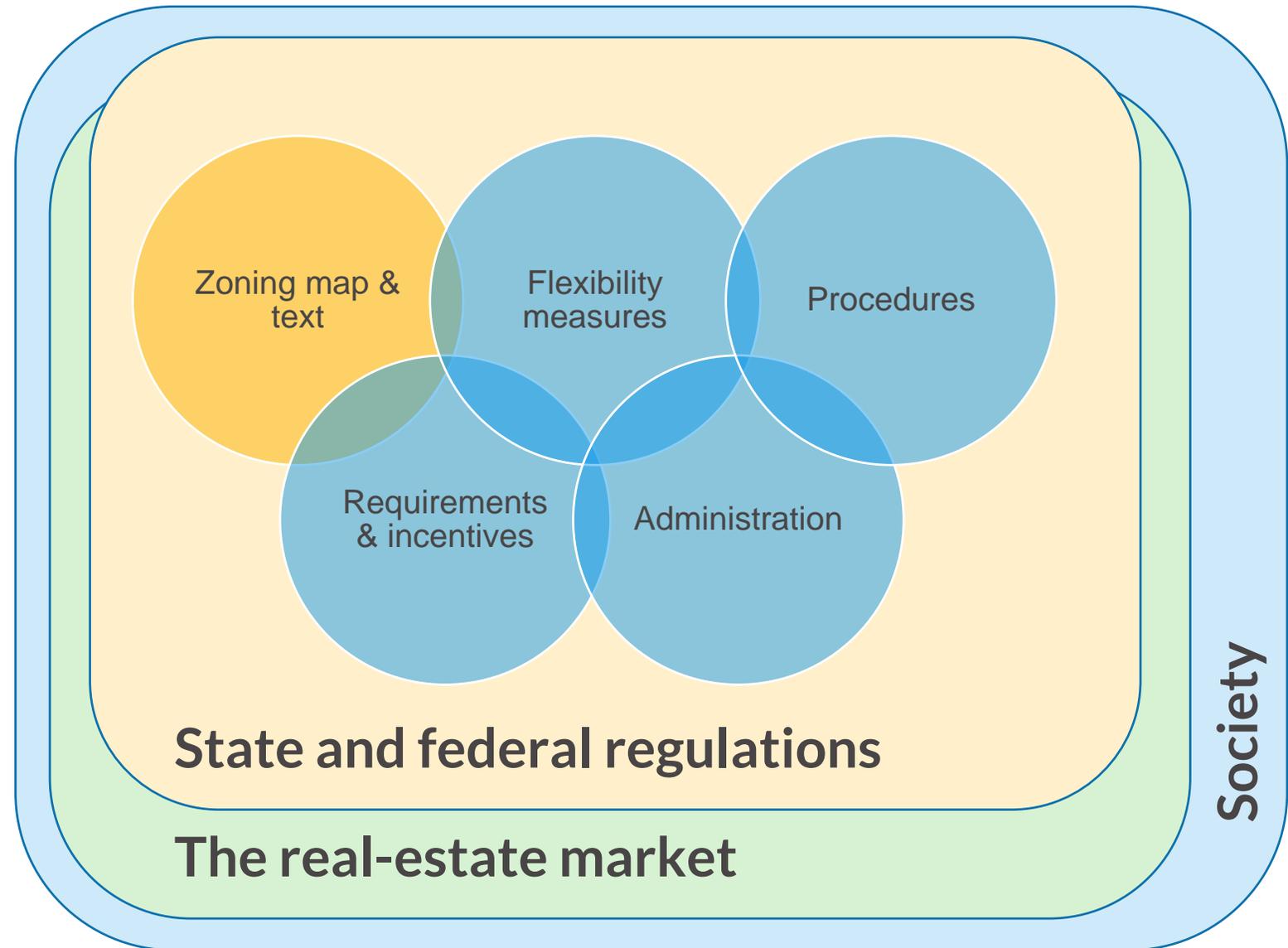
	I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B'	Use Standards
Institutional					
Airports				•	
Preschool facilities	•	•			
Emergency shelters	•	•	•		6.5.6(B)
Intermediate care facilities		•			
Places of assembly (<10,000 SF)	•				
Commercial/Services					
Bars				•	
General offices (<5,000 SF)	•	•			
General offices (>5,000 SF)	•	•			
General services (<5,000 SF)				•	
General services (>5,000 SF)				•	
Hotels				•	
Recreation and amusement centers	•	•			
Repair services	•	•	•		
Restaurants				•	
Animal-related services	•				
Construction & engineering services	•	•	•		
Dairies	•	•	•		
Fish waste processing				•	
Food & seafood processing, packing, and distribution		•	•		
High-impact industrial uses			•		
Intermodal transportation facilities	•	•	•		
Laboratory and research facilities	•	•	•		
Low-impact industrial	•	•	•		
Lumber yards	•	•	•		
Marijuana cultivation facility (<2,000 SF plant canopy)	•	•	•		
Marijuana cultivation facility (2,000-7,000 SF plant)					

Zoning text

Elements of zoning



Local zoning in context



Why was zoning developed?

Planning is an ancient tradition



Timgad, Algeria, built ~100 CE

The idea of dividing cities into “zones” for developers is about 150 years old

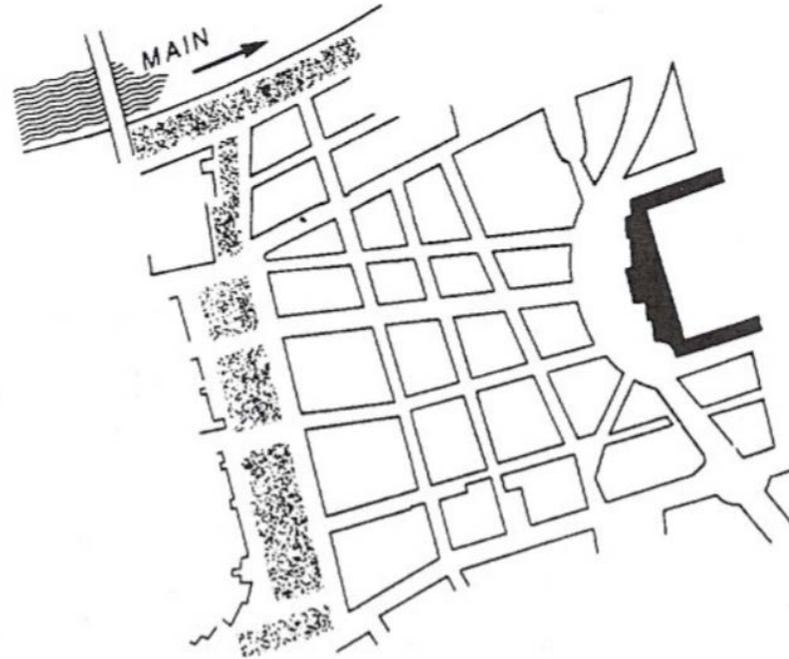
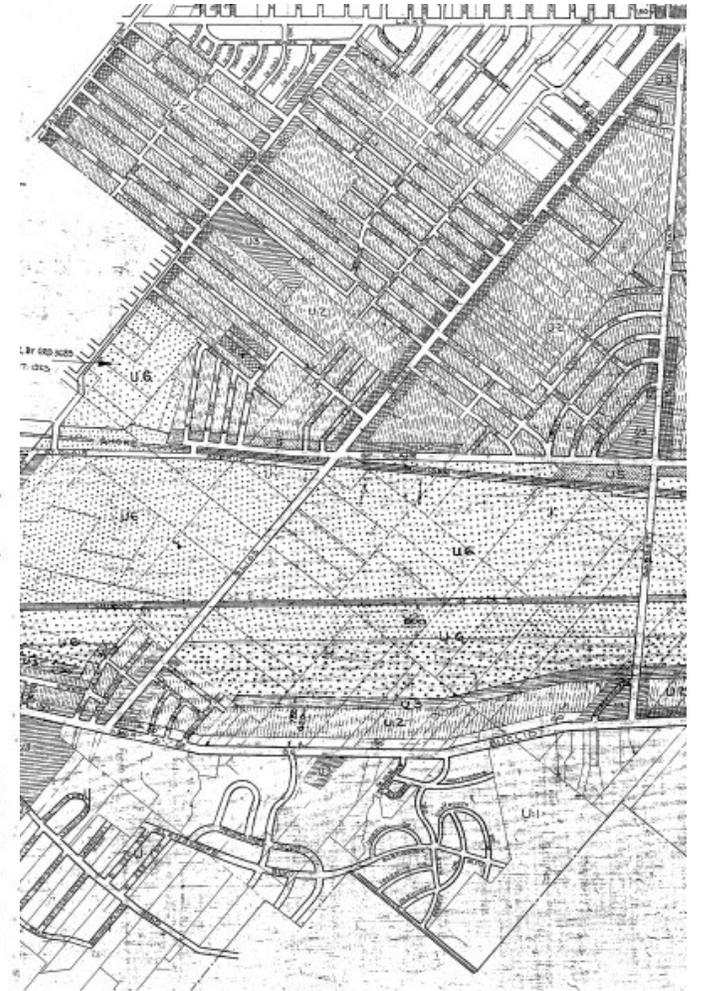


Plate One: *The Hauptbahnhof Quarter.* It was added to the city beginning in the late 1870's. A contrast can be made between the “pack donkey” street pattern of Medieval times and the geometric-regularist approach of the Baumeister-Stubben advocates of the last quarter of the nineteenth century.

Frankfurt, 1870s



Euclid, OH, 1922

Why zoning?



Crowding

- Address the perception that closely knit communities were bad for health

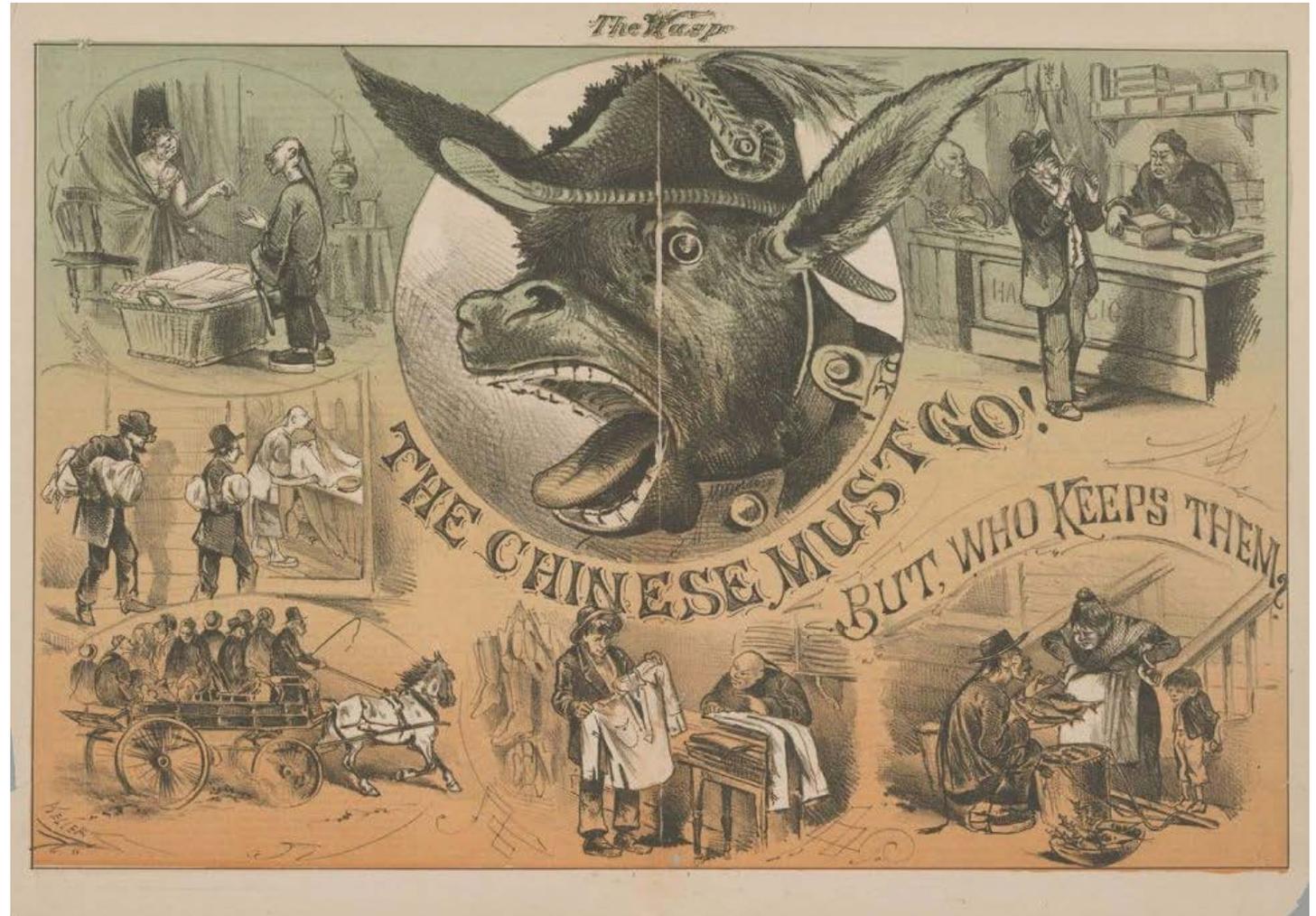


Pollution

- Address the negative impacts of living near industrial uses

Why zoning?

- The earliest zoning codes were implemented with racist motivations
- Zoning out industrial uses was motivated by stopping integration



An 1878 anti-Chinese cartoon in S.F.

Why zoning?

- Anti-density standards were premised on inaccurate claims of environmental determinism
- They had racially disparate effects



Arguments against apartments in San Diego

The real-estate market and the public also contributed to racist land use

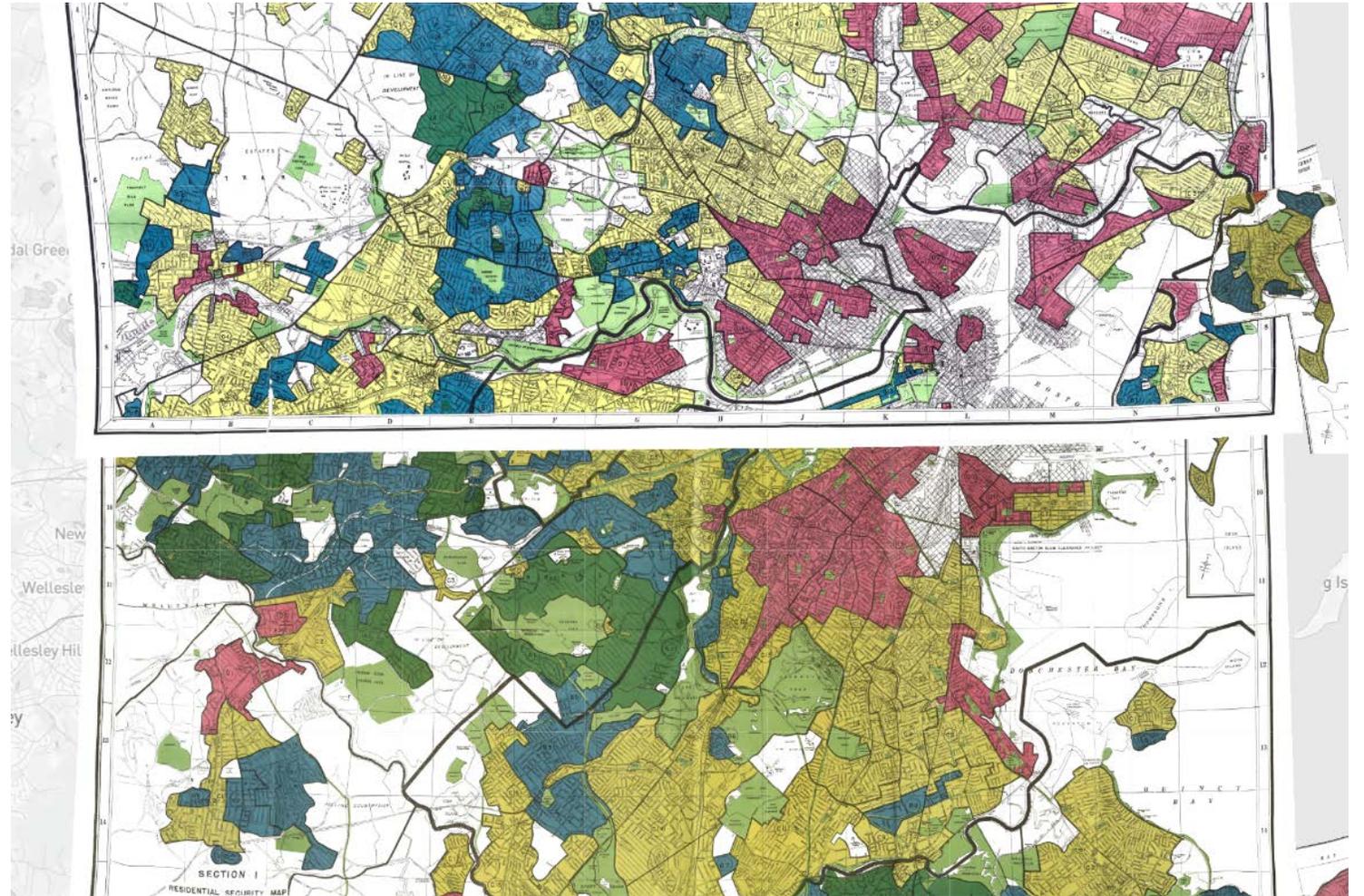
- Landlords advocated for single-family zoning and used covenants to prevent people of color from living in certain neighborhoods



Claremont Court, Berkeley, California

The real-estate market and the public also contributed to racist land use

- Government officials and real-estate industry used racist and classist logic to underinvest in poor, minority neighborhoods

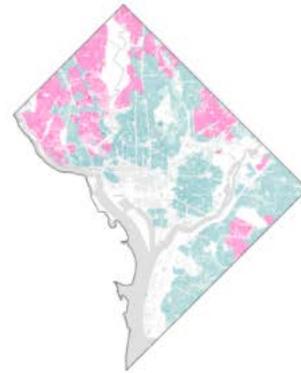


Neighborhood ratings, Boston, MA, 1933

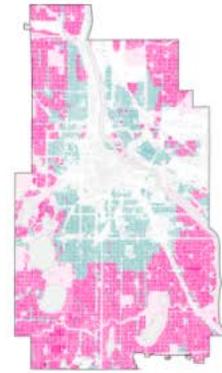
What kinds of cities has zoning produced?

- Most neighborhoods in cities nationwide continue to be zoned only for single-family homes

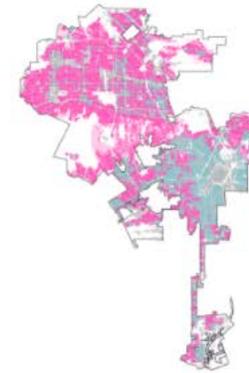
Residential land zoned for: ■ detached single-family homes ■ other housing



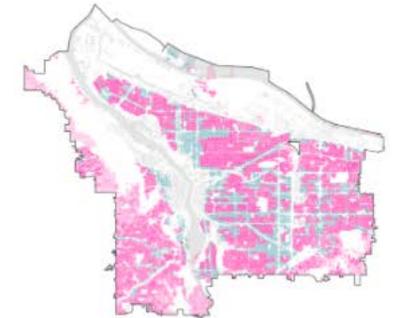
Washington 36%



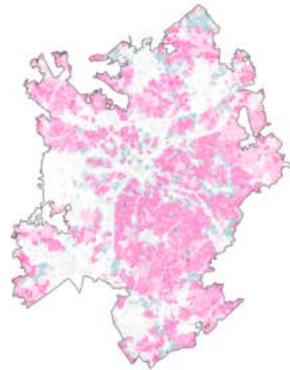
Minneapolis 70%



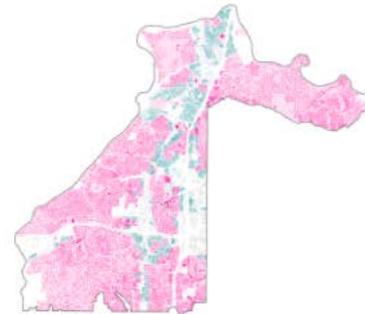
Los Angeles 75%



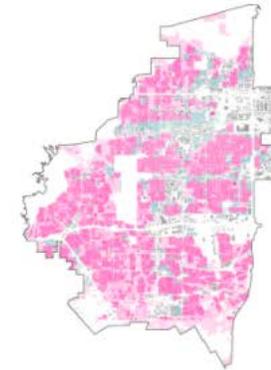
Portland, Ore. 77%



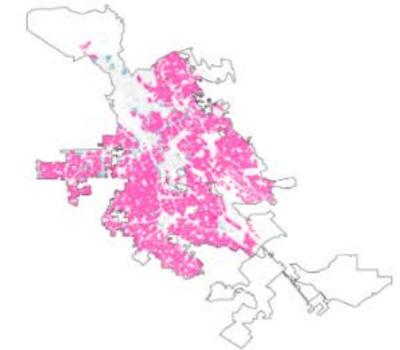
Charlotte, N.C. 84%



Sandy Springs, Ga. 85%



Arlington, Tex. 89%



San Jose, Calif. 94%

Single-family zoning in major US cities

What are the consequences of zoning—particularly for racial equity?

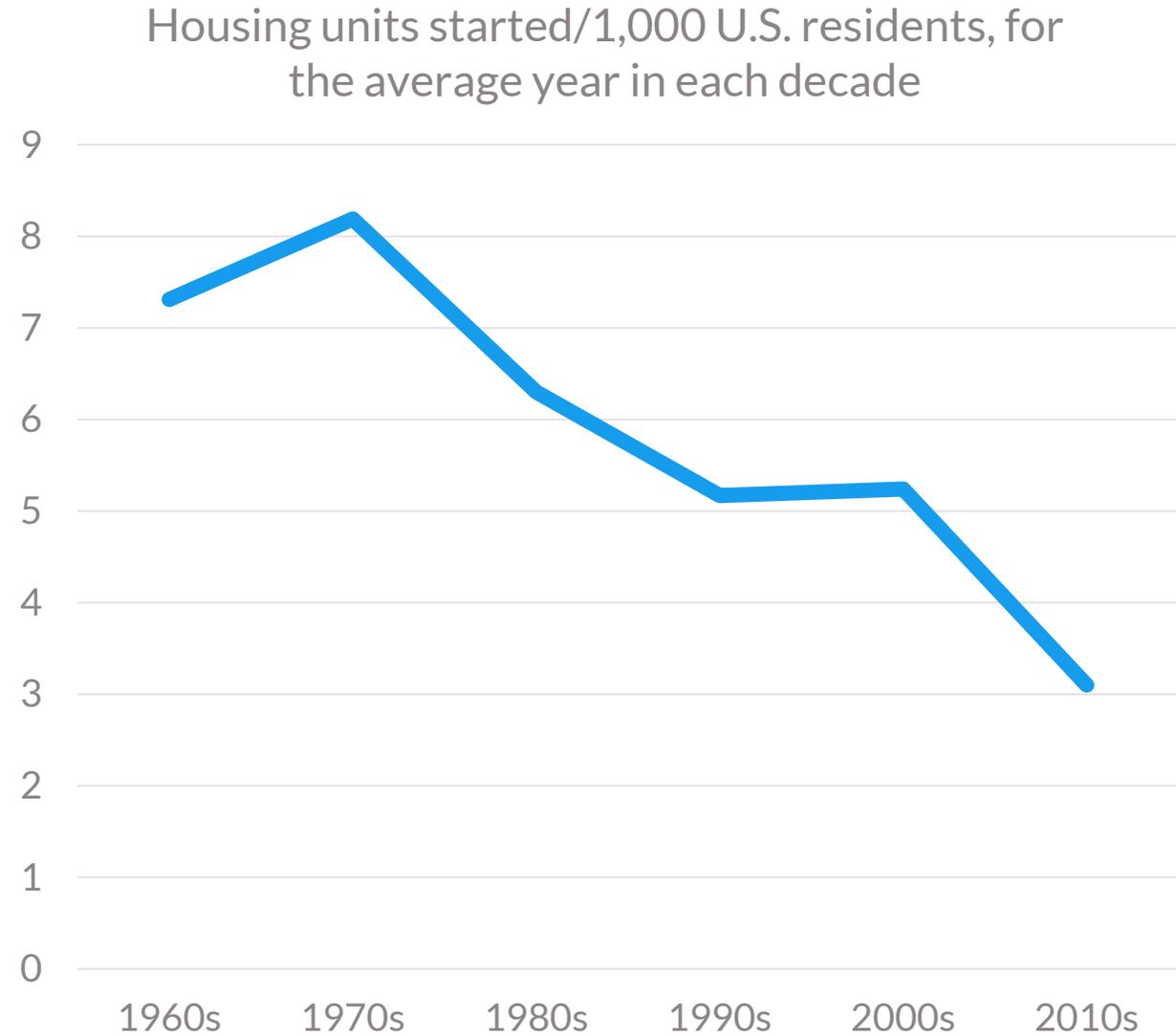
The problems with single-family home requirements

- Increases costs.
- Limits options.
- Exacerbates segregation.
- Encourages car use.
- Makes alternatives difficult to build.

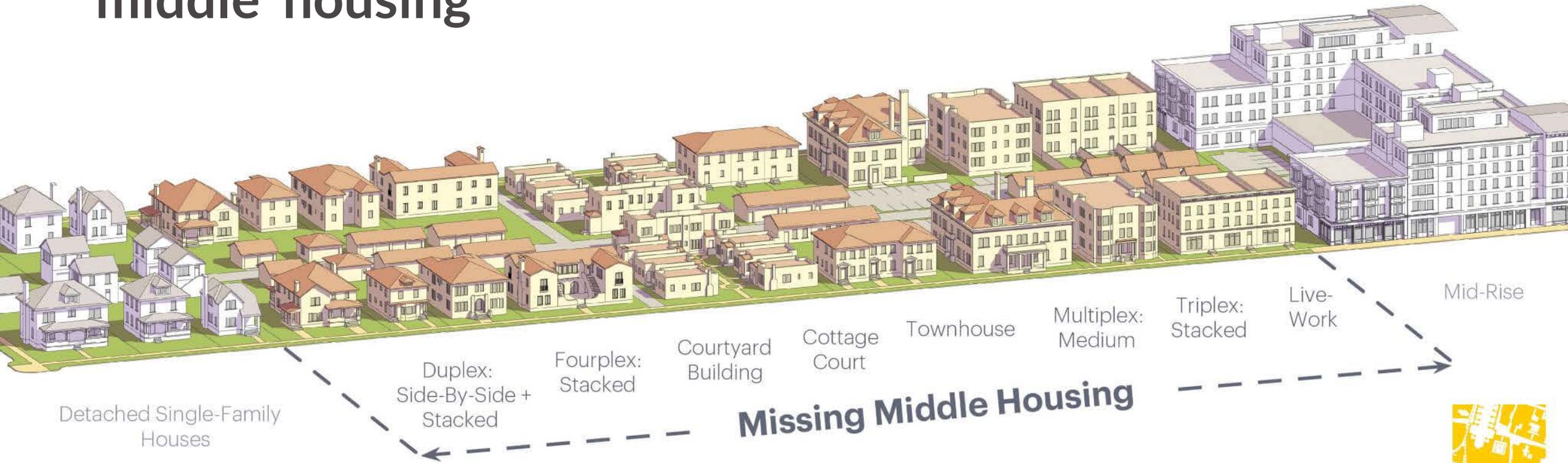


The US is not building enough housing

- The US built half as many units per capita in the 2010s as it did in the 1960s through 1980s



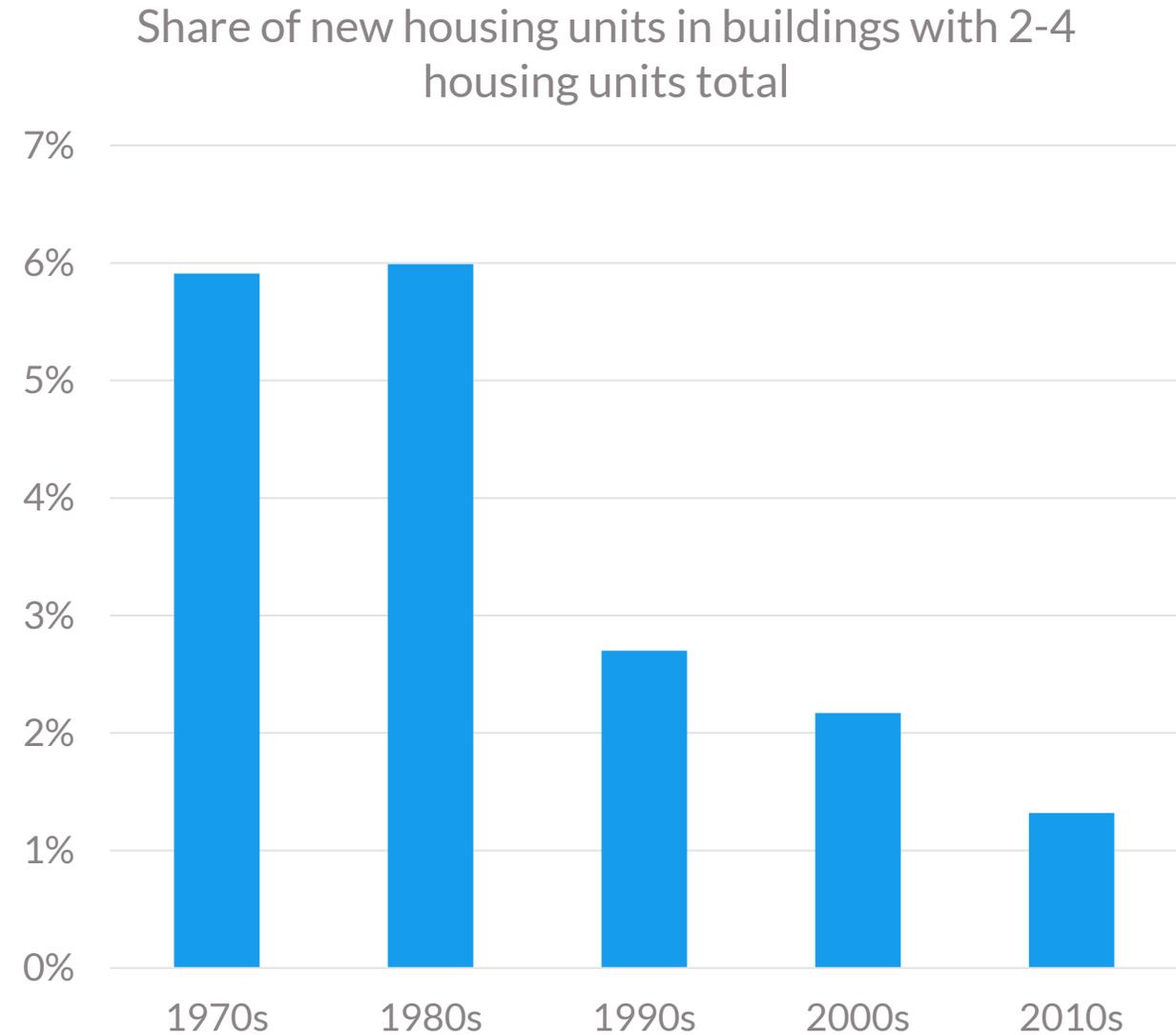
The US has a gap in 'missing middle' housing



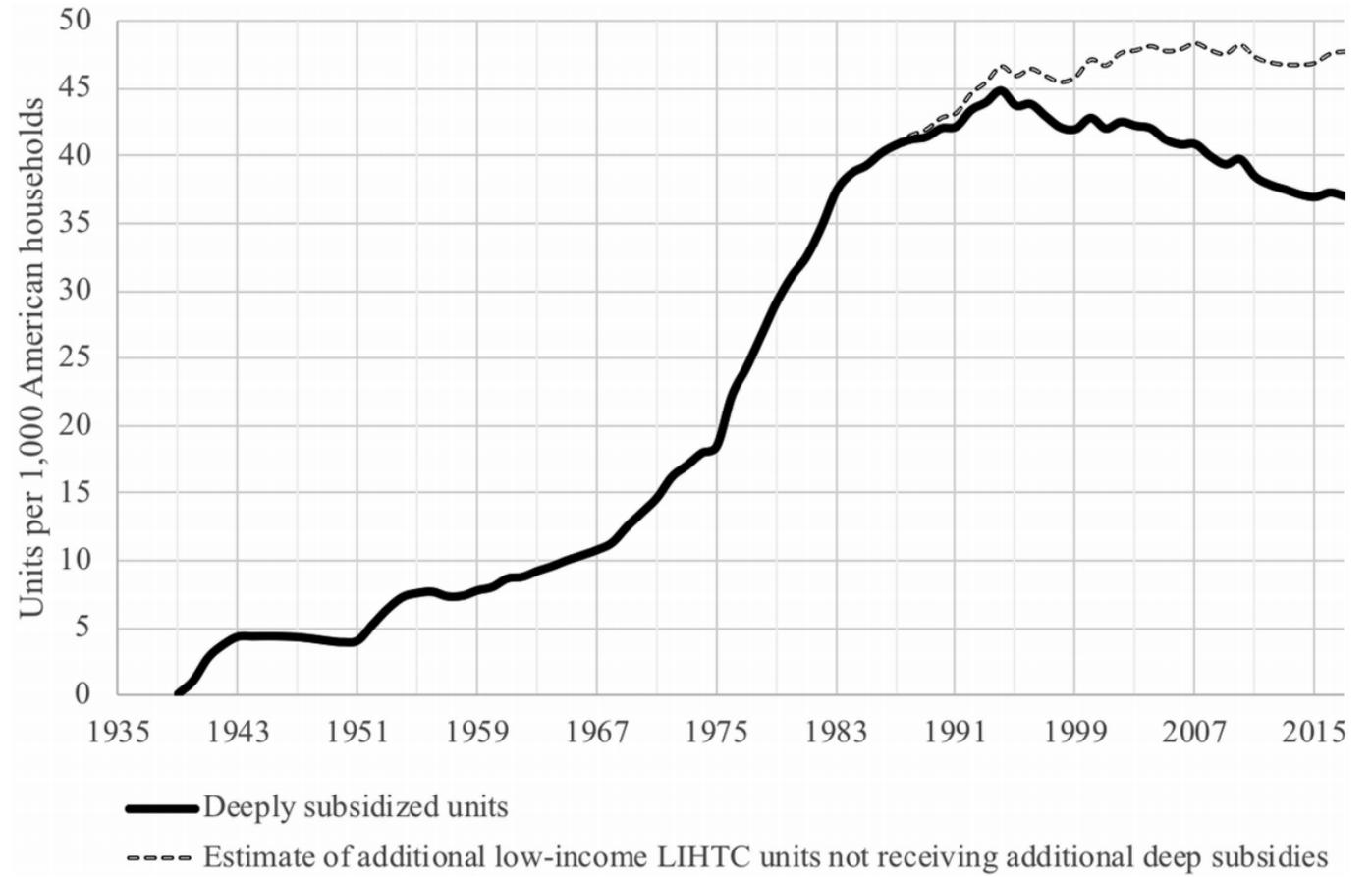
Copyright © 2020
Opticos Design, Inc.



The US has a gap in 'missing middle' housing

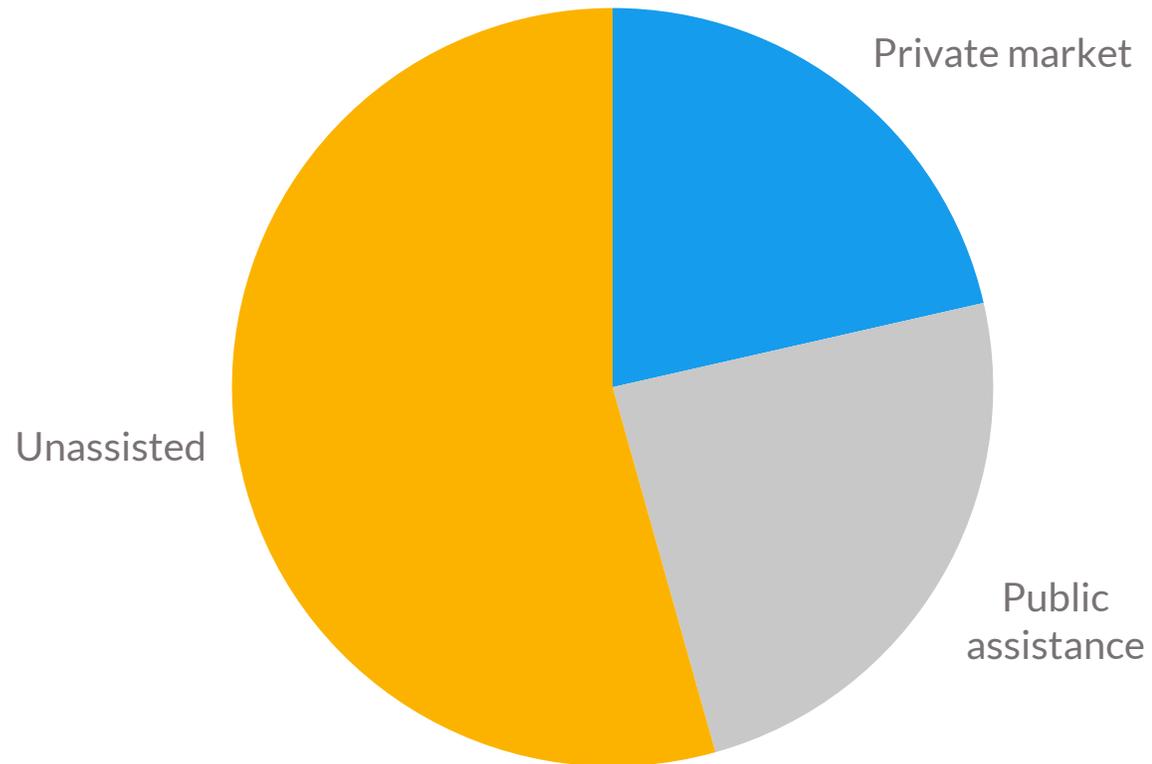


US affordable housing construction is declining



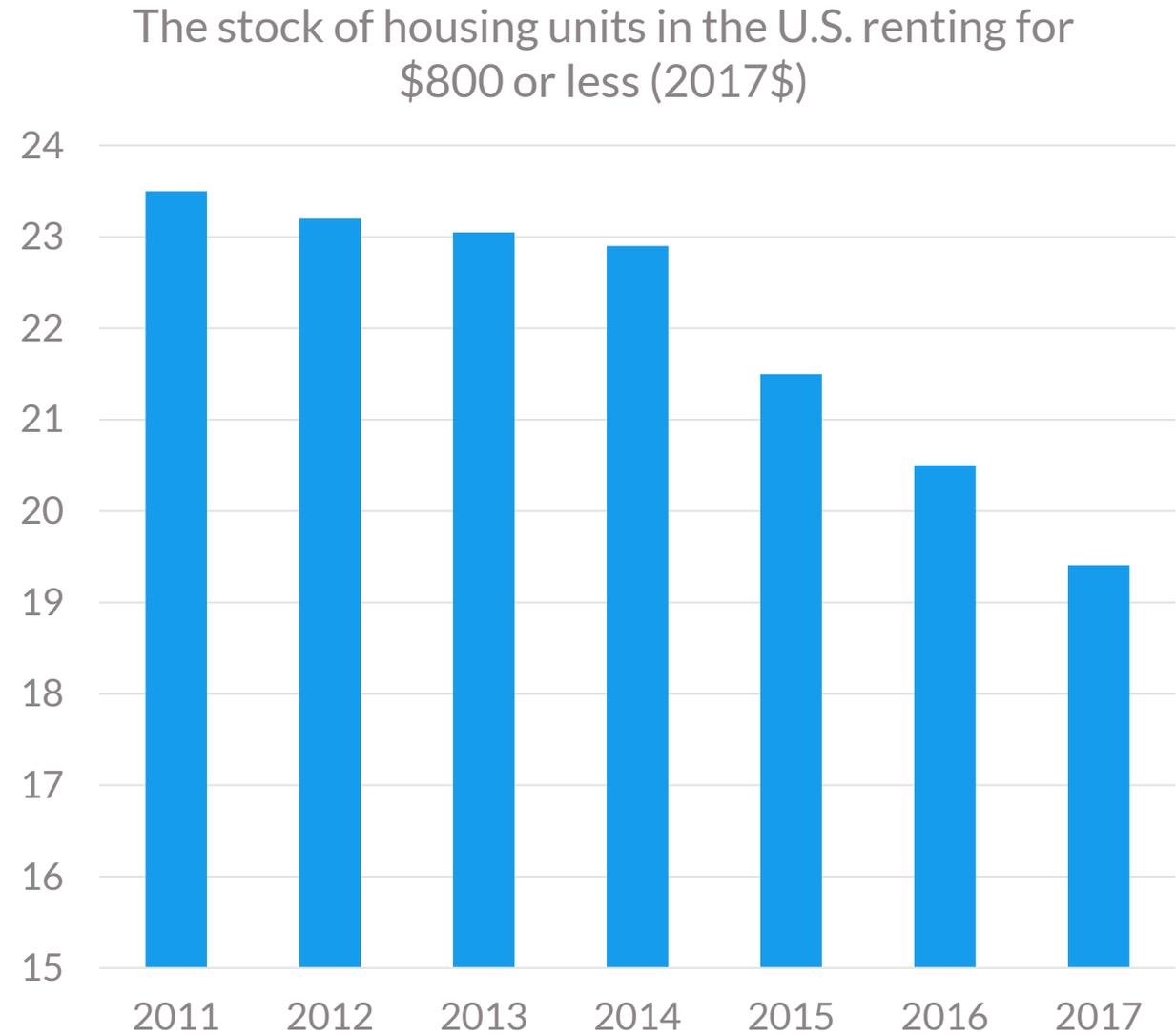
Most Americans who need affordable housing—by which we mean paying <30% of incomes to rent—don't have it

Of 12 million extremely low-income families in the United States, more than half are paying too much for housing



The stock of affordable rental housing is shrinking rapidly

- The number of cheap rental units declined by 4 million between 2011-2017.



People of color are disproportionately renters

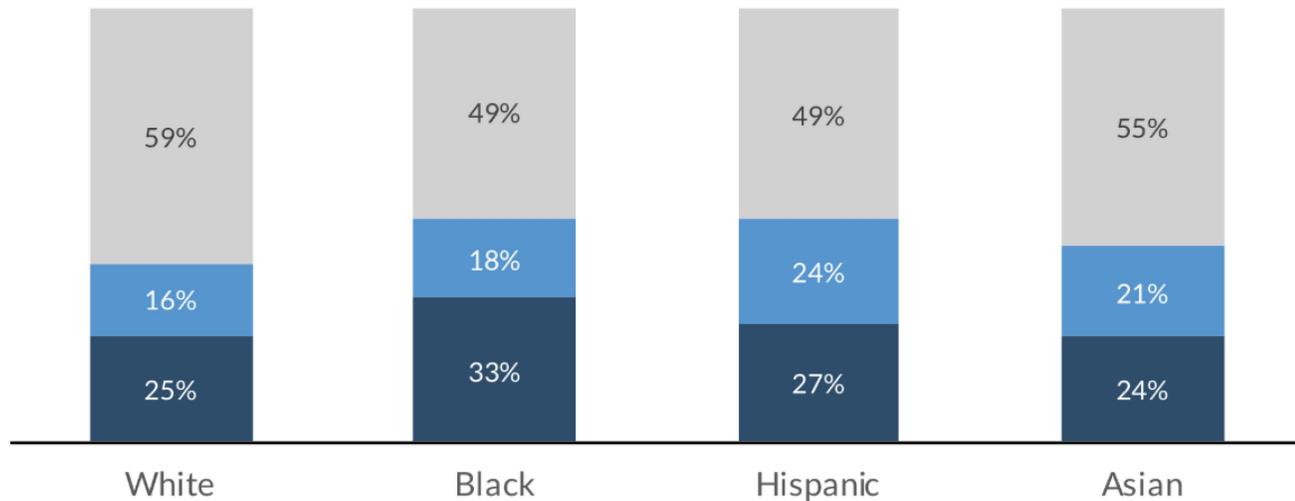
Share of Renters and Their Financial Status, by Race or Ethnicity

	White	Black	Hispanic	Asian
Renter share	27.8%	58.3%	52.5%	40.5%
Median income	\$43,000	\$30,000	\$39,000	\$58,500
Median liquid assets	\$9,000	\$1,600	\$2,808	\$9,300
Unemployment rate	4.1%	7.2%	4.4%	3.1%

People of color are more likely to have difficulty paying rent

Do You Experience Difficulty Paying Rent?
By race or ethnicity

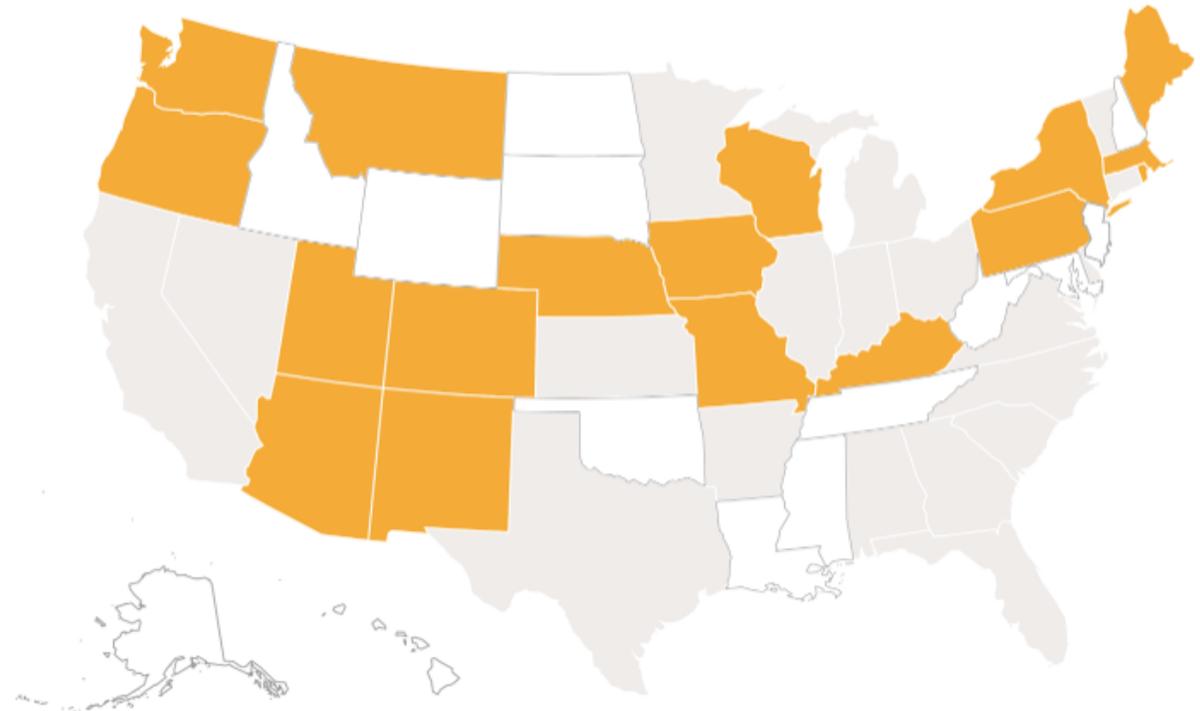
■ Often or sometimes ■ Rarely ■ Never



Black renters experience high rates of evictions

BLACK FEMALE RENTERS WERE FILED AGAINST FOR EVICTION AT DOUBLE THE RATE OF WHITE RENTERS OR HIGHER IN 17 OF 36 STATES

- 2+ times rate of white filings
- < 2 times rate of white filings
- None/not enough data available



Data source: The Eviction Lab. Counties without data² were excluded from the analysis. States where all counties were excluded or where the sum of all counties' Black populations were less than 1%, are shown in white with a grey border. Five states: Delaware, Georgia, South Carolina, and Vermont filed white tenants for eviction at slightly higher rates than Black women. Ratios were rounded to the nearest tenth.

The combination of:

- Restrictive local zoning codes
- Low construction overall
- Limited investment in affordable housing
- Rising real estate prices...

Limits **access to opportunity**, making it difficult for low-income people, particularly people of color, to access public services, jobs, and other essential needs.

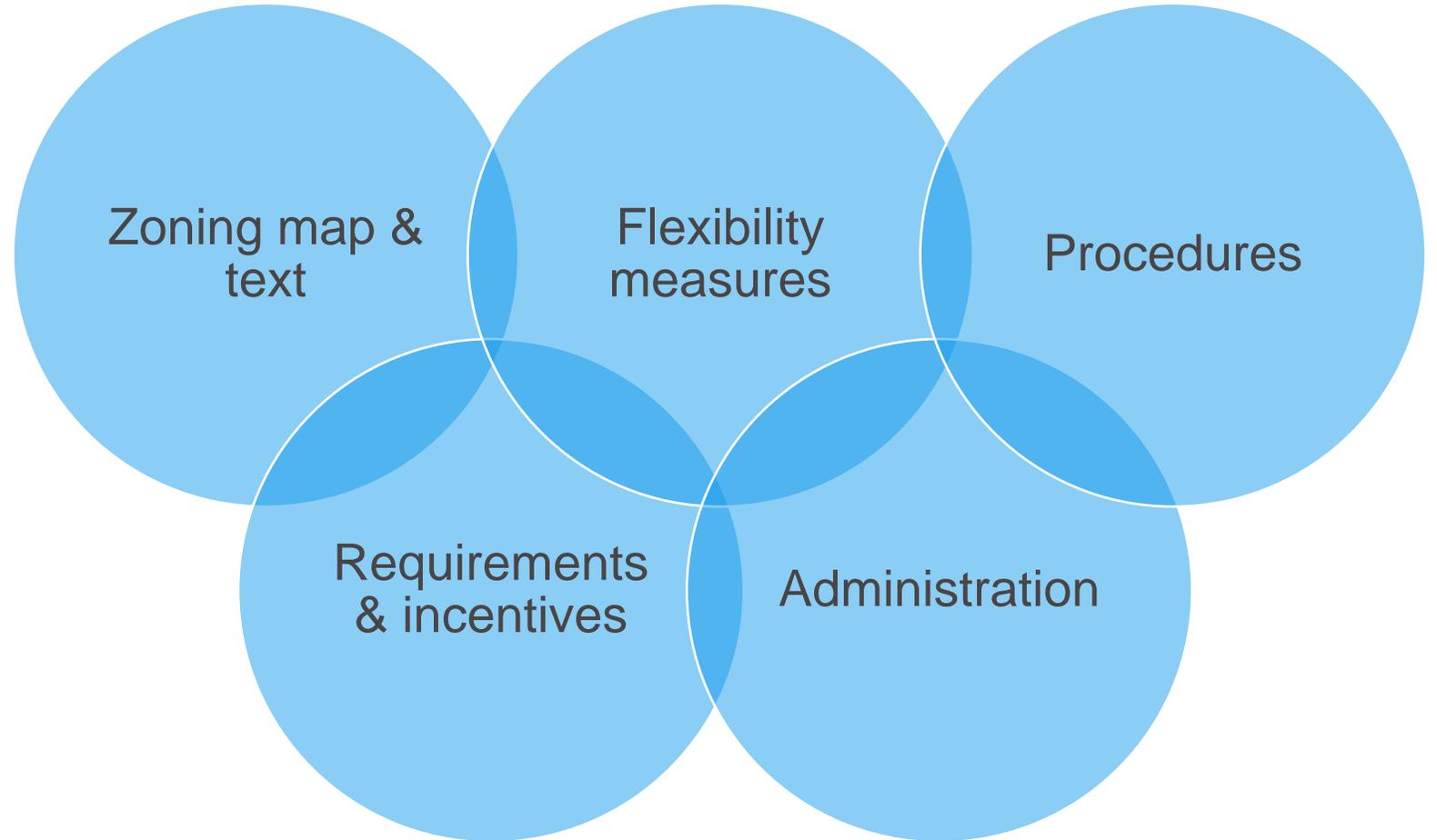
Enabling low-income folks to move to opportunity communities has significant positive impacts

- **Increase in income**
- **Less incarceration**
- **Amenities are more available**
- **Better mental and physical health outcomes**

How can zoning policy serve as a mechanism for positive change?

Elements of zoning

- All elements of zoning must be addressed to increase racial equity in communities



Zoning innovation

- New momentum
- New coalitions
- New approaches

Recent examples

- California SB 9
- Oregon SB 2001
- Minneapolis 2040



NEIGHBORHOODS, CITIES, AND METROS

How Communities Are Rethinking Zoning to Improve Housing Affordability and Access to Opportunity

Local governments are increasingly recognizing that restrictive zoning can suppress housing supply.

Cut the red tape

- Streamline review
- Reduce discretion



Allow increased density

- Build bigger
- Build smaller



Identify the means to boost affordability

- Inclusionary zoning
- Density bonuses
- Eliminating parking requirements
- Disposition of public land



Recenter race in zoning policy

- Rigorous enforcement of state and federal fair housing laws
- Renewed commitment to public subsidies
- Pair reforms with tenant protections to prevent displacement
- New decision-making tables and robust community engagement
- Regional approaches and state oversight
- Data, metrics and accountability

Thank you



Yonah Freemark
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Metropolitan Housing and Communities
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yfreemark@urban.org*

APPENDIX K

**A Brief History on Racism & Discrimination in Maine:
1630-1970 – presentation materials from Andy O'Brien,
September 16, 2021**

A Brief History on Racism & Discrimination in Maine 1630 - 1970



Civil rights march down Congress Street following Martin Luther King's assassination in 1968.

1492: Christopher Columbus landed in the Bahamas and launched the conquest and colonization of the Americas.





1524 — Florentine explorer Giovanni da Giovanni Da Verrazzano arrives on Maine's shores. The local Abenacki mooned him, likely because they had previously encountered Europeans and had some bad experiences.



Estevan Gomez



Monument to Estevan Gomez in Bangor

1525 — Portuguese explorer Estevan Gomez comes to Maine and kidnaps 58 native men and women to sell into slavery.



The Paxton Boys, frontiersman of Scots-Irish Mostly Ulster Protestants origin from along the Susquehanna River in central Pennsylvania, who formed a vigilante group to attack local American Indians in 1763.

Early 1700s: wealthy land barons known as the "Great Proprietors" encouraged the Scotch Irish of Northern Ireland to colonize midcoast Maine and fight off indigenous tribes who were defending their territory from encroachment. They described indigenous people as savages, as they had also called the Irish during the conquering and colonization of Ireland several years earlier.



French Jesuit missionary Father Sebastian Rale killed by the British at the Battle of Norridgewock in 1724.

1675 and 1763 — The British and the French/Wabanacki Confederacy (Mi'kmaq, Maliseet and Abenaki) wage a continuous series of wars over land and resources.



By His HONOUR

SPENCER PHIPS, Esq;

Lieutenant-Governor and Commander in Chief, in and over His Majesty's Province of the Massachusetts-Bay in New-England.

A P R O C L A M A T I O N.

WHEREAS the Tribe of Penobscot Indians have repeatedly in a perfidious Manner acted contrary to their solemn Submissions unto His Majesty long since made and frequently renewed;

I have therefore, at the Desire of the House of Representatives, with the Advice of His Majesty's Council, thought fit to issue this Proclamation, and to declare the Penobscot Tribe of Indians to be Enemies, Rebels and Traitors to His Majesty King GEORGE the Second: And I do hereby require His Majesty's Subjects of this Province to resist all Opportunities of joining, assisting, harboring, selling and buying all and every of the aforesaid Indians.

AND WHEREAS the General Court of this Province have voted that a Bounty or Encouragement be granted and allowed to be paid out of the Publick Treasury, to the marching Forces that shall have been employed for the Defence of the English and English Provinces, from the First to the Twenty-fifth of this Instant November;

I have thought fit to publish the same; and I do hereby declare, That there shall be paid out of the Treasury-Chest to all and any of the said Forces, over and above their Bounty upon Joining, their Wages and Subsistence, the Perquisites as Bounty following, viz.

- For every Male Penobscot Indian above the Age of Twelve Years, that shall be taken within the Time aforesaid and brought to Boston, Fifty Pounds.
- For every Scalp of a Male Penobscot Indian above the Age aforesaid, brought in as Evidence of their being killed or aforesaid, Forty Pounds.
- For every Female Penobscot Indian taken and brought in as aforesaid, and for every Male Indian Prisoner under the Age of Twelve Years, taken and brought in as aforesaid, Twenty-five Pounds.
- For every Scalp of such Female Indian or Male Indian under the Age of Twelve Years, that shall be killed and brought in as Evidence of their being killed as aforesaid, Twenty Pounds.

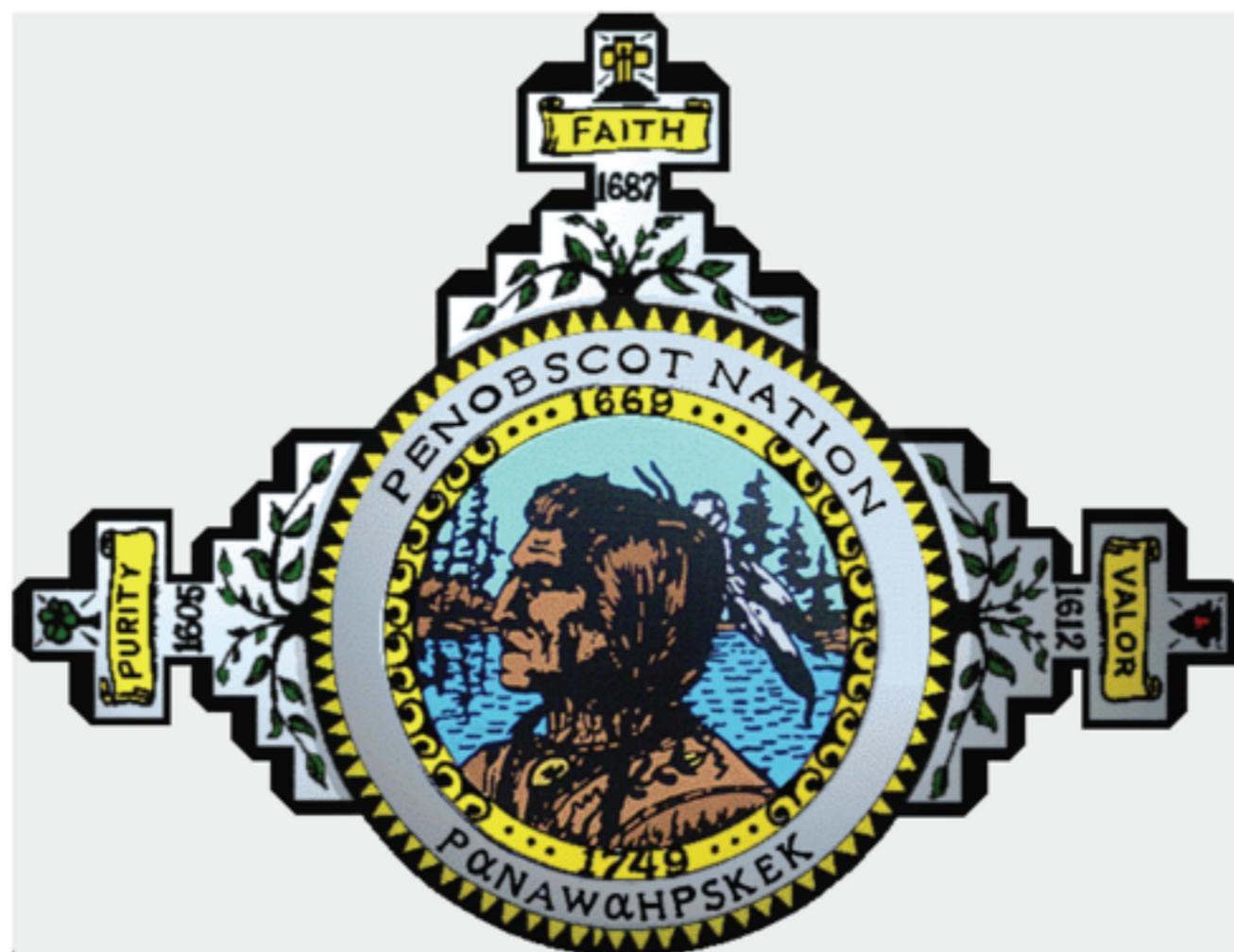
Given at the Council-Chamber in Boston, this Third Day of November 1755, and in the Twenty-sixth Year of the Reign of our Sovereign Lord GEORGE the Second, by the Grace of GOD of Great-Britain, France and Ireland, KING, Governor of the said Province.

By His Honor's Council, J. WILLIAMS, Secy. S. Phips.

GOD Save the KING.

BOSTON: Printed by John Draper, Printer to His Honor the Lieutenant-Governor and Council. 1755.

1755 — Spencer Phips, lieutenant governor of the Province of Massachusetts Bay, issues a proclamation declaring the Penobscot people enemies, rebels, and traitors to King George II, and promising a bounty to be paid for the scalp of every Penobscot Indian man, woman and child. The Phips Proclamation contributed to the annihilation of the Wabanaki Confederacy and the freeing up of land for Europeans to colonize, divide up into private property and extract wealth from.



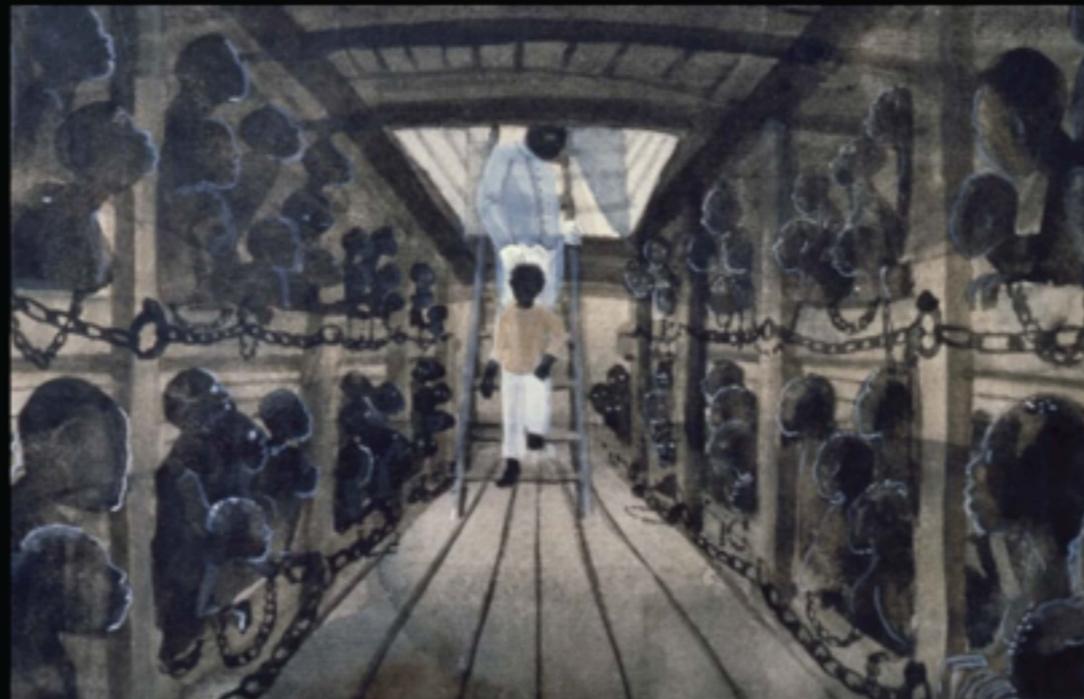
July 2, in 1755 — Colonel James Cargill of Newcastle, slaughtered and scalped a party of peaceful Penobscot men, women in children in Owl's Head and Thomaston. The previous year, Abenaki Indians, who had been protesting the encroachment of English settlements into their territory along the Kennebec River, had attacked the colonial fort at Norridgewock. The Massachusetts government responded by putting a bounty on Abenaki scalps, but exempted Penobscot Indians because they repeatedly professed their desire for peace.

Nevertheless, Colonel Cargill assembled a scalp-hunting posse and traveled eastward into Penobscot territory. In Thomaston, his party encountered a friendly family of Penobscots and proceeded to murder and scalp the man, woman and child.

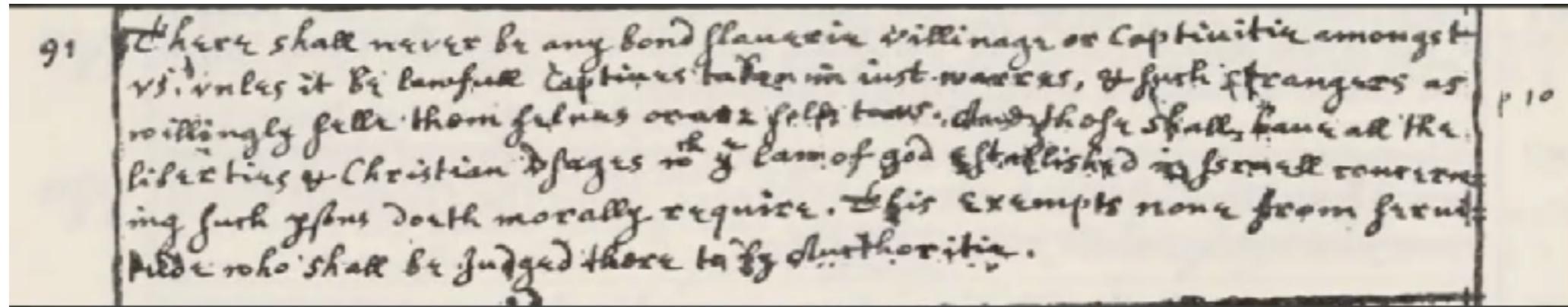
Shortly after Cargill and his men opened fire on an encampment of Penobscot people who were returning from a peace conference at St. George's Fort, killing and scalping nine of them. The unprovoked attacks sparked another war with the Indians that eventually defeated the Penobscot tribe and opened up the backcountry to white settlement. A jury in York later acquitted Cargill of his crimes.

“Racism in the United States developed as a justification for the enslavement of African-Americans in order for capital to extract wealth from their labor and build the foundation of the economy in early America.”

- **In the 1620s, White settlers discovered that they could make a lot of money growing tobacco, but it was only profitable if they forced people to grow it.**
- **Colonial planters tried to use enslaved indigenous people, but found the labor unreliable.**
- **Colonists also used indentured servants from Europe, but this created class conflicts in their home countries and the servitude was only for seven years, so the servants would eventually become landowners and competition for the planters**
- **Finally the colonists decided to kidnap people from Africa and force them into bondage to produce wealth for the colonies.**

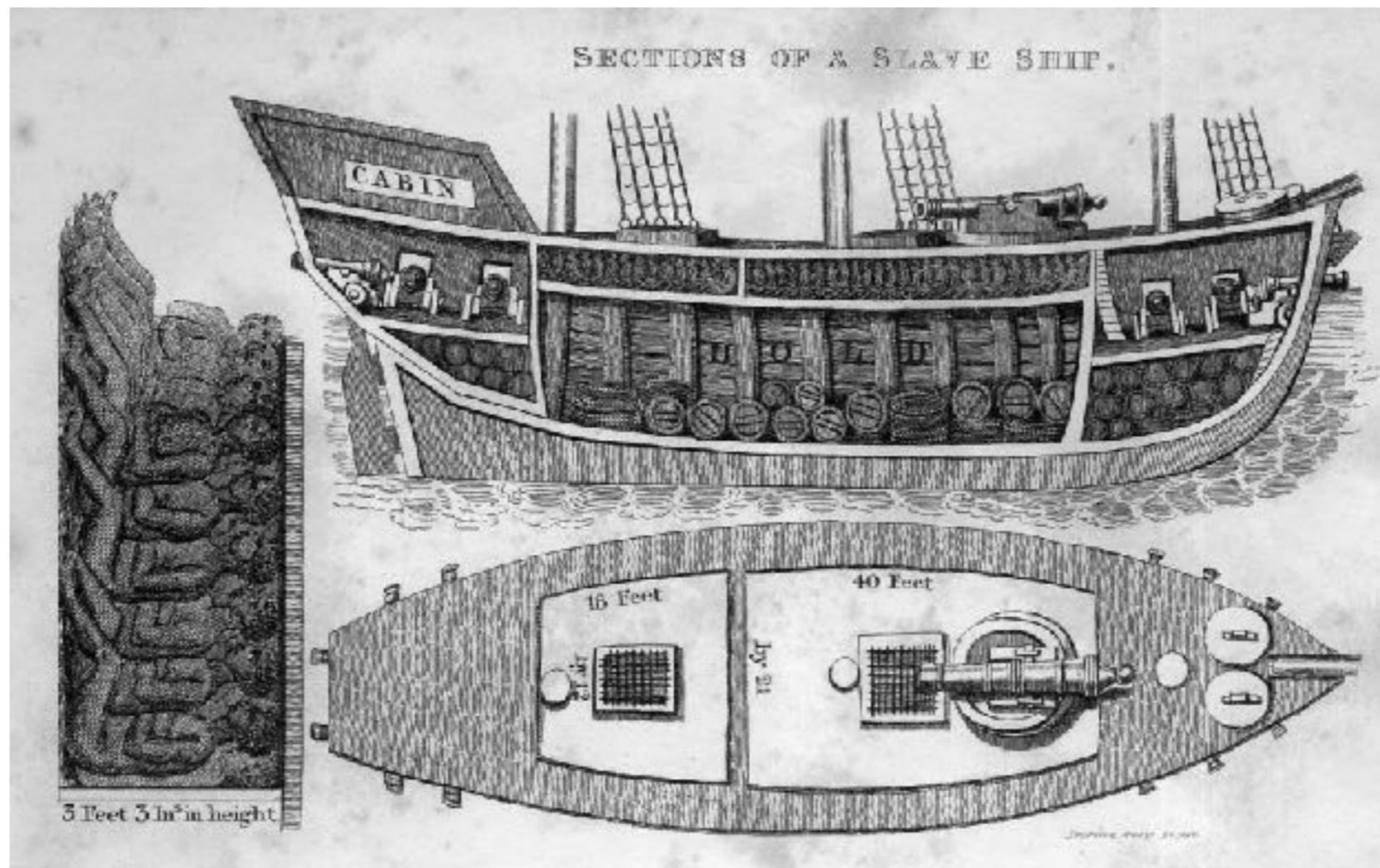


1641 – Massachusetts (which Maine was a part of) becomes the first colony to legalize slavery through the passage of the Body of Liberties.*



There shall never be any bond slavery, villeinage, or captivity amongst us unless it be lawful captives taken in just wars, and such strangers as willingly sell themselves or are sold to us. And these shall have all the liberties and Christian usages which the law of God established in Israel concerning such persons cloth morally require. This exempts none from servitude who shall be judged thereto by authority.

* This became part of the Articles of New England Confederation, which legalized the slave trade in Massachusetts and eventually the rest of New England, according to the Massachusetts Historical Society,



Courtesy of Monticello Digital Classroom

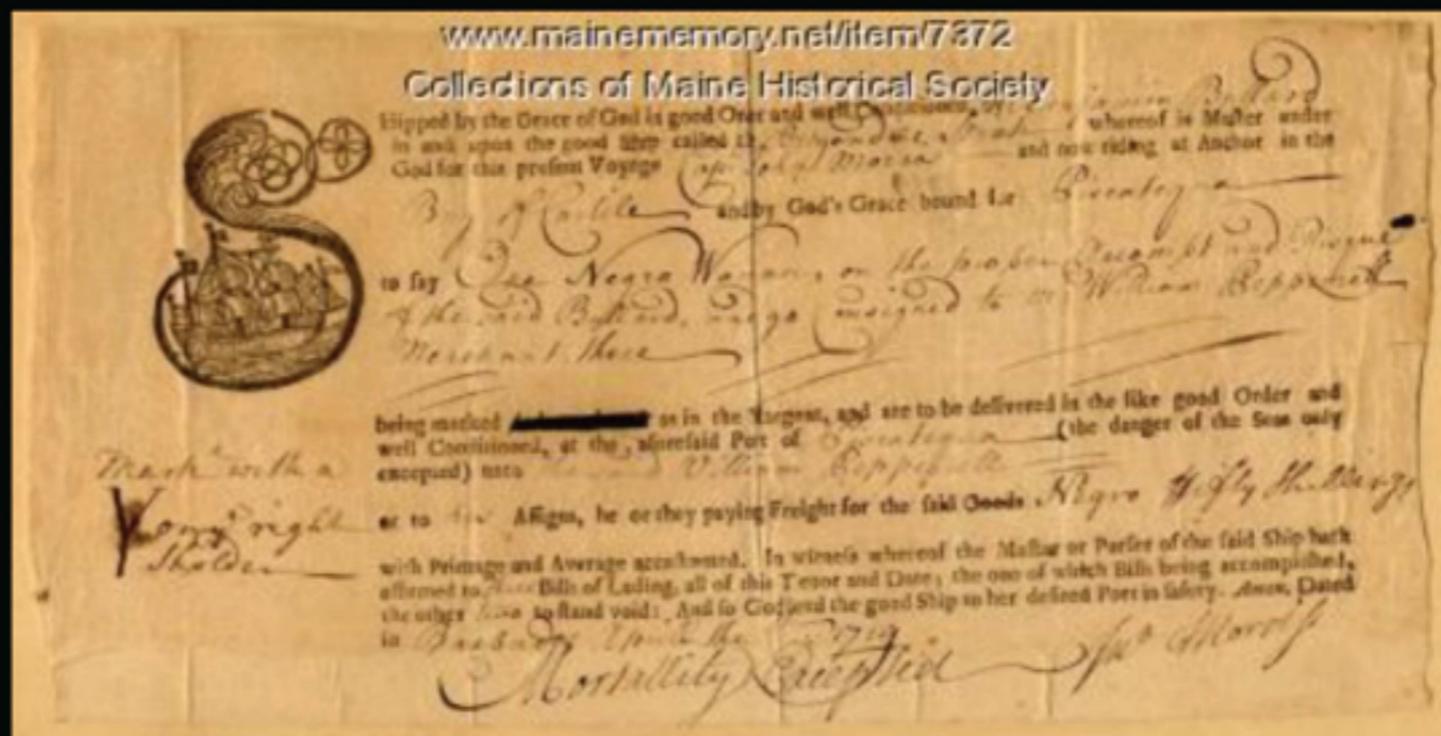
- **1670** The Bodies of Liberties was amended to include the enslavement of a slave woman's offspring to be a legal slave. This guarantees that offspring of all enslaved people were considered as the same legal status as their mother, a slave.

1705 Massachusetts enacts a duty of £4 on all slaves imported to the colony. Massachusetts enacts a law against interracial marriages.

From Massachusetts Historical Society

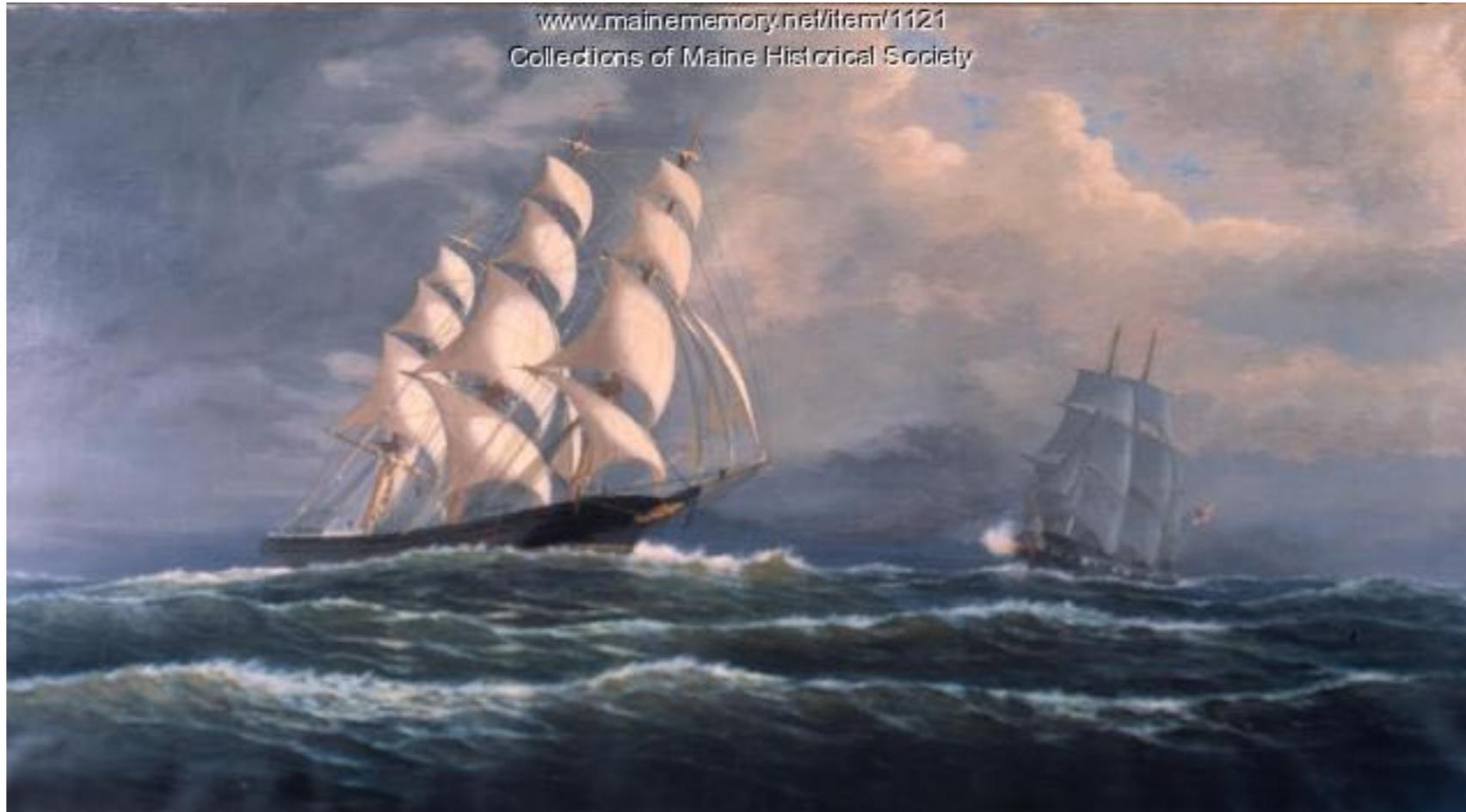


William Pepperell



A receipt for one African woman consigned to William Pepperell

1719 — Receipt for “One Negro Woman... Consigned to M: William Pepperell” (left) of Kittery. Chattel slavery existed in Maine as early as the 1650s. White Mainers were also active in the transatlantic slave trade, building slave ships or sailing to Africa to pick up human cargo, which they traded for sugar in the West Indies that was sold to the rum distilleries in New England. Slaves were also purchased off the boat in York and Wells from ships traveling from slave markets in Boston and Portsmouth.



Franklin Stanwood (1852-1888), a self-taught painter and sailor from Portland, painted this large canvas of a slave ship escaping from a British cruiser. Courtesy Maine Historical Society

Known Maine-built slave ships prior to 1808 include:

- Snauw *Knutsford* (1761) - Berwick, 230 embarked, 197 disembarked at Bonny
- Ship *Hereford* (1770) Sheepscutt River (Sheepscot) 352 embarked, 287 disembarked at Charleston. Makes additional journeys in 1775, 1776, 1779.
- Brig *Rising Sun* (1772) - Biddeford, 241 embarked, 0 disembarked (wrecked all perished)

Courtesy of Kate McMahon

Slavery in Maine

The economy of Colonial New England was built by extracting wealth from land taken from indigenous peoples and from the bodies of Africans, which were transported in ships built by Mainers and traded for sugar that was sold to the rum distilleries in Portland and the rest of New England.

- **Maine merchants, banks and insurance firms were entangled in slave economy**
- **Most prominent New England families in the 18th century owned slaves of African or indigenous descent**
- **Researchers have identified over 1600 people of color lived in Maine before 1800**
- **Cuba was Portland's #1 trading partner in the 19th century - Cuba was the hub of the illicit slave trade.**
- **90 percent of all legal slaving voyages under the US flag were out of Massachusetts, Maine and Rhode Island**

*** Research & text courtesy of Kate McMahon**


 NEW-ENGLAND. D N^o. 688.
 THE
B O S T O N
 WEEKLY
POST-BOY.
 MONDAY, *January* 25. 1748.

A D V E R T I S E M E N T S

TO BE SOLD, by Job Lewis, Esq; the House he lives in at the South End of Boston, with a good Garden, Chaise House, Stable, &c. Also the Flats thereto belonging down to low Water Mark.

A Healthy, strong young Negro Man to be hired out by the Year. Enquire at the Post Office.

ALL Persons indebted to the Estate of Mr. Joseph Prince late of Stratford in Connecticut; Coaster, deceased, and all to whom the said Estate is indebted, are desired speedily to settle Accounts with Mr. William Beach Merchant, or Mrs. Hannah Prince of said Stratford, Executors to said Estate.

ALL Persons that have had any Dealings with Mrs. Eunice Rogers of Newbury, or since her Marriage with Capt. Anthony Farmer, and the Account remains unsettled, are desired forthwith to settle the same with said Farmer (his Wife being dead and he going to Sea.) Also a stout, healthy Molatto Woman brought up in the Baking Business, and fit for a Farmer; and a Molatto Girl about 7 Years old, are to be Sold by said Capt. Farmer at Newbury

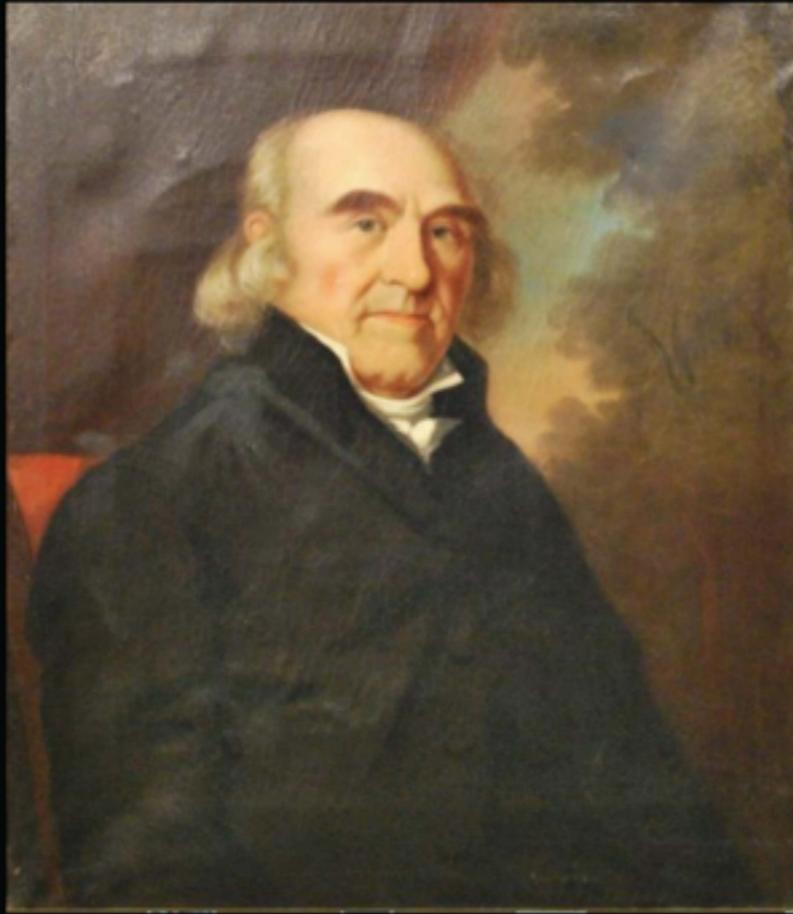
RAN away from Ichabod Goodwin of Berwick, a Negro Man named Pompey, a short thick-set Fellow: Had on when he went away a Homespun double breasted, light colour'd Jacket plain Pewter Buttons; one of his Ears cut: There went a white Boy of fourteen Years of Age with him, with little Hair and short, pretty slim and has a white Eye. Whoever shall take up said Negro and Lad and secure them so that I the said Goodwin may have them, shall have Four Pounds old Tenor Reward by me
Ichabod Goodwin.

1748 advertisement for a reward for the capture of an escaped enslaved man name Pompey of Berwick, Maine.

Textile manufacturing, which was Maine's largest industry for much of the 19th century, relied on cheap cotton picked by enslaved people. Some Maine mills produced low quality "negro cloth," sold to slave owners to clothe enslaved people.



Ad for the Continental Mills in Lewiston.



Josiah Little



Henry Knox



James Bowdoin

1760s - early 1820 — A group of mercantile capitalists from Massachusetts laid claim to vast tracts of Maine wilderness based largely on patents granted to a handful of wealthy English gentlemen by King Charles I, dating back as far as 1629. Through political connections, heredity, and legal manipulation, three major land companies secured dubious legal rights to millions of acres where Indian tribes formerly



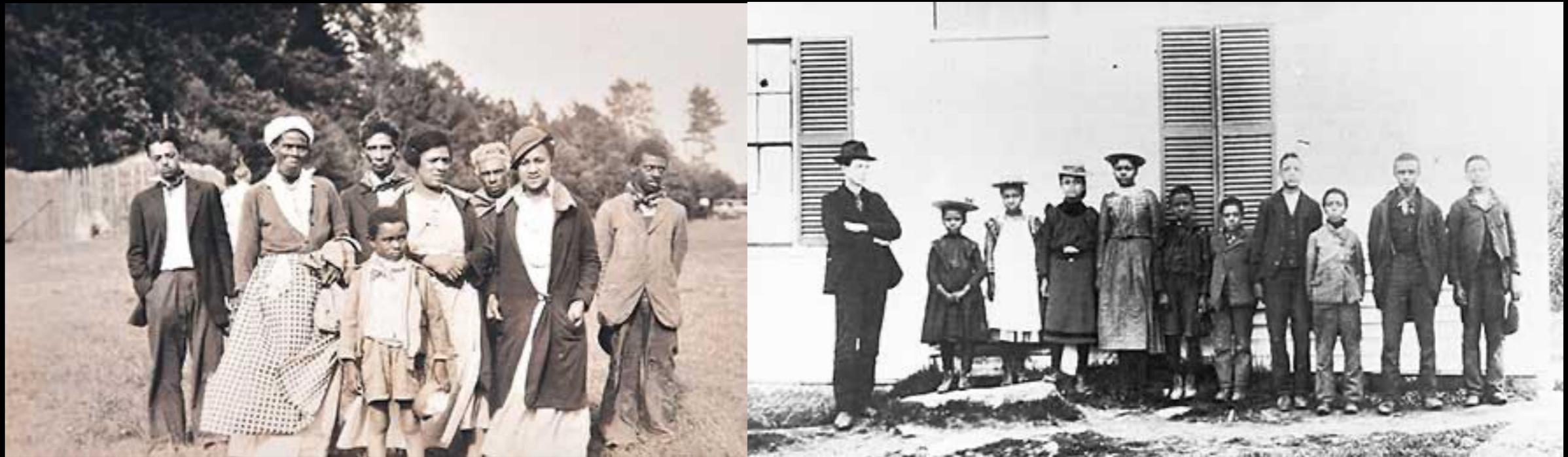
Settlers clearing land on Paris Hill — 1802

1775 -1790 — Maine's population triples to nearly 100,000 as Massachusetts veterans of the Revolutionary War and their families came to claim their slice of the new nation on former Indian land to live off God's bounty — free from bosses, lords and masters.



Mum Betts AKA Elizabeth Freeman

1781 — A Massachusetts slave named Mum Betts who later changed her name to Elizabeth Freeman, successfully sued in court for her freedom, arguing that slavery was not consistent with the state constitution's guarantee that "all men are born free and equal and have certain natural, essential and unalienable rights." On July 8, 1783, the Massachusetts Supreme Court effectively abolished slavery in Massachusetts and Maine.



Residents of Peterborough, a free black community in Warren; circa 1930s

1780s — Free Black farming communities were formed by Black revolutionary War veterans in Warren and Machias.



19th century Maine pioneer cabin



Home of General Henry Knox in Thomaston

1760s - 1820 - After wealthy aristocrats began demanding high payments for the former Indian land white settlers squatted on, desperate farmers known as “Liberty Men” took up arms and fought back against land agents, lawmen and lawyers enforcing the Proprietors’ claims. Land agents and surveyors were mobbed, shot at and otherwise driven from the area. Eventually, the back country resistance was defeated and the wealth derived from these land payments helped give the Proprietors the capital they needed to finance the construction of mills, dams and other commercial investments in the 1820s and ’30s.



Portland City Hall in 1885.

1866 First strike among black Maine workers in Maine: The construction of Portland's new City Hall sparked conflicts between workers and contractors. When "colored men" were hired to work on the building in the summer of 1866, it angered many who thought that white men should have been given preference in hiring. Local whites complained that the city had a "no white need apply" policy as it brought the "party of negroes" to Portland from Boston. The conflict was exacerbated by the rumor that the "negroes worked for \$1.75 a day, while those seeking work were willing to labor for \$1.50 a day." The "colored men and brothers" soon went on strike for higher wages, however, and hope was expressed that the "white folks may now have a chance if they be wanted again."

- **1877: the North pulled its troops out of the South in the aftermath of Reconstruction and a reign of terror swept through the South, overthrowing state governments and murdering and disenfranchising Blacks.**
- **From 1882-1968, 4,743 lynchings occurred in the United States.**



"The Colored Race" — Bangor Daily News Editorial, 1906

The colored man at the north is finding his conditions less favorable for advancement every decade. Forty years ago the colored man was looked upon by New England residents with a tolerant charity that led to easy employment," he wrote. "Today a negro is viewed with suspicion — at times with alarm. New England conservatism finds the negro shifty and unreliable. He is fond of pleasure and prefers idleness and poverty to thrift.

The Indian and the negro present no menace in any field of industrial competition. Both races have wide areas of usefulness. They make the bravest soldiers in the world. They are industrious when they can be induced to work. But as soon as they have earned a few dollars beyond their immediate wants, the desire to spend the surplus is overmastering. Neither the petting of philanthropists nor the efforts of teachers can overcome their inherent laziness and lack of foresight. The end of the Indian is in sight. Indications are that the negro is going in the same direction.





1911 - On Malaga Island, a mixed race community was forcibly evicted by a legislative decree in 1912 based on racist pseudoscientific views that they were “degenerate” and “feeble minded.”

1917-1919 - 350,000 Black soldiers serve in World War I and come home, newly emboldened to demand basic rights. The Great Migration of Southern Blacks to the Northern cities face violence and lynchings in their communities by white mobs in the Red Summer of 1919.



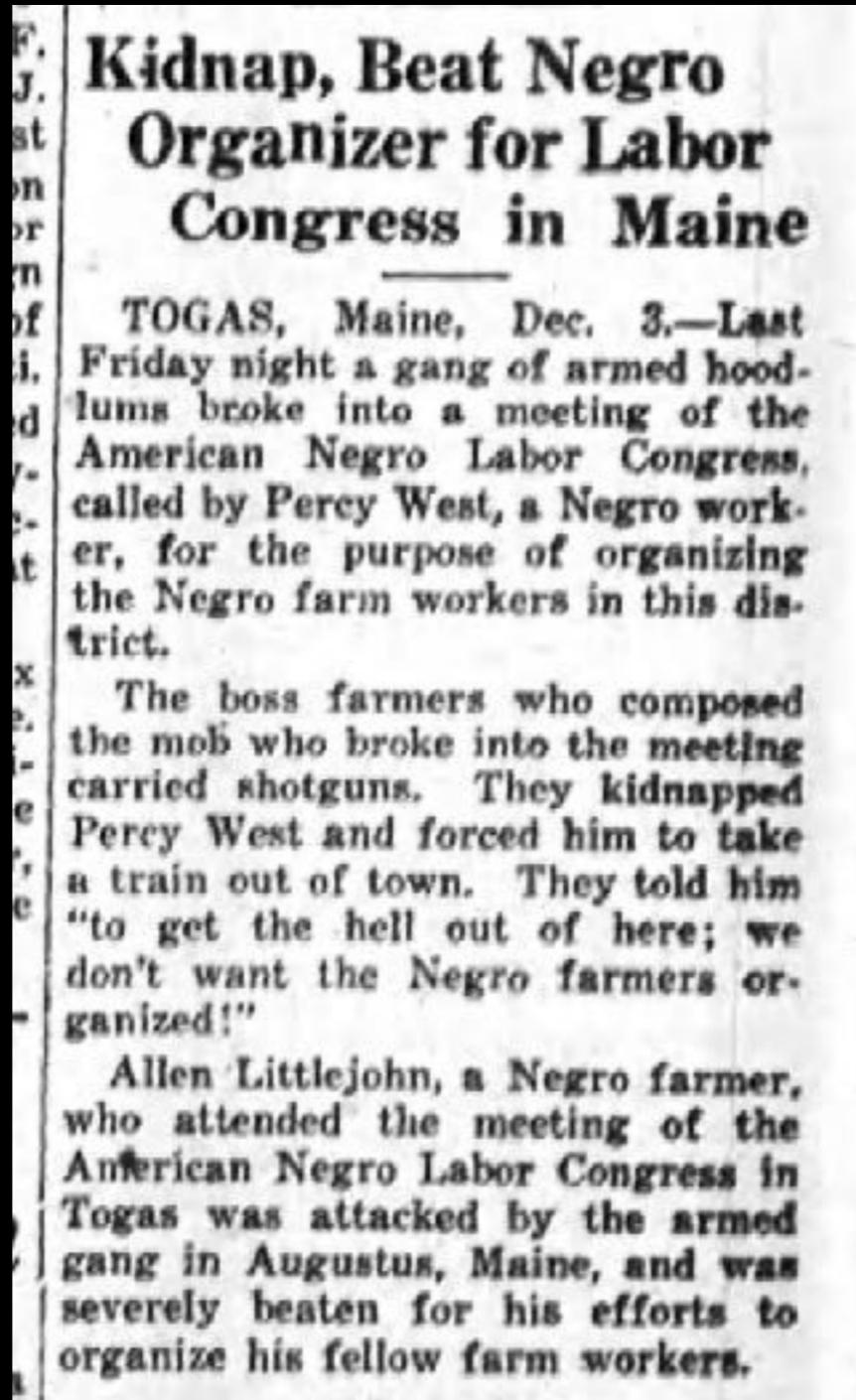
Roger and Samuel Courtney, two African-American brothers who were “tarred” and feathered by a white mob at the UMniversity of Maine in 1919.

The Rise of the Maine Ku Klux Klan



Ku Klux Klan members from across Maine, along with their wives and children, gathered in Portland for a field day and parade on August 28, 1926. They posed for this photo behind the Portland Exposition Building, at right, where Hadlock Field now stands. — Collections of Maine Historical Society, courtesy of www.MaineMemory.net

Black workers continue to face violence throughout the 20th Century for standing up for workers' rights. Below is a newspaper clipping from December 3, 1929:



9-23-96

the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said

Roy C. Lord and Donna C. Lord

as joint tenants and not as tenants in common, and their heirs and assigns, and the survivor of them, and the heirs and assigns of the survivor of them, forever, a certain lot or parcel of land, with the buildings thereon, situated in said Augusta, being Lot No. 65 in Belmont Park, a sub-division of house lots of certain premises conveyed by Titcomb Real Estate Association and others by deed recorded in Book 586 at Page 92 in Kennebec County Registry of Deeds. The plan of said house lots having been filed on August 24, 1920 in said Registry. It is understood and agreed that said lot shall never be occupied by a colored person and no house shall be erected thereon costing less than Two Thousand Dollars. All buildings shall be placed ten feet back from the front line of the lots.

Meaning and intending hereby to convey the same premises conveyed to us by deed of George A. Severance, et al, dated May 17, 1962 and recorded in said Registry of Deeds in Book 1263, Page 264.

It is hereby understood and agreed between the parties hereto that taxes assessed against said property for the year 1968 are to be prorated between said parties.

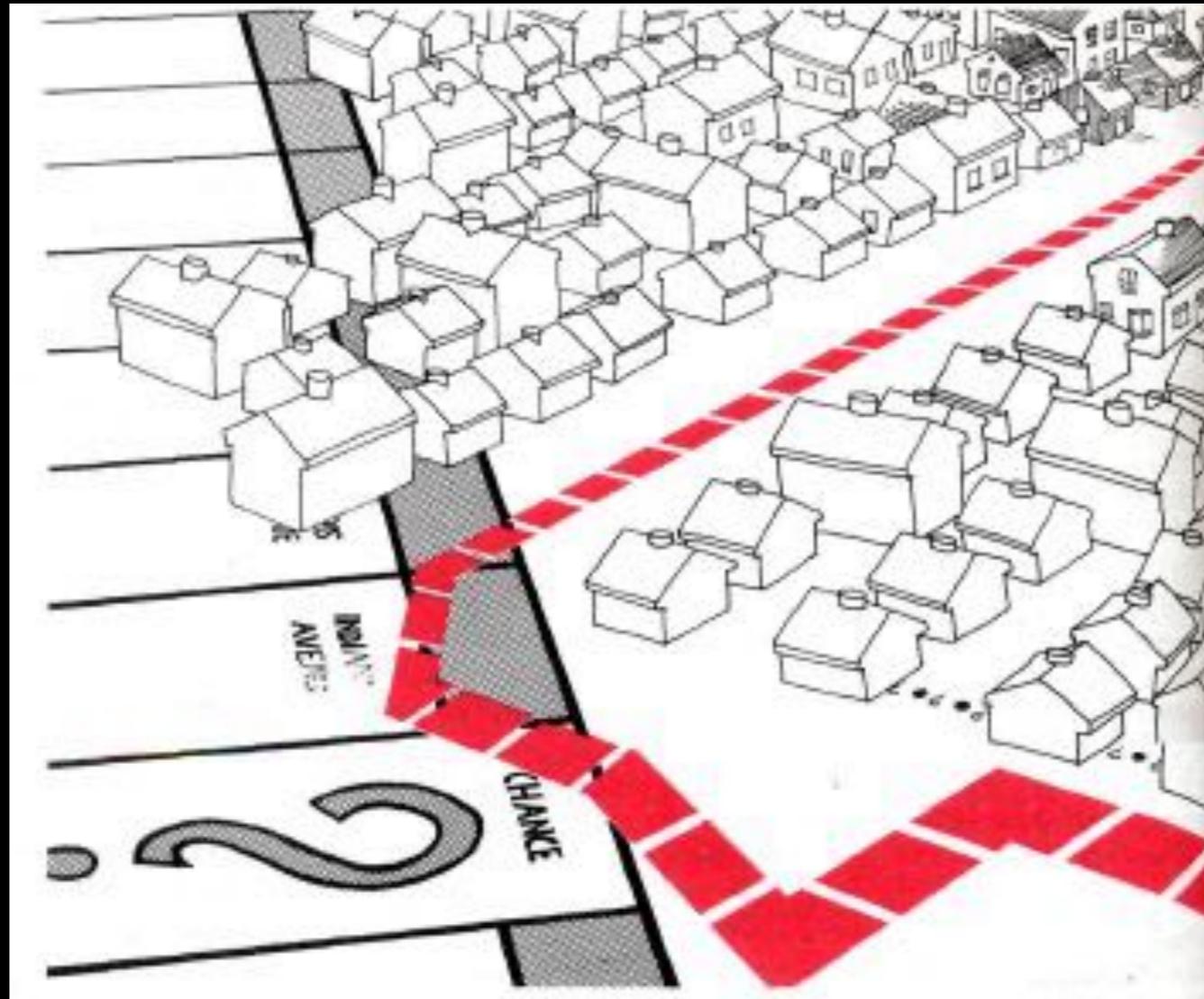
LINE
TAX
55

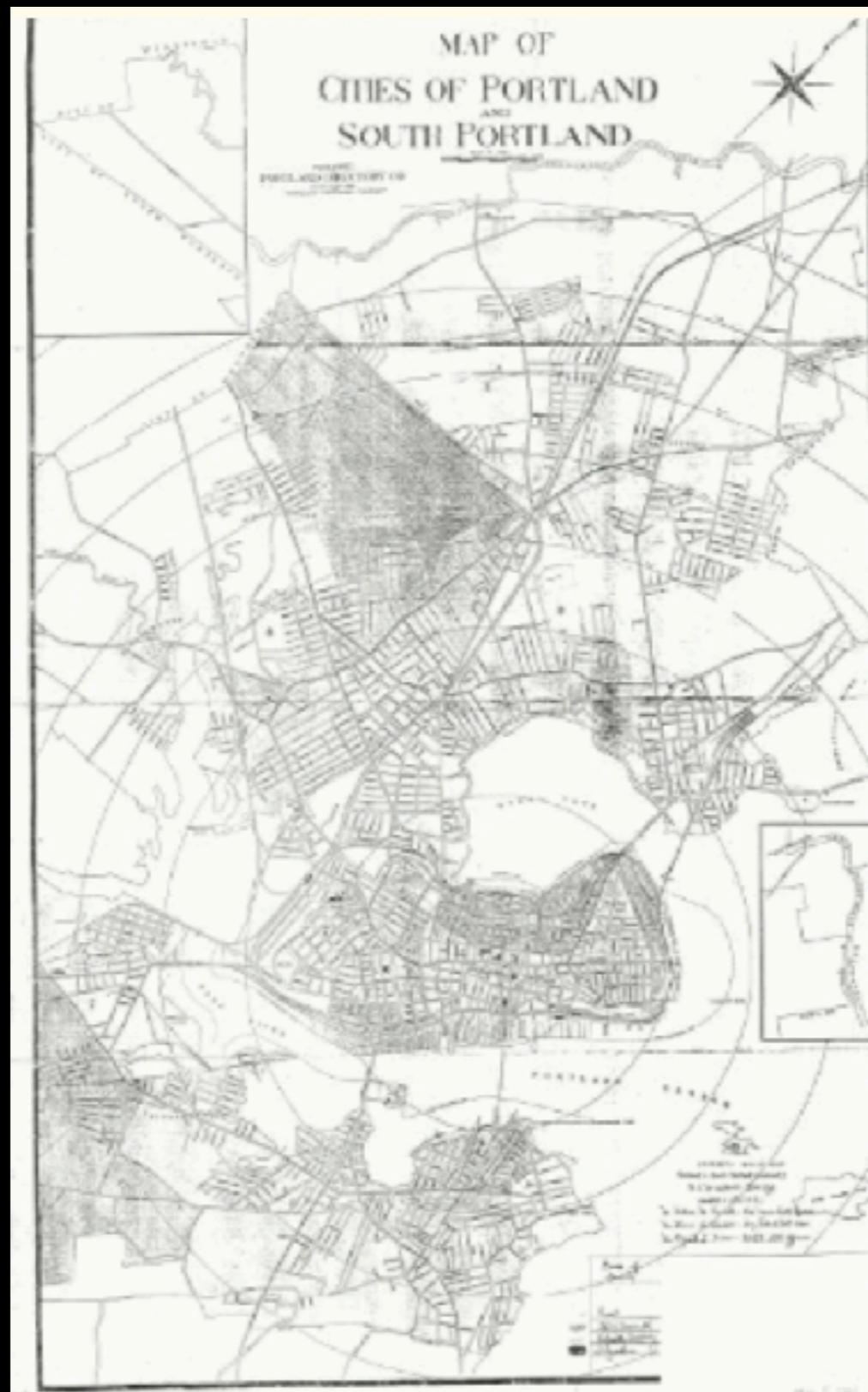


Kennebec Says Bk July 23

Sellers' legal description of deed of house in Augusta showing explicit housing discrimination toward African-Americans: "It is understood and agreed that said lot shall never be occupied by a colored person...."

Redlining: New Deal government policies were primarily designed to provide housing to white, middle-class, lower-middle-class families in the suburbs while African-Americans and other people of color were left out of new suburban communities and pushed instead into urban housing projects.





1935 Residential Security Map detailing most desirable neighborhoods in Portland and South Portland in blue and the least desirable in red, considered the most risky for lending.



Maine residents returning from the March on Washington on August 29, 1963 — from left, Gerald Talbot, Larry Burris, Lawrence Graham, the Rev. Valton V. Morse, Elizabeth Aldrich, Mrs. Joseph Robey and the Rev. John C. Bruce. - Photo by Don Johnson/Courtesy of the Portland Public Library, Gannett Photo Collection



Maine Governor John Reed signing the Fair Housing Bill in May 1965.

APPENDIX L

**Morgan Williams, General Counsel, National Fair Housing
Alliance Presentation Outline**

Morgan Williams, General Counsel
National Fair Housing Alliance

Presentation Outline

Modern discriminatory land use/zoning policy

- St. Bernard Parish litigation
<https://lafairhousing.org/st-bernard-parish-litigation>
- DOJ docket
<https://www.justice.gov/crt/housing-and-civil-enforcement-cases>

Modern housing policies/practices

- Road Home Program litigation
https://www.naacpldf.org/wp-content/uploads/road_home_factsheet.pdf
- REO maintenance/marketing litigation
<https://nationalfairhousing.org/reo/>
- Facebook litigation – modern day racial covenants
<https://nationalfairhousing.org/facebook-settlement/>
- Redfin litigation – modern day redlining
<https://nationalfairhousing.org/redfin-investigation/>

Solutions →

1. AFFH
 - AFFH mandate
<https://nationalfairhousing.org/affh/>
 - Justin Steil research – MIT
<https://dusp.mit.edu/sites/dusp.mit.edu/files/attachments/publications/Steil%20Kelly%202019%20The%20Fairest%20of%20Them%20All.pdf>
 - California mandate
https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf
2. Zoning/Land use measures
 - a. City of Boston – Land Use Policy
<https://www.boston.gov/news/boston-become-first-major-city-nation-include-fair-housing-requirements-zoning-code>
 - b. Comprehensive zoning ordinance/AFFH policy paper
https://www.lawyerscommittee.org/wp-content/uploads/2015/06/4-28-11_Strategies_to_Affirmatively_Further_Fair_Housing.pdf

3. Race-conscious housing programs

- a. SPCP – NFHA blog
<https://nationalfairhousing.org/using-spcps-blog/>
- b. SPCP – Fair Housing Act white paper
https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf
- c. CRA Regulations, Examination Procedures Should Include Explicit Focus On Race
[CRA regulations, examination procedures should include explicit focus on race » NCRC](#)
- d. Evanston, IL – reparations
https://www.nytimes.com/2021/03/22/us/reparations-evanston-illinois-housing.html?.?mc=aud_dev&ad-keywords=auddevgate&gclid=EAlaIQobChMI3rG0ipqE8wIVC5WGCh1bQwScEAAAYASAAEgJd6fD_BwE&gclsrc=aw.ds
- e. Asheville, NC – “reparations”
<https://www.google.com/amp/s/www.nytimes.com/2020/07/16/us/reparations-asheville-nc.amp.html>

4. Fair Housing Center

- a. NFHA map
<https://nationalfairhousing.org/get-local-help/>
- b. Havens decision
<https://caselaw.findlaw.com/us-supreme-court/455/363.html>
- c. Fair housing testing ~ FHJC-Norman Lear
<https://www.fairhousingjustice.org/resources/video-resources/america-divided/>

*NFHA conference – zoning session, Sept. 30 – 1:00-3:10pm ET:
The Fair Housing Implications of Zoning and Land Use Reform

*Biden policy

White House fact sheet on the administration’s plan to increase the supply of affordable housing:
<https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/01/fact-sheet-biden-harris-administration-announces-immediate-steps-to-increase-affordable-housing-supply/>.

APPENDIX M

**State Level Laws that Impact Zoning and Land Use in
Maine Quick Reference Guide and Memo on U.S. Supreme
Court rulings regarding exclusionary zoning prepared by
Office of Policy and Legal Analysis**

State Level Laws that Impact Zoning and Land Use in Maine

Non-comprehensive quick reference guide
(prepared by OPLA Staff)

Municipal Home Rule Authority:

The Constitution of Maine, [Article VIII, Part Second, Section 1](#), is generally interpreted to give municipalities the right to freely adopt ordinances regulating almost any subject, unless the ordinance conflicts with another state or federal law. This principle is further delineated in the Maine Revised Statutes [Title 30-A, Chapter 111](#) (Home Rule) and [Title 30-A, Chapter 141](#) (Ordinances).

In practice this principle, known as Municipal Home Rule Authority, means that municipalities in Maine generally have the authority to self-govern in all areas where the State of Maine or the federal government has not passed laws that would restrict them.

Municipal Planning and Land Use:

Municipal planning and land use is partially constrained by a number of chapters within the Maine Revised Statutes, Title 30-A. Generally, these chapters set forth processes that municipalities must follow in adopting planning and land use ordinances. There are also specific provisions regarding the issuance of variances, growth management, development, comprehensive plans, and a number of other areas. Links to major provisions are below.

[Title 30-A, Chapter 187: Planning and Land Use Regulation](#)

[Subchapter 2: Growth Management Program](#)

[Subchapter 3: Land Use Regulation](#)

[Subchapter 4: Subdivisions](#)

[Title 30-A, Chapter 201: Housing Authority](#)

[Subchapter 2: Maine State Housing Authority established; powers, duties and restrictions](#)

[Subchapter 5: Loans to Financial Institutions](#)

[Subchapter 6: Construction loans](#)

[Subchapter 7: Housing Opportunities for Maine Program](#)

[Subchapter 7-A: Maine Energy, Housing and Economic Recovery Program](#)

[Subchapter 12: Preservation of Moderate-Income and Low-Income Housing Constructed with Federal Assistance](#)

[Title 30-A, Chapter 206: Development Districts](#)

[Subchapter 3: Municipal Affordable Housing Development Districts](#)

Additional Planning and Land Use Laws:

There are a number of other areas within the Maine Revised Statutes that touch on planning and land use directly. These include but are not limited to the following:

Shoreland Zoning:

The Mandatory Shoreland Zoning Act requires municipalities to adopt, administer, and enforce local ordinances that regulate land use activities in the shoreland zone. The shoreland zone is comprised of all land areas within 250 feet, horizontal distance, of the:

- Normal high-water line of any great pond or river;
- Upland edge of a coastal wetland, including all areas affected by tidal action;
- Upland edge of defined freshwater wetlands; and
- All land areas within 75 feet, horizontal distance, of the normal high-water line of certain streams.

The Mandatory Shoreland Zoning Act: [Title 38, §§ 435-339](#)

Department of Environmental Protection: [Mandatory Shoreland Zoning Rules and Info](#)

River Corridor Commissions:

River corridor commissions exist, and are encouraged by statute, to assist local governments in implementing their responsibilities under shoreland zoning, and to enhance coordination and cooperation among municipalities. For more information about the approval of such commissions, interlocal agreements, comprehensive plans, ordinance power, and powers generally, see the links below.

River Corridor Commissions: [Title 30-A, Chapter 189](#)

See also - Saco River Corridor

Enabling Legislation: [Title 38, Chapter 6](#)

Website: [Saco River Corridor Commission](#)

Land Use Planning Commission:

The Land Use Planning Commission serves as the planning and zoning authority for the unorganized and deorganized areas of the State, including townships and plantations. These areas either have no local government or have chosen not to administer land use controls at the local level. The commission issues permits for smaller development projects, such as home constructions and camp renovations. For larger development projects requiring Department of Environmental Protection review under the [Site Location of Development Law](#), the commission certifies that proposed land uses are allowed and that proposed development activities comply with applicable land use standards.

Department of Agriculture, Conservation & Forestry: [Land Use Planning Commission](#)

Land Use Planning Commission establishing legislation: [Title 12, §§ 681-689](#)

Minimum Lot Sizes for Waste Disposal:

Maine has certain statutorily designated minimum lot sizes for single family and multiple unit housing when it comes to waste disposal, approval of lesser frontage, exemptions (certain lots and structures prior to 1970 or 1973), and violations.

[12 MRSA §§ 4807 – 4807-G](#)

Traffic Movement Permits:

Any project which generates 100 or more passenger car equivalents trips during peak hour of traffic generation, must file a Traffic Movement Permit application with the Maine Department of Transportation. Such permits could potentially apply to major housing developments and require traffic mitigation measures.

Traffic Movement Permit statute: [Title 23, §704-A](#)

Department of Transportation: [Traffic Movement Permit Rules](#)

Tiny Homes:

Non-traditional structures such as “Tiny Homes” have recently become more popular in Maine and raised a set of unique issues (including the enforcement of building code standards) both at the state and municipal level. Regulation varies slightly based on whether such structures are built on trailers (requires a title through Bureau of Motor Vehicles and subject to trailer road safety equipment requirements) or built on land. Relevant statutory provisions and recent legislation are linked below.

Recently adopted legislation (not yet on MRS website): [Title 30-A, §4363 \(as LD 1530\)](#)
Statutory Requirements for Certificate of Title: Title 29-A, [§651](#) & [§708](#)

Enforcement of Land Use and Zoning Laws:

Land use and zoning laws are enforced by municipal code enforcement officers, trained by the Office of the State Fire Marshal and governed under [Title 30-A §4452](#). Code enforcement officers are responsible for the enforcement of all enabling state laws and local ordinances in the following areas: shoreland zoning, land use regulation, internal plumbing, subsurface waste water disposal, and building standards.

The State has explicitly limited municipal home rule authority in the area of building codes. Any municipality above 4,000 residents is required to enforce the Maine Uniform Building and Energy Code, and while municipalities below that threshold are not required to enforce the code, they may not adopt or enforce any other building or energy code.

The requirements of the Maine Uniform Building and Energy Code do not apply to:

- (1) Log homes or manufactured housing as defined in [chapter 951](#);
- (2) Post and beam or timber frame construction; or
- (3) Warehouses or silos used to store harvested crops.

Resources:

Office of State Fire Marshal: [Code Enforcement](#)

Office of State Fire Marshal: [Maine Uniform Building and Energy Codes](#)

Enforcement of Land Use Regulations: [Title 30-A, Subchapter 5, §§4451-4453](#)

Maine Uniform Building and Energy Code: [Title 10, Chapter 1103](#)

Municipal Home Rule Limitation: [Title 10, §9724](#)

To: Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions
From: Legislative Staff
Date: September 30, 2021
Subject: Background on U.S. Supreme Court Rulings Regarding Exclusionary Zoning

Summary of Key Points:

- Explicitly racial or other directly class or category-based zoning policies are unconstitutional under the 14th Amendment of the United States Constitution and illegal under the Fair Housing Act of 1968.
- Zoning ordinances are generally permissible if they are not “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare,” even when those ordinances may result in a disparate impact on certain communities.

Strict Scrutiny: While this memo does not go into the intricacies and extended history of case law addressing equal protection under the 14th Amendment more generally, it is important to note that when laws are passed that directly address or discriminate against a class or category of persons such laws will receive what is referred to as “strict scrutiny” review by the courts. To pass strict scrutiny review, the legislature must have passed the law to further a “compelling governmental interest,” and must have narrowly tailored the law to achieve that interest. Strict scrutiny is the highest standard of review which a court will use to evaluate the constitutionality of governmental discrimination. However, laws that have a disparate impact but are not explicitly discriminatory typically do not receive strict scrutiny review.¹

Types of Exclusionary Zoning and Defenses to Exclusionary Zoning Challenges: Zoning ordinances may achieve an exclusionary effect in a number of different ways. The most common have traditionally been by limiting the number of dwellings permitted through large lot zoning, the exclusion of multiple dwellings or multi-family homes, the exclusion or restriction of mobile homes, and various density restrictions, including but not limited to setback requirements, minimum frontage requirements, and lot coverage restrictions. Generally, a court must weigh the public interests served by the regulation against the need for affordable housing. Common defenses to exclusionary zoning challenges include municipal finances, infrastructure and traffic considerations, property values, rural, historic, or unique community character, and open space, agricultural land, and environmentally sensitive areas.

¹ Laws that have a disparate impact on a protected class may still be prohibited by the Fair Housing Act of 1968. See *Texas Department of Housing Community Affairs v. Inclusive Communities Project*, 135 S. Ct. 2504 (2015).

Overview of Seminal Cases:

Below, please find a brief overview of the seminal cases regarding the constitutionality of exclusionary zoning policies.

In 1917, the United States Supreme Court addressed an ordinance out of Louisville, Kentucky, which prohibited the sale of real property to people of color in white-majority neighborhoods or buildings and vice versa. *Buchanan v. Warley*, 245 U.S. 60 (1917). In that case, the Supreme Court held unanimously that the ordinance in question violated the 14th Amendment of the United States Constitution, as it interfered with individuals' property rights and rights to privately contract. The central holding of the case was that explicitly racial zoning policies are unconstitutional, a principle later codified in the Fair Housing Act of 1968.²

However, in 1926, the United States Supreme Court upheld an exclusionary zoning ordinance (that was neither explicitly race or class based) on the basis that it was a reasonable, constitutionally permissible, exercise of police power in the landmark case of *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926). In that case the court held that a locality's decision on the separation of uses within its own borders may be afforded substantial deference as long as the division is not "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Euclid*, at 395. Although two years later the Supreme Court rejected a different ordinance in *Nectow v. City of Cambridge*, 277 U.S. (1928) as arbitrary and irrational, the Court has expressed a reluctance to question the policy decisions of localities in zoning practices.³ See, *Euclid*, at 389; *Village of Belle Terre v. Boraas*, 416 U.S. 1, 4 (1974).

The law around exclusionary zoning practices has not seen much movement since the case of *Euclid v. Ambler Realty*, however in the 1974 case of *Belle Terre v. Boraas* the Court upheld a zoning ordinance that limited the types of groups (those related by "blood, adoption, or marriage") that could occupy a single dwelling because it bore a rational relationship to the objective of promoting "family needs" and "family values." *Village of Belle Terre*, at 6-9. In that case, the Court also explicitly distinguished such an ordinance from those prohibited by *Buchanan v. Warley*.

In 1977 the Court followed up *Village of Belle Terre v. Boraas* with the case of *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (1977) where it overturned an ordinance that regulated

² The *Buchanan* decision, however, did not affect restrictive covenants that were routinely held not to violate the Constitution because they were private agreements, not enforced by state action. In 1948, the United States Supreme Court held that standing alone, racially restrictive covenants do not violate the 14th Amendment, but while private parties may abide by the terms of such a covenant, they may not seek judicial enforcement as that would constitute state action. Accordingly, enforcement of racially restrictive covenants in state court violate the Equal Protection Clause of the 14th Amendment.

³ Although *Euclid* allows for zoning based on separate uses, the case of *Belle Terre et al. v. Boraas et al.* 416 U.S.1 (1974) upheld the constitutionality of a residential zoning ordinance that limited the number of unrelated individuals who may inhabit a dwelling.

which type of family members may live together in a single dwelling (the ordinance in question prohibited a grandparent from living with a single dependent son and children). The Court stated that “[w]hen a city undertakes such intrusive regulation of the family, neither Belle Terre nor Euclid governs; the usual judicial deference to the legislature is inappropriate” and cited *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974) for the proposition that the “Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.” The Court in *Moore* looked specifically at the City of East Cleveland’s justification for the ordinance, “a means of preventing overcrowding minimizing traffic and parking congestion, and avoiding an undue financial burden on East Cleveland’s school system” and determined the ordinance served those goals “marginally, at best.” *Moore*, at 498-500.

In 1977 the United States Supreme Court heard also a case dealing with a zoning ordinance of a Chicago suburb of a neighborhood that was zoned for single-family dwellings without variance since 1959, and thus prohibited the construction of multifamily units. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). The Court upheld the ordinance as constitutional, finding that there was no discriminatory intent or evidence of racial motivation.

Relevant Areas of Interest:

Standing:

Another legal issue that may arise is the doctrine of “standing.” Standing refers to whether a person has the legal capacity to bring a lawsuit in court, and it typically revolves around the requirement that plaintiffs have sustained or will sustain direct injury or harm and that such harm is redressable by the court.

Standing in reference to zoning laws has been addressed by the United States Supreme Court. In *Warth v. Seldin*, 422 U.S. 490 (1975), low-income individuals and a non-profit housing organization sued, contending that a town’s zoning ordinance effectively excluded persons of low and moderate income from living in the town, in contravention of a petitioners’ constitutional rights and in violation of civil rights statutes. The Court held that none of the petitioners in that suit met the threshold requirement of stating a “specific case or controversy” between themselves and the defendant and that to have standing a complainant must clearly allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the Court’s remedial powers. *Warth*, at 517-518. A “generalized grievance” is typically not enough to show an “actual or threatened injury.” *Warth*, at 499-502.⁴

⁴ For an example of a discussion of standing in Maine, see *Halfway House, Inc. v. City of Portland*, 670 A.2d 1377, 1380-81 (Me. 1996)

Inclusionary Zoning:

A few states have passed laws attempting to create explicitly inclusionary zoning programs. These include, for example, expedited permitting procedures and appeals mechanisms for affordable housing projects, requirements to include affordable housing in municipalities' comprehensive plans, and legislation enabling municipalities to adopt inclusionary zoning requirements. Requirements at either the state or local level may include mandatory inclusionary housing set-asides, mandatory inclusionary housing fees, zoning incentives for affordable housing, affordable housing preservation (for example using community land trusts), permitting accessory dwelling units, and designating affordable senior housing.

Those laws have prompted lawsuits that have yet to be addressed by the United States Supreme Court. At the state level, an oft-cited example of an inclusionary zoning challenge is *Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp.*, 92 N.J. 158, (1983) (also known as *Mount Laurel II*). In this case, the New Jersey Supreme Court rejected the contention that mandatory set asides are impermissible socioeconomic regulations, explaining that “it is nonsense to single out inclusionary zoning ... and label it ‘socio-economic’ if that is meant to imply that other aspects of zoning are not. Detached single family residential zones, high-rise multi-family zones of any kind, ... indeed practically any significant kind of zoning now used, has a substantial socio-economic impact and, in some cases, a socio-economic motivation. It would be ironic if inclusionary zoning to encourage the construction of lower income housing were ruled beyond the power of a municipality because it is ‘socio-economic’ when its need has arisen from the socio-economic zoning of the past that excluded it.” The court also rejected the claim that mandatory set asides are takings of property, stating that “the builder who undertakes a project that includes a mandatory set-aside voluntarily assumes the financial burden, if there is any, of that condition.”

Another of the more high-profile examples of such cases is that of *Cherk v. Marin County* ([link to superior court complaint](#)), where plaintiffs challenged a county's \$40,000 fee to subdivide a vacant plot of land they owned and had hoped to sell. The fee was part of a county ordinance that required people subdividing parcels of land to either devote a portion of that land to affordable housing or else pay an in-lieu affordable housing fee. The intent of the law was to combat high housing costs in Marin County. Plaintiffs in the case argued that the government had not shown a reasonable relationship between subdividing their lot and housing prices, and was therefore placing an unconstitutional condition on the Cherk's lot split in violation of the Fifth and 14th Amendments.⁵ The plaintiffs lost at both the superior court and on appeal, where the court

⁵ The plaintiffs argued the fee was invalid under the "unconstitutional conditions doctrine," established in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Under that doctrine, the government can't condition a person's receipt of a governmental benefit on the waiver of a constitutionally protected right. Conditions imposing monetary exactions or dedications of property must bear an “essential nexus” and “rough proportionality” to adverse public impacts of the proposed development. The court later applied this doctrine to protect the 5th Amendment right to just compensation for property the government takes when owners apply for land-use permits. *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).

determined that the development fees the county had imposed on the plaintiffs were well within the county's ability to regulate land use.⁶ The case was finally appealed United States Supreme Court, where it was denied review.⁷

Additional Resources:

Please find below, additional links relevant to exclusionary zoning litigation taken from the presentations at the last meeting.

- [United States Department of Justice – Housing and Civil Enforcement Cases](#)
- [Post Katrina Discrimination Case – Fact Sheet](#)

⁶ *Cherk v. County of Marin*, Cal. App. 1st Dis. (2018) [unpublished No. A153579.]

⁷ *Cherk v. County of Marin*, 140 S.Ct. 652 (2019) [unpublished No. 18-1538.]

APPENDIX N

**Memo on the demographic and housing profile
for the State of Maine, Daniel Brennan
Directory, MaineHousing**



Director's Department Memorandum

To: Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions

From: Daniel Brennan, Director MaineHousing

Date: September 24, 2021

Subject: Demographic and Housing Profile for the State of Maine

This memo is intended to provide the Commission current data related to demographics and housing in Maine. It draws on the 2019 American Community Survey (ACS) 1-Year Estimates and the Diversity Index from the 2020 Census. While both surveys are conducted by the U.S. Census differences in methodologies should caution comparing data fully against each other. The ACS is beneficial in providing estimates and trend data in the inter-decade period between Censuses.

2020 Census

The data released from the 2020 Census to date shows Maine has become more diverse since 2010. According to the [Diversity Index](#), two people chosen at random in Maine have an 18.5% chance of being from different race and ethnic groups, the lowest probability in the nation. Comparing the 2010 and 2020 data Maine's White alone, not Hispanic or Latino population decreased from 94.4% (1,254,297) to 90.2% (1,228,264). Of Maine's sixteen counties, Androscoggin (86.3%), Cumberland (86.5%), and Washington (88.7%) are the only three with a White alone, not Hispanic or Latino population, below the state's average 90.2%.

2019 ACS 1-Year Estimates

This data provides more detail into demographics and housing than currently available from the 2020 Census. Key points are:

- Greater number of racial minorities live in poverty.
- Black or African American Households are the only racial identity more likely to rent (70%) than own (30%).
- Renter households have a median household income 51% below homeowner households (\$35,103 renter vs. \$71,913 owner).
- Of all households in Maine 72% are owner occupied.
- Over 40% of households who rent pay more than 30% of their income in housing related costs.

MaineHousing expects similar trends to be represented in the 2020 Census when the data is released, and is illustrative of the work that is needed to provide all Maine people safe and affordable housing suitable to their needs.

Data Tables, Demographic Profile of Maine:

Population by Race		#	%
Total:		1,362,359	
Population of one race:		1,297,649	95.3
White alone		1,237,041	90.8
Black or African American alone		25,752	1.9
American Indian and Alaska Native alone		7,885	0.6
Asian alone		16,798	1.2
Native Hawaiian and Other Pacific Islander alone		443	0.0
Some Other Race alone		9,730	0.7
Two or more races		64,710	4.7

Source: 2020: DEC Redistricting Data (PL 94-171)

Poverty Level by Race	Below Poverty Level	
	#	%
Total:		
Population of one race:		
White alone	127,432	10.4
Black or African American alone	6,391	31.6
American Indian and Alaska Native alone	1,455	15.7
Asian alone	1,937	14.0
Native Hawaiian and Other Pacific Islander alone	N	N
Some Other Race alone	N	N
Two or more races	4,097	15.6

Source: 2019: ACS 1-Year Estimate, TableID: S1701

Demographic Characteristics of Occupied Housing Units						
Race	Occupied Housing Units		Owner Occupied Housing Units		Renter Occupied Housing Units	
	#	%	#	%	#	%
White	550,749	96	401,255	96.9	149,494	93.7
Black or African American	5,586	1	1,665	0.4	3,921	2.5
American Indian and Alaska Native	4,110	0.7	2,611	0.6	1,499	0.9
Asian	4,019	0.7	3,088	0.7	931	0.6
Native Hawaiian and Other Pacific Islander	52	0.0	N	N	N	N
Some Other Race	1,290	0.2	684	0.2	606	0.4
Two or more races	7,812	1.4	4,794	1.2	3,018	1.9
Total	573,618	100.0%	414,097	100.0%	159,469	100.0%

Source: 2019: ACS 1-Year Estimate, TableID: S2502

Data Tables, Selected Housing Characteristics:

Units in Structure	#	%
Total Housing units	750,964	
1-unit, detached	528,983	70.4
1-unit, attached	15,369	2
2 units	36,937	4.9
3 or 4 units	40,410	5.4
5 to 9 units	28,386	3.8
10 to 19 units	10,380	1.4
20 or more units	28,357	3.8
Mobile home	61,719	8.2
Boat, RV, van, etc.	423	0.1

Source: 2019: ACS 1-Year Estimate, TableID: DP04

Occupied Housing Units		
Year Structure Built	#	%
2014 or later	17,143	3
2010 to 2013	12,456	2.2
2000 to 2009	66,561	11.6
1980 to 1999	159,199	27.8
1960 to 1979	116,938	20.4
1940 to 1959	68,215	11.9
1939 or earlier	133,106	23.2

Source: 2019: ACS 1-Year Estimate, TableID: DP04

Data Tables, Financial Characteristics of Occupied Housing:

GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME (GRAPI)		
Occupied units paying rent (excluding units where GRAPI cannot be computed)	144,833	
Less than 15.0 percent	17,896	12.4
15.0 to 19.9 percent	21,374	14.8
20.0 to 24.9 percent	18,462	12.7
25.0 to 29.9 percent	23,576	16.3
30.0 to 34.9 percent	14,653	10.1
35.0 percent or more	48,872	33.7
Not computed	14,666	(X)

Source: 2019: ACS 1-Year Estimate, TableID: DP04

	Maine		Owner-occupied		Renter-occupied	
	#	%	#	%	#	%
Occupied housing units	573,618		414,119		159,499	
HOUSEHOLD INCOME IN THE PAST 12 MONTHS (IN 2019 INFLATION-ADJUSTED DOLLARS)						
Less than \$5,000	12,531	2.2	5,972	1.4	6,559	4.1
\$5,000 to \$9,999	16,625	2.9	5,803	1.4	10,822	6.8
\$10,000 to \$14,999	26,772	4.7	12,672	3.1	14,100	8.8
\$15,000 to \$19,999	25,944	4.5	12,943	3.1	13,001	8.2
\$20,000 to \$24,999	28,416	5	15,169	3.7	13,247	8.3
\$25,000 to \$34,999	55,630	9.7	33,811	8.2	21,819	13.7
\$35,000 to \$49,999	78,311	13.7	51,344	12.4	26,967	16.9
\$50,000 to \$74,999	105,886	18.5	79,587	19.2	26,299	16.5
\$75,000 to \$99,999	78,301	13.7	66,038	15.9	12,263	7.7
\$100,000 to \$149,999	83,954	14.6	72,878	17.6	11,076	6.9
\$150,000 or more	61,248	10.7	57,902	14	3,346	2.1
Median household income (dollars)	58,924		71,913		35,103	

Source: 2019: ACS 1-Year Estimate, TableID: S2503

APPENDIX O

Greater Portland Council of Governments Pilot Project Proposal

Risler, Hillary

From: Kristina Egan <kegan@gpcog.org>
Sent: Wednesday, October 27, 2021 2:16 PM
To: Risler, Hillary
Cc: Vanessa L. Farr; Prawer, Samuel; jfguillette@hpcme.org; mbarnes@lcrpc.org; erabbe@lcrpc.org; Amy Landry; pschumacher@smpdc.org; Ole Amundsen; Brian Dancause; Robert Clark; lumphrey@emdc.org; Chris Hall
Subject: Proposal for Commission's consideration
Attachments: Proposal for Housing Opportunities Technical Assistance to Municipalities 10-27-21.docx

This message originates from outside the Maine Legislature.

Dear Ms. Risler,

On behalf of the Greater Portland Council of Governments, I'm pleased to provide the attached proposal to the Commission on how the state can support municipalities in welcoming more housing with technical assistance. As requested by Senator Hickman, we have connected with our regional agency colleagues across the state. The following agencies support the proposal and welcome the opportunity to be part of the proposed pilot program:

- Androscoggin Valley Council of Governments
- Eastern Maine Development Corporation
- Greater Portland Council of Governments
- Hancock County Planning Commission
- Kennebec Valley Council of Governments
- Lincoln County Regional Planning Commission
- Midcoast Economic Development District
- Northern Maine Development Commission
- Southern Maine Regional Planning Commission

I have cc'd my colleagues from other regions so you have their email contact information as this proposal is considered.

Please extend our thanks to Senator Hickman, Speaker Fecteau and the members of the commission for inviting this proposal.

All best,
Kristina

Kristina Egan
Executive Director
Greater Portland Council of Governments

 (207) 210-3396
 kegan@gpcog.org
 www.gpcog.org
 970 Baxter Boulevard, Suite 201, Portland, Maine 04103

DRAFT

Housing Opportunities Technical Assistance to Municipalities Program Proposal

Concept:

The Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions will make recommendations to the Legislature designed to expand housing and reduce zoning and regulatory barriers to housing opportunities.

Most municipal governments will require technical assistance to implement the Commission's recommendations.

This proposal offers a framework for the Commission's consideration for how to fund technical assistance to municipalities, recognizing that a variety of technical assistance providers will be required to support the differing levels of municipal need and expertise across Maine.

Unified Approach:

To expand housing choices in ways that protect public investments in transportation and other infrastructure, while ensuring new housing supports the state in reaching its racial equity and climate goals, cross-agency coordination is needed.

We propose a pilot program of two years in which a single state entity manage the *Housing Opportunities Technical Assistance to Municipalities* program to ensure consistent application of Commission policy recommendations. This entity should have the capacity to ensure statewide fairness in the distribution of resources, and to coordinate across state agencies to align state racial equity, climate, transportation, and economic policies with the implementation of this program. The pilot phase will enable the state to find the best long-term home for this project, should the program prove effective, in ensuing years.

Multiple Technical Assistance Channels:

We propose that the managing state entity establish the following municipal technical assistance channels, recognizing that different channels will be more or less viable in different areas of the state:

- Direct state Technical Assistance, provided, to individual municipalities by personnel in the managing state entity, by sister-agency personnel, and/or by contractors hired by the state. Resources will be needed to support this additional capacity.
- Regional Technical Assistance, funded by the state by contract with a regional planning organization or other regional entity that has demonstrated capacity to provide Technical Assistance to municipalities in a region.
- Direct municipal Technical Assistance grants, funded by the state directly to individual municipalities with capacity to implement the Commission's recommendations without additional support.

Pilot Program:

We propose that a two-year pilot program be established in 2022 to test and perfect each of the proposed Technical Assistance delivery channels in representative municipalities and regions across Maine.

Piloting the *Housing Opportunities Technical Assistance to Municipalities* program will allow the administering state entity to refine its statewide implementation of program in 2023.

Funding Requirements:

We propose that in 2022 no less than \$1,500,000 be provided to run the proposed Pilot program and provide technical assistance funding to at least four regions that well represent the diversity of the state's regions. This first year's experience will help refine budget estimates for implementation of the program in 2023 and for continued implementation in ensuing years.

We propose that in 2023 an expanded amount of resources be available to begin scaling up the program, amounting to an allocation of at least \$2,500,000 statewide per year for the *Housing Opportunities Technical Assistance to Municipalities* program. That allocation should be refined based on the experience in 2022. This funding would include an average of \$200,000 per region per year, scaled to fit various regions, and for those regions willing and able to provide regional technical assistance.

APPENDIX P

List of Suggested Recommendations from Commission Members

**Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions
(Resolve 2021, ch. 59)**

**Suggested Recommendations from Commission Members
(UPDATED: 11/12/2021 10:17 AM)**

<u>Accessory Dwelling Units (ADU's)</u>	<u>Suggested by</u>
<ul style="list-style-type: none"> Permit Accessory Dwelling Units (ADU's) by Right: The Maine Legislature should follow New Hampshire's example and require that ADU's be permitted with limited regulation in all single-family zones. 	Commissioner Levine
<ul style="list-style-type: none"> Support and recommend final passage of L.D. 1312, An Act To Remove Barriers to Accessory Dwelling Units and Allow Accessory Dwelling Units where Single-family Houses Are Allowed concerning accessory dwelling units (carried over on the Special Appropriations Table). 	Speaker Fecteau Commissioner Hill Commissioner Totman
<ul style="list-style-type: none"> Amend/adopt ordinances to allow for the construction of accessory dwelling units (ADU), but give communities latitude to implement land use regulations that impact their scale, location and environmental impacts. 	Commissioner Dufour
<ul style="list-style-type: none"> Legalize accessory apartments 	Commissioner Jackson
<ul style="list-style-type: none"> Permit ADUs by right, including options for mobile ADUs, such as tiny houses, small mobile homes, and granny pods 	Commissioner Golek

<u>Single/Multi-Family Zoning</u>	<u>Suggested by</u>
<ul style="list-style-type: none"> Elimination of single-family zoning restrictions in residential zones across the state; allowing up to four residential units on all lots. With a sunrise clause to provide adequate time for municipalities to prepare for this change. 	Speaker Fecteau
<ul style="list-style-type: none"> Encourage the construction of 4-unit housing (see Rep. Arata's other recommendations for suggested strategies to accomplish this goal) 	Representative Arata
<ul style="list-style-type: none"> Place a referendum on each town's ballot for the June, 2022, election that states that a 4-unit multifamily home will be permitted on any lot where a single family home is allowed, subject to the same setback, frontage, etc. zoning ordinances. 	Representative Arata
<ul style="list-style-type: none"> Permit up to four units in single-family housing districts when public health and safety criteria are met (similar to sb 9 in California) 	Commissioner Jackson
<ul style="list-style-type: none"> Eliminate single-family zones, thereby allowing for the development of mixed housing options in all residential areas. 	Commissioner Dufour
<ul style="list-style-type: none"> Prevent zoning that caps the number of multi-family housing units 	Commissioner Jackson
<ul style="list-style-type: none"> Address Exclusion through Single-Family Zoning Districts: The Legislature should set a standard that any "single-family zone" in communities over a certain size allow at least two housing units on every conforming lot. The details of such a proposal are important, as it is easy to find other ways to limit housing production, through tools such as lot area per dwelling unit, or parking requirements. There could be other reasonable regulations related to use intensity and public health, such as rules on septic systems and water supply. 	Commissioner Levine
<ul style="list-style-type: none"> Municipalities should be required to set-aside a certain percentage of its area for affordable, denser housing options free from regulatory or financial barriers (single family and multifamily). 	Director Brennan

<ul style="list-style-type: none"> • Tie application scoring for infrastructure grants to zoning that allows multifamily property and higher housing density, especially where there is public water and sewer. 	Representative Arata
<ul style="list-style-type: none"> • Amend state statutes to allow for more dense development, when deemed environmentally sound, on properties served by private wastewater and drinking water systems. 	Commissioner Dufour

Fair Housing

Suggested by

<ul style="list-style-type: none"> • Add exclusionary zoning as a violation of Maine's fair housing statute. This would effectively trump an incentive program as any exclusionary zoning policies on the books in any municipality would be a violation of this Act. This would require a section be added to the law here. 	Speaker Fecteau
<ul style="list-style-type: none"> • Emulate the Desegregate Connecticut policy, which sets the standard that zoning laws must: “affirmatively further fair housing,” language inspired by a related federal fair housing rule; promote housing choice and economic diversity in housing, including housing for both low and moderate-income households; address significant disparities in housing needs and access to educational, occupational, and other opportunities; expressly require the development of housing the state's consolidated plan for housing and community development says we need. 	Commissioner Jackson
<ul style="list-style-type: none"> • Reduce the fear factor for becoming a landlord. Require Pine Tree Legal to represent landlords as well as tenants to achieve mutually beneficial outcomes. Require the Maine Human Rights Commission to work with landlords on restorative justice rather than financial penalties for those who unwittingly violated fair housing laws. 	Representative Arata
<ul style="list-style-type: none"> • Racial equity should be driven by Legislative action, applicable across the entire state. 	Director Brennan
<ul style="list-style-type: none"> • Racial Equity Analyses to accompany zoning and other major land use regulations <ul style="list-style-type: none"> ○ The logic of racial equity analyses is similar to the logic of Environmental Impact Statements or Fiscal Notes. And it is the same logic behind the racial impact statements that will soon be available as part of the legislative process in Augusta. ○ The scope of racial equity analyses could include how the costs and benefits of a zoning or land use action are likely to be distributed across racial/ethnic groups, the risks of displacement disaggregated by race/ethnic group, and how the proposed action would impact current residential segregation patterns. ○ As an example, imagine a low-density town that is rezoned to allow increased density. The rezoning is part of a proposed development that will include new market rate units. An Environmental Impact Statement would require the developer to show how the new development will impact the environment, considering impacts on sensitive land uses, air quality and the like. A racial equity analysis would look at the likely racial composition of the new development, whether or not displacement was likely to occur, and if so in a racially disparate manner. The analysis would also take into consideration how the 	Commissioner Golek

anticipated demographic composition of the new development would influence existing residential segregation patterns.

- Some cities have begun to implement policies that require explicit consideration of proposed developments’ impacts on racial equity. For example, New York City is adopting a law requiring the anticipated impacts on racial equity be documented for large-scale housing projects that require city approval. Seattle’s comprehensive planning efforts include a focus Growth and Equity Analysis as part of their decision-making process for rezoning.

Technical Assistance

Suggested by

<ul style="list-style-type: none"> ● Create a State Technical Assistance Office on Housing and Zoning: There should be a state office that provides grants and direct technical assistance, or assistance through regional planning organizations, for communities who wish to update their zoning and other local ordinances to increase housing production. This office could also look at tools such as Community Land Trusts and assist communities in creating local Housing Trusts 	Commissioner Levine
<ul style="list-style-type: none"> ● Provide municipalities with access to housing data and best practices necessary to make short-term and long-term housing development decisions, prioritizing residential growth in areas where infrastructure exists. 	Commissioner Dufour
<ul style="list-style-type: none"> ● Solidify and emphasize its role in providing guidance and technical and financial assistance to help communities achieve their planning goals, including an assessment of progress. This, in part, should include the development of model programs and ordinances for local implementation. 	Commissioner Dufour
<ul style="list-style-type: none"> ● Develop citizen education programs to assist local leaders in explaining why changes are necessary for future growth and economic vitality. 	Commissioner Dufour
<ul style="list-style-type: none"> ● Help fund the costs associated with reviewing and amending local ordinances either through direct financial assistance or technical assistance or a combination of the two. 	Commissioner Dufour
<ul style="list-style-type: none"> ● Develop, implement and manage programs to ensure that housing remains affordable over the long-term with particular assistance provided to communities that are interested in creating dedicated affordable housing, but do not have the administrative or programmatic means to ensure affordable housing compliance over time. 	Commissioner Dufour
<ul style="list-style-type: none"> ● Develop creative financial tools to assist communities to meet housing goals (e.g., tax increment financing, local option sales tax, the sheltering of value associated with new housing development in the distribution of revenue sharing and assessment of county and school taxes, homestead exemption benefit for residents that use ADU as long-term rentals, dedicated portion of real estate transfer tax revenue, etc.). 	Commissioner Dufour
<ul style="list-style-type: none"> ● Create a permanent state study/assistance office on zoning and housing to further research, provide educational materials, models, and training to municipalities 	Commissioner Jackson
<ul style="list-style-type: none"> ● Require DECD to fund and staff a program to provide technical assistance to municipalities for zoning and related municipal guidance which will enhance affordable housing opportunities for households with median incomes at or 	Commissioner Totman

below 80% of median income. Preference will be to assist municipalities with populations less than 20,000.

- Planning and Technical Assistance funding is most efficiently spent for a specific project, rather than the creation of an office. If anything, financial support for existing regional planning commissions should be considered over the creation of a statewide office. Director Brennan

Incentive Programs/Density Bonuses

Suggested by

- The creation of the "You're Home" (name is a work in progress) municipality incentive program. Qualifying communities must make a commitment to reviewing zoning and land use restrictions in Year 1; adopt home-friendly policies in Years 2 and 3. Qualifying communities will receive a state financial reward for up to 3 years, so long as they remain in good standing with the program requirements. MaineHousing Authority will be charged with administering the program qualifications and model zoning policies for municipal reference. DAFS will be charged with administering the incentive. Speaker Fecteau
- Communities that move forward with a PDA as outlined above should be eligible to access new sources of revenue, either from the state, transfer taxes, and/or through local options. Commissioner Levine
- Create programs and incentives that are funded with State resources, rather than property taxes and other local revenue. Commissioner Dufour
- Add a Density Bonus for any Below-Market Affordable Housing Production: The Legislature should create a statewide system that would provide density bonuses by right for below-market affordable housing development. Such a system would allow below-market affordable housing developers to compete financially for developable sites. Commissioner Levine
- Require municipalities to adjust their zoning to provide density bonuses for affordable housing which serves persons at or below 80% median in order for the municipality to be eligible for Department of Transportation funding. Commissioner Totman
- Create a statewide Vacant Apartment Acquisition Program (VAAP) Commissioner Golek
 - Legislation that would authorize state funding for lump sum payments available to the owners of existing apartments in return for making an apartment affordable for 30 years.
 - Such a program could reduce rents at levels that are more affordable than those in Low-Income Housing Tax Credit (LIHTC) projects. With new affordable housing units requiring public subsidies of \$250,000 on average for each one-bedroom apartment, and with several years spent in the approval and construction process, the VAAP could quickly produce affordable units at less cost and reduce market rents to affordable levels.
 - This program would enable lower income households to access housing in high opportunity areas, where average rents are higher than the statewide averages. By restricting VAAP to wealthier, higher opportunity city neighborhoods and suburban areas, the program would

affirmatively further fair housing and prevent poverty concentration and reduce segregation in housing and schools.

- VAAP would also be an ideal tool used in conjunction with a mobility assistance program that is tasked with locating affordable housing units for voucher holders in more affluent city neighborhoods or suburban areas.
- In addition, VAAP could be used by any multifamily property owners, from existing two- and three-family homes to large apartment buildings. To avoid a concentration of affordable units, landlords of rental buildings of more than four units could not reserve more than 25% or 25 units, depending on which is less, of their building's apartments for VAAP.
- The program would target naturally occurring vacancies so as not to encourage removal of existing tenants, and the landlord would have to demonstrate that the tenant vacated the apartment voluntarily, which is routinely done in the acquisition of federally subsidized units, or was evicted for good cause, such as non-payment of rent.
- The subsidy would be secured by a performance mortgage and deed restriction placed on the property for 30 years, insuring that the unit would remain affordable.
- The rent would be adjusted annually based on the HUD rent guidelines for units at the targeted AMI.
- Details regarding the criteria for high-opportunity areas where the program would focus VAAP resources, tenant selection, affirmative marketing, unit inspections, etc. would need to be fleshed out.

Housing Trusts

Suggested by

- Create a Statewide Framework to Encourage Housing Trusts: The Legislature should create a state framework for creation and funding of local Housing Trusts, which can help leverage other funding sources through direct local investment. Local housing trusts could also be authorized to collect impact fees for housing from commercial development through state legislation. Finally, considerations should be given to a state match to local Housing Trust investment. Commissioner Levine
- Where necessary, assist communities in developing and implementing regional housing solutions, including the creation and funding for housing trusts to encourage private/public investment in housing. Commissioner Dufour

Priority Development Areas (PDA's)

Suggested by

- Create a System of "Priority Development Areas" (PDA's): Each community should have the flexibility to decide where they would like to focus their housing production. While the current rules governing Comprehensive Plans provide some framework, it has few incentives or requirements. Each community over a certain size should be expected to designate a reasonably sized area as their PDA. In a PDA, multifamily housing would have to be permitted at a minimum density without significant regulatory hurdles. These Commissioner Levine

areas would be prioritized for state investment, and state review of projects in PDA's would be expedited, provided the community updates its local zoning and other ordinances to encourage development in PDA's.

- Require communities to designate priority development areas, but retain local authority to designate the location, type (e.g., duplexes, triplexes, row houses, multi-story, shared housing, etc.) and scale of multi-unit development authorized in the area. Commissioner Dufour

Fees

Suggested by

- Reduce impact fees for certain low-to-moderate income housing developments. Commissioner Dufour
- Prevent zoning that charges unreasonable or different fees for multifamily affordable housing, or impose onerous consulting fees on property owners Commissioner Jackson

Income Requirements

Suggested by

- Eliminate zoning provisions that include income requirements. Commissioner Dufour
- Prevent zoning that discriminates on the basis of income source (including public assistance), income level, or "immutable characteristics" (other than age and disability). Commissioner Jackson
- Require any development greater than 20 units to set aside 10% of the units to be priced so as to be affordable to persons equal or less than 100% of median income for homeownership developments and 80% for renter occupied developments. Commissioner Totman

Lot size & Parking Requirements

Suggested by

- Reduce minimum lot sizes and relax parking requirements to support diversity of housing sizes and types Commissioner Dufour
- Cap parking mandates Commissioner Jackson

Miscellaneous and Additional Suggestions

Suggested by

- Repeal building codes that increase costs disproportionately to any improvement of safety or energy efficiency. Representative Arata
- Eliminate the state subdivision law for existing structures. Representative Arata
- Provide municipalities the flexibility to develop ordinances that meet locally adopted housing goals. Commissioner Dufour
- Support [LD 1084 \(HP 799\)](#) "An Act To Authorize a General Fund Bond Issue To Create Energy-Efficient and Affordable Homes for Maine People" sponsored by Representative Victoria Doudera. Commissioner Hill
- Prevent zoning that requires that housing units to be minimum square footage, except for public health reasons like those enshrined in building and housing codes. Commissioner Jackson
- Adjust the affordable housing TIF program. Rather than capture the increased value of an affordable housing development (difference between original and post development assessments) capture the difference between one half the original and post development assessments. Additionally, adjust the targeting of Commissioner Totman

the affordable housing targeting to 100% or less of median income. Alternatively tie the TIF programs to municipalities with affordable housing zoning density bonuses. For instance to be eligible for economic or housing TIFs or transportation funding, a municipality must establish affordable housing density bonuses within their zoning.

<ul style="list-style-type: none"> Emulate the Desegregate Connecticut policy, which eliminates the terms “character,” “overcrowding of land,” and “undue concentration of population” from state law as legal bases for zoning regulations and allows towns to consider only the “physical site characteristics” of a district. 	Commissioner Jackson
<ul style="list-style-type: none"> Emulate Chapter 126a of Connecticut General Statutes and Massachusetts chapter 40b: Enable developers to challenge denials of proposed new developments that contain affordable housing. 	Commissioner Jackson
<ul style="list-style-type: none"> Pass a law similar to New Hampshire’s RSA 674:58-:61. This law was passed in 2008 and requires every community to provide “reasonable and realistic opportunities” for the development of workforce housing (RSA 674:59). I think we should add seniors to the workforce requirement and indicate the housing must be targeted to persons at or below 80% median income. 	Commissioner Totman
<ul style="list-style-type: none"> Look to highlight best practices from municipalities that have embraced good concepts and have actually succeeded (Auburn). 	Director Brennan
<ul style="list-style-type: none"> If the Commission is going to avoid the status quo, it should consider bold legislative recommendations to ensure meaningful debate occurs as a result. 	Director Brennan
<ul style="list-style-type: none"> Require municipalities to establish limitations on Airbnb residences 	Commissioner Totman
<ul style="list-style-type: none"> Create a statewide Equitable Share Housing Plan and establish a minimum affordable housing goal for every community <ul style="list-style-type: none"> Legislation that would mandate that every community work to ensure that at least 10% of its existing housing stock is affordable (60% AMI cap for rentals and 80% AMI cap for homeownership). Allow towns to use averages to achieve AMI caps (for added flexibility). The plan would encourage the development of affordable housing in all areas, expanding housing choice and preventing poverty concentration and segregation. The program would offer financial incentives to develop housing that reaches lower income bands as well as supportive, accessible, and integrated housing opportunities for people with disabilities and those who are experiencing homelessness. Success will require proper messaging to explain the benefits for communities accepting an equitable share of affordable housing, along with providing successful examples of various types of affordable housing developments (e.g., mixed income, supportive housing, accessible, etc.). 	Commissioner Golek
<ul style="list-style-type: none"> Create a statewide Housing Appeals Board (HAB) <ul style="list-style-type: none"> The HAB would have the authority to: <ul style="list-style-type: none"> Override local zoning decisions when it appears a decision is effectively limiting or excluding viable affordable housing proposals from being developed; and Fast-track viable affordable housing proposals that have zoning as-of-right but meet with costly or unreasonable delays, often fueled by local opposition. 	Commissioner Golek

- The HAB would be appointed by the State Legislature and shall include representatives of populations utilizing affordable housing, including homeless populations, people with disabilities, etc.
- One measure the HAB would consider is whether the neighborhood or community involved in the dispute has met its minimum goal under the Equitable Share Housing Plan referenced above.
- The HAB could also look at the supply of affordable housing within a neighborhood or community.

Agricultural/Environmental Recommendations¹

Suggested by

<ul style="list-style-type: none"> ● Launch a public education effort to remind communities that we, as U.S. citizens, are party to the Universal Declaration of Human Rights (UDHR), recognizing adequate housing as a component of the human right to an adequate standard of living. Emphasize how housing is an essential component for an individual’s progress toward self-sufficiency and away from dependency. 	Commissioner Spalding
<ul style="list-style-type: none"> ● Engage Department of Agriculture, Conservation and Forestry (DACF) and county Cooperative Extension offices in comprehensive assessment of farmworker housing needs and subsequent plan to improve existing farm housing stock and create new affordable housing for farmworkers. 	Commissioner Spalding
<ul style="list-style-type: none"> ● Put special emphasis on providing housing for seasonal and migrant laborers who are essential for the success of Maine farm businesses at specific times of year in specific sectors. One option would be providing mobile housing units that could be moved along with the communities of farmworkers serving different sectors around the state. Units meeting basic needs (bedrooms and bathrooms) could plug into modules with communal utilities and amenities (kitchens, dining areas, dining areas etc.) Seasonal and migrant labor needs in agriculture could be considered in relation to other sectors or the economy that also have peaks and valleys in labor needs, <i>e.g.</i> tourism. 	Commissioner Spalding
<ul style="list-style-type: none"> ● Ensure that housing initiatives for farmworkers take into consideration the needs of migrant farmworker families with children. Provide daycare opportunities. 	Commissioner Spalding
<ul style="list-style-type: none"> ● Provide transportation systems for farmworkers to help them get to work, to commerce centers for food and personal provisions, and participate in social activities. 	Commissioner Spalding
<ul style="list-style-type: none"> ● Similarly engage Maine’s regional planning offices (ensuring coverage of counties without a Council of Governments) in discussions about farm worker housing needs. As Kristina Egan from the GPCOG had suggested in last week’s meeting, \$200k per planning office per year would go a long way to helping assessments and planning strategies. 	Commissioner Spalding
<ul style="list-style-type: none"> ● Engage the DACF to use its assessment of prime farmland soils and soils of statewide importance to inform decisions about ongoing and future siting of housing developments. This is not to suggest a strict separation of open space and farmland from farm housing. We obviously need housing in rural areas to support the farm economy. Incentives should be provided to builders that commit to providing housing for farmworkers while planning carefully on siting to preserve our agricultural soils. 	Commissioner Spalding

¹ Submitted by Commissioner Spalding during the 6th meeting, but not included in the discussion document used at that meeting

- Establish a fund to provide grants to Maine farmers to make environmental and energy improvements to their homes and to build environmentally friendly, climate-smart housing for farm workers. Commissioner Spalding
- Fund development of multi-family housing units in areas with greatest need for agricultural workers. Coordinated support could come from USDA and HUD to establish these complexes. A success story along these lines is in Milbridge, where Mano en Mano worked to establish Hand in Hand Apartments to help migrant farm workers settle in Downeast Maine. Commissioner Spalding
- Ensure racial equity is elevated and honored in all projects to increase affordable housing for farm workers. Commissioner Spalding
- Restore the Home Energy Assistance Program (HEAP) formula to the iteration when it allowed farms and home-based businesses to claim property depreciation and increase eligibility for heating assistance. Commissioner Spalding
- Provide incentives for builders to use Maine-produced, environmentally friendly, climate-smart materials in construction of affordable housing to ensure that low-income citizens are not subject to toxic materials commonly used in development projects. New science is showing that chemicals commonly used in homes are resulting in billions of dollars of medical bills, millions of IQ points, and disproportionately impacting the health of children, communities of color, low-income families, and other vulnerable populations. Commissioner Spalding
- Assess the formulas for determining the costs of affordable housing. Funding must keep pace with the cost of labor and appropriate (healthy, safe, locally derived, environmentally friendly, climate-smart) building materials. Commissioner Spalding
- Take stock of rural motels that have gone out of business and refurbish them or rebuild on their footprints with green design standards. Provide incentives for communities/builders to refurbish these facilities with the goal of providing housing for farmworkers. Commissioner Spalding

APPENDIX Q

**Proposed Framework from Commissioners Erin Cooperrider,
Dana Totman and Jeff Levine**

MEMORANDUM

To: Commission to Increase Housing Opportunities in Maine by Studying Zoning & Land Use Restrictions

From: Commissioners Cooperrider, Levine and Totman

October 24, 2021

RE: PROPOSED COMMISSION RECOMMENDATIONS

After reviewing the ideas presented by Commission members and the public, we offer the following framework for discussion of recommended actions from the Commission. This framework includes state legislative actions, additional resources for local governments, and further exploration of the positive and negative impacts of short-term rentals on the housing market in Maine.

1. State Laws

To address the disparate racial impacts of existing zoning rules, as well as to help meet state housing production goals, the Legislature should pass omnibus legislation that includes the following elements:

- ✓ Permits Accessory Dwelling Units in all zoning districts that allow single family homes.
- ✓ Permits at least two dwelling units in all zoning districts that allow single family homes.
- ✓ Provides for an affordable housing floating overlay zone that allows for additional density and other zoning incentives for below-market affordable housing, such as reduced parking requirements, reduced setbacks, increased lot coverage and additional building height allowed by right.
- ✓ Requires every municipality to have at least one “priority development area” where multifamily housing is permitted with limited regulatory barriers.

2. Funding for Local Governments

Local governments will need additional resources to proactively plan for housing production. The state should provide funding for technical assistance for all communities seeking support in making zoning improvements and in identifying and creating priority development areas. Additional finance assistance should be provided to communities that have created priority development areas.

3. Short Term Rentals

Rapid growth of unregulated short-term rentals in Maine has taken existing housing stock out of the year-round rental pool and put upward pressure on rental rates all over Maine. While we are not sure about the long-term impacts of short-term rentals, their popularity is impacting the housing market. The Commission should recommend further exploration of the impact of short-term rentals on housing supply to understand the benefits and drawbacks of regulating short-term rentals.

APPENDIX R

Public Law 2021, chapter 270

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

H.P. 929 - L.D. 1269

An Act To Preserve Fair Housing in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4741, sub-§18, as amended by PL 2015, c. 494, Pt. B, §3, is further amended to read:

18. State designee for homeless programs. The Maine State Housing Authority is designated the coordinating agency for the State for programs dealing with homeless persons and may apply for, receive, distribute and administer federal, state and other funds on behalf of the State for homeless programs including, without limitation, the Emergency Community Services Homeless Grant Program and the programs authorized pursuant to the federal Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, (1987), as amended; ~~and~~

Sec. 2. 30-A MRSA §4741, sub-§19, as enacted by PL 2015, c. 494, Pt. B, §4, is amended to read:

19. State designee for National Housing Trust Fund. The Maine State Housing Authority is designated as the entity to receive and allocate funds from the National Housing Trust Fund established by the federal Housing and Economic Recovery Act of 2008; ~~and~~

Sec. 3. 30-A MRSA §4741, sub-§20 is enacted to read:

20. Affirmatively further fair housing. The Maine State Housing Authority shall, to the extent consistent with federal law, ensure that any Maine State Housing Authority funding or any state or local funding is used in a manner that will affirmatively further fair housing in this State. For the purposes of this subsection, "affirmatively further fair housing" means to engage actively in efforts to address barriers to and create opportunities for full and equal access to housing without discrimination on the basis of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin, familial status or receipt of public assistance.

Sec. 4. Report to the Legislature. The Maine State Housing Authority shall develop a plan to ensure public funds are used to affirmatively further fair housing in this State in accordance with the Maine Revised Statutes, Title 30-A, section 4741, subsection

20 and report the development of that plan to the Joint Standing Committee on Labor and Housing by January 15, 2022. The report must include data reported by municipal housing authorities to the United States Department of Housing and Urban Development on affirmatively furthering fair housing and other reports required to be filed by municipal housing authorities. The Maine State Housing Authority shall recommend in its report a method by which municipal housing authorities may annually submit any reports and data submitted to the United States Department of Housing and Urban Development to the joint standing committee of the Legislature having jurisdiction over housing matters. The Joint Standing Committee on Labor and Housing may report out legislation based on the report to the Second Regular Session of the 130th Legislature.

APPENDIX S

**130th Legislature, LD 1312, An Act To Remove Barriers to
Accessory Dwelling Units and Allow Accessory Dwelling Units were
Single-family Houses Are Allowed**



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 1312

H.P. 968

House of Representatives, March 30, 2021

**An Act To Remove Barriers to Accessory Dwelling Units and Allow
Accessory Dwelling Units where Single-family Houses Are Allowed**

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GEIGER of Rockland.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: BAILEY of Gorham, DOUDERA of Camden, MORALES of South Portland,
OSHER of Orono.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 30-A MRSA §3015** is enacted to read:

3 **§3015. Accessory dwelling units**

4 **1. Use permitted.** A municipality shall allow one accessory dwelling unit, as defined
5 in section 4301, subsection 1-C, to be located on the same lot as a single-family dwelling
6 unit.

7 **2. Prohibited requirements.** A municipality may not:

8 A. Require additional setbacks for an accessory dwelling unit that is within an existing
9 single-family dwelling unit;

10 B. Require side and back setbacks greater than 5 feet for newly constructed accessory
11 dwelling units;

12 C. Except as provided in paragraph E, require new or additional off-street parking
13 spaces;

14 D. Except as provided in paragraph E, require the owner of the single-family dwelling
15 unit to occupy either the single-family dwelling unit or the accessory dwelling unit;

16 E. Prohibit use of the single-family dwelling unit or the accessory dwelling unit as a
17 short-term rental or vacation rental, as defined in Title 22, section 2491, subsection 17,
18 except that a municipality may require additional off-street parking and that the owner
19 occupy the dwelling unit not used as a short-term rental or vacation rental;

20 F. Prohibit inclusion of an accessory dwelling unit into a single-family dwelling unit
21 that does not conform to existing land or building use ordinances as long as the
22 inclusion does not increase the nonconformity and both units meet applicable fire
23 safety and building codes;

24 G. Prohibit the conversion of a structure located on the lot of a single-family dwelling
25 unit that does not conform to existing land or building use ordinances into an accessory
26 dwelling unit as long as the conversion does not increase the nonconformity of the
27 structure and the accessory dwelling unit created meets applicable fire safety and
28 building codes; or

29 H. Require separate sewer or water connections for an accessory dwelling unit.

30 **3. Design standards.** Design standards for accessory dwelling units established by a
31 municipality must be clear and objective.

32 **4. Historical districts.** Notwithstanding contrary provisions in subsections 2 and 3,
33 an accessory dwelling unit in a historical preservation district must comply with the design
34 standards applicable in the historical district.

35 **SUMMARY**

36 This bill requires municipalities to allow one accessory dwelling unit to be included
37 within or located on the same lot as a single-family dwelling unit. It prevents municipalities
38 from imposing any of the following for accessory dwelling units: setback requirements on
39 accessory dwelling units incorporated within an existing single-family dwelling unit;
40 setback requirements of more than 5 feet for accessory dwelling units not included within

1 a single-family dwelling unit; off-street parking requirements; separate sewer or water
2 systems; or owner occupancy of one of the units unless one of the units is being used for
3 short-term or vacation rentals. A municipality may not restrict use of one of the units on a
4 lot as a short-term or vacation rental. A municipality may not require correction of a
5 nonconforming use when an accessory dwelling unit is incorporated into an existing single-
6 family dwelling unit or of an existing structure converted into an accessory dwelling unit,
7 but a municipality may require compliance with applicable building and fire safety codes
8 for all accessory dwelling units. A municipality's design standards for accessory dwelling
9 units must be clear and objective. Accessory dwelling units within historical preservation
10 districts must comply with historical preservation standards.

APPENDIX T

**130th Legislature, House Amendment “A” to Committee
Amendment “A” to H.P. 968, LD 1312, An Act to Remove Barriers
to Accessory Dwelling Units and Allow Accessory Dwelling**

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Date: (Filing No. H-)

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION

HOUSE AMENDMENT “ ” to COMMITTEE AMENDMENT “A” to H.P. 968, L.D. 1312, “An Act To Remove Barriers to Accessory Dwelling Units and Allow Accessory Dwelling Units where Single-family Houses Are Allowed”

Amend the amendment in the first paragraph after the title (page 1, lines 12 to 14 in amendment) by striking out the following: "in section 1 in §3015 in subsection 2 in paragraph C in the first line (page 1, line 12 in L.D.) by striking out the following: "Except as provided in paragraph E, require" and inserting the following: 'Require' " and inserting the following: 'by striking out everything after the enacting clause and inserting the following:'

Amend the amendment by striking out everything after the first paragraph after the title and inserting the following:

'Sec. 1. 30-A MRSA §3015 is enacted to read:

§3015. Accessory dwelling units

A municipality shall allow one accessory dwelling unit, as defined in section 4301, subsection 1-C, to be located on the same lot as a single-family dwelling unit as long as the unit complies with minimum shoreland zoning guidelines adopted by the Department of Environmental Protection, subject to all locally adopted accessory dwelling unit land use requirements, and either the primary or accessory dwelling is owner-occupied. A municipality may not adopt an ordinance or regulation that circumvents the provisions of this section.

For purposes of this section, "lot" means acreage sufficient to satisfy the minimum lot size as required by the municipality's land use or building permit ordinance or regulations or, in the absence of any municipal minimum lot size requirement, as required by Title 12, section 4807-A.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF
Single Family Dwelling Units Fund N404**

HOUSE AMENDMENT

1 Initiative: Provides funding to reimburse municipalities for costs associated with requiring
2 municipalities to allow one accessory dwelling unit to be included within or on the same
3 lot as a single-family dwelling unit.

4	GENERAL FUND	2021-22	2022-23
5	All Other	\$95,004	\$95,004
6			
7	GENERAL FUND TOTAL	<u>\$95,004</u>	<u>\$95,004</u>

8 ' Amend the amendment by relettering or renumbering any nonconsecutive Part letter or
9 section number to read consecutively.
10

11 **SUMMARY**
12 This amendment requires municipalities to allow one accessory dwelling unit as long
13 as the unit complies with minimum shoreland zoning guidelines adopted by the Department
14 of Environmental Protection, subject to locally adopted accessory dwelling unit land use
15 requirements, and either the primary or accessory dwelling is owner-occupied. It prohibits
16 a municipality from adopting an ordinance or regulation that circumvents the requirement.
17 The amendment also adds an appropriations and allocations section.

18 **SPONSORED BY:** _____
19 **(Representative SYLVESTER, M.)**
20 **TOWN: Portland**

HOUSE AMENDMENT