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Senator Hickman, Speaker Fecteau, and Commissioners,

At the Portland Regional Chamber of Commerce, we focus our advocacy efforts on three intersectional policy areas: public transportation, workforce development, and affordable housing. As has become glaringly apparent in the era of COVID-19, Maine is woefully short in the creation and preservation of affordable housing, which has downstream deleterious impacts on expanding our workforce to realize economic development goals, as well as enhancing multimodal public transportation networks. We are grateful that the Legislature and Governor Mills have recognized the urgency of this shortage, through establishing this Commission to study ways the state can assist in removing barriers to affordable housing through land use and zoning reforms throughout the state.

Located in downtown Portland, but representing seven additional cities and towns in the region, our organization has a front row seat to communities that are both struggling with the perceived strains of increased development—in some cases responding with onerous regulations that hamper development despite relatively permissive zoning schemes—and communities that are just now waking up to the need to take responsibility for our statewide housing failures by critically examining their zoning and land use regulations for the first time with an eye towards creating more affordable housing. These experiences have led us to believe that from a macro perspective, the ideal environment for housing production lays somewhere between the small “c” conservative status quo of disallowing multifamily zoning by right in almost all cases, and the seemingly-progressive vision of allowing a permissive zoning environment on paper while simultaneously attempting to socially engineer housing developments that have no basis in the financial feasibility constraints that housing providers are confronted with on every project.

We are encouraged by the bipartisan support for this commission, and we hope the ultimate recommendations are considered by the full Legislature with a similar understanding that housing and land use are inherently non-partisan issues that deserve sober, fact-based analysis. What follows is our attempt to summarize the issues as we see them in Maine housing markets, along with suggested solutions including fixes to problems endemic to Maine, examples from other states, and further suggested readings.

Please be in touch with us regarding any follow up questions you may have. We look forward to following your progress and supporting your recommendations when the Legislature returns. Should you have any questions about our recommendations, please reach out to our Director of Advocacy, Eamonn Dundon, at [edundon@portlandregion.com](mailto:edundon@portlandregion.com).

Respectfully,

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## Exclusionary Zoning is Problematic in Maine

As America moved away from the explicit forms of racism embodied by Jim Crow laws, more subtle forms of exclusion worked their way into the fabric of daily life. We now recognize that this has permeated all facets of American life in a systemic fashion—including government, criminal justice, business, education, health and housing. Perhaps none of those categories is more interconnected to the others than housing, which is often the most determinative factor in predicting outcomes around where people live, what services they have access to, how they interact with the broader economy, and thus build the type of wealth that ensures well educated children, healthy communities, and agency to fully participate in society.

These national conversations on housing affordability are particularly relevant to New England, where one [index](#) created by the University of Pennsylvania found to be the most stringent region in the country in terms of zoning regulations. Maine is no exception to this and is one of the worst offenders in New England as a whole. [Analysis](#) from the Cato Institute ranks Maine fourth in the nation in restrictive land-use regulations (*Figure 1*), stating that, “The growing number of rules and regulations on urban land use has stemmed from well-intentioned efforts to promote public safety, environmental objectives, and aesthetic goals for development. But a major side effect of this growing volume of rules has been to deter construction and reduce the supply of housing, including multifamily and low-income housing.”

Much attention has recently been given to a [report](#) from Jeff Levine describing the zoning hurdles to multi-family housing construction in the Portland region. Traditionally, these exclusionary measures have taken the form of unreasonable parking minimums, massive set-back requirements, and maximum lot coverage standards. Mr. Levine finds in his report that in the towns of Portland, Falmouth, Westbrook, Gorham, Scarborough, South Portland, and Cape Elizabeth, only 5 percent of lands is designated for the types of multifamily housing that will significantly reduce the severe supply shortages we are facing in Maine.

Examples abound in recent years of ambitious proposals to bring more housing to Maine being sidelined by community opposition rooted in a weaponization of the existing restrictive zoning schemes. [Last year in Freeport](#), L.L. Bean brought forward plans to construct 329 single family home, 60 apartments, and 70 duplexes on a piece of company owned land. This represents the type of transformational development that is possible, especially with willing financial partners like L.L. Bean, but instead got bogged down by community concerns regarding burdens on municipal services and scale. Community members deployed familiar cliches like “character of community” and “rural feel” to sandbag a thoughtful proposal to expand access to housing. Because this project required zoning changes to make it feasible, the development team pulled out rather than face the uncertainties and costs of going up against the incumbent homeowners class.

Opposition to liberalizing zoning regimes and building more housing in Maine comes despite the fact doing so will allow us to realize our goals in other areas where we claim to be calling out for urgent action from local, state and federal governments. We have briefly mentioned economic growth, but, perhaps even more urgently, building more housing in a manner that increases density will help us meet our climate goals through increases to pedestrian, bike, and transit trips and reductions in individual passenger car trips by bringing residents closer

Rank (most to least restrictive)	State
1	OH
2	CT
3	DE
4	ME
5	VT
6	HI
7	OR
8	RI
9	WA
10	NH

*Figure 1*

to work, school, and other services they may need. Research shows that increasing density and building more compact neighborhoods leads to fewer miles driven, supporting more climate friendly options such as walking, biking, and transit use. Additionally, other [research](#) shows that switching land-use profiles from single family to multifamily reduces energy demand by 27-47%.

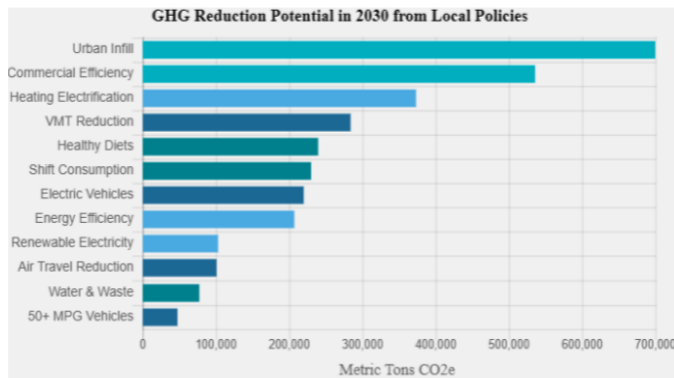


Figure 2

from the downtown core and transit nodes and corridors, making it harder to encourage transit use and decrease dependence on single user passenger car trips.

Portland’s One Climate Future plan finds that when land use policies (e.g., increasing density) and transportation policies are combined they result in an 8.1% reduction in vehicle miles traveled over 20 years, compared to a decrease of 1.1% and 0.9%, respectively, if each set of policies is pursued independently. In the absence of action to reverse the negative impacts of restrictive land-use regulations, we can expect housing developments to occur further afield

## There is Hope—But Also Reasons for Concern

Communities like Portland, and more recently Auburn and Westbrook, have been implementing aggressive rezoning initiatives in recent years to address structural zoning and land-use barriers to the development of housing. The state would be wise to examine these reforms in detail and consider ways in which they can be expanded to more communities. In Portland, this has taken the form of an ambitious [“ReCode”](#) initiative that seeks to modernize the city’s land-use code informed by the evident shortcomings of urban planning over the last few decades. This project is being broken into two phases, but [the first](#), already enacted, included several important reforms that have simplified the city’s accessory dwelling unit framework to make it easier to create ADUs and significantly relaxed parking standards to lower the cost of multifamily housing development on transit nodes and corridors.

In Auburn, Mayor Jason Lavesque is [undertaking similarly ambitious reforms](#) to radically open up plots of land for increased housing and commercial development. The City Council has [already enacted two ordinance changes to eliminate parking minimums](#) for commercial development, and will soon be taking up changes to the road frontage, density requirements, minimum setbacks, and maximum heights in their urban and suburban cores. [In Westbrook](#), the city recently changed their zoning ordinances to address affordable housing shortages by reducing the required square feet of land for each unit from 2,5000 square feet to 500 square feet. A change one property owner credits for his ability to double the number of apartments in his mixed-use building.

These movements towards reform are meaningful first steps, but fixing zoning codes alone is often not a good enough answer if those reforms are paired with excessive restrictions that vitiate the new opportunities to build more housing. Another area where we have observed artificial caps on the production of housing is the growth permit scheme employed by several communities in Maine.

The Town of Scarborough has [recently](#) undertaken debate about their growth permits, which led to a new cap of 144 units annually, both nowhere near either the demand to build in that specific community or the underlying regional and state demand necessary to meet our shared housing needs. Comments from municipal officials included ideas like, “we need to slow the curve of housing production” or “it will help us flatten the curve”, using language more apt for fighting a pandemic like COVID, than combating the housing production that our state so desperately needs.

This rhetoric is coming from a community that very clearly has interest from housing providers who want to build a range of housing needs—market rate, workforce, low-income—that would easily be absorbed by the growing demand. The Downs project in Scarborough is a perfect example of what thoughtful investment in housing can look like. It incorporates a mix of uses from office, to light industrial, apartments, and single-family houses that will create a walkable town center in a historically auto-centric town, but none of that is possible if local regulations continue to insist on artificial caps on housing. At a [recent Town Council meeting](#) the developers of the project pleaded with the town to increase these caps or create exemptions, as they are throttling good faith efforts to bring much needed housing to the region.

In the Town of Falmouth, [similar conversations](#) about growth caps are playing out. Their growth ordinance was created in 2000 with an annual cap of 100 homes, which has since been lowered to a paltry 65, moving in the wrong direction at a time when that is most unhelpful. Over the last few years there has been considerable demand for these permits, which ran out in 2018, 2020, and this year. Instead of recognizing that the cap is undermining the fundamentals of the free market, the town is hemming and hawing about simply “borrowing” permits from future years when the real solution is to either abolish the cap or significantly increase it. In these communities, it almost doesn't matter if zoning is liberalized if these restrictive caps are in place.

Matt Yglesias of Slow Boring has a wonderfully [simple analysis](#) of how these familiar cycles of opposition to new development have played out to the detriment of communities all over the country. In his theoretical model, building is disallowed in desirable suburbs, much like we have established it is in Maine's suburban communities. Building is also not feasible in the most expensive parts of the city through a combination of land scarcity, regulations like historic preservation, and other regulations like I will soon discuss is the case in Portland. Because these two buckets of land are off limits to development, new development gets squeezed into relatively small pockets of land in poorer or less desirable parts of the urban environment, which engenders backlash neighbors, activists, and some elected officials—who often demand concessions from developers that make development financial infeasible. Because little to no new housing gets built, costs skyrocket leading to situations like we are now facing both nationally and at the state level in Maine.

A recent [article](#) from Strong Town's summarizes this dynamic well:

*“What happens when we rule most neighborhoods off limits to even the kind of gradual changes that would have been common in another era, such as the addition of a granny flat or corner store, or conversion of a home to a duplex? We end up funneling a whole region's worth of demand for new buildings to the handful of neighborhoods where that demand is permitted to be met.”*

In response this dynamic has created a backlash against housing development in the relatively few places where it is permitted. In Portland, we are increasingly hearing the refrain that no housing is worth building unless it is socially engineered to be immediately affordable, and that any new housing (especially market rate) necessarily equates to housing costs increasing, even though [we know through empirical analysis](#) that all additional housing added to the market, no matter its price, is accretive to both lower housing costs and less displacement over all.

These ideas have manifested themselves most clearly in the City of Portland, where we have previously mentioned that important reforms have been undertaken through the ReCode process to make it easier to build the type of dense, transit-oriented development so essential to our state's economy. Unfortunately, these reforms are largely meaningless, because of excessive regulation placed on housing creation through citizen referendum.

In 2018, there was a proposal to increase our inclusionary zoning requirement in Portland from 10% to 20%. Portland city staff undertook analysis to determine what the effects of that proposal would be on housing production. Staff noted that the 10% requirement in place at the time did not materially slow the market because of the flexibility in the ordinance for a fee-in-lieu option and careful consideration of economic factors that supported the ability for developers to either absorb the cost of on-site unit creation or payment of the fee-in-

lieu at the 10% level. Former City Director of Planning Jeff Levine stated, “Why 10%? We looked at the market closely and what internal subsidy is reasonable for the projects in Portland in terms of still being able to get the internal return that allows people to do development, because they don’t have to, they choose to. So, they are rightfully expecting to make some money doing so.” Using [a model](#) from the Urban Land Institute staff determined that with theoretical rents of \$3.50psf a market could absorb a 20% requirement if land costs were around \$150psf. With rents at \$3.00psf, the land costs would have to be closer to \$10psf to make the same development pencil out. Finally, if we examine the fundamentals using Portland’s roughly \$2.50psf rent, land costs would have to be negative (meaning a developer is paid to develop a piece of land) for that same project to pencil out with 20% IZ requirement.

In 2020, Portland voters adopted a citizen’s initiative called the “Green New Deal” that raised the city’s inclusionary zoning (IZ) requirement from 10% of units in a new building to 25% of units in a new building, along with a host of other provisions that made new construction of multi-family housing largely infeasible including stringent building code requirements and the mandate of “responsible contracting” requirements (more familiar at the state level as project labor agreements) that lock out many Maine construction companies.

It is important to note that these changes passed despite unified opposition from the very people who know most about affordable housing production. Groups including Avesta Housing, Community Housing of Maine, Developers Collaborative, the Maine Affordable Housing Coalition and the Portland Housing Authority all signed a [letter](#) during the campaign which stated, “(the ordinance) would have severe, negative repercussions for efforts to increase the availability of affordable housing in Portland. (It would) drive affordable housing costs up by hundreds of thousands of dollars, which could disqualify Portland projects already struggling to meet the cost limitations outlines in Maine’s Qualified Allocation Plan.”

As the affordable housing providers predicted, the combination of the higher material costs, higher labor costs, and increased affordability mandates under the new ordinance has killed the momentum of housing production in Portland since the ordinance took effect in December of 2020. In fact, before the ordinance took effect, Portland was averaging 482 units of housing permitted every year since 2014, enough to meet the city’s goal of producing over 3,000 units of new housing by the late 2020s. Since that time, Portland has seen a total of 0 units approved that would be subject to the new requirements<sup>1</sup>. It is hard to imagine a starker illustration of the adverse impacts ordinances such as this one can have on communities that otherwise have the right intentions with zoning to encourage housing production.

If we look to other communities where similar IZ levels have been in place for longer, we see similarly distressing results. Burlington, VT has had a 25% IZ requirement since 1990, with significant concessions for projects with average prices or rents below 180% of AMI, and density, lot coverage, and parking bonuses for developers who comply with the ordinance. The Burlington market also commands much lower land prices in their downtown and downtown-adjacent neighborhoods, averaging \$21.45psf in the five most recent transactions, compared to a \$92.91psf average in Portland for the five most recent transactions. Even with all of those concessions, Burlington has only managed to produce an average of 10 IZ units per year from 1990-2015. We can conclude that Portland, with none of those concessions and considerably higher land costs, will produce many fewer units annually, if any.

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<sup>1</sup> Detailed breakdown of numbers available on request.





Figure 3

Similarly, in Portland, OR a recently enacted increase of the IZ requirements has led to a [complete collapse in housing production](#), as developers conclude it is no longer financially feasible to construct housing. New permits for apartment construction have fallen by 60% there. Of the units that have been constructed all of them have been fewer than the 20 unit minimum for the IZ requirements. This collapse in housing production in Portland, OR is illustrated in Figure 3.

IZ requirements such as this are ironically exclusionary zoning by a different name. Unreasonable IZ mandates will contribute just as much to our region’s housing shortage as the high hurdles to multi-family production found in communities like Cape Elizabeth and

Falmouth have done for decades. 25% of zero is zero, and if this ordinance remains in effect Portland will fail to live up to our housing production goals, adversely affecting progress towards the important commitments of our Comprehensive Plan.

Given the market dynamics discussed above, these goals are now impossible with the 25% IZ requirement that vitiates the ability for developers to build housing unless land costs are negative, or, as discussed in the case study below, massive public subsidies are provided that the city simply can’t afford.

### Case Study-Excessive Regulations Lead to Unsustainable Subsidy Request

#### *Lessons from Portland’s 45 Brown Street Proposal*

Currently, the Portland City Council is considering a tax increment financing request and an associated credit enhancement agreement for a 275-unit development proposal at 45 Brown Street. This project represents a taste of what’s to come with the 25% IZ requirement and offers an illustration of the massive levels of public subsidy required to pencil out the exact type of TOD projects on the peninsula we will need in order to meet our housing, climate and economic development goals.

After negotiations with the city the developer of this project, Presidium Real Estate, is proposing that 50% of the units in this project be deed-restricted affordable, more than satisfying the city’s IZ requirements, but in turn is requesting the creation of an AHTIF with a CEA to remit 75% of the increased taxable value on the parcel to developer. This 75% is the maximum level of CEA allowed under the city’s AHTIF policy and represents \$24,553,142 in forgone tax revenue to the city. Most notably, this request would be the first of its scale given to a developer who is not a non-profit developer and is not building 100% of the units at affordable rents. Subsidies like this are unsustainable in the long term as the city confronts numerous budget constraints. If this is the only way infill projects are feasible under the requirements of the current IZ percentage, we cannot be assured that this type of trade-off for the city will be repeated for future projects.

Meanwhile, projects that were approved before the effective date of the IZ increase continue to sail ahead without the need for any public subsidy. This illustrates the clear dividing line of the implementation date of the ordinance between infill TOD development not subject to the ordinance that are feasible without public subsidy, and similar infill TOD development subject to the ordinance that will require unsustainable levels of public investment.

## Ideas for Commission

Before we get into a discussion on potential recommendations for the commission to consider, it is important to establish why the state has an interest in playing a larger role in the realm of zoning and land use, which have typically been assigned almost entirely to municipalities. As we know, Maine has a long history of home rule and that is an asset to community's agency over the execution of their local priorities. So, why shake that up and insert the state in a policy realm that municipalities have long had free reign? Simply put, because municipalities have failed to live up to their obligations in creating an environment for property owners to use their property as they see fit to meet the market demands for more housing. In no other area of policy would the state tolerate the level of historic inaction that has led us to the tenuous state we now find the availability of affordable housing in.

The status quo is enabling local residents to internalize discussions which have inherent external interested parties. When we place all the decision-making power around land use and zoning in the hands of people who already live in a community, we are necessarily excluding the input and interest of those who would like to move to that community but can't because they cannot afford to live there. This leads to local officials who only have an interest in listening to local concerns, ignoring the negative externalities their decisions may have on issues of state interest like economic growth, climate mitigation, and racial equity.

Right now, in Maine discussions about the creation of affordable housing happen almost exclusively around single projects in different communities. Groups like employers, economists, and renters all have an interest in expanding the supply of housing, but when the decisions necessary to make that happen are cordoned off into one-off community-specific projects, they don't have the opportunity to participate, ceding the public involvement almost exclusively to NIMBY homeowners who carry great influence with town and city councils. Because these excluded groups do not have a way to be at the table, local land use restrictions have been enacted that directly undermine economic mobility and growth, to the detriment of the state as a whole. Attend any planning board or city council meeting in the state when a housing project is up for review, and you will quickly see that the folks in the room invariably have more privilege, wealth and influence than anyone who might someday want to live in said housing development.

In the face of localized NIMBY backlash, municipal officials lose their will to act on the issue of housing affordability which they almost universally recognize as a significant challenge. Because the issue can only be solved when many communities move at once to address zoning and land use barriers, local politicians have little incentive to act and incite backlash from their constituents. No doubt state action would invite backlash, but because the state can better frame the action around regional solutions to economic growth, climate mitigation, and equity, efforts will be contextualized in a way that more easily demonstrates the urgency of action.

To combat this dynamic that has played out routinely in Maine communities, it is now necessary to scale up the conversation and discuss reform at the state-wide level where more representative voices can be involved in making substantive change. Local communities may well think that they are making substantive positive change on this issue in their own way, but if we zoom out to the state level it is demonstrably clear that is not the case. Just like the fight against climate change we can observe towns and even states taking modest measures to address facets of the massive problem, but we know that it will take cooperation of entire countries and the global economy to truly move the needle on reducing carbon emissions.

Given the number of municipalities in the State of Maine, trying to reform zoning and land use regulations at the local level will only be accomplished slowly over decades, and the result will be one in which regulations vary widely from community to community, setting up many of the troubling dynamics previously described in this testimony. In communities like Portland, which have demonstrated a willingness to tackle issues of

affordable housing production, the rezoning process still stretches on for many years or decades—a proposition that is unacceptable given the acute nature of our housing shortages.

### **Recommendation 1: Understand the Problem Better and Invest in Planning Resources**

The first step in partnering with municipalities to tackle zoning and land use restrictions centers on data and information. We realize that many municipalities have limited resources to undertake complex analysis and action on zoning and land use reform, so the state should step in to provide the resources necessary for communities to understand the problem and get to work on imagining solutions unique to that community.

We are encouraged to see that the Greater Portland Council of Government's will be expanding Jeff Levine's recent analysis on land use and zoning restrictions to additional communities including Saco, Biddeford, Yarmouth, Cumberland, Freeport and Windham. We would suggest that the state allocate funds to undertake similar analysis on a state-wide level, starting with the regions most acutely suffering from housing shortages, and building outwards to eventually encompass at least all the urban areas of the state.

Another recent effort from GPCOG is assistance to municipalities with planning transit-oriented developments. The [first of these plans](#) created a high-level conceptual layout of what a dense and walkable re-imagining of the Maine Mall campus in South Portland could look like. These aren't meant to be definitive site plans for what will be constructed in each place. Rather, they are a blueprint for towns and cities to consider what their most prime and underutilized transit-oriented sites could look like with investment. This can help municipal officials zone these areas for more density, and work with potential development partners to get projects off the ground that will add mixed-use development. In addition to the Maine Mall site, GPCOG has identified over two dozen additional sites to study in this manner, with plans to use CARES Act funding to bring several more plans to fruition. The state should build off this model to fund more planning efforts like this around the state, in consultation with municipal governments and other councils of governments.

Finally in this category, we look to an example from Vermont. Vermont recently enacted a state-wide up-zoning of many parcels in across the state (which we will discuss below). In order to assist communities in implementing this new mandate, they created a [guide](#) called "Enabling Better Places: A Zoning Guide for Vermont Neighborhoods" by working with the Congress for New Urbanism. This guide summarizes best practices and additional resources for communities as they think about how they want to lift zoning regulations to comply with the new law.

We are agnostic as to whether or not the recommendations above require the state to reestablish a planning office, but we do feel the Legislature ought to take any steps necessary to fund these essential components of technical assistance and then make them accessible to municipalities in a centralized manner. Any barriers to entry for municipalities to participate in state-wide solutions would be antithetical to the urgent action that must be undertaken in the next few years to tackle our housing shortage.

### **Recommendation 2: Reform the State Law Authorizing Growth Caps**

Previously, we addressed the negative impacts of municipal growth cap ordinances on the production of housing. While ultimately, we would like to see the state eliminate municipalities ability to enact these artificial caps on housing production, we feel a modest first step is to significantly reform [the state enabling law](#) for growth caps.

Currently, state law reads, "The ordinance sets the number of building or development permits for new residential dwellings, not including permits for affordable housing, at 105% or more of the mean number of permits issued for residential dwellings within the municipality during the 10 years immediately prior to the year in which the number is calculated."



This section of the law is concerning in several ways, because it becomes a self-limiting number if an ordinance is in place for many decades and the triennial recalculation is based off of years in which the cap was already in place. Thus, the 105% metric does not reflect a true understanding of where demand would be if not for the cap and only allows for inadequate incremental increases in each calculation. One approach to solving this, would simply be to lift this percentage, to something more like 150% of the permits issued in the proceeding 10 years. Another approach would instead use permits applied for instead of issued when calculating the 105% number. Both of this would increase these caps overtime while still allowing municipalities important agency to manage growth and identify priority areas for that growth to take place.

### **Recommendation 3: Enact State Enabling Legislation Around Inclusionary Zoning**

Perhaps nothing is more thoroughly explored in this testimony that the adverse impacts of unreasonable inclusionary zoning percentages on the production of housing. As we mention in Portland, the largest housing market in the state, housing approvals went from ~480 annually to 0 nine months into this new ordinance, at a time when demand for new housing most certainly hasn't collapsed. In our observations, ordinances in Portland generally spread to other communities, especially in southern Maine. Now is the time for the state to step in and enact enabling legislation around inclusionary zoning to prevent this misguided policy, really NIMBYism cloaked in affordability buzzwords, from metastasizing in a manner that works against our housing production goals.

Virginia has a great model to consider for Maine inclusionary zoning enabling legislation. [Code § 15.2-2305](#) institutes a statewide cap on both the number of units that must be set aside for people earning up to 80% of the area median income at 17% of units, and on the amount of density bonus at 30% that can be offered if a developer hits the 17% affordable unit set aside. This ratio of 17%-30% for affordable units and density bonuses provides a good balance between incentivizing some affordable units while also giving developers the ability to densify a parcel to subsidize the affordable units with market rate units.

[According to](#) the Progressive States Network, well designed state enabling legislation on housing matters should seek to accomplish three objectives:

- “Ensure that state law does not pose a barrier to the enactment of important local tools for promoting affordable housing, such as tax abatements, tax increment financing, and inclusionary zoning.”
- “Reduce the likelihood that the policies that localities adopt will be vulnerable to a court challenge.”
- “Help to reduce the learning curve for municipalities by specifying one or more sound program variants for their consideration.”

This model from Virginia accomplishes those three tenants of successful enabling legislation and would set Maine's towns and cities on a workable path to encouraging affordable housing without killing all development as Portland's current ordinance does. First, it does not mandate that municipalities enact an inclusionary zoning ordinance, but it does explicitly recognize their rights to do so, while putting parameters in place to ensure that any ordinance does not adversely impact overall housing production. Second, it does not mandate inclusionary zoning set aside or density bonus percentages, it simply states that the higher a municipality sets its unit set aside percentage, the higher the density bonus must be, allowing municipalities to craft ordinances that are aligned with the interests of their town.

### **Recommendation 4: Legalize Fourplexes on All Land Served by Sewer and Water**

One of the keys to Maine getting land use and zoning reform right, is to make sure that the benefits of increased housing development are spread evenly across the state. Will this look like four and five story apartment buildings in every town in the state? No, but it could look like incremental density increases across a broad swath of Maine neighborhoods that broadly resemble the type of modest, multi-family living that was

commonplace in earlier eras of Maine’s towns and cities before restrictive zoning measures were put in place. By simply allowing the by-right construction of fourplexes on all parcels with sewer and water connections, we can dramatically lower the entry cost to housing.

Historically, Maine and other New England states have developed around dense and walkable town and village centers that featured all sorts of housing options, from single family homes, to rowhouses, to 2–4-unit apartment buildings, and finally much larger multi-family developments. From Portland’s Old Port to the small fishing communities that dot our coast and the mill towns along the rivers of our interior, dense and walkable urban clusters evoke positive feelings from many and reflect some of the most economically dynamic periods of our state’s history. This is no accident. The Biddefords, Portlands, Stoningtons, Augustas, Bangors, and Lewistons of yesteryear allowed workers and families to be near jobs, schools, and small businesses. These cities were built incrementally over time by carpenters, mariners, and other lay people who were allowed to expand housing units on their property little by little. Unfortunately, we’ve moved away from that with the advent of single-family housing that pushes new development further afield from places they want to be, with more reliance on personal automobiles, and, most importantly, much higher costs for housing. Why would we want to accept that raw deal we have rationalized ourselves into over the last 70 years?

Many states have recently tackled legislation to broadly legalize fourplex developments in many more areas than have recently been available to this type of growth. Most notably, Oregon passed HB 2001, which requires municipalities with over 10,000 people to allow duplexes in areas zoned for single-family homes, and municipalities with over 25,000 people to allow fourplexes in zones previously reserved for single family homes. Additionally, Oregon’s law broadly stuck down municipal rules that put an “unreasonable cost or delay” on the development of 2–4-unit housing projects. If those same population parameters were applied to Maine, the following towns would be subject to this law:

<b>Fourplexes Legalized</b>	
Portland	68,408
Lewiston	37,121
Bangor	31,753
South Portland	26,498
<b>Duplexes Legalized</b>	
Auburn	24,061
Biddeford	22,552
Scarborough	22,185
Sanford	21,982
Brunswick	21,756
Westbrook	20,400
Saco	20,381
Augusta	18,889
Windham	18,484
Gorham	18,336
Waterville	15,828
York	13,723
Falmouth	12,444
Kennebunk	11,536
Wells	11,213
Orono	11,183
Standish	10,244
Kittery	10,070

2020 U.S. Census Data

The Oregon proposal [was supported by a broad range of organizations](#), including the AARP of Oregon, who argued it would make it easier for people to age in place; transportation advocates who argued it will let more people live near good transit and walkable neighborhoods; the NAACP who argued it will reverse many of the racist policies zoning was created to enact; climate groups who said densifying housing will help address climate change; and public schools advocates who see it as a key way to address school segregation.

The legislation represents a step that is deferential to municipalities, while making the state's preference for growth and new housing a required consideration for municipalities as they debate their local codes. Under the law, municipalities still had significant control over height, size, and aesthetics of new housing, which, from our observations in Southern Maine are often the most sensitive components of the planning process. Notably, this law did not eliminate single family homes, it simply allowed other types of homes to be built in areas that have traditionally been off limits to those who could not afford to, or simply preferred not to, live in the post WWII phenomenon of a single family detached home.

Following passage of HB 2001 in Oregon in 2019, similar proposals have been brought forward in several states, including our neighbors in northern New England. In New Hampshire, [HB 341](#) proposed in this year's session would allow four units of housing by-right on any residentially zoned lot with municipal water and sewer. The bill's sponsor [notes](#) that the four unit number works well with lending guidelines for conventional mortgages from FHA, the VA, Freddie Mac, and Fannie Mae, dramatically lowering the barriers to entry for real estate development.

In Vermont, Republican Governor Phil Scott signed legislation that also encourages this type of "middle" 2-4-unit housing. [Act 179](#) bans zoning laws that set minimum lot sizes greater than 1/8<sup>th</sup> of an acre, while also allowing duplexes and accessory dwelling units to be built by-right. Additionally, it requires all municipalities that currently allow some form of multi-family housing to allow residential dwellings up to four units on parcels with water and sewer connections.

There is no doubt that a move such as the ones proposed in New Hampshire and passed in Vermont and Oregon represent a paradigm shift in the state's role in zoning and land-use, but the state's overriding interest in economic growth, promoting housing affordability, and enhancing property rights call out for such bold reforms. Salim Furth, of the Mercatus Center at George Mason University, spoke to this interest in his [testimony](#) on New Hampshire's HB 341:

*"In the present case, unless the legislature believes that there is a compelling reason that four households should not reside on a lot where one household can safely and beneficially reside, it ought to limit municipal authority to impose that specific restriction."*

*"Municipal governments are responsive mainly to their current residents, so zoning can be tilted toward maximizing incumbent property values and keeping potential schoolchildren out. The state legislature can balance those narrow interests against the interests of Granite Staters who live outside the towns in question and do not have representation there."*

In making these type of minor up-zoning amendments to the land use code, entire neighborhoods are not razed overnight. When we act simultaneously to broadly up-zone the most urban areas of our state, development naturally gets interspersed into more neighborhoods in an incremental fashion, reducing the pace of rapid change in the select neighborhoods where multi-family development is already allowed, broadening both where new tenants and homebuyers can live, and lowering the barriers to who can build new housing. Whether we go the route of the legislation proposed in New Hampshire, which is broadly permissive on all lots with municipal sewer or water, or we go the population-based route of the law passed in Oregon, Maine should seriously consider the important benefits a statewide mandate such as this one would provide for the type of incremental, neighborhood scale middle housing projects that were the hallmark of urban development before the advent of restrictive single-family zoning

## Suggested Reading

While we hope our testimony above provides a good overview of our concerns and recommendations germane to the commission's work, we know that there are countless other ideas and ways of thinking about zoning and land use that are important for you to consider. Below we have included some of our favorite resources on the topic, that expand upon the ideas we've offered and provide additional ways of thinking about housing shortages in Maine.

1. Strong Towns:
  - a. [\*Why Are Developers Only Building Luxury Housing?\*](#)
  - b. [\*Two Simple Rules for Healthy Neighborhood Change\*](#)
  - c. [\*Making Normal Neighborhoods Legal Again\*](#)
  - d. [\*Vermont Missing Middle\*](#)
  - e. [\*Will 2021 Be the Year Zoning Reform Reaches Critical Mass?\*](#)
2. George Mason University, Mercatus Center:
  - a. [\*Inclusionary Zoning Hurts More than it Helps\*](#)
  - b. [\*Testimony to the Connecticut Legislature\*](#)
  - c. [\*Letter to the U.S. Department of Housing and Urban Development\*](#)
  - d. [\*Testimony to the New Hampshire Legislature\*](#)
  - e. [\*Inclusionary Zoning and Housing Market Outcomes\*](#)
  - f. [\*Housing Reform in the States: A Menu of Options\*](#)
3. Sightline,
  - a. [\*Eight Ingredients for a State Level Zoning Reform\*](#)
  - b. [\*Four Lessons from California's Big Zoning Reform\*](#)
4. Congress for New Urbanism:
  - a. [\*Statenide Code Reform is a Good Idea\*](#)