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Public opinion and zoning reform

Single-family zoning is the predominant form of residential zoning in the United States.[1] It also is a major contributor to the nation's housing affordability crisis,[2] because it allows only one family to live on a housing lot, regardless of the lot size. Other local zoning and related barriers to housing opportunities also place undue restrictions on the housing supply.[3]

The nationwide housing shortage recently was estimated by Freddie Mac to be about 3.8 million homes.[4] Private estimates vary.[5] The shortfall naturally has caused housing prices to escalate, persistently leading inflation. In fact, it is axiomatic that the cost of a

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[1] *See, e.g.,* Joint Ctr. for Housing Stud. of Harv. U. ("Harv. JCHS"), *The State of the Nation's Housing 2024* ("SONH 2024"), p. 36 (2024) ("The majority of land in cities across the country is currently zoned exclusively for single-family homes").

[2] *See, e.g., id.,* p. 1; Emily Badger and Eve Washington, *The Housing Shortage Isn't Just a Coastal Crisis Anymore*, NY Times (July 14, 2022), posted at: https://www.nytimes.com/2022/07/14/upshot/housing-shortage-us.html.

[3] *See, e.g.,* SONH 2024, p. 15 ("local zoning and regulatory barriers frequently impede new construction by restricting or deterring the types, amount, and density of housing that can be built. . . . The National Zoning and Land Use Database, for example, captures data from 2,639 municipalities. According to Center tabulations, 43 percent of jurisdictions have a minimum lot size of at least one acre in any residential district, nearly 10 percent don't allow multifamily housing by right in any district, and a median of 1.8 parking spaces are required per new unit, on average.")

The unduly limited amount of urban land on which residential development of any kind is permitted by local governments poses other regulatory barriers to housing opportunities. *See, e.g., id.*

[4] *See, e.g.,* Badger and Washington, *supra* n. 2.

[5] *See, e.g.,* Daniel McCue and Sophie Huang, *Estimating the National Housing Shortfall,* Harv. JCHS (Jan. 29, 2024), posted at https://www.jchs.harvard.edu/blog/estimating-national-housing-shortfall (using different methodologies, the National Association of Realtors (NAR) suggests a 5.5 million unit shortage of housing; the National Low Income Housing Coalition (NLIHC) estimates a shortage of 7.3 million units affordable to renters who earn 30 percent or less of area median income; and the National Association of Home Builders (NAHB) estimates a 1.5 million unit shortfall in America's metropolitan areas).

commodity such as housing tends to increase when the demand for it exceeds the supply.[6]

"[T]he price of a standardized quarter-acre lot for existing single-family homes in the US grew 13 percent annually in 2022 and an astounding 51 percent since 2019."[7] Lagging housing production and increasing housing cost burdens have been ongoing issues since at least the 1970's.[8]

Substantial increases in housing supply result in less upward pressure on housing prices in the general area. And sufficient supply increases actually help stabilize housing prices.[9] However, the addition of new, high-quality housing in one neighborhood does not necessarily lower prices in that neighborhood, due to gentrification. Many current residents of most communities will have concerns about possible adverse effects of new housing on them.

Numerous, recent public opinion surveys indicate that large majorities of Americans favor removing many zoning and housing restrictions in single-family zones, in order to permit "missing middle" housing opportunities.[10] Those opportunities may consist of accessory dwelling units (ADUs) and/or other multi-unit residential structures (such as

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[6] To illustrate—as of the third quarter of 2023, the robust production of new rental apartment units, along with declining market demand for apartments, "brought rent growth to a near standstill." Harv. JCHS, *America's Rental Housing 2024*, p. 28 (2024). Unfortunately, those stable rental prices were short-lived and are rare in the United States.

[7] SONH 2024, p. 15, citing American Enterprise Institute, *Land Price and Land Share Indicators*.

[8] *See, e.g.,* Equitable Housing Institute (EHI), *Toward a comprehensive ban on exclusionary housing practices,* pp. 3-9 (2019), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EHI_Toward-comprehensive-ban-tech-edits_1-2022.pdf.

[9] *See, e.g., America's Rental Housing 2024, supra* n. 6, p. 2 (temporary stabilization of rents in United States in late 2023 was explainable by large number of units added and softening of rental demand).

[10] Gentrification is one of the potential side effects on current residents that need to be—and generally can be—resolved to the residents' satisfaction. For more on successful strategies for resolving gentrification issues. See, e.g., Equitable Housing Institute (EHI), *Approaches to resolving displacement concerns in gentrifying, urban neighborhoods* ("EHI, *Displacement concerns*") (2021), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EHIResolving-city-displacement-concerns-7-6-21.pdf.

Other side effects that often cause residents concern also can be resolved generally to their satisfaction. Examples are increased traffic, loss of open space, effects of affordable housing units on residents' property values, and higher taxes on residents resulting from the development. For more on successful strategies for resolving such concerns. See, e.g., EHI, *Developing a better "carrot," to induce residents to support needed, new housing in their communities* (June 2018), posted at: https://equitablehousing.org/images/PDFs/PDFs--2018-/Pursuing_win-win_solutions_with_local_residents.EHI-6-2018.pdf.

duplexes and triplexes). Various forms of such “middle housing” were common in our nation’s cities before zoning was adopted.[11]

Consistent with the results of those public opinion surveys, a number of states—ranging from deep-blue to deep-red politically—have recently enacted statewide laws that permit some form(s) of “missing middle” housing in many single-family zoning districts. Numerous major cities also have enacted local "missing middle" housing ordinances.

However, several other public opinion surveys sound a note of caution about efforts to add housing in established residential areas. Those surveys indicate that: (1) most Americans, regardless of whether they are renters or homeowners, would prefer to live in low-density, single-family neighborhoods, if they could, and (2) the majority of American homeowners respond negatively to most proposals to build new housing in their vicinity.

Public opinion surveys are an important guide to politicians and other policymakers. This report will focus on numerous, major surveys conducted since 2021 regarding public attitudes about adding housing in American communities.

First, we will discuss several major recent surveys that indicate strong, majority support among Americans for numerous reform measures to reduce housing shortages. Second, we will discuss several major recent surveys that sound a note of caution about some oft-tried efforts to add large amounts of new housing in established residential areas.

Third, we will note numerous caveats about the various survey results we discuss and about public opinion surveys on housing issues generally. Fourth, we will summarize dramatic, recent zoning reforms in various states and cities and certain other indications of the feasibility of similar reforms across the United States. Finally, we will offer conclusions and recommendations, including a Do Bee, Don’t Bee summary of ways to help heal the housing affordability crisis by permitting "missing middle" housing in single-family neighborhoods.

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[11] *See, e.g.,* John Infranca, *Singling Out Single-Family Zoning*, 111 GEORGETOWN L.J. 659, 668-669 (2023) (citing Michael Anderson, *Oregon Just Voted to Legalize Duplexes on Almost Every City Lot*, Sightline Inst. (June 30, 2019)), posted at https://www.sightline.org/2019/06/30/oregon-just-voted-to-legalize-duplexes-on-almost-every-city-lot/. *See also, e.g.,* AARP, *ADUs Are an American Tradition,* posted at https://www.aarp.org/livable-communities/housing/info-2019/adus-are-an-american-tradition.html (accessed August 4, 2023).

1. Recent survey reports showing strong, majority support among Americans for increasing the amount of housing in their vicinity

A. Zillow survey (May 2023)

Online real estate platform Zillow published a survey in May 2023 of more than 14,000 adults, randomly selected from 29 major metropolitan areas of the United States, regarding their attitudes toward building more housing in their neighborhoods. [12] Zillow determined that 78% of the homeowners and 89% of the renters support doing so—especially small-scale "missing middle" housing projects.[13]

Though homeowners were less supportive of apartments than renters, 49% of homeowners, a near majority, indicated that they "would support a multi-family residence such as an apartment building or complex being built in [their] neighborhood."[14]

"[R]esidents were more likely to support allowing accessory dwelling units (70% supported versus 23% opposed) and duplexes and triplexes (59% supported versus 34% opposed) in their neighborhoods." [15] And 68% of homeowners agreed somewhat, or felt strongly, that: "Homeowners should be allowed to convert their homes to add additional housing units (e.g., single-family to duplex, adding a mother-in-law unit, etc.)."[16]

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[12] Manny Garcia, *Across 29 Metro Areas, Residents Largely Support Allowing Missing Middle Homes in Residential Neighborhoods (*"Zillow survey (May 2023)") (May 31, 2023), posted at https://www.zillow.com/research/missing-middle-affordability-32711/.

As to the survey's methodology: "Results from this survey are representative of adults in each metropolitan area. To achieve representativeness, ZG [Zillow Group] Population Science used a two-pronged approach. First, the initial recruitment to the sample was balanced to all adults from the U.S. Census Bureau's 2021 American Community Survey (ACS) on the basis of age, relationship status, income, ethnicity/race, education and sex. Additional targeted subgroups were sampled based on all key household demographic characteristics. Second, statistical ranking was used to create calibration weights to ensure that the distribution of survey respondents matched each metro's population with respect to a number of key demographic characteristics." *Id.*

[13] Zillow survey (May 2023), *supra* n. 12.

[14] Christopher Elmendorf, Clayton Nall and Stan Oklobdzija, *What State Housing Policies Do Voters Want? Evidence from a Platform-Choice Experiment* ("ENO 2024"), p. 7 (April 29, 2024), posted at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4811534.

[15] Zillow survey (May 2023), *supra* n. 12.

[16] *Id.* That figure is based on the responses from homeowners in 20 major metros, who answered a series of questions about their attitudes toward specific statements about housing in their neighborhoods. The share of respondents who supported that statement increased from 57% in Zillow's 2019 survey and 64% in Zillow's 2022 survey. *Id.* "This latest survey shows a *growing consensus* among homeowners and renters that similar measures [such as allowing two units on 10% of single-family lots across some of the

> There also was widespread support for even larger multi-family buildings in the respondents' neighborhood—if that area was "within a 15-minute walk of frequent transit, recreation, or with an affordability requirement for low and middle income families."[17]

Zillow added: "Results are largely similar among registered voters: 69% say they support allowing ADUs in their neighborhood, and 57% say they support allowing duplexes and triplexes."[18] "Younger residents, renters, people of color and LGBTQ+ respondents were more likely to express support for allowing accessory dwelling units, duplexes and triplexes in residential neighborhoods, and were more likely to agree that they would support building each type of home in their own neighborhoods." [19]

"Across the metros, most respondents said that allowing duplexes and triplexes would have a positive impact on most neighborhood characteristics they were asked about. The largest share of respondents felt this would positively impact neighborhood amenities (69%) and affordability (69%), followed by access to public transportation

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largest U.S. metros] should be taken in their own neighborhoods to address affordability." *Id.* (emphasis added).

[17] *Id.*

> While fourplexes, fiveplexes, sixplexes and medium/large buildings generally did not garner majority support outright, respondents reported being more supportive of allowing new multifamily homes within a 15-minute walk of frequent transit, recreation, or with an affordability requirement for low and middle income families. For example, only 38% said they would support allowing large condo or apartment buildings in their neighborhood, but that number grew to 76% when including those that said they would be more supportive on a 15-minute or affordability condition. *Id.*
>
> . . . Most respondents (69%) also said allowing small and medium apartment buildings would have a positive impact on the availability of more affordable housing options, but they split more evenly on apartment buildings in their own backyards: Across all the surveyed metros, 57% agreed they would support a multifamily residence like an apartment building being built in their neighborhood, while 36% disagreed." *Id.* "Opponents who reported opposing every type of multifamily home (15% of adults surveyed), though, were less likely to say that each condition would make them more supportive." *Id.*

[18] *Id*. "Adults who had registered to vote previously – but who had not updated their registration since their last move – were most likely to express support for allowing more types of homes in their neighborhoods, like ADUs (77%), du/triplexes (75%), four/fiveplexes (65%), sixplexes (61%), and small (67%), medium (66%), and large (61%) condos/apartments." *Id.*

[19] *Id*. "These more supportive demographics, though, were less likely to report having up-to-date voter registration. For example, 65% of LGBTQ+ respondents said they were registered to vote at their current address, versus 77% among cisgender heterosexual respondents." *Id.*

(64%), a sense of community and belonging (63%), neighborhood look and feel (58%), and the value of existing homes (55%).[20]

"About half, however, said allowing such homes would have a negative impact on parking and traffic (48%). On this point, though, 62% agreed with the statement 'Having more affordable housing in my community is more important than free parking for myself.'" [21]

B. Pew Charitable Trusts (PCT) survey (2023) [22]

A September 2023 survey of more than 5,000 American adults, conducted for the Pew Charitable Trusts (PCT), showed that large majorities favored major reforms to zoning and land use regulations, in order to increase "missing middle" housing opportunities.[23]

First, the participants were asked whether they support or oppose certain ideas "to make housing more available and affordable in the largest cities in your state and the towns nearest them where many people commute into those cities for work." [24] The results indicated strong, majority support for numerous policies that would allow more apartments to be built:

- 81% support allowing apartments near train or bus stations or major job centers;
- 81% support making it easier for churches and colleges to build affordable housing or dorms on their land;
- 75% support allowing apartments near offices, stores, or restaurants;
- 73% support allowing conversion of basements or attics into apartments; and
- 72% support allowing adding an apartment over a garage or in a backyard.[25]

The survey also indicated the following levels of support for different policies that would allow more homes to be built in commercial and residential areas:

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[20] *Id*. "Most respondents (76%) also said that allowing homeowners to add additional units to their property would have a positive impact on enabling them to care for aging family members." *Id.*

[21] *Id*.

[22] Pew Charitable Trusts, *Survey Finds Large Majorities Favor Policies to Enable More Housing* ("PCT 2023") (Nov. 30, 2023), posted at https://www.pewtrusts.org/en/research-and-analysis/articles/2023/11/30/survey-finds-large-majorities-favor-policies-to-enable-more-housing.

[23] "The data was weighted to adjust for gender by age, race/ethnicity, education, census region, metropolitan status, and household income." Ipsos, *Zoning Reform Survey Methodology and Toplines* ("Ipsos"), p. 1 (Nov. 2023), posted at https://www.pewtrusts.org/-/media/assets/2023/11/zoning-survey-toplines-and-methods.pdf. (Ipsos conducted the PCT survey.)

[24] *Id*., p. 1.

[25] PCT 2023, *supra* n. 22.

- 86% support requiring governments to make building permit decisions faster;
- 81% support allowing offices, hotels, and similar buildings to be converted to housing;
- 62% support letting property owners and builders decide how much off-street parking to have;
- 58% support allowing town houses or small multifamily homes to be built on any residential lot; and
- 49% support allowing homes to be built closer together with smaller yards.

The report observed: "The most popular policies in the survey would primarily add housing in commercial areas, making incremental or no changes to residential blocks consisting of single-family detached houses."

> Support for most of the housing policies transcended the usual fault lines of political party, region, race, income, and gender. The eight most popular proposals received clear majority support from Republicans, Democrats, and independents." They also received majority support from both renters and homeowners.[26]

As mentioned, the only housing rule change about which respondents were asked and that did not receive majority support was a change "so that homes are allowed to be built closer together with smaller yards so people can buy less land and homes cost less."[27] The respondents also were asked how they would rate various reasons given in support of changing housing rules. [28]

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[26] PCT 2023, *supra* n. __ 20.

[27] Ipsos, *supra* n. 24, p. 2.

[28] *Id*., p. 4. Respondents rated the following rationales that improve consumer choice as "excellent" or "good" reasons to allow more housing:

> 79% cited allowing people to move closer to jobs and schools;
> 77% cited allowing people to live closer to offices, stores, restaurants, or public transportation;
> 72% cited allowing family members to afford to live near each other; and
> 65% cited giving people more freedom over their property.

PCT 2023, *supra* n. 22. The following shares of survey respondents viewed various economic or social rationales as "excellent" or "good" ways to allow more housing:

> 82% cited making housing more affordable;
> 76% cited helping business owners have more employees and customers nearby;
> 75% cited reducing fees for building permits;
> 73% cited reducing homelessness;
> 66% cited reducing racial segregation.

Id.

C. CZI *California Dream* White Paper (2023)[29]

A project by the Chan Zuckerberg Initiative (CZI) used representative surveys of registered California voters in order to identify a narrative that would best support "housing advocacy groups as they work to shift voter attitudes and values in support of housing reform across California."[30]

A baseline survey of 1,078 registered California voters, conducted in 2019 and followed up by other CZI surveys of housing attitudes, indicated that 71% of Californians support increased housing production in the state, either strongly (25%) or somewhat (46%).[31]

Support was higher, however, for the other two basic options, which were stronger efforts to (a) preserve housing and (b) protect Californians from very high housing costs. Both of those options had 79% support overall, including 24% strong support.[32]

CZI concluded that the 2019 survey indicated that "while California voters can agree there's a serious problem, they are not aligned on the source of the problem, or the solutions to address it."[33] That survey did not tie the respondents' answers to their own communities.

Later CZI surveys during the *California Dream* study focused on whether respondents' support for certain housing reform measures increased after they were given specific pro-housing messages. Certain of those messages produced statistically significant increases in support for certain housing reform measures, although none of them produced majority support for any one measure.[34]

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[29] Chan Zuckerberg Initiative (CZI), *The California Dream: A New Narrative to Engage Californians on Housing Affordability* (2023), posted at https://bit.ly/3xVf9Mx.

[30] *Id.,* p. 6. That survey was conducted by AmeriSpeak (at the National Opinion Research Center (NORC) of the University of Chicago) on November 5 –18, 2019. *Id*. at 10. It aimed to break out the responses from members of different groups—traditional political identities and demographic identities of gender, race, ethnicity, and class. *Id.* at 6.

[31] *Id*. at 12 (Chart on "Housing Reform Outcome by Segment"). The margin of error for the full sample of 1,078 people was ±3.94%. *Id*. at 36.

[32] *Id*. at 12 (Chart on "Housing Reform Outcome by Segment").

[33] *Id.* at 29.

[34] The highest overall support came in response to the *California Dream = Build What Matters to You* framing of the appeal, which stated:

> "**It's about time we redefine the American Dream, and we Californians are the right ones for the job.** We need to reboot our idea of the American Dream to reflect the values of our present-day state. Californians know that when we bring people together from all different walks of life, we're able to spark new ideas, pioneer groundbreaking innovations, and solve big problems the Californian way. That's why we need to ensure

2. Recent, cautionary survey reports on Americans' attitudes toward "missing middle" housing reforms

A. ENO survey (2024)[35]

The latest, major public opinion survey of which we are aware, concerning ways to solve the housing affordability crisis, was published in late April 2024 by Profs. Christopher Elmendorf, Clayton Nall and Stan Oklobdzija. That survey polled a representative sample of 5,000 residents of U.S. urban and suburban zip codes on their housing policy preferences.[36] The survey "elicited perceptions of the efficacy of a wide range of potential state policies for 'helping people get housing they can afford.'" [37]

The authors found: "The public's take on effective and desirable state policy in the housing domain deviates significantly from the conclusions reached by economists, and from the preferences of the pro-supply YIMBY movement. Price controls and demand subsidies earned much more support than any supply measure."[38]

> Fully 85% or more of the respondents supported rent control, property-tax limits, down-payment subsidies, and restrictions on Wall Street ownership of housing. Nearly as many respondents favored mandates

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> we build communities where people from different incomes, beliefs, and backgrounds can live, work, and create the California Dream together."

Id. at 31, 32 (emphasis in original). "In addition to identifying the winning frame, this phase of research also found that the *California Dream = Build What Matters to You* frame can be even more effective when paired with outcome-specific messages." *Id*. at 33. The largest support was based on an "outcome-specific message" intended to increase support for producing additional housing *in the respondent's community*. That message was:

> "**Rising housing costs are driving businesses, workers, and young people out of our communities, and if we wait to take action, the problem will only get worse.** Let's expand housing options right here, right now, to protect the good jobs, great schools, diverse communities, and unique opportunities that matter to our families and neighbors."

Id. at 33 (emphasis in original). Respondents exposed to this message were more likely to "somewhat support" housing production *in their communities* (35%, compared to 31% overall—a 13% increase). *Id.* So, that message was specific to the areas where respondents lived.

[35] Christopher Elmendorf, Clayton Nall and Stan Oklobdzija, *What State Housing Policies Do Voters Want? Evidence from a Platform-Choice Experiment* ("ENO 2024") (April 29, 2024), posted at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4811534.

[36] *Id.* at 5.

[37] *Id.* The study also analyzed how "tenants differ from homeowners and Democrats differ from Republicans" on those issues. *Id.* at 25.

[38] *Id.* at 23.

> that developers provide price-restricted middle-income or lower-income housing (a.k.a "inclusionary zoning").[39]

"The most popular pro-housing policies in our study are 'Reduce fees and taxes on housing development' and 'Make cities approve housing proposals that comply with city rules,' both of which were backed by nearly 80% of the sample."[40] The authors point out that "these policies may tap into other sources of support, such as anti-tax or rule-of-law sentiments."[41] "It is an open question whether these policies would retain high levels of support if attacked as giveaways to 'market-rate' or 'profiteering' developers."[42]

The authors also find: "The policies regarded as *most effective* are inclusionary zoning, rent control, allowing more building of below-market-rate housing, and down-payment subsidies for first-time homebuyers."[43]

In contrast to the preferences of many YIMBY activists, the *least-popular policies* in the survey were: "Allow more market-rate apartments in existing neighborhoods"; "Allow more market-rate homes on open land"; and the lowest-ranked policy—"Reduce requirements for off-street parking in new developments."[44] Those policies were also the lowest-rated policy options by the respondents as to *perceived effectiveness*.[45] However, those policies were "not strongly opposed either."[46] The only policy that received less than 50% support was allowing more infill, market-rate apartments (47%).[47]

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[39] *Id.* at 24 & 25, Fig. 4.1 (horizontal axis). Rent control was so popular that it was preferred about 95% of the time, when respondents were asked to choose between it and another, randomly selected housing reform policy. *Id.* at 30. The authors define inclusionary zoning as "requirements that developers set aside units for low or moderate income households." *Id.* at 6.

[40] *Id.* at 24, 25 and Fig. 4.1 (horizontal axis).

[41] *Id.* at 24.

[42] *Id.*

[43] *Id.* (emphasis added); *id.* at 25, Fig. 4.1 (vertical axis). As mentioned, rent control was so popular that it was preferred about 95% of the time, when respondents were asked to choose between it and another, randomly-selected housing reform policy. *Id.* at 30.

[44] *Id.* at 24.

[45] The parking reduction policy got the nod less than 20% of the time, and the policies to allow more market-rate housing got the nod less than 40% of the time, when compared by respondents to another, randomly selected housing policy. *Id.* at 24, 25, Fig. 4.1 (vertical axis).

[46] *Id.* at 6.

[47] *Id.* at 24. As further support for people's general preference to live in and near single-family housing developments, that study points to two European surveys. *Id.* at 8. One of them explored why apartment development proposals tend to arouse a good bit more opposition in Denmark than proposals to build single-family homes. *See, e.g.,* Martin V. Larsen and Niels Nyholt, *Understanding Opposition to Apartment Buildings* (Feb. 8, 2024), posted at https://priceschool.usc.edu/wp-content/uploads/2008/08/Larsen-and-

Perhaps influenced by surveys such as ENO 2024, less than three months after that survey was published, the Biden Administration called on Congress to pass rent cap legislation effective through 2026.[48] Under that legislation, "corporate landlords"—defined by the White House as all landlords that own more than 50 rental housing units—would be given "a choice to cap annual rent increases on existing units at 5 percent annually or lose federal tax breaks based on property depreciation."[49] We discuss the merits of such rent stabilization proposals below, pp. 14-15.

> To our amazement, replacing the word "market-rate housing" with "subsidized affordable housing" increased support for allowing more housing by roughly *25 percentage points*. This holds for both the existing-neighborhoods and open-land versions of the upzoning question. Respondents were also broadly supportive of increasing government spending on subsidized affordable housing.[50]

The authors also observed:

> More than three-quarters of respondents wanted to increase government spending on housing, whether through vouchers, renter tax breaks, or direct spending on subsidized affordable housing—but very few wanted to pay for it. . . . property-tax caps were wildly popular. So were middle-class tax cuts and reductions in gasoline taxes. The only tax

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Nyholt.pdf. (We have found no reference online to the version listed in EHO 2024 ("Larsen, Martin Vinaes and Neils Nyholt. 2023. *Understanding Nimbyism: Beyond Home Values and Exclusionary Attitude*").

The other European survey explored the views of residents of Zurich, Switzerland, about adding housing in Swiss neighborhoods generally, and in the respondents' own neighborhoods specifically. Michael Wicki and David Kaufmann, *Accepting and Resisting Densification: The Importance of Project-Related Factors and the Contextualizing Role of Neighbourhoods*, 220 Landscape and Urban Planning 104350 (2022), posted at https://www.sciencedirect.com/science/article/pii/S0169204621003133?via%3Dihub. Analyzing the data from a 2014 Zurich government survey, the article found that residents "tend to accept densification as a general policy strategy but overwhelmingly reject concrete densification projects in their own neighbourhoods." *Id*. at 8.

We have not evaluated those studies in this report, however. The cultural backgrounds, population densities and topographies of the areas they discuss may be distinguishable from those in the American studies. The European studies are cited essentially as corroboration for findings in certain American surveys discussed in this report, so we will not attempt to evaluate them independently.

[48] White House, *FACT SHEET: President Biden Announces Major New Actions to Lower Housing Costs by Limiting Rent Increases and Building More Homes* ("*Biden rent cap call*") {July 16, 2024).

[49] Zolan Kanno-Youngs and Robert Jimison, *Biden Returns to Campaigning, and a New Reality on the Trail*, NY Times (July 16, 2024), posted at https://www.nytimes.com/2024/07/16/us/politics/biden-campaigning-nevada.html. (The Administration says that those landlords own more than 20 million units in the United States, combined. *Biden rent cap call, supra* n. 48.)

[50] ENO 2024 at 24 (emphasis in original).

> proposal to win majority support in our study is "Increase taxes on the wealthy. . . . "Something for nothing" is indeed the order of the day.[51]

The authors note that "the share of U.S. urban and suburban residents who named the cost of housing as a 'top-3' concern in our survey equals or exceeds the proportion who listed education, taxes, the environment, racism, or jobs. An even greater share listed homelessness."[52] In fact, if the housing-related issue of homelessness (named by 30% of respondents) were included, housing sector problems were "top-3" concerns for half of the respondents overall—*more than any other issue*, including abortion (named by 45%) and inflation (named by about 44%).[53]

However, "the housing policies that urban and suburban Americans favor are largely the policies urged by 'supply skeptics' rather than policies to facilitate production of market-rate housing."[54] The authors caution:

> Our results speak to a great challenge for the new breed of interest groups, think tanks, and foundations promoting an abundance agenda for housing. . . . *This strategy may well succeed in overcoming NIMBYism and local parochialism*, . . . but it offers no immunity against statewide electorates demanding supply-stanching policies in the name of affordability.[55]

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[51] *Id.*

[52] *Id.* at 36.

[53] ENO 2024 found that 20% of respondents named the cost of housing among those issues, as well as the 30% who named homelessness among those issues. *Id.*, Suppl. Info., p. 3, Fig. B.1.It also found that two issues were named more often than homelessness: abortion (45%) and inflation (about 44%). *Id.*

Because of the widely reported fact that the cost of housing is closely related to the extent of homelessness, most of those who listed homelessness among their top three concerns probably were aware of the connection to unaffordable housing costs. ENO 2024's "housing 'issue public'" actually may constitute up to half of the overall panel for ENO 2024.

See generally, e.g., Equitable Housing Institute (EHI), *Toward a comprehensive ban on exclusionary housing practices,* pp. 3-5 & n. 12 (2019) (citing U.S. Conference of Mayors' annual reports on hunger and homelessness, issued through 2016 and widely reported in the media. In this millennium, those reports regularly found the shortage of affordable housing to be the leading cause—or at least *a* leading cause—of homelessness cited by its study cities), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EHI_Toward-comprehensive-ban-tech-edits_1-2022.pdf.

[54] ENO 2024 at 36, citing Vicki Been, Ingrid Gould Ellen and Katherine M. O'Regan, *Supply Skepticism Revisited* (Technical Report 24-12, N.Y.U. School of Law, 2023).

[55] ENO 2024 at 7. "Some relaxation of zoning restrictions may be achieved, but its effect is likely to be vitiated by a host of other requirements that make new housing economically infeasible to build. That Republicans like Texas Governor Greg Abbott are pushing restrictions on "Wall Street" ownership of housing just as avidly as Bernie Sanders acolytes like Rep. Ro Khanna is right in line with our findings." *Id.*

(Emphasis added).

> The political sweet spot for YIMBYs appears to be upzoning with strings attached and frosting on top (to badly mix metaphors). Strings, in the form of mandates that a portion of the units in a project consist of deed-restricted affordable housing. Frosting, in the form of tax and fee relief that offsets the developer's losses on the price-restricted units.[56]

As examples, the study notes: "States as disparate as Florida and New York have recently enacted variations on this theme, with Florida demanding inclusionary units for middle-income households[57] and New York opting for low-income units,[58] the latter of which proved especially popular with the Democrats in our sample."[59]

The authors suggest that, based on past experience, housing advocates' efforts in state politics to increase housing production relative to demand, especially market-rate housing, are much more likely to be successful if they result from bipartisan legislative deals on low-visibility issues—as opposed to high profile, public debates. [60] Among those agreements are measures to allow denser housing to be built in places where local governments previously forbade it, as well as to expedite permitting, streamline environmental reviews, and reduce parking requirements.[61]

Bipartisan, low-profile legislation and deregulation does seem crucial to ending the housing supply crisis within the foreseeable future. Most legislators and public officials, across the political spectrum, are more aware of the need for major reform of zoning and land use restrictions in order to accomplish that goal. A virtual consensus has formed among economists and housing experts, that such reform will be necessary to produce an adequate housing supply and stabilize housing prices.[62]

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at 37 (citations omitted). (NIMBY is an acronym for "Not In My Back Yard," which means opposition to new housing in one's community).

[56] *Id.* at 37. YIMBY is the opposite of NIMBY. It is an acronym for "Yes In My Back Yard," meaning support for new housing in one's community).

[57] *Id.* at 37-38. That statute is Senate Bill 102, the "Live Local Act" (effective date July 1, 2023), codified at Fla. Stat. Section 196.1978(3).

[58] ENO 2024 at 37-38. That statute is N.Y. Consol. Laws, Real Property Tax Law § 485-x, *Affordable neighborhoods for New Yorkers tax incentive,* 2024 N.Y. Senate Bill 8306(U), enacted April 20, 2024.

[59] ENO at 37-38.

[60] *Id.* at 36.

[61] *Id.* at 36.

[62] *See, e.g.,* EHI, *Emerging consensus recognizes importance of removing regulatory barriers to housing affordability* (Dec. 2017), posted at https://www.equitablehousing.org/images/PDFs/Emerging-consensus-on-RBHAs.EHI-memo-final-2.pdf.

By contrast, the general public has limited knowledge of the necessary steps and often thinks in terms of "quick fixes" that don't address the underlying problems. But certain popular reforms (such as moderate rent stabilization measures and inclusionary zoning) actually can be significant parts of the overall solution to the affordability crisis. We explain why next.

Seemingly, the only built-in opposition to statewide land use reforms comes from local government officials, who tend to resist any reduction in their authority. Of course, NIMBY groups (especially homeowners) will oppose reforms if they sense that reform threaten changes they don't want to the character of their neighborhoods.

NOTE: Rent stabilization and inclusionary zoning as parts of the solution

ENO 2024 is the only survey we discuss that asks for respondents' views specifically on "rent control." The authors state that policy responses such as rent control and inclusionary zoning "have been found to be ineffective or even counterproductive at increasing the availability and affordability of housing."[63] However, a broad-brush dismissal of modern rent stabilization and inclusionary zoning programs would be unwarranted.

It is true that economists almost universally oppose the "first-generation" rent controls that imposed a freeze on rents in the United States during, and for a while after, World War II. Those rent freezes usually were applied for an indefinite period of time.[64] However, modern, second-generation "rent stabilization" or "anti-rent gouging" measures have been used increasingly, at both the state and local level, to combat the chronic hyper-inflation in American housing prices and rents in recent decades.[65]

Those programs involve annual caps on rent increases, with exceptions for new construction and renovation. They can avoid or minimize the adverse outcomes of old-fashioned "rent controls," such as impairing new housing production.[66] Leading land use economist William A. Fischel finds that the newer, "[m]oderate rent control (with

[63] ENO 2024 at 1.

[64] *See, e.g.,* Richard Arnott, *Time for revisionism on rent control?,* 9 Journal of Economic Perspectives 99, 100 & nn. 1-3 (1995). Such controls also were imposed in Europe during both World Wars and have been imposed in many major cities elsewhere, since then. *Id.*

[65] *See generally, e.g.,* EHI, *Approaches to resolving displacement concerns in gentrifying, urban neighborhoods* ("EHI, *Displacement concerns*"), pp. 11-13 (2021), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EHIResolving-city-displacement-concerns-7-6-21.pdf.

[66] *See generally, id.*

periodic adjustments to market) does not have much adverse effect and may help tenants accept other reforms."[67]

Those other reforms include increased housing production in cities, where many renters, especially low-income renters, "are exhibiting the same risk-averseness that NIMBY homeowners have long shown. Further, there is little hard evidence to counter [those renters]' fear that new development in their neighborhood may increase rents nearby."[68] The moderate rent stabilization that Prof. Fischel favors protects current tenants but allows rents to return to market rates after those tenants leave.[69]

The Biden Administration's July 2024 rent cap proposal includes modern provisions to avoid an adverse effect on housing production. It would "include an exception for new construction and substantial renovation or rehabilitation."[70] The U.S. Dept. of Housing and Urban Development (HUD) sees no evidence that similar rent caps have limited the supply of new affordable housing nationally.[71] The Biden rent cap proposal is not subject to the same critique as early, rigid forms of rent control.[72]

As for inclusionary zoning programs, they have reportedly produced more than 100,000 housing units that low- and moderate-income Americans could not have accessed otherwise.[73] They may be voluntary or mandatory, and the housing provider can be

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[67] Prof. William A. Fischel, e-mail exchange with EHI President Tom Loftus, Dec. 31, 2020.

[68] Vicki Been, *City NIMBYs,* 33 J. Land Use 217, 243 (2018) (footnotes omitted).

[69] *Id.* Rent stabilization is only a limited form of tenant protection. For example, such policies generally: (i) allow owners to raise rents to cover investments in capital improvements; (ii) apply only to older buildings; and (iii) don't prevent the owner(s) from converting their properties to condominium or co-op ownership, or even demolishing them. *See generally, e.g.,* EHI, *Displacement concerns, supra* n. 65, p. 13. So, tenant protections should address numerous issues beyond rent stabilization. For a discussion of other remedies for gentrification concerns in cities, *see, e.g., id,* pp. 10-35.

[70] *Biden rent cap call, supra* n. 48.

[71] Rachel Siegel, *Biden administration to cap rent increases for some affordable housing units*, Wash. Post (March 29, 2024) (quoting HUD spokesman about rent caps imposed in March 2024 on properties that are part of a tax-credit program for low-income housing), posted at https://www.washingtonpost.com/business/2024/03/29/biden-rent-housing/.

[72] However, the plan is likely to face major opposition in the current House of Representatives. *See, e.g.,* Kanno-Youngs and Jimison, *supra* n. 49.

[73] A 2019 report on 258 of the nation's 1000+ inclusionary zoning programs provides detailed information about their outcomes:

> These programs report creating a total of about 110,000 affordable units, including 70,000 affordable rental units, 31,000 for-sale units, and 9,000 units with tenure unknown. For the 221 programs that report at least one affordable unit and with known program age, a program produced 27 affordable units per year on average.

Ruoniu Wang and Sowmya Balachandran, *Inclusionary Housing in the United States: Prevalence, Impact, and Practices in Local Jurisdictions as of 2019,* p. 5 (2021). New Jersey's "fair share" housing statute (1985)

protected from financial loss on below-market-rate (BMR) units by offsets in the form of density bonuses and/or tax and fee relief.[74]

Although their efficacy does not approach that of the leading program—the low-income housing tax credit (LIHTC) program, which has produced more than 3.5 million such units[75]—inclusionary zoning programs are increasing in number rapidly. There now are more than 1,000 of them. They do not deserve to be dismissed with a broad brush as ineffective.

B. Marble-Nall survey (2021)[76]

Another robust, recent survey indicates that a majority of American homeowners respond negatively to most proposals to build new housing in their communities—regardless of the homeowners' general political stance on housing opportunities for low- and moderate-income people.[77] The results of that survey indicated that even most

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reportedly had produced more than 60,000 housing units for low- and moderate-income families there by 2015. Editorial, *Ending the Cycle of Racial Isolation,* N.Y. Times, Oct. 17, 2015.

Also, as of 2010, Massachusetts' inclusionary zoning statute "Chapter 40B" (1969) had been used to produce "approximately 58,000 housing units, including nearly 31,000 units of housing for low- and moderate-income households and 27,000 market rate units." Carolina K. Reid, et al., *Addressing California's Housing Shortage: Lessons from Massachusetts Chapter 40B*, 25 Journal of Affordable Housing 241, 251 (2017) citing Rachel G. Bratt & Abigail Vladeck, *Addressing Restrictive Zoning for Affordable Housing: Experiences in Four States,* 24 Housing Policy Debate 594–636 (2014).

[74] "[S]tudies support that inclusionary housing programs that are mandatory, have greater local political will, and are in stronger markets, are likely to produce more affordable housing units." Emily Thaden and Ruoniu Wang, *Inclusionary Housing in the United States: Prevalence, Impact, and Practices,* p. 3 (Cambridge, MA: Lincoln Institute of Land Policy, 2017). ENO 2024 states that the "political sweet spot" for YIMBY initiatives appears to include such programs, provided that they offer "tax and fee relief that offsets the developer's losses on the price-restricted units." ENO 2024 at 37-38.

In addition, most of the successful programs also offer "density bonuses" to developers that include a sufficient percentage of below-market units in their buildings, in order to offset losses on price-restricted units. *See, e.g.,* Tim Iglesias, *Maximizing Inclusionary Zoning's Contributions to both Affordable Housing and Residential Integration,* p. 34 (U.S.F. Law Research Paper 2015-10, 2015) ("If a jurisdiction requires on-site development of affordable units, an alternative way to reduce developer resistance is to provide for a relatively generous density bonus and other regulatory relief attractive to developers, e.g. fast-tracking.")

[75] *See, e.g.,* HUD Office of PD&R, *Low-Income Housing Tax Credit (LIHTC): Property Level Data* (rev. April 12, 2024) ("LIHTC database contains information on 53,032 projects and 3.65 million housing units placed in service between 1987 and 2022").

[76] William Marble & Clayton Nall, *Where Self-Interest Trumps Ideology: Liberal Homeowners and Local Opposition to Housing Development*, 83 JOURNAL OF POLITICS 1747 (Oct. 2021) ("Marble-Nall Survey").

[77] *Id.* at 1748.

homeowners classified in the survey as politically "liberal" on housing policy responded negatively to most of the housing proposals about which they were asked.[78]

The survey got responses from 4,100 homeowners and renters in the twenty largest U.S. metropolitan areas (MSAs).[79] The respondents were "quota-sampled" in order to match the demographics of their respective metros.[80]

In the first survey experiment, the authors randomly assigned one-fifth of the respondents to address a different version of a proposed development, based on different messaging about it.[81] Respondents viewed a description containing information and messages explaining how building more housing in an area can reduce housing costs.[82] Respondents then were asked: "Thinking about the possibility of more housing development in your area, do you support or oppose constructing more . . .

- Apartment-only buildings
- Buildings that have both apartments and business spaces
- Multi-family housing (for example, townhomes or duplexes)
- Single-family houses in high-density subdivisions (small yards with neighboring

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[78] *Id.* at 1751. That survey classified the respondents politically, based on their answers to an initial request that they "place themselves on a 5-point (Likert) support scale in response to the following statement: Some people say the federal government should ensure that all Americans have housing. Others say that shouldn't be a concern of the federal government." *Id.* at 1751. (The Likert scale is the most widely used rating scale for measuring people's survey responses to questions about how much they agree or disagree with a particular statement. *See, e.g.,* Saul McLeod, *Likert Scale Definition, Examples and Analysis*, (updated 2019), posted at https://www.simplypsychology.org/likert-scale.html (accessed June 6, 2022).)

The survey categorized respondents who strongly or somewhat agree with the first statement as "liberal," or "pro-guarantee," and it characterized those opposed or neutral toward that statement as "conservative," or "anti-guarantee." Marble-Nall Survey at 1751. The Marble-Nall survey actually counted respondents who said they somewhat or strongly supported the policy as 1, and the others as 0. The resulting averages were expressed in Table 4 on a scale of 1-5. *See, e.g., id.* at 1752.

[79] *Id.* at 1751. The survey questions were based on an April 2015 Hoover Institution poll. *E.g., id.* at 1755 n. 14.

[80] *Id.* Marble-Nall survey, *supra* n. 76, at 1751 and n. 6. The quota-sampling was administered by quantitative statistics firm Qualtrics.

[81] *Id.* at 1753. The remaining fifth was randomly assigned *not* to participate in this experiment. *Id.*

[82] *Id.* at 1753-54. Included were a no-information ("control") condition and three "persuasive messages" that used the following language:

- "Economists have shown that building more housing in an area can reduce housing prices." (This message summarizes received, albeit contested, economic wisdom.)
- "Economists have shown that building more housing in an area can reduce housing prices. Of course, housing prices are not the only issue affecting communities."
- "Economists have shown that building more housing in an area can reduce housing prices. This can make communities more affordable to low-income and middle-income families."

houses close together)
- Single-family houses in low-density subdivisions (large yards with neighboring houses far apart)."[83]

"Liberal homeowners were on average split over whether to support additional apartment construction," [84] expressing average support of 3.05 on the 5-point Likert scale.[85] "Conservative homeowners' average support was only 2.69. Renters were more uniformly supportive: liberal renters' support was 3.40, and even conservative renters' support was 3.47."[86]

By contrast: "Construction of additional low-density single-family housing wins broad support from liberals and conservatives, homeowners and renters. Our persuasion messages have no detectable effect on any groups' already high support levels."[87]

EHI interprets the data as indicating that there was a slightly positive level of support for additional apartment construction among the respondents, when renters are included (average support of 3.09 on the 5-point Likert scale).[88] However, a vocal minority opposed to a housing proposal can often prevail against a less motivated majority.[89]

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[83] *Id.* at 1754-1755.

[84] *Id.* at1755-1756 and Table 4.

[85] *Id.*

[86] *Id.*

[87] *Id.* at 1757. That survey also mentions a 2015 Hoover Institution poll as support for the same conclusion. ENO 2024 at 9. *See, e.g.*, Carson Bruno, *Californians See the Housing Affordability Crisis as a Threat to the California Dream*, Eureka (Hoover Institution, May/June 2015) ("Hoover-Bruno"), posted at https://www.hoover.org/sites/default/files/research/docs/eureka_1502_3rs_0.pdf. Bruno cites a 2015 Hoover Institution *Golden State Poll* posted at https://www.hoover.org/sites/default/files/golden-state-poll-january-2015-results-public-release.pdf. Because the Marble-Nall survey is based on the same poll (or a comparable 2015 Hoover Institution poll), and because the Golden State Poll only involves California respondents, we will not evaluate that poll independently.

[88] The respondents consisted of 1,211 liberal homeowners (x 3.05 on the 5-point Likert scale), 1,233 conservative homeowners (x 2.69 on that scale); 1,096 liberal renters (x 3.40 on that scale), and 515 conservative renters (x 3.47 on that scale). *Id.* at 1755-1756 and Table 4, 1759, Table 7 (*N* row). Adding those figures together, we arrived at a total of 12,523.77 ÷ 4,055 participants, or 3.09 on the Likert scale.).

As mentioned, one-fifth of the survey group was randomly selected not to address that survey question. *Id.,* p. 1753. However, because the respondents were "quota-sampled" in order to match the demographics of their respective metro areas, we assume that that one-fifth of the group also was essentially representative of the overall group.

[89] *See, e.g.,* WILLAM A. FISCHEL, ZONING RULES!, at 205-207 (2015) (since about 1970, when community members gained increased power in local land use matters: "A minority of insiders or organized outsiders now could stop or at least delay and modify (mostly by proposing fewer units) development in communities that had previously offered developers one-stop regulatory shopping.").

See also, e.g., Katherine L. Einstein, *et al.*, *Who Participates in Local Government? Evidence from Meeting Minutes*, p. 32 (June 29, 2018) (authors conclude that "an unrepresentative group disproportionately

Homeowners are more likely to vote, and to be actively involved in local zoning and land use matters.[90] So, even if most residents would approve of more housing in the community, that fact might not translate into more housing actually being built.

In the second survey experiment: "Each respondent is randomly assigned to view and evaluate one of six different versions of a hypothetical 120-unit apartment development project proposed in their community, manipulating two different features of the projects." The first is whether all the tenants would be paying market rate or whether half of them would be low-income housing voucher recipients. The second is the distance of a project to a respondent's home.[91]

On average, the respondents were opposed to any new, 120-unit apartment building being built within ¼ mile of their residence. The response regarding a market rate

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participates in public meetings concerning housing development [and] the concentrated costs and diffuse benefits of housing development spur a group of highly affected individuals to both participate and oppose new housing"), posted at https://open.bu.edu/bitstream/handle/2144/34276/ZoningParticipation_Perspectives_Final.pdf?sequence=1&isAllowed=y; Joseph T. Ornstein, *Municipal Election Timing and the Politics of Urban Growth*, p. 1 (April 30, 2018) (concluding that "the actors with the most political influence in city government are disproportionately drawn from groups that oppose new housing construction"), posted at https://sites.lsa.umich.edu/ornstein/wp-content/uploads/sites/157/2018/04/election-timing.pdf.

[90] *See, e.g.,* ZONING RULES!, *supra,* n. 89, at 249; Einstein et al., *supra* n. 89, at 1.

[91] Marble-Nall, *supra* n. 76, at 1757. Each group of respondents was given one of the specific messages ("treatments") below:

- Control (no information): "A local group is proposing to build a 120-unit apartment building in your community."
- Low-income: "A local group is proposing to build a 120-unit apartment building in your community. About half of the units will be occupied by low-income housing voucher recipients."
- Low-income, quarter-mile: "A local group is proposing to build a 120-unit apartment building in your community. About half of the units will be occupied by low-income housing voucher recipients. The new building will be 1/4 mile from your home."
- Low-income, two miles: "A local group is proposing to build a 120-unit apartment building in your community. About half of the units will be occupied by low-income housing voucher recipients. The new building will be 2 miles from your home."
- Market-rate, quarter-mile: "A local group is proposing to build a 120-unit apartment building in your community. The units will be rented at whatever price the local market supports. The new building will be 1/4 mile from your home."
- Market-rate, two miles: "A local group is proposing to build a 120-unit apartment building in your community. The units will be rented at whatever price the local market supports. The new building will be 2 miles from your home."

Id. at 1757-58. All respondents are then asked to answer the question, "Based on this information, would you support or oppose such a project?" Again, respondents selected from a 5-point Likert scale ranging from "strongly support" to "strongly oppose." *Id.* at 1758. Presumably, the responses to that question were counted the same way as those regarding the first survey experiment. *See supra,* n. 78.

apartment located 2 miles from their residence was mixed.[92] Also, because there was almost as much support as opposition among homeowners overall, regarding a new, 120-unit market-rate apartment building being built 2 miles from them, there may have been a positive net response among the respondents as a whole to that development (with renters included).[93]

Homeowners who favor a federal guarantee of housing expressed *slightly more support for, than opposition to, a new 120-unit, low-income apartment building* being built ¼ mile of them, as well as one 2 miles away.[94] Those homeowners' "net positive support for hypothetical mixed income projects presents a hard challenge to our claims, as it appears to deviate from naively self-interested behavior."[95]

The authors suggest several possible reasons for liberal homeowners' net positive support for hypothetical mixed income projects.[96] The authors also note two major alternative explanations for the respondents' position on new housing development in the community—racism and a bias in favor of the degree of density that the respondent currently lives with (low or high).[97]

Marble and Nall also state: "Ultimately, we find that one's racial attitudes are only partially associated with attitudes toward allowing development of more apartments and sometimes run counter to the expected relationship."[98] The authors concluded that the population density in which a respondent currently lived was an important determinant of the person's "attitudes toward new housing construction, but homeowner-renter differences appeared in all but the densest zip codes."[99]

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[92] *Id.* at 1758, Table 6.

[93] *Id.* About 60% of respondents were homeowners and about 40% were renters. *See id., supra* n. 88.

[94] *Id.* at 1758, Table 6. ENO 2024 states that "Marble and Nall (2021) find that *only about half of the homeowners* in major metropolitan areas *who favor a federal guarantee of housing* also support building additional apartments in their "area"—a region which the authors report to be the observational equivalent to one's county, not one's neighborhood." ENO 2024 at 8 (emphasis added). However, the areas about which respondents were specifically questioned in the Marble-Nall survey were no more than 2 miles from where they lived. *See id.*

[95] *Id.* at 1759.

[96] *See id.* ("Such stated preferences may reflect social desirability bias. Or, liberal homeowners asked to evaluate an apartment "in their community" without additional information may infer that the project is close to their home and occupied by low-income residents anyway. Providing specific information in the experimental profiles reduces uncertainty around proposed projects. Another possible reason for such support is that even the "low-income" apartments described in our experimental prompts are, in fact, mixed income: voucher recipients would occupy only half the units, a much less threatening prospect than a development dedicated entirely to low income residents.")

[97] *Id.* at 1759.

[98] *Id.* at 1760.

[99] *Id.* at 1761.

Both liberal and conservative renters expressed net positive support for a low-income apartment building being built 2 miles away from them, as well as a new, 120-unit market-rate apartment building being built either ¼ mile or 2 miles from them.[100] Liberal renters' support for all those projects was robust—averaging about 3.5 on a scale of 5.[101] That indicates that in communities where most people would be classified as "liberal," there might be net positive support for a large, new low-income apartment building being built as close as ¼ mile from them.[102]

All surveys and other studies have their limitations. Among the limitations we see in the Marble-Nall survey:

- In the first survey experiment, there was about as much support, among the respondents as a whole, for additional apartment construction as there was opposition to it. That suggests that there may have been net support within that group for townhome, mixed-use, and/or higher-density single-family detached housing development. Participants were asked for their responses about those types of developments, but those responses were not included in the survey report "for simplicity."[103]

- The second survey experiment only asked respondents for their views on 120-unit apartment buildings with 50% subsidized units and fully market-rate buildings, so far as the authors' article states. However, in many apartment buildings that have subsidized, low-income units, only between 10% and 20% of the building's units are set aside for such tenants.[104] There may have been more support for an apartment building with some subsidized units, but much fewer than 50%, or for a smaller apartment building.

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[100] *Id.* at1758, Table 6.

[101] *Id.*

[102] In the second survey experiment, a total of 1,211 liberal homeowners and 1,233 conservative homeowners responded, as well as 1,096 liberal renters and 515 conservative renters. *Id.* at1759, Table 7 (*N* row).

[103] "For simplicity," the authors stated, "we report only the results for housing types that are least and most desired, as measured in various previous surveys: apartment-only buildings, which are usually seen as a threat to homeowners and neighborhood quality of life, and single-family houses in low-density subdivisions, which represent a minimal threat." *Id.* at1755. No data was given for those housing types.

[104] For example, under the basic federal low-income housing development program, the Low-Income Housing Tax Credit (LIHTC) program, developers have a choice of two use restrictions. They must commit to having at least 20% of the units occupied by tenants 50% or less of the area median income (AMI), or at least 40% of the units occupied by tenants who earn 60% or less of AMI *See, e.g.,* National Housing Law Project, *How the LIHTC program works,* Sept. 17, 2017, posted at https://www.nhlp.org/resources/how-the-lihtc-program-works/.

However, the Marble-Nall survey provides valuable metrics on the resistance of homeowners to most proposals for more housing in their communities—including homeowners who profess to want to reduce unmet housing needs there.

C. Trounstine survey (2021) [105]

Prof. Jessica Trounstine conducted a survey of 645 adults randomly selected from Census-defined metropolitan areas of the United States.[106] Her survey contractor (Qualtrics) used quota-sampling to ensure that the group that was actually surveyed, although of "relatively limited sample size,"[107] was representative of aggregate metropolitan demographics among adults along race, gender, and educational lines.[108]

The survey requested the following: "Imagine that your city government is considering a proposal to build new residential homes near your neighborhood. You will be presented with different development scenarios. Pick the one that you prefer."[109]

The survey showed that all the demographic groups surveyed "preferred single-family developments by a considerable margin." [110] The demographic factors included "race, partisanship, education, income, political participation, age," and housing density at the zip code level.[111] The survey found no significant differences in response based on those factors, although it noted that that may have been due to the survey's limited sample size.[112] The survey did find significant differences based on whether the respondent was a homeowner, renter, single-family dweller, suburbanite, central city dweller, conservative or political ideologically, or lived in a large family.[113]

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[105] Jessica Trounstine, *You Won't Be My Neighbor: Opposition to High Density Development*, URBAN AFFAIRS REVIEW, SAGE PUBLICATIONS Vol. 59(1), pp. 294–308 (2023), posted at https://journals.sagepub.com/doi/epub/10.1177/10780874211065776.

[106] There were 387 Metropolitan Statistical Areas (MSAs) in the United States as of July 1, 2023, based on Wikipedia's computations of U. S. Census Bureau data. Wikipedia, *Metropolitan statistical area*, posted at: https://en.wikipedia.org/wiki/Metropolitan_statistical_area#:~:text=The%20387%20MSAs%20in%20the,Office%20of%20Management%20and%20Budget, citing U. S. Census Bureau, *Metropolitan Areas*. posted at https://www.census.gov/history/www/programs/geography/metropolitan_areas.html.

[107] *Id.* at 306, n. 9. Another limitation of the survey was that only 26% of the respondents were renters, whereas 35% of Americans were renters, according to the Census Bureau. *Id.* at 298, Table 1.

[108] *Id.* at 297.

[109] *Id.* at 299. The author stated: "I did not allow respondents to opt out or select no development because I presumed that this would be the overwhelming response. For the most part, residents oppose any development in their neighborhood." *Id.* at 306 n. 6.

[110] *Id.* at 301.

[111] *Id.* at 297.

[112] *Id*. at 297, 306 n. 9.

[113] *Id.* at 297, 301 Table 3.

None of the demographic groups selected apartments as their preferred form of new housing nearby more than 50 percent of the time, regardless of their characteristics and those of the single-family development alternative.[114]

> Before being shown any developments, respondents were asked their race, gender, education level, and their opinion on housing costs in their area. Next, they read a prompt about housing shortages and development tradeoffs.[115]

Respondents then were asked to choose between two hypothetical developments, with the attributes of the two developments randomly varied. Those attributes were: (1) the type of development (single-family housing versus apartments), (2) the development's size, (3) the racial makeup of the new residents, (4) the percentage of units reserved for low-Income people (0%, 10% or 25%), (5) whether (street) parking for residents is planned, and (6) the unit cost in thousands of dollars.[116]

Each respondent was given four pairs of developments to choose between. "Then, respondents were presented with a single development and asked to evaluate how it would affect various neighborhood outcomes. They repeated this task 3 times. The survey ended with a set of questions probing their political participation and affiliation, opinions on several policy areas, and demographics."[117]

The author's primary focus was on the respondents' "selection or rejection of a development based on the *type* of housing."[118] As mentioned, all the demographic groups preferred single-family developments by a considerable margin.

> [R]elative to single family development, apartments are viewed as likely to increase crime, decrease school quality, increase traffic, decrease property values, and decrease desirability. Perhaps equally important, there is no single neighborhood effect that stands apart from the others. It appears that apartments are disliked for a variety of reasons, even after

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[114] *Id.* at 299.

[115] *Id.* The prompt read: "Housing is becoming increasingly expensive in a wide range of cities. Many places face a chronic shortage of housing for their least advantaged residents, and in some cases, for the working and middle classes as well. Experts contend that building more housing will reduce housing costs. But development can alter the look, feel, or character of a neighborhood. We are interested in your views." *Id.* at 306, n. 5.

[116] *Id.* at 298, Table 2.

[117] *Id.* at 299.

[118] *Id.* at 298 (emphasis in original).

> accounting for their racial makeup, low-income set-asides, and number of units.[119]

"Although I find that white respondents prefer whiter developments and wealthier respondents prefer fewer units reserved for low-income families, development type is a much stronger driver of choices for these respondents."[120]

Despite its limited sample size, that survey provides support for the conclusion that most people of all demographics would prefer to live *in and near* relatively low-density, single-family housing developments, if they could. Of course, that is a big *if*, especially in today's extremely meager, single-family housing market. However, that preference is consistent with the central role of homeownership in the American Dream.[121]

D. Pew Research Center (PRC) survey (2023) [122]

A representative survey of 5,079 respondents conducted by PRC in March-April also indicates that most Americans would prefer to live in relatively low-density, single-family neighborhoods, if they could. (PRC is a separate group from the Pew Charitable Trusts (PCT), which produced the 2023 survey discussed above.) PRC found:

> A majority of Americans (57%) say they would prefer to live in a community where "houses are larger and farther apart, but schools, stores and restaurants are several miles away," [whereas about] four-in-ten (42%) would prefer a community where "houses are smaller and

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[119] *Id.* at 304. *See also id.* at 303, Figure 2. The author notes, however, that she "did not specify whether the development would be comprised of owners or renters. . . . It is possible that residents prefer their neighbors to be owners rather than renters and believe that this is most likely to be ensured when their neighborhood is comprised of single-family homes rather than apartments/condos." *Id.* at 304.

[120] *Id.* at 304.

[121] *See, e.g.,* Gregory Schmidt, *Homeownership Remains the American Dream, Despite Challenges,* New York Times (June 2, 2022), posted at https://www.nytimes.com/2022/06/02/realestate/homeownership-affordability-survey.html (survey released in March 2024 for Bankrate.com, a financial services company, found that "74 percent of respondents ranked homeownership as the highest gauge of prosperity, above having a career (60 percent), children (40 percent) and a college education (35 percent)"). "Total sample size was 2,529 adults, among whom 1,397 were homeowners and 1,132 were not homeowners." Bankrate.com, *Nearly Two-Thirds Say Affordability Factors are Holding Them Back From Homeownership* (March 30, 2022), posted at https://www.bankrate.com/pdfs/pr/20220330-march-fsp.pdf.

[122] Ted Van Green, *Majority of Americans prefer a community with big houses, even if local amenities are farther away* ("PRC 2023") (Aug. 2, 2023), posted at https://www.pewresearch.org/short-reads/2023/08/02/majority-of-americans-prefer-a-community-with-big-houses-even-if-local-amenities-are-farther-away/.

> closer to each other, but schools, stores and restaurants are within walking distance."[123]

Support for houses that are "larger and farther apart" increased from 53% in September 2019, based on the Pew survey conducted a few months before the Covid-19 outbreak.[124] However: "As in the past, there are differences in these preferences by party, age, education, race and ethnicity, and community type."[125] Notably:

- While a majority of adults ages 30 and older would prefer communities with larger homes over those with more walkability, adults under 30 are somewhat more likely to express the opposite preference. Also, more Americans who currently live in urban areas (57%) say they would prefer a community with smaller houses that are within walking distance of schools, stores and restaurants.[126]
- Six-in-ten White adults say they would prefer communities that are more spread out, as do about half of Black (54%) and Hispanic adults (51%). By comparison, 62% of Asian adults would prefer more walkable communities with smaller houses.
- "Republicans have consistently been more likely than Democrats to express a preference for communities with larger houses. Currently, 72% of Republicans and Republican leaners, compared with 43% of Democrats and Democratic leaners, would opt for this type of community."
- Further, about three-quarters of conservative Republicans (77%) say they would prefer more spread-out communities with larger houses, while 65% of liberal Democrats express a preference for smaller houses in more walkable places.
- Americans who do not have a bachelor's degree are more likely than those with more formal education to prefer communities with larger houses.[127]

3. Caveats about survey results

The data in the recent surveys discussed above give an impressive, nuanced picture of American homeowners' and renters' preferences regarding their own housing and housing opportunities for others. However, there are important caveats about the

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[123] *Id.* That survey was managed by public opinion research firm Ipsos, as was the PCT 2023 survey discussed above,

[124] *Id.*

[125] *Id.*

[126] *Id.* By contrast: "About three-quarters of Americans who describe their own communities as rural (74%) say they would prefer to live in places where houses are larger and farther apart, but also farther from schools, stores and restaurants. A narrower majority of suburban Americans (56%) also say they would prefer places with larger houses." *Id.*

[127] *Id.*

findings in those surveys—and about public opinion surveys generally on complex topics.

A. Somin caveats

Prof. Ilya Somin has written an incisive analysis of the divergent results of two of the key surveys discussed above— the PCT 2023 survey (discussed at pp. 6-7) and the ENO 2024 survey (discussed at pp. 9-14).[128] We think his points apply to public opinion surveys about housing policies generally.

> Which is right? I suspect the truth lies somewhere in between. It may well be that many voters don't know much about these issues, don't have strong opinions about them, and therefore their views (and answers to survey questions) may vary a lot based on context and framing.[129]

Prof. Somin has studied extensively the problem of political ignorance in democracies.[130] The extent of public ignorance of even basic facts about American government is noteworthy, as he points out. For example:

- "A 2002 Columbia University study indicated that 35 percent believed that Karl Marx's dictum 'From each according to his ability, to each according to his need' is in the Constitution (34 percent said they did not know if it was or not)."[131]
- "A 2014 Annenberg Public Policy Center study found that only 36 percent of Americans could even name the three branches of the federal government: executive, legislative, and judicial. Some 35 percent could not name even one. [132] The 36 percent result was an even lower figure than the 42 percent who could name all three branches in a similar 2006 poll,"[133] and

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[128] Ilya Somin, *Conflicting Evidence on Public Support for YIMBY Zoning Reform*, Reason (June 4, 2024), posted at https://reason.com/volokh/2024/06/04/conflicting-evidence-on-public-support-for-yimby-zoning-reform/.

[129] *Id.*

[130] *See e.g.,* ILYA SOMIN, DEMOCRACY AND POLITICAL IGNORANCE: WHY SMALLER GOVERNMENT IS SMARTER (SOMIN, POLITICAL IGNORANCE) (2D ED. 2016).

[131] *Id.* at 35, citing Michael Dorf, *Whose Constitution Is It Anyway? What Americans Don't Know About Our Constitution—And Why It Matters,* Findlaw, May 29, 2002, https://writ.corporate.findlaw.com/dorf/20020529.html.

[132] SOMIN, POLITICAL IGNORANCE, *supra* n. 130, at 35, citing Annenberg Public Policy Center survey, July 8–14, 2014, posted at https://www.annenbergpublicpolicycenter.org/americans-know-surprisingly-little-about-their-government-survey-finds/.

[133] *Id.,* citing Zogby Poll, July 21–27, 2006.

- "In 1964, in the midst of the Cold War, only 38 percent were aware that the Soviet Union was not a member of the U.S.-led NATO alliance."[134]

Extrapolating from that degree of citizen ignorance about public affairs, it is very likely that most members of the public, and even most voters, are not well-versed in housing policy generally, and that they look to people who appear to be more knowledgeable about such matters for guidance.[135]

> The major differences between the Pew survey [PCT 2023] and the ENO study are that the latter asks more complicated and detailed questions, and that they intersperse questions about YIMBY policies with questions about pro-regulatory policies (e.g.—rent control and restrictions on developers), which most experts consider to be ineffective . . . but which are clearly popular with many voters.[136]

Somin also thinks "the Pew question wording is relatively more favorable to YIMBY policies."[137] He adds:

> Interestingly, while the Pew study finds that Democrats are more supportive of deregulatory YIMBY policy than Republicans, ENO find the exact opposite. I think that, too, is an effect of question wording. The

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[134] *Id.*, citing Benjamin Page and Robert Shapiro, The Rational Public (Chicago: University of Chicago Press, 1992), 10.

[135] *Id.* at 36 (citations omitted). Somin also documents that the "level of political knowledge in the American electorate has increased only modestly, if at all, since the beginning of mass survey research in the late 1930s," despite massive increases in educational attainment and the amount of information readily available to the public. *Id.*

[136] Somin, *Conflicting Evidence*, *supra* n. 128.

> ENO also leave more room for uncertainty and ambiguity (including allowing "don't know" answers), whereas the Pew questions have a "forced choice" format, with no "don't know" or "uncertain" option. The latter approach probably elicits more weakly held views than the former.

Id. As discussed *supra* at pp. 14-15, EHI believes that modern rent stabilization policies do not merit the blanket criticism that economists generally have made of early rent controls ("first-generation" controls, which basically froze rents, usually for an indefinite period). Modern rent stabilization measures avoid the basic pitfalls of early rent controls and deserve a case-by-case evaluation.

[137] Somin, *Conflicting Evidence, supra* n. 128. He finds Pew's questions "sometimes implicitly suggesting they are likely to increase supply." *Id.* By contrast, "ENO's question wording often cuts the other way. ENO also include questions that reference corporate and developer interests, which may trigger 'anti-market bias' and 'supply skepticism.' An earlier ENO study found that many people don't understand the basic economics of housing and don't believe increasing supply is likely to reduce prices, suspecting instead that it will just benefit nefarious financiers and developers. Clayton Nall, Chris Elmendorf, and Stan Oklobdzija, *Folk Economics and the Persistence of Political Opposition to New Housing* (2022, rev. April 30, 2024), available through https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4266459.

> ENO questions more often refer to developers and corporations, thereby triggering left-wing suspicion of capitalist interests.[138]

Somin concludes that the divergent results of those surveys show that:

> public perceptions of housing policy are heavily influenced by frames and question-wording. If you ask about YIMBY policies in isolation, and imply they may increase the availability of housing and reduce costs, you will get strong majority support for them. If you have less favorable question wording, reference capitalist interests, and include questions about increased regulation, you get more negative results.[139]

"While ENO use a more sophisticated methodology, it's not clear their approach better captures voters' responses to real-world political campaigns. . . . That said, ENO are right to warn that increased public focus on housing issues won't necessarily lead to better policy."[140]

B. Other caveats

Although the Marble-Nall and PRC 2023 surveys found a majority preference for low-density, single-family development, the data indicate that there might be a net positive attitude toward apartment construction and compact, walkable communities in urbanized areas where most residents are younger, more "liberal" or "progressive" politically, and ethnically diverse.[141]

At the same time, despite the strong majority support indicated by the PCT 2023 survey for major zoning and land use reforms in urban areas, one suggested housing rule change did not receive majority support. As mentioned, that rule change would allow homes "to be built closer together with smaller yards so people can buy less land and homes cost less." Only 49% of respondents favored that change.

The relative lack of support indicated by the PCT 2023 survey for reducing single-family lot sizes appears similar to findings in other surveys that sound a cautionary note about "missing middle" housing efforts. The PCT survey also did not ask respondents to assess whether the reforms they favored should be carried out *in their neighborhood*.

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[138] Somin, *Conflicting Evidence, supra* n. 128.

[139] *Id.*

[140] *Id.*

[141] As mentioned, the Trounstine survey did not find a significant difference based on the housing density in the respondents' current zip codes, but she noted that that might have been due to the survey's limited sample size.

Also as mentioned, a vocal minority opposed to a housing proposal can often prevail against a less motivated majority, and homeowners (who are prone to NIMBYism) are more likely to vote and be actively involved in local zoning and land use matters. So, the fact that most residents of the overall community would approve of more housing there might not mean that more actually would be built.

Numerous, recent surveys indicate that most Americans, regardless of where they live and whether they are renters or homeowners, would prefer to live in relatively low-density, single-family neighborhoods, if they *could.* However, that's a big "if," especially in today's very meager, overpriced housing market. Policymakers need to deal with the reality that a huge portion of the population that might *prefer* low-density, single-family neighborhoods will not be able to afford living in one for the foreseeable future.

Nationwide surveys may mix incompatible local or regional attitudes toward housing reforms. The degree of density in which a person now lives is an important predictor of how much density the person is comfortable with. Some areas and populations are much more amenable to high-density housing than others.

Also, there are certain inconsistencies in the results of large "representative" surveys that we find a bit puzzling. For example, the ENO 2024 survey indicates that the *least-popular policies* among the 5,000 respondents nationwide include to "allow more market-rate homes on open land." But other major surveys that contain similar, cautionary statements indicate that allowing more low-density, market-rate homes on open land is the *most popular policy* among their respondents.

And there's the inconsistency between ENO 2024, on the one hand, and the Zillow and PCT surveys on the other, as to the popularity of allowing more market-rate homes in existing neighborhoods. Whereas Zillow found that 78% of the homeowners and 89% of the renters in major metropolitan areas support building more housing *in their neighborhoods*—especially small-scale, "missing middle" housing projects—ENO 2024 found that most current residents generally oppose new market-rate housing nearby. PCT found that a "decisive majority" (58%) said they support allowing "town houses or small multifamily homes on any residential lot," which also seems inconsistent with ENO 2024.

Then there's the seeming inconsistency between the two Pew polls (PCT and PRC), as to whether most people support more housing in single-family neighborhoods. Such inconsistencies argue for caution about relying too heavily on the results of any particular public opinion poll on complex issues such as housing policy.

4. Indications that major zoning reforms may be feasible, despite homeowners' comfort level with their current zoning

A. Widespread new state and local laws to curb exclusionary zoning

There is a major zoning reform movement underway that encompasses states ranging from deep-blue to deep-red politically, and it reflects the majority view found in the PCT 2023 survey. Within the last six years, numerous states and cities have supported new laws that permit accessory dwelling units (ADUs) (a/k/a granny flats, in-law suites) and other forms of "missing middle" housing in single-family zoning districts.

Relevant state statutes have been enacted in Oregon, California, Maine, Montana, Washington State, and Vermont, since 2018.[142] Montana actually had the second-least population density of any State of the Union, as of 2020. [143]

In addition, in 2023 the Texas Senate passed a bill (SB 1412) *unanimously,* under which city zoning on ADUs no longer would apply, so that homeowners could build an additional dwelling unit on their property.[144] SB 1412 was narrowly defeated in the Texas House of Representatives.[145]

And in Colorado, where "most residential zones only allow one type of construction: the single-family home,"[146] Gov. Polis's very ambitious 2023 zoning reform bill ("More Housing Now") passed the House, although not the Senate.[147] The original, 105-page bill

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[142] *See, e.g.,* Christian Britschgi, *In State Legislatures, Targeted Bills and Bipartisan Support Were Key To Passing Housing Reforms*, REASON, (June 7, 2023), posted at https://reason.com/2023/06/07/in-state-legislatures-targeted-bills-and-bipartisan-support-were-key-to-passing-housing-reforms; EHI, *"Missing middle" housing and the Economic Fair Housing Act*, pp. 7-13 (Sept. 2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/Missing_middle_and_EFHA.EHI.pdf; Owen Minott, *et al., Expanding Affordable Housing Opportunities: Zoning and Land Use Case Studies,* Bipartisan Policy Center (Oct 03, 2023), posted at https://bipartisanpolicy.org/blog/expanding-affordable-housing-opportunities-zoning-and-land-use-case-studies/;

[143] U.S. Census Bureau, *Population Density of the 50 States, the District of Columbia, and Puerto Rico: 1910 to 2020*, posted at https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/population-density-data-table.pdf.

[144] *See, e.g.,* Lori Brown, *Texas Senate passes bill to eliminate single-family zoning in neighborhoods*, FOX 4 (KDFW), April 27, 2023, posted at https://www.fox4news.com/news/texas-senate-passes-bill-to-eliminate-single-family-zoning-in-neighborhoods; Britschgi, *supra* n. __76.

[145] Bethany Erickson, *How Texas Democrats Killed Bills Promoted by Advocates of Affordable Housing*, D Magazine, May 24, 2023, posted at https://www.dmagazine.com/frontburner/2023/05/how-texas-democrats-killed-bills-promoted-by-advocates-of-affordable-housing/.

[146] Andrew Kenney, *Colorado's big land-use bill, explained*, Colo. Pub. Radio, Apr. 12, 2023, posted at https://www.cpr.org/2023/04/12/colorado-land-use-bill-explained/.

[147] Andrew Kenney, *Colorado's upzoning bill doesn't include upzoning anymore*, Apr. 26, 2023, posted at https://www.cpr.org/2023/04/26/colorado-land-use-bill-upzoning-removed/.

would have placed numerous new "upzoning" requirements on the state's 40 largest cities and its 15 "rural resort job centers" (such as Vail, Aspen and Steamboat Springs).

> Instead of reserving neighborhoods just for single-family homes, those cities would have to allow townhomes and buildings with up to six residential units in any area zoned residential. They would also have to let people build accessory dwelling units.[148]

Under that Colorado bill, large cities "would also have to allow denser residential development around rail transit stations and along commercial corridors — think townhomes and multi-story apartments."[149] In addition, the state would get more involved in housing planning, including setting goals for cities, and rules regarding manufactured homes and other prefabricated homes would be relaxed.[150] Numerous other local housing restrictions also would be disallowed.[151]

Other states also have considered "missing middle" housing legislation recently.[152] And major zoning reform measures are increasingly being considered and implemented in cities across the nation. Among major cities, Minneapolis (Minn.), Portland (Ore.), Chicago, Miami and Seattle have new ADU laws.[153] Numerous other cities have been considering such legislation.[154]

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[148] Andrew Kenney, *Colorado's big land-use bill, explained*, Colo. Pub. Radio, Apr. 12, 2023, posted at https://www.cpr.org/2023/04/12/colorado-land-use-bill-explained/. The ADU requirements would apply in all but the smallest cities. *Id.*

[149] *Id.*

[150] *Id.*

[151] For example, minimum square footage requirements for new units generally would be disallowed. Homeowners' associations and planned-unit developments would have to obey all the same "upzoning" rules as local governments. "And governments wouldn't be allowed to set occupancy limits based on familial relationships. So, a city like Boulder, which has a big university, would no longer be able to limit the number of unrelated roommates who can live together. *Id.*

Further. by the end of 2024, cities would have to either: (1) adopt a "model" zoning code that would be promulgated by the state, including all the new density rules in SB23-213, or (2) adjust their existing codes. If cities failed to act, their local zoning codes would be overwritten with the model version in 2025.

[152] "Virginia, and New York have introduced, but not passed, statewide measures to allow additional units in single-family districts." John Infranca, *Singling Out Single-Family Zoning*, 111 GEORGETOWN L.J. 659, 669 (2023).

[153] *See, e.g.,* EHI*, "Missing middle" housing and the Economic Fair Housing Act* 7 (2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/Missing_middle_and_EFHA.EHI.pdf.

[154] *See,, e.g., Singling Out Single-Family Zoning, supra* n. 152, at 669:

> Other less high-profile efforts appeared during the same period in cities including Charlotte and Raleigh, North Carolina, and Charlottesville, Virginia. . . . Smaller cities, from Northampton, Massachusetts, and Gainesville, Florida to Sheridan, Wyoming, and

ADU's alone can't solve the nation's housing crisis.[155] Even if other forms of multi-unit housing also become widely adopted in single-family neighborhoods, that likely would remedy only a fraction of the current housing shortage in the foreseeable future.[156] But maximum allowances for "missing middle" housing opportunities are a key part of the solution.[157]

B. Concerns about growing economic inequality

"Economic inequality has increasingly become a part of the U.S. national political conversation."[158] According to a January 2018 Gallup Poll, 66% of a random sample of 1,024 American adults stated that they are dissatisfied with "the way income and wealth are distributed in the U.S."[159] A 2019 survey by Pew Research Center (PRC) of

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Walla Walla, Washington, have also considered or approved denser development in single-family zones.

[155] Shelby R. King, *Why ADUs Can't Solve the Nation's Housing Crisis*, Shelterforce, May 17, 2022, posted at https://shelterforce.org/2022/05/17/why-adus-cant-solve-the-nations-housing-crisis/ ("Even if ADUs became legal and permittable in every city in every state, they can't be built or delivered quickly enough to supply the millions of units the nation needs, for several reasons. First, they're built piecemeal, as single units, and at the whims of private homeowners. . . . Even if all zoning barriers were removed and every homeowner who wanted to build an ADU could legally do so, ramped-up production couldn't match multifamily apartment complexes in terms of sheer capacity and scale").

[156] *See, e.g.,* Ben Metcalf, *et al., Will Allowing Duplexes and Lot Splits on Parcels Zoned for Single-Family Create New Homes?,* p. 2 (Terner Center for Housing Innovation, 2021), posted at https://ternercenter.berkeley.edu/wp-content/uploads/2021/07/SB-9-Brief-July-2021-Final.pdf (California's groundbreaking 2021 statute SB 9 "allows for the development of new, for-sale homes, either on a newly subdivided lot or through the conversion of existing single family homes into multiple units." However: "Relatively few new single-family parcels are expected to become financially feasible for added units as a direct consequence of this bill.")

[157] The United States actually could prohibit regulatory barriers to housing opportunities generally, by amending the federal Fair Housing Act, 42 U.S.C. §§ 3601-3619 (Apr. 11, 1968, as amended). *See e.g.,* EHI, *Can the vast range of regulatory barriers to housing opportunity be deterred by an Economic Fair Housing Act (EFHA)?* (2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EFHA_v_vast_range_of_RBHOs-EHI-web.pdf. However, efforts to date to curb those barriers have been much more targeted to specific forms of them.

[158] Juliana M. Horowitz, *et al., Most Americans Say There is Too Much Economic Inequality in the U.S., but Fewer Than Half Call it a Top Priority,* p. 11 (Pew Research Center, Jan. 2020), posted at https://www.pewresearch.org/social-trends/2020/01/09/most-americans-say-there-is-too-much-economic-inequality-in-the-u-s-but-fewer-than-half-call-it-a-top-priority/. That survey was based on responses from 6,878 U.S. adults in September 2019.

[159] Gallup News Service, *Mood of the Nation -- Final Topline,* p. 2 (March 7. 2018), posted at https://news.gallup.com/poll/228980/americans-views-economic-mobility-economic-inequality-trends.aspx. That poll was based on "telephone interviews conducted January 2-7, 2018 with a random sample of –1,024—adults, ages 18+, living in all 50 U.S. states and the District of Columbia. For results based on this sample of national adults, the margin of sampling error is ±4 percentage points at the 95% confidence level." *Id.,* p. 1.

more than 5,000 American adults found that 61% believe "there's too much economic inequality in the country these days, and among that group, most say addressing it requires significant changes to the country's economic system."[160]

About half of the respondents (49%) in the PRC survey stated that the federal government has a responsibility to provide "adequate housing to all Americans." [161] Although economic inequality ranked behind certain other policy priorities in the respondents' view, 42% considered the issue to be a top priority, and it ranked higher than the widespread concern with reducing illegal immigration (39%).[162]

i. Extent of economic inequality in the United States

"[T]he U.S. has one of the most unequal income distributions in the developed world, according to data from the Organization for Economic Cooperation and Development [OECD]—even after taxes and social-welfare policies are taken into account."[163] As of 2013, the U.S. had the second-highest level of inequality among the 31 OECD nations for which there was enough recent information available—after taking taxes and transfers into account.[164]

The OECD data "show that U.S. tax and spending policy does relatively little, compared with its peers in the developed world, to reduce inequality."[165] Among the 31 OECD

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[160] Horowitz *et al.*, *supra* n. 158, at 11 (Pew Research Center, Jan. 2020), posted at https://www.pewresearch.org/social-trends/2020/01/09/most-americans-say-there-is-too-much-economic-inequality-in-the-u-s-but-fewer-than-half-call-it-a-top-priority/. That survey was based on responses from 6,878 U.S. adults in September 2019.

[161] *Id.* at 10.

[162] Those policy priorities are: making health care more affordable (72%), dealing with terrorism (66%), reducing gun violence (58%), and addressing climate change (49%). *Id.*

[163] Drew DeSilver, *Global inequality: How the U.S. compares*, Pew Research Center (Dec. 2013, posted at https://www.pewresearch.org/short-reads/2013/12/19/global-inequality-how-the-u-s-compares/#:~:text=before%20accounting%20for%20taxes%20and,of%20inequality%2c%20behind%20only%20chile. "As of 2016, upper-income families had 7.4 times as much wealth as middle-income families and 75 times as much wealth as lower-income families. These ratios are up from 3.4 and 28 in 1983, respectively." Horowitz, *et al., supra* n. 158, at 20.

[164] *Id.* Only Chile had more income inequality, among those nations "Before accounting for taxes and transfers, the U.S. ranked 10th in income inequality" among those nations. *Id.* (The OECD consists of 37 industrialized nations with market economies.) The OECD is an organization of 38 nations with market-based economies, around the world. *See, e.g.,* https://www.oecd.org/about/members-and-partners/.

[165] *Id.*

nations compared, 28 had at least 10% less economic inequality than the U.S., and 14 had at least 25% less than the U.S.[166]

ii. Role of housing costs in economic inequality

Housing cost inflation is among the leading causes of America's growing economic inequality.[167] "Homeownership is the main way people build wealth in the United States."[168] Those who have the means to purchase housing see their home investment climb in value well ahead of overall inflation. Those who are unable to become homeowners, including a disproportionate share of minority group members, see their housing costs grow well ahead of overall inflation.[169]

A home purchase is the biggest investment that most people ever make.[170] Housing represents about one-third of the value of the market basket of goods and services that the Bureau of Labor Statistics (BLS) uses to track inflation in the Consumer Price Index (CPI), and the cost of housing is by far the largest factor in the CPI. [171]

The rise in the cost of housing—what the BLS calls "shelter"—has accounted for about two-thirds of the nation's daunting inflation problems since late 2021.[172] And as mentioned, housing cost inflation has been a major, growing problem for decades.

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[166] *Id.* (bar chart). That Pew Research Center survey relied on the Gini index, a commonly used summary statistic that measures the dispersion of incomes on a scale of zero (everyone has exactly the same income) to 1 (one person has all the income). *Id.*

[167] "In 1963, the wealthiest families had 36 times the wealth of families in the middle of the wealth distribution. By 2022, they had 71 times the wealth of families in the middle." Urban Institute, *Nine Charts about Wealth Inequality in America* (April 25, 2024), posted at https://apps.urban.org/features/wealth-inequality-charts/.

[168] *Id.*

[169] "Millions of households are now priced out of homeownership, grappling with housing cost burdens, or lacking shelter altogether, including a disproportionate share of people of color, increasing the need for policies to address the national housing shortfall at the root of the affordability crisis." HARV. JCHS, *The State of the Nation's Housing 2023* (hereinafter SONH 2023"), p. 1 (2023).

[170] *See, e.g.,* WILLAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS 4 (2001).

[171] Alexander Conner, *et al., How does the Consumer Price Index account for the cost of housing?* Brookings Inst. (Jan. 31, 2024), posted at https://www.brookings.edu/articles/how-does-the-consumer-price-index-account-for-the-cost-of-housing/.

[172] For example, based on the April 2024 Consumer Price Index (CPI): "The index for all items less food and energy rose 3.6 percent over the past 12 months. The shelter index increased 5.5 percent over the last year, accounting for over two thirds of the total 12-month increase in the all items less food and energy index." Bureau of Labor Statistics, *Consumer Price Index (CPI) Summary*, May 15, 2024, posted at https://www.bls.gov/news.release/cpi.nr0.htm.

So, housing costs increased 65% faster than core inflation over the year ending in April 2024, continuing a years-long trend. As leading housing market expert Mark Zandi puts it: "There is no more effective way to

For example, when adjusted for inflation, the median rent payment in the United States rose 1,200% faster than the median income among renters between 1960 and 2016 —a 61% average increase in rent versus only a 5 percent average increase in renter incomes.[173] (Most low- and moderate-income American households rent their housing, and about 36 percent of U.S. households are renters.)[174]

By contrast, when adjusted for inflation, the median home value in the U.S. increased only 112% during that period, while median income for owners rose 50 percent.[175] Excessive housing costs are a prime reason for America's abnormally high and ever-growing economic inequality. It is only a matter of time until most Americans become aware of that fact and demand major reform of housing-related regulatory barriers.

C. Passage of federal Fair Housing Act at a time (1968) when most Americans supported the homeowner's right to discriminate

A ban on a form of housing discrimination can be enacted even where the majority of the population supports a personal right to discriminate in housing. The federal Fair Housing Act was enacted in an era when a majority of the U.S. population supported the right of individual homeowners to engage in racial discrimination in the sale of their homes.

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rein in inflation than to expand the supply of affordable housing and increase housing affordability." (Zandi is Chief Economist of Moody's Analytics.)

[173] *See,* PEW RESEARCH CENTER *More U.S. households are renting than at any point in 50 years* (Jul. 19, 2017). (as of 2016, there were about 43.3 million rental households and 75 million owner-occupied households). Between the 1960s and 2016, the proportion of American rental households that paid more than 30 percent of their household income for housing (the standard definition of "housing cost burdened") roughly doubled, from 23.8 percent to 47.5 percent. Harv. JCHS, *The State of the Nation's Housing 2018* ("SONH 2018"), p. 5 (2018).

[174] About half of those households (11.0 million) had "severe" cost burdens in 2016—that is, they paid more than 50 percent of their household income for housing *Id.* at 5, 30. Most severely cost-burdened households are in the bottom quartile of income Harv. JCHS, *The State of the Nation's Housing 2019* ("SONH 2019"), p. 5 (2019) (about 90% of households with severe housing cost burdens have incomes of less than $30,000, and those households constitute a little less than one-quarter of American households).

See also, Whitney Airgood-Obrycki, *Even Fully-Employed and Moderate Income Households Struggle to Pay Rent*, JOINT CTR. FOR HOUSING STUD. OF HARV. U., (Jul. 5, 2018), https://www.jchs.harvard.edu/blog/even-fully-employed-and-moderate-income-households-struggle-to-pay-the-rent/ . "[S]ince 2001, the fastest growth in cost burden shares has been among moderate-income renters. For example, the share of cost-burdened renters making $30,000-$45,000 (in constant dollars) rose from 37 percent in 2001 to 50 percent in 2016. During the same time frame, the share of cost-burdened renters making $45,000-$75,000 nearly doubled from 12 percent to 23 percent."

[175] SONH 2018, *supra* note 173, at 5.

In 1973—five years after the Fair Housing Act was passed—64% of White Americans polled in the General Social Survey (GSS), and 56% of the overall group polled, said they would vote for a law giving a right to a homeowner to "decide for himself whom to sell his house to, even if he prefers not to sell it to Blacks."[176]

The Fair Housing Act already prohibited homeowners from such racial discrimination, generally speaking.[177] A majority of White Americans continued to support the right of a homeowner to engage in racial discrimination in housing each year until the late 1980's.[178]

As mentioned, numerous surveys suggest that most Americans, especially homeowners, would prefer to live in and near relatively low-density, single-family housing, if they

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[176] *See* Emily Badger, *28 percent of whites say they favor a law allowing homeowners to discriminate*, Wash. Post (July 9, 2015). The GSS is a major national opinion conducted annually by the National Opinion Research Center (NORC), a non-governmental organization associated with the University of Chicago. The GSS is based on in-person interviews with random national sample of U.S. adults The GSS has been funded largely by the National Science Foundation. *Id.*

EHI bases its conclusion that at least 56% of the overall U.S. population agreed with that proposition on the fact that 87.5% of the United States population was classified as "White" by the Census Bureau at that time (per the 1970 census; there was not yet a separate category for Hispanic Whites). *See, e.g.,* U.S. Census Bureau, *Table 60--Race of the Population of the United States, by States: 1970, p*osted at https://www2.census.gov/library/publications/decennial/1970/pc-s1-supplementary-reports/pc-s1-11.pdf; *See generally* Wikipedia, *Race and ethnicity in the United States census,* posted at https://en.wikipedia.org/wiki/Race_and_ethnicity_in_the_United_States_census. The GSS indicated no different definition of the White population.

"On another GSS question, a third of whites in 1972 agreed with the statement 'white people have a right to keep blacks out of their neighborhoods if they want to, and blacks should respect that.'" Badger, *supra* n. 176. That result indicates that most White Americans by that time recognized that laws that would enforce racial segregation were inappropriate and/or illegal. Similarly, once Americans recognize that regulatory barriers to housing opportunities are harmful to a high percentage of the nation's people—probably including themselves—and that they have been declared illegal by the highest courts of numerous states, most Americans likely will accept a prohibit on those barriers.

By 1996, when the GSS last asked question about a supposed right of White people to keep Black Americans out of their neighborhoods, only 12 percent of White GSS respondents held that view. *Id.*

In a further indication of changing attitudes toward exclusionary neighborhoods, since 1990 the share of white Americans who told the GSS that they're opposed to living in a neighborhood where half their neighbors are black has fallen dramatically. In 1990, 46% of White Americans polled said they would oppose living in a neighborhood where half their neighbors were Black, and only 10% said they would favor doing so. But in 2014, only 19% of White Americans polled said they would oppose living in such a neighborhood, and more people (23%) said they would favor doing so. *Id.*

[177] *See* 42 U.S.C. 3604. The only exception to that prohibition is if a homeowner with less than three properties sells a single-family house: (A) without any use of a real estate broker, agent, salesperson, or other person deemed by the statute to be in the business of selling or renting dwellings; and (B) without any advertisement or written notice made by a person deemed by the statute to be in the business of selling or renting dwellings. 42 U.S.C. 3603(b).

[178] Badger, *supra* n. 176, citing GSS polling. By 2014, only 28% of White Americans held that view. *Id.*

could. But that does not mean that Americans today would consciously endorse economic discrimination that excludes low- and moderate-income people from any suitable housing in their community.

Regulatory barriers to housing opportunities are just that—unlawfully exclusionary zoning and land use practices. The highest courts of numerous states, from "red" to "blue" politically, have declared those practices unconstitutional or in violation of the state's zoning authorization statute.[179]

Conclusions

Major, recent public opinion polls show strong, majority support among Americans for a variety of ways to eliminate harmful zoning and housing restrictions, in order to permit "missing middle" housing opportunities in residential communities and reduce the nation's crisis-level housing affordability problems.

Numerous states, ranging from deep-blue to deep-red politically, have newly enacted statewide laws that permit accessory dwelling units (ADUs) and other forms of "missing middle" housing in many single-family zoning districts. Many major cities also have newly enacted "missing middle" housing ordinances, too.

At the same time, numerous recent public opinion surveys indicate that: (1) most Americans, regardless of whether they are renters or homeowners, would prefer to live in low-density, single-family neighborhoods, if they could, and (2) the majority of American homeowners respond negatively to most proposals to build new housing in their communities. Overall, housing permits continue to lag far behind demand in most of the nation's metropolitan areas. The nationwide deficit is now several million housing units.

Surveys provide only a limited glimpse, however, at how voters and their political representatives might act on complex housing issues, when those issues are raised and debated in their state or locality. The surveys indicate not only the moods and default attitudes of voters, but also the fact that most voters have very limited knowledge of the merits of housing reform strategies recommended by housing economists and other housing experts.

Based on recent surveys and developments in state and local attitudes toward restrictive residential zoning, we offer the following Do's and Don'ts:

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[179] *See, e.g.,* EHI, *Exclusionary Housing Practices,* posted at https://www.equitablehousing.org/background/exclusionary-housing-practices.html.

DO's:

- → DO support efforts to allow homeowners the freedom to add accessory dwelling units (ADUs) for long-term rental to people who need affordable housing in their community, or for the use of the owners' friends or family. Oppose the use of new ADU's as short-term visitor rentals, as they defeat the purpose of providing more housing opportunities for people who wish to live in the community long-term.
- → DO assess whether the community is ready to accept other traditional forms of multi-family housing (duplexes, triplexes, etc.) on land in single-family neighborhoods.
- → DO anticipate, and work patiently to resolve, rational concerns of current residents about possible, adverse effects of new housing in their vicinity.
- → DO try to add as much housing as possible in commercial areas, by converting buildings to residential or building new, multi-family structures on vacant lots, rather than focusing primarily on settled, residential areas.
- → DO preserve as much housing as possible.
- → DO advocate for mixed-income housing projects whenever possible. Surveys indicate that current residents are much more sympathetic to them than purely market-rate projects.
- → DO allow the developers of mixed-income projects to offset their losses on the price-restricted units in mixed-income buildings with density bonuses and or tax and fee reductions.
- → DO support policies to reduce fees and taxes on housing development and to require cities to approve housing proposals that comply with city rules, as those policies gain overwhelming support in public opinion polls.
- → DO support policies to allow residential developers and landowners to determine how much parking is necessary on their properties, rather than continue government policies to require high, minimum parking requirements.
- → DO achieve housing production goals so far as possible through bipartisan legislative deals on low-visibility issues, rather than counting on winning in hot-button, public controversies.

DON'TS:

- → DON'T fail to deal compassionately and carefully with the settled expectations of current residents about the character of their neighborhood and the amenities of their community.
- → DON'T set unrealistically high expectations for rapid change—just keep your hopes high. Remember that anything that can go wrong will go wrong, as we pursue affordable housing.
- → DON'T give up! We're going to get there—to a sufficient housing supply for everyone. It's just a question of time.

ADUs alone can't solve the nation's housing crisis. Even if other forms of multi-unit housing also become widely adopted in single-family neighborhoods, that likely would remedy only a fraction of the current housing shortage. But maximum allowances for "missing middle" housing opportunities are a key part of the solution.

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