

THE FORBIDDEN HOME: MIDDLE HOUSING REFORM ON THE WEST COAST

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ABSTRACT

In recent years, home prices have skyrocketed compared to the average homebuyer's income. The West Coast region in particular harbors some of the highest price-to-income ratios in the country, with four of the five most "impossibly unaffordable" U.S. cities located in California, including San Jose, Los Angeles, San Francisco, and San Diego. Several other major West Coast markets are rated as "severely unaffordable," including Seattle, Portland, Riverside-San Bernardino, Sacramento, and Fresno.

Restrictive land-use regulations are the primary factor driving this steep increase in housing costs, particularly in metropolitan areas. Zoning practices that restrict development lead to fewer houses being built, creating a fundamental disconnect between supply and demand. The most prevalent restrictive zoning practice preventing housing supply from meeting the market's demand is single-family zoning, which prohibits the construction of any form of subdivided housing. This restriction means that building any type of housing other than a detached single-family home is illegal on the majority of urban residential land in the United States.

Increasing housing supply need not require permitting high-rise apartment towers on lots previously zoned for single-family housing. Allowing the development of middle housing, such as duplexes, triplexes, and other small multifamily buildings in areas previously zoned for single-family housing offers a more moderate solution to the mismatch between housing supply and demand. Middle housing is typically less expensive than single-

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family homes because of its smaller square footage and the division of land costs among multiple homes, while offering a wider range of affordability due to the diverse spectrum of housing options. Despite their compatibility in scale and build with detached single-family homes, middle housing construction has historically been prohibited by single-family zoning restrictions, contributing to the shortage of these housing types and creating what has become known as the “missing” middle housing gap.

In response to rising housing prices, states have begun to enact middle housing legislation to permit the development of middle housing on lots previously zoned exclusively for single-family homes. As of 2023, all three West Coast states—Washington, Oregon, and California—have enacted some form of middle housing zoning reform. This Note will compare the zoning reform approaches of Washington’s House Bill 1110, Oregon’s House Bill 2001, and California’s Senate Bill 9 to evaluate the strengths and challenges of each approach and identify considerations for states considering similar legislation.

TABLE OF CONTENTS

INTRODUCTION.....	673
I. BACKGROUND	677
A. <i>The History of Single-Family Zoning</i>	677
B. <i>The “Missing” Middle Housing on the West Coast</i>	681
C. <i>The Benefits of Upzoning</i>	686
II. ZONING REFORM ON THE WEST COAST.....	689
A. <i>Oregon</i>	689
B. <i>California</i>	691
C. <i>Washington</i>	693
III. LEGAL CHALLENGES.....	694
A. <i>The Home Rule Doctrine</i>	695
B. <i>The Takings and Contracts Clauses</i>	698
IV. OUTCOMES, LESSONS, AND HOW TO MOVE FORWARD.....	700
A. <i>Outcomes</i>	700
B. <i>Lessons Learned</i>	703
1. <i>Streamlining Procedures</i>	704
2. <i>Avoiding Legal Obstacles</i>	708
CONCLUSION	710

INTRODUCTION

A wise Tony Soprano once offered his son, A.J., some life advice. Tony said, “[b]uy land, A.J., ‘cause God ain’t making any more of it.”¹ Those of us born in A.J.’s generation are all too aware that the days of simply buying property are increasingly unattainable. When Tony Soprano suggested this advice to A.J. in 2002, a typical house cost roughly three times a buyer’s annual income.² Now, however, home prices continue to skyrocket compared to the average homebuyer’s income.³ In 2022, the median sale price for a single-family home in the U.S. was 5.6 times the median household income, a higher ratio than at any point since the early 1970s.⁴

Although the housing affordability crisis remains a national issue, the West Coast region in particular harbors some of the highest price-to-income ratios in the country.⁵ As of 2025, California, Oregon, and Washington are all among the top six states with the highest price-to-income ratios.⁶ The major metropolitan cities within these states suffer greatly from housing unaffordability. According to the 2024 edition of the *Demographia International Housing Affordability* report, four of the five “impossibly unaffordable” U.S. cities are in California: San Jose, Los Angeles, San Francisco, and San Diego.⁷ Several other major West Coast markets are rated as “severely unaffordable,” including Seattle, Portland, Riverside-San Bernardino, Sacramento, and Fresno.⁸ The West Coast presents a uniquely pressing housing affordability crisis,

1. THE SOPRANOS: *Watching Too Much Television* (HBO television broadcast Oct. 27, 2002).

2. Jennifer Ludden & Daniel Wood, *U.S. Home Prices Have Far Outpaced Paychecks. See What It Looks Like Where You Live*, NPR (June 20, 2024, at 00:02 ET), <https://www.npr.org/2024/06/20/nx-s1-5005972/home-prices-wages-paychecks-rent-housing-harvard-report> [https://perma.cc/287B-M89Z].

3. Alexander Hermann & Peyton Whitney, *Home Price-to-Income Ratio Reaches Record High*, HARV. UNIV. JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS. (Jan. 22, 2024), <https://www.jchs.harvard.edu/blog/home-price-income-ratio-reaches-record-high-0> [https://perma.cc/75UU-N979].

4. *See id.*

5. *Id.*

6. Jonathan Jones, *Cities with the Highest Home Price-to-Income Ratios*, CONSTR. COVERAGE (Oct. 23, 2025), <https://constructioncoverage.com/research/cities-with-highest-home-price-to-income-ratios> [https://perma.cc/2AAT-7K85].

7. WENDELL COX, DEMOGRAPHIA INTERNATIONAL HOUSING AFFORDABILITY 14 (2024). *See generally id.* at 1 tbl. ES-1 (defining “impossibly unaffordable” as a price-to-income ratio of 9.0 and over).

8. *Id.* at 14. *See generally id.* at 1 tbl. ES-1 (defining “severely unaffordable” as a price-to-income ratio between 5.1 and 8.9).

considering that virtually every major metropolitan area within it is rated, at a minimum, severely unaffordable.

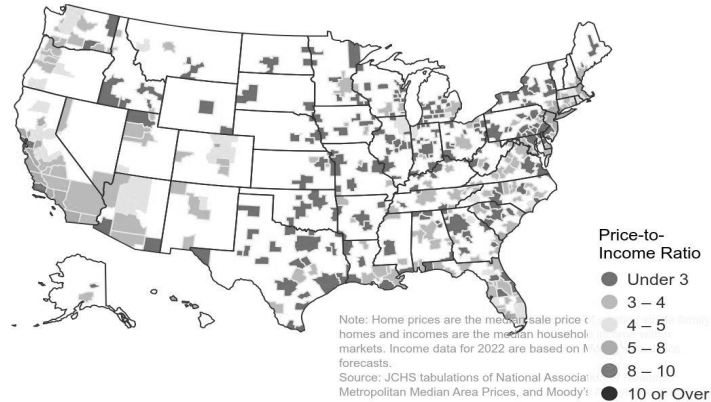


Figure 1: Price-to-Income Ratio Map for 2002.⁹

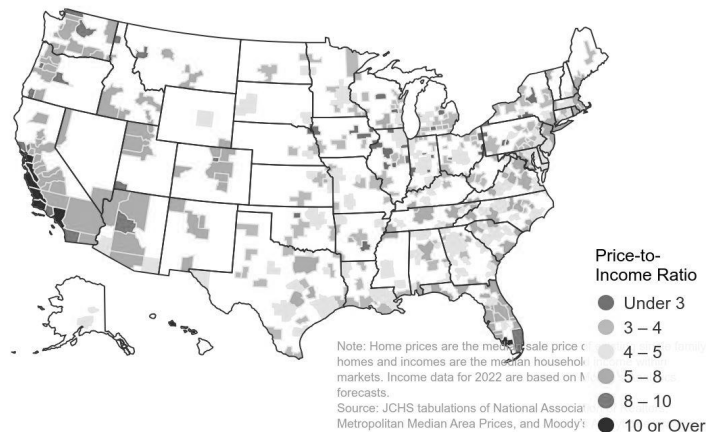


Figure 2: Price-to-Income Ratio Map for 2022.¹⁰

Several complex factors contribute to the steep increase in housing costs. Increased mortgage interest rates deter first-time buyers from

9. Hermann & Whitney, *supra* note 3.

10. *Id.* This map reflects the staggering increase in housing costs over the last two decades when compared with Figure 1. California has the most metro areas with price-to-income ratios exceeding ten, and virtually every single metro area in Washington, Oregon, and California exceeds five.

purchasing homes¹¹ and prevent those who already own from selling.¹² Existing homes are not going on the market as the baby boomer generation chooses to age in place rather than move into senior housing.¹³ Real estate investors—who bought around 10% of homes in 2010—are estimated to have purchased approximately 20% of homes in 2023, creating increased competition with individual homebuyers.¹⁴ As new home construction has failed to keep up with increasing demand,¹⁵ home supply has reached historic lows.¹⁶ The primary driving factor, however, is restrictive land use regulations, particularly in metropolitan areas.¹⁷

The explanation for why restrictive land use regulations drive up housing costs is simple. Zoning practices that restrict development lead to fewer houses built, creating a fundamental disconnect between supply and demand.¹⁸ The most prevalent restrictive zoning practice preventing housing supply from meeting market demand is single-family zoning, which bans neighborhoods from building any form of apartment or subdivided homes.¹⁹ This arbitrary restriction has come to mean that building any type of housing other than a detached single-family home is illegal on most urban residential land in the United States.²⁰ This practice leads to higher concentrations of wealth and reduced racial diversity in single-family zoned neighborhoods.²¹ Major West Coast cities

11. See Daniel McCue, *Home Prices and Interest Rates Still Rising, Shutting Out More Potential Homebuyers*, HARV. UNIV. JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS. (Sep. 28, 2023), <https://jchs.harvard.edu/blog/home-prices-and-interest-rates-still-rising-shutting-out-more-potential-homebuyers> [https://perma.cc/Q4PN-UG6T].

12. See Alvin Chang, *How Finding a Home in America Became So Absurdly Expensive*, GUARDIAN (May 10, 2023, at 06:00 ET), <https://www.theguardian.com/us-news/2023/may/10/us-housing-market-prices-increasing> [https://perma.cc/47TJ-ZC4R].

13. *Id.*

14. *Id.*

15. *Id.*

16. Alexander Hermann, *With Existing Inventories Historically Low, Homebuyers Turn to the New Home Market*, HARV. UNIV. JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS. (Sep. 12, 2023), <https://www.jchs.harvard.edu/blog/existing-inventories-historically-low-homebuyers-turn-new-home-market> [https://perma.cc/Q25S-LKKA].

17. See COX, *supra* note 7, at 2.

18. M. NOLAN GRAY, *ARBITRARY LINES: HOW ZONING BROKE THE AMERICAN CITY AND HOW TO FIX IT* 53–54 (2022).

19. See *id.* at 54.

20. Emily Badger & Quoc Trung Bui, *Cities Start to Question an American Ideal: A House with a Yard on Every Lot*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html> [https://perma.cc/YX9C-A7UC].

21. Lydia Lo, *Jurisdictions Dominated by Single-Family Zoning Hoard Opportunities, but Bans Aren't the Only Fix*, URB. INST.: URB. WIRE (July 13, 2023), <https://www.urban.org/urban-wire/jurisdictions-dominated-single-family-zoning-hoard-opportunities-bans-arent-only-fix> [https://perma.cc/GY8D-8NZS].

previously took this restrictive practice to the extreme. In 2019, Seattle restricted 81% of residential land to single-family homes, Portland restricted 77%, Los Angeles restricted 75%, and San Jose restricted a staggering 94%.²²

Increasing housing supply does not have to mean a drastic overhaul to permit high-rise apartment towers on lots previously zoned for single-family housing. A more moderate solution, allowing middle housing development in areas previously zoned for single-family housing, could help address the mismatch between housing supply and demand.²³ Middle housing typically refers to housing types like duplexes, triplexes, quadplexes, and small multifamily buildings containing between five and twelve homes.²⁴ These housing styles are traditionally less expensive than single-family homes because of their smaller square footage and the division of land cost between multiple homes,²⁵ and they offer a wider range of affordability due to the diverse spectrum of housing options.²⁶ Despite their compatibility in scale and build with detached single-family homes, middle housing-style builds are prohibited under single-family zoning restrictions and have become known as “missing” middle housing.²⁷

In response to skyrocketing housing prices, states have begun to enact middle housing legislation to permit the development of middle housing on lots that were previously zoned to permit only single-family homes.²⁸ All three West Coast states, Washington, Oregon, and California, have enacted some form of middle housing zoning reform bill as of 2023. This Note will analyze these zoning reform approaches, comparing Washington’s recent House Bill 1110, Oregon’s House Bill 2001, and California’s Senate Bill 9 to evaluate the strengths and challenges of each approach and suggest what states enacting similar legislation should consider when moving forward with zoning reform to increase housing supply.

22. Badger & Bui, *supra* note 20.

23. See MISSING MIDDLE HOUS.: ABOUT PAGE, <https://missingmiddlehousing.com/about-2/> [<https://perma.cc/GYY8-TCDF>] (last visited Sep. 26, 2026).

24. *All About Thrive: Part 4 - Missing Middle Housing*, MONTGOMERY FOR ALL (July 13, 2022), <https://www.montgomery4all.org/thrive-2050/all-about-thrive-part-4-missing-middle-housing> [https://perma.cc/9TQ7-7X9Q].

25. *Id.*

26. See MISSING MIDDLE HOUS., *supra* note 23.

27. *What is Missing Middle Housing?*, CHESTER CNTY. PLAN. COMM’N, <https://www.chescoplanning.org/Housing/MissingMiddle/Definition.cfm> [https://perma.cc/PN4Z-FF89] (last visited Oct. 28, 2025).

28. Lena Zeebuyth & Mallory Moore, *Missing Middle Housing: Accelerating America’s Transition from Single-Family Zoning*, 64 NAT. RES. J. 63, 64 (2024).

This Note proceeds in four Parts. Part I addresses the history and legality of the pervasive restrictive zoning that drives up costs and limits supply on the West Coast, and why the West Coast can particularly benefit from upzoning to permit middle housing. Part II examines the scope and variations in each state's middle housing bill. Part III explores the constitutional challenges these bills have faced or may face under the state's home rule doctrine and the Takings Clause of the Fifth Amendment. Part IV analyzes how city planning commissions are reforming their zoning codes to comply with the new housing bills, the outcomes each state has seen so far, the barriers hindering development, and lessons for other states as they move forward with zoning reform.

To be clear, middle housing bills alone will not solve the housing affordability crisis.²⁹ Additional zoning reforms, such as changing building height restrictions, altering minimum setback requirements, eliminating parking requirements, and reducing minimum floor area and minimum lot sizes, can supplement middle housing bills to enable denser housing development.³⁰ Federal and state procedural reform and funding incentives are needed to lower the financial hurdle to building more affordable housing options.³¹ This Note will analyze how other states can craft effective middle housing bills that will withstand constitutional challenges and allow the greatest degree of flexibility in permitted middle housing developments; no additional zoning reform or funding incentive will matter without addressing the root issue. Middle housing has historically been illegal on the vast majority of the West Coast, and well-crafted middle housing bills are the key starting point for legalizing the development needed to alleviate the housing affordability crisis.

I. BACKGROUND

A. *The History of Single-Family Zoning*

How did so much of America's residential land come to be zoned for single-family housing? Before the proliferation of zoning laws, there was little segregation of land-use types within cities.³² People worked and shopped in areas within or immediately adjacent to their homes.³³ Cities

29. See Allison Hanley, *Rethinking Zoning to Increase Affordable Housing*, NAT'L ASS'N HOUS. & REDEVELOPMENT OFFS.: J. HOUS. & CMTY. REDEVELOPMENT (Dec. 22, 2023), https://www.nahro.org/journal_article/rethinking-zoning-to-increase-affordable-housing/ [https://perma.cc/MCR6-YJX8].

30. *Id.*

31. *Id.*

32. GRAY, *supra* note 18, at 14.

33. *Id.*

were constrained from expanding outward because people depended on having their needs within walking distance due to a lack of infrastructure and technology, such as cars or transit.³⁴ Without formal zoning restrictions, common-law remedies were largely effective in resolving land-use conflicts arising from negative externalities associated with living in a dense environment, such as noise, odors, or pollution.³⁵

Only in 1916 did New York City pass the country's first zoning resolution.³⁶ This resolution divided the city into residential, business, and unrestricted land use districts and imposed various height limits and setbacks on each city block.³⁷ The driving factor behind this ordinance was not negative externalities resulting from urban density or health and safety concerns that come with apartment living. The underlying motivation was far more sinister; there was an influx of young, Jewish, immigrant workers who left their factory floors to window shop along Fifth Avenue during their lunch breaks, and retail landlords feared these "flies" would scare off elite shoppers.³⁸ Thus, zoning laws were born as the means to separate the undesirables from the elites, an underlying principle that permeates many zoning laws as they exist today.³⁹

The West Coast joined the trend immediately, with Berkeley, California, creating the country's first single-family zoning district that same year.⁴⁰ Berkeley banned all forms of apartment buildings in residential areas, permitting only the most expensive form of housing—single-family dwellings on large lots⁴¹—in response to African American dance halls and Chinese laundromats cropping up in exclusive neighborhoods.⁴² Zoning spread like wildfire, with eight municipalities

34. *Id.*

35. *Id.* at 14–15.

36. Zeebuyth & Moore, *supra* note 28, at 67; *see* N.Y.C., N.Y., Building Zone Resolution (July 25, 1916).

37. N.Y.C., N.Y., Building Zone Resolution §§ 2–9 (July 25, 1916); *see also* GRAY, *supra* note 18, at 22 (explaining that New York City's 1916 zoning resolution, containing various setbacks and height restrictions, resulted in the city's "iconic ziggurat skyscraper pattern").

38. GRAY, *supra* note 18, at 21.

39. M. Nolan Gray, *Apartheid by Another Name: How Zoning Regulations Perpetuate Segregation*, NEXT CITY: URBANIST NEWS (July 4, 2022), <https://nextcity.org/urbanist-news/apartheid-by-another-name-how-zoning-regulations-perpetuate-segregation> [<https://perma.cc/RKB9-3ZAV>].

40. Zeebuyth & Moore, *supra* note 28, at 67; GRAY, *supra* note 18, at 13.

41. GRAY, *supra* note 18, at 24.

42. John Metcalfe, *Berkeley May Get Rid of Single-Family Zoning as a Way to Correct the Arc of Its Ugly Housing History*, BERKELEYSIDE (Feb. 17, 2021, at 11:30 ET), <https://www.berkeleyside.org/2021/02/17/berkeley-may-get-rid-of-single-family-zoning-as-a-way-to-correct-the-arc-of-its-ugly-housing-history> [<https://perma.cc/8ACB-65V4>].

adopting some form of zoning by the end of 1916.⁴³ By 1923, that number was 218.⁴⁴

Exclusionary zoning continued to gain traction as zoning worked its way to the Supreme Court. In 1926, the Court gave its constitutional blessing to municipalities looking to impose single-family zoning restrictions in *Village of Euclid v. Ambler Realty Company*.⁴⁵ *Euclid* concerned a sixty-eight-acre tract of land in Euclid, Ohio, a suburb of Cleveland.⁴⁶ Ambler challenged a village ordinance that established a comprehensive zoning plan restricting certain types of development based on zoned districts, arguing that the ordinance deprived landowners of liberty and property without the due process guaranteed by the Fourteenth Amendment.⁴⁷ The Court recognized the growing modern need for land use regulations, given increasing population sizes and the advent of cars and public transit.⁴⁸ The ordinance's constitutionality hinged on whether the provisions were "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."⁴⁹ The Court specifically honed in on the novel question of whether there was any valid police power in restricting apartment houses from residential districts.⁵⁰

While evaluating the ordinance's constitutionality, the Court took *quite* a stand against apartment buildings. Justice Sutherland, writing for the majority, described the apartment house as a "mere parasite" that "greatly retarded" the development of detached homes.⁵¹ Further, apartments "monopoliz[ed] the rays of the sun" from smaller homes, "deprive[d] children of the privilege of quiet and open spaces for play," and would come to "utterly destroy[]" the "residential character of the neighborhood."⁵²

The Court ultimately held that the zoning ordinance was a valid exercise of municipal police power and was not arbitrary or unreasonable because eliminating the increased traffic, noise, height, and bulk that apartments caused in residential areas bore a rational relationship to

43. Zeebuyth & Moore, *supra* note 28, at 67.

44. GRAY, *supra* note 18, at 26.

45. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926).

46. *Id.* at 379.

47. *Id.* at 379–80, 84. Ambler further alleged the ordinance's restriction on lawful land uses decreased land value and deterred prospective buyers from investing in property subject to the village ordinance. *See id.* at 384–85.

48. *Id.* at 386–87.

49. *Id.* at 395.

50. *Id.* 389–90.

51. *Id.* at 394.

52. *Id.*

community health and safety.⁵³ Municipalities were thus free to zone areas to permit only single-family dwellings under their “flexible” police powers.⁵⁴

The Court in *Euclid* focused solely on the substantive due process challenge to the ordinance in its entirety;⁵⁵ therefore, this holding meant that zoning was generally constitutionally valid. The Court recognized, however, that many specific provisions in the ordinance could be found to be clearly arbitrary or unreasonable, but those challenges would be decided as they arose.⁵⁶ The Court tackled this issue two years later in *Nectow v. City of Cambridge* when evaluating an ordinance of the same general character as *Euclid*.⁵⁷ The Court held that the ordinance, as applied to the plaintiff’s land, violated the Fourteenth Amendment when subject to heightened scrutiny because the restriction bore no substantial relationship to health, safety, or general welfare.⁵⁸ Today, heightened scrutiny no longer applies to state substantive due process challenges to zoning ordinances; they are merely evaluated under rational basis review, requiring only that the law be rationally related to a legitimate state interest.⁵⁹

Similar exclusionary land use measures have been achieved through private residential restrictive covenants.⁶⁰ These use covenants emerged as a method for communities to minimize negative externalities resulting from conflicting land uses.⁶¹ In the nineteenth century, English courts held that private restrictive covenants were enforceable against successive owners of property, and American landowners quickly adopted these covenants in residential areas.⁶² By the early twentieth century, it had become routine to include restrictive covenants against nuisances in property deeds, and city planners began including them in boilerplate

53. *Id.* at 394–95, 397.

54. *Id.* at 397.

55. *Id.* at 386.

56. *Id.* at 395–96.

57. *Nectow v. City of Cambridge*, 277 U.S. 183, 185 (1928).

58. *Id.* at 187–89 (explaining that a residential restriction on the plaintiff’s land, located between immediately adjoining land of industrial and railroad purposes, would render the land of comparatively little value).

59. JESSE DUKEMINIER ET AL., PROPERTY 935 (Rachel E. Barkow et al. eds., 10th ed. 2022); *see, e.g.*, *Yim v. City of Seattle*, 451 P.3d 694, 702 (Wash. 2019) (en banc) (explaining that since 1934, the Supreme Court has recognized that laws regulating the use of property are matters of private, not public, concern and are therefore not subject to heightened scrutiny).

60. Mary Jo Wiggins, *Supremacy Lost?: Zoning, Covenants, and the Evolution of Single-Family Ownership*, 128 PENN ST. L. REV. 127, 146 (2023).

61. *Id.*; Maureen E. Brady, *Turning Neighbors into Nuisances*, 134 HARV. L. REV. 1609, 1679 (2021).

62. Wiggins, *supra* note 60, at 146.

forms.⁶³ Covenants became a powerful tool for property owners to protect themselves from the encroachment of apartments, particularly as American society increasingly viewed apartments and dense housing negatively.⁶⁴ Through covenants, communities could promote the now-stereotypical aesthetic of low-density housing, and modern courts furthered this objective by reducing barriers to enforcement.⁶⁵ Thus, restrictive covenants became the primary method for private landowners to maintain single-family neighborhoods.⁶⁶

Now, over a hundred years after the first zoning ordinances were enacted in 1916, single-family zones have remained a hallmark of societal norms in the United States. In the United States, the percentage of detached single-family homes is almost twice that of the European Union.⁶⁷ Single-family homes have come to represent far more than behind-the-scenes zoning laws or restrictive covenants; they are a status symbol representing the American dream of a life with a two-car garage, landscaped lawn, and white picket fence. How could they not? As the *Euclid* Court said, anything more than a single-family home was a parasite inhibiting the development and health of our children. The residential character of single-family neighborhoods became associated with light, air, health, and safety, and its preservation allows the American dream to endure.

B. The “Missing” Middle Housing on the West Coast

The West Coast states have widely adopted the residential character of single-family-zoned neighborhoods, which has come at a high cost for these states’ residents. With *Euclid*’s decision granting municipalities freedom to zone certain areas only for detached single-family dwellings in the 1920s, followed by the proliferation of automobiles and highway development, many American cities began to take on a specific character of their own. If you look at the majority of skylines of major West Coast cities like Seattle, Portland, Los Angeles, or San Diego, you will notice they all present a similar pattern of sprawling suburban-style homes with a single dense cluster of high-rise towers in the downtown area.⁶⁸

63. Brady, *supra* note 61, at 1625.

64. *See id.* at 1644.

65. Wiggins, *supra* note 60, at 148.

66. *Id.*

67. John Infranca, *Singling Out Single-Family Zoning*, 111 GEO. L.J. 659, 666 (2023) (citing SONIA HIRT, ZONED IN THE USA: THE ORIGINS AND IMPLICATIONS OF AMERICAN LAND-USE REGULATION 20–21 (2014) (showing detached single-family homes make up 63.3% of the housing stock in the United States and only 34.7% in the European Union)).

68. *See generally* Kyle Paoletta, *The Paradox of the American West: Plenty of Open Land, but Nowhere to Build New Homes*, BUS. INSIDER (Sep. 13, 2023, at 06:01 ET),

Zoning maps reflect this pattern, with detached single-family residential land nearly creating a circle around the downtown area of these cities and extending to the city limits.⁶⁹

This trend is prominent in many large American cities, but it is particularly noticeable out West.⁷⁰ Western cities experienced robust growth during the twentieth century, when zoning schemes were at their peak, resulting in the majority of American cities with the largest footprints being located west of the Mississippi.⁷¹ Decades ago, this urban sprawl helped accommodate the rapid influx of those moving West when the areas had substantial undeveloped land available.⁷² This zoning pattern made a suburban ambiance possible within major city limits, but at the cost of creating a restricted housing supply and affordability crisis in the present day.

This limits developers and residents to two options: a detached single-family home or a mid- to high-rise apartment, which renders an entire building type “missing.”⁷³ This in-between style of housing, falling somewhere within the spectrum of a detached home to a large apartment building, is known as “middle housing.”⁷⁴ Middle housing comes in various shapes and sizes that fit on single-family lots. On the smaller end, there are side-by-side or stacked duplexes with two dwelling units⁷⁵ or triplexes with three dwelling units.⁷⁶ On the larger end, there are fourplexes⁷⁷ or multiplexes with five to twelve dwelling units that still reflect a similar appearance to a large single-unit house.⁷⁸ Additional

<https://www.businessinsider.com/affordable-housing-crisis-us-west-coast-cause-explained-2023-9> [<https://perma.cc/SP7K-QZK2>] (describing the “sprawl-first development practices” which characterize urbanization in the western United States).

69. See Badger & Bui, *supra* note 20 (visualizing zoning maps reflecting single-family zoned areas around the downtowns of Los Angeles, San Jose, Portland, and Seattle).

70. Paoletta, *supra* note 68.

71. *Id.*

72. *Id.* (explaining that San Diego is an example of a city that “grew from a harbor-oriented city of 200,000 residents in 1940” to a “325-square-mile metro [area]” with almost 1.4 million residents in 2023).

73. See MISSING MIDDLE HOUS., *supra* note 23.

74. *Id.*

75. *Duplex: Side-by-Side*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/types/duplex-side-by-side> [<https://perma.cc/KRN2-53DP>] (last visited Nov. 2, 2025); *Duplex: Stacked*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/types/duplex-stacked/> [<https://perma.cc/9DJJ-KYLD>] (last visited Dec. 22, 2025).

76. *Triplex: Stacked*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/types/carriage-house/> [<https://perma.cc/5DPC-NUFP>] (last visited Dec. 22, 2025).

77. *Fourplex: Stacked*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/types/fourplex> [<https://perma.cc/2V28-EJ5D>] (last visited Dec. 22, 2025).

78. *Multiplex: Medium*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/types/multiplex-small/> [<https://perma.cc/HQ9A-KMKU>] (last visited Dec. 22, 2025).

middle housing types include townhouses with anywhere from two to sixteen multi-story, side-by-side dwelling units,⁷⁹ or courtyard buildings with multiple side-by-side or stacked dwelling units surrounding a common courtyard through which each unit is accessed.⁸⁰ Similarly, accessory dwelling units (“ADUs”) offer similar advantages to boost housing supply while retaining the communities’ residential feel.⁸¹

The “missing” nature of middle housing is not necessarily reflective of residents’ desires for only high-rise condos or single-family homes. Rather, it is a byproduct of restrictive zoning policies in West Coast states. Until very recently, building any type of middle housing remained illegal on most residential land in Washington, California, and Oregon. A 2024 statewide analysis of California revealed that 95.8% of the state’s total residential land area is still zoned to permit only single-family development.⁸² One might intuit that this percentage would be significantly smaller in major metropolitan areas that would seemingly favor more dense housing options, but this was not the case. As of 2019, San Jose restricted 94% of residential land to permit only detached single-family development.⁸³ The entire Bay Area closely followed suit, with 85% of residential land zoned for single-family housing.⁸⁴ The San Diego region similarly reserved over 75% to single-family development,⁸⁵ while Los Angeles—sitting in the most populated county in California⁸⁶—

79. *Townhouse*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/types/townhouse> [https://perma.cc/MBN4-CLQD] (last visited Oct. 27, 2025).

80. *Courtyard Building*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/types/courtyard-apartments> [https://perma.cc/H43U-UYRQ] (last visited Nov. 19, 2025).

81. *The Types*, MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/the-types> [https://perma.cc/VU5G-YA9A] (last visited Oct. 28, 2025). ADUs, however, are not technically a style of middle housing. *Id.*

82. Stephen Menendian, Shahan Shahid Nawaz & Samir Gambhir, *Single-Family Zoning in California: A Statewide Analysis*, OTHERING & BELONGING INST. (May 22, 2024), <https://belonging.berkeley.edu/single-family-zoning-california-statewide-analysis> [https://perma.cc/Y8N8-CWZQ].

83. Badger & Bui, *supra* note 20.

84. Stephen Menendian et al., *Single-Family Zoning in the San Francisco Bay Area: Characteristics of Exclusionary Communities*, OTHERING & BELONGING INST. (Oct. 7, 2020), <https://belonging.berkeley.edu/single-family-zoning-san-francisco-bay-area> [https://perma.cc/8LCN-3ZMG].

85. Stephen Menendian, Samir Gambhir & Shahan Shahid Nawaz, *Single-Family Zoning in the San Diego Region: A California Zoning Atlas Snapshot*, OTHERING & BELONGING INST. (Dec. 19, 2022), <https://belonging.berkeley.edu/single-family-zoning-san-diego-region> [https://perma.cc/M4GH-KV6T].

86. Kristen Carney, *California Counties by Population (2025)*, CAL. DEMOGRAPHICS (Aug. 7, 2025), https://www.california-demographics.com/counties_by_population [https://perma.cc/49U7-LQ42].

matched at 75%.⁸⁷ In the northwestern states, the major cities follow the same pattern, with Portland reserving 77% of residential land to detached single-family development and Seattle reserving a steep 81%.⁸⁸

While these western cities once offered abundant land to develop outwards, this sprawl has severely limited affordable housing options while populations continue to grow. Four of the five “impossibly unaffordable” housing markets in the United States—those with a price-to-income ratio of 9.0 and over—are in California.⁸⁹ To buy a traditional mid-tier home in California today, the average home buyer is looking at spending over \$750,000, which is more than twice the amount of a typical mid-tier U.S. home.⁹⁰ This median home price requires a household income of about \$221,000, over twice the median California income.⁹¹ Seattle and Portland offer little reprieve, as both are rated “severely unaffordable,” with a price-to-income ratio between 5.1 and 8.9.⁹²

This amalgamation of damaging housing factors makes it unlikely that meaningful change in the affordability and accessibility of homeownership in these states will occur without permitting middle housing options. Housing inventory has remained scarce following record lows of existing homes for sale in 2022.⁹³ Many Western cities face unique geographic land constraints, rendering continued sprawl untenable. California’s coastal cities are surrounded by state parks, as well as additional land designated for conservation or owned by the government.⁹⁴ Seattle is constrained by the Puget Sound to the west and Lake Washington to the east,⁹⁵ limiting further buildout, and Portland is

87. Badger & Bui, *supra* note 20.

88. *Id.* See generally Kevin DeGood, *Building Opportunity: Expanding Housing in America by Reforming Local Land Use*, CTR. FOR AM. PROGRESS (Sep. 19, 2024), <https://www.americanprogress.org/article/building-opportunity-expanding-housing-in-america-by-reforming-local-land-use/> [https://perma.cc/3FMN-RWPE] (contrasting the stark difference of American residents compared with those in the European Union, only 35% of whom live in detached or single-family houses).

89. COX, *supra* note 7, at 1, 14.

90. Alex Bentz, *California Housing Affordability Tracker (3rd Quarter 2025)*, LEGIS. ANALYST’S OFF. (Nov. 6, 2025), <https://lao.ca.gov/LAOEconTax/Article/Detail/793> [https://perma.cc/9WNJ-QKTS].

91. *Id.*

92. COX, *supra* note 7, at 1, 14.

93. Hermann, *supra* note 16.

94. Paoletta, *supra* note 68.

95. *Seattle and the Puget Sound Region*, UNIV. WASH., <https://depts.washington.edu/bpsd/prospective-students-2/seattle/> [https://perma.cc/4NZ8-GM3Z] (last visited Nov. 21, 2025).

built around the Columbia and Willamette Rivers, with state and national forests on either side.⁹⁶

The impracticability of establishing a home base in these states is driving residents out. California saw a decline in population for the first time in its history in 2021, and 34% of Californians in a 2023 survey reported that housing costs are leading them to consider moving out of the state.⁹⁷ Oregon saw its first population decline since the 1980s in 2020, despite the state's positive economic growth.⁹⁸ Washington continues to see population growth, although the rate of this growth slowed after 2020 when compared to the preceding decade.⁹⁹ These states present a sharp contrast to neighboring states with a lower cost of living, such as Idaho and Nevada, which have dominated population growth charts in recent years.¹⁰⁰

The West Coast is in desperate need of housing reform. Stagnating inventory, exorbitant home costs, and geographic land constraints limiting outward development highlight the need to “find” missing middle housing options to keep residents from relocating to areas where buying a home is feasible on a median income. Perhaps the real “parasite”¹⁰¹ is the lasting effect of single-family zoning. In recent years, however, these states have begun changing their zoning laws to permit new middle housing development, which offers a vital starting point to give more options to new homeowners.

96. See James Farrell, *Exploring the Physical Geography of the Portland, Oregon Region*, E. OF NOWHERE (Apr. 10, 2024), <https://eastofnowhere.co/blogs/news/exploring-the-physical-geography-of-the-portland-oregon-region> [<https://perma.cc/CJJ9-79Z4>]. See generally DeGood, *supra* note 88 (explaining that cities cannot change their geographic constraints but zoning reform and reducing regulatory restrictions are a response to persistently high housing costs).

97. Hans Johnson et al., *What's Behind California's Recent Population Decline—and Why it Matters*, PUB. POL'Y INST. CAL. (Oct. 2, 2023), <https://www.ppic.org/publication/whats-behind-californias-recent-population-decline-and-why-it-matters/> [<https://perma.cc/BPK4-X268>].

98. Serra Kirsch & Mark McMullen, *Oregon's Migration Landscape: Evolving Patterns and New Challenges*, COMMON SENSE INST. (Oct. 28, 2024), <https://www.commonseminstituteus.org/oregon/research/housing-and-our-community/domestic-migration-data-2023> [<https://perma.cc/5SEN-RD8E>].

99. *Washington Population Growth Slowing*, WASH. ST. OFF. FIN. MGMT. (June 27, 2025), <https://ofm.wa.gov/news-publications/washington-population-growth-slowing/> [<https://perma.cc/QPQ5-3EV7>].

100. See Kirsch & McMullen, *supra* note 98; *Fastest Growing States 2025*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/fastest-growing-states> [<https://perma.cc/AVM2-MVXA>] (last visited Oct. 27, 2025) (showing Idaho and Nevada both among the five fastest growing states).

101. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926).

C. The Benefits of Upzoning

Efforts to undo the proliferation of single-family zoning are underway at the state level. Oregon, California, and Washington have all enacted new zoning laws that preempt local authorities from prohibiting multi-family housing in formerly single-family-zoned areas¹⁰² and that promote increased land-use density in urban areas.¹⁰³ These state-level zoning laws are necessary—but not sufficient in themselves—to fully address the complex problems of housing density, supply, and affordability along the West Coast.¹⁰⁴ This type of zoning reform—“upzoning,” i.e., allowing increased development—offers the necessary first step to begin addressing these issues.¹⁰⁵

Middle housing offers unique advantages to enable cities’ population expansions while retaining a residential ambiance.¹⁰⁶ Middle housing options are often more affordable than their stand-alone counterparts in the same neighborhood because of their modest square footage and the ability to share land costs among households.¹⁰⁷ Middle housing fills the gap for the middle class bracket, those making at least 60% of the median income level, who need homes at a more affordable price point without

102. See *State Preemption of Local Zoning Laws as Intersectional Climate Policy*, 135 HARV. L. REV. 1592, 1601 (2022) [hereinafter *State Preemption*]; see, e.g., H.B. 2001, 80th Legis. Assemb., 2019 Reg. Sess. § 7(1) (Or. 2019) (codified at OR. REV. STAT. § 197.312(1) (2019), current version at OR. REV. STAT. § 197A.395(1) (2025)); S.B. 9, 2021 Leg., Reg. Sess. § 1(a) (Cal. 2021) (codified at CAL. GOV’T CODE § 65852.21(a) (West 2021)); H.B. 1110, 68th Leg., 2023 Leg., Reg. Sess. § 4 (Wash. 2023) (codified at WASH. REV. CODE § 36.70A.636 (2023)).

103. Zeebuyth & Moore, *supra* note 28, at 83.

104. *State Preemption*, *supra* note 102, at 1600–01. State-level upzoning laws are not a catch-all solution for reforming single-family zoning sprawl. *Id.* There are a myriad of other laws and regulations creating barriers to residential development. These include heightened requirements for project approval—necessitating approval from two or more government entities—costly exaction fees, formal design reviews, and unworkable minimum lot size or height requirements. See Alexander von Hoffman, *Single-Family Zoning: Can History be Reversed?*, HARV. UNIV. JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS. (Oct. 5, 2021), <https://www.jchs.harvard.edu/blog/single-family-zoning-can-history-be-reversed> [https://perma.cc/38CJ-2Z9G].

105. *State Preemption*, *supra* note 102, at 1600–01.

106. See Zeebuyth & Moore, *supra* note 28, at 72.

107. Dan Bertolet, *Seven Reasons Washington Needs Middle Housing*, SIGHTLINE INST. (Jan. 9, 2023), <https://www.sightline.org/2023/01/09/seven-reasons-washington-needs-middle-housing/> [https://perma.cc/9AY7-KXUC]; Samar Jha & Timothy Murphy, *The Role of Middle Housing in Tackling America’s Housing Challenge*, UP FOR GROWTH (June 29, 2023), https://upforgrowth.org/news_insights/the-role-of-middle-housing-in-tackling-americas-housing-challenge/ [https://perma.cc/4QQH-RMWT].

relying on subsidies.¹⁰⁸ Many case studies show that middle housing options sell at more attainable price points. A 2016 renovation project in Portland, converting a four-bedroom Victorian single-family home into four two- to three-bedroom condos, sold each unit for \$35,000–\$190,000, cheaper than comparable three-bedroom single-family homes in the area.¹⁰⁹ A King County analysis through September 2018 found that median townhome prices were 31% lower than single-family homes, a steeper discount than that for low- to mid-rise condos, which were only 18% lower.¹¹⁰

Further, relaxing restrictive land use practices to permit upzoning increases housing supply.¹¹¹ Evidence suggests that adding supply makes housing more affordable even in high-end housing markets, because a lack of supply to meet high-end demand makes housing less affordable to those shopping in lower-cost markets.¹¹² Upzoning to permit more dense housing thus leads to a “supply effect,” where increasing the number of available units decreases the prices of surrounding units.¹¹³

Middle housing offers additional economic advantages beyond the front-end cost and supply benefits. Lower-cost home options give first-time buyers an opportunity to build equity through homeownership when a single-family home is out of reach.¹¹⁴ Homeownership is linked to significant wealth increases compared to renting on an individual level, and research finds that parental homeownership has a significant and positive effect on homeownership among younger generations.¹¹⁵ Upzoning may provide today’s young, first-time buyers with a better

108. Daniel Parolek & Karen Parolek, *The Missing Middle Housing Affordability Solution (With Case Studies)*, in MISSING MIDDLE HOUSING: THINKING BIG AND BUILDING SMALL TO RESPOND TO TODAY’S HOUSING CRISIS 51, 53 (2020).

109. Daniel Parolek, *Case Studies*, in MISSING MIDDLE HOUSING: THINKING BIG AND BUILDING SMALL TO RESPOND TO TODAY’S HOUSING CRISIS 177, 182 (2020).

110. “Missing Middle” Housing in the Region, PUGET SOUND REG’L COUNCIL (Nov. 7, 2018), <https://www.psrc.org/media/4938> [<https://perma.cc/YE6A-YCWR>].

111. Sarah J. Adams-Schoen & Edward J. Sullivan, *Middle Housing by Right: Lessons from an Early Adopter*, 37 J. LAND USE & ENV’T L. 189, 239 (2022).

112. *Id.* at 239–40 (“[M]any urban planners and economists have found that single-family detached zoning has driven up the cost of sales and rental housing in U.S. cities. Studies have found that even the production of high-end housing can put downward pressure on nearby sales costs and rents across all price points.”).

113. *State Preemption*, *supra* note 102, at 1600 (explaining that increasing supply “tends to decrease the price of surrounding properties, albeit not by a large amount”).

114. Daniel Parolek, *Understanding Barriers to Missing Middle Housing*, in MISSING MIDDLE HOUSING: THINKING BIG AND BUILDING SMALL TO RESPOND TO TODAY’S HOUSING CRISIS 71, 86–87 (2020).

115. Caitlin Young, Amalie Zinn & Jung Hyun Choi, *Rethinking Homeownership as “the American Dream,”* URB. INST.: URB. WIRE (June 26, 2023), <https://urban.org/urban-wire/rethinking-homeownership-american-dream/> [<https://perma.cc/4AKX-RTJW>].

chance at building equity and passing on generational wealth in markets that were previously unattainable. This prospect of increased economic mobility also suggests that relaxing zoning laws could increase U.S. gross domestic product over time because people can move to places where they can be more productive.¹¹⁶

Upzoning also offers community lifestyle and environmental benefits. Middle housing is a core component of walkable communities,¹¹⁷ which are especially in demand by younger generations who prioritize proximity to shops, cafes, and parks, and shorter commutes than detached homes provide.¹¹⁸ Increased housing density provides residents with choices of transportation—such as by foot, bicycle, or public transit—which drastically reduces gasoline consumption.¹¹⁹ Moving from a suburb to an urban area may reduce one's annual gasoline consumption by 300 gallons.¹²⁰ Middle housing styles are also generally more energy-efficient than single-family housing because shared walls boost heating and cooling efficiency.¹²¹

Moreover, living in the temperate West Coast climate reduces energy use.¹²² Increased migration from the West Coast to less affluent cities in the Sun Belt, Mountain West, and Southeast regions in pursuit of affordable housing results in significantly increased energy consumption.¹²³ Three of the top five fastest-growing major cities are in the Sun Belt, and each also ranks among the top five energy-consuming cities, given the increased need for air conditioning and heating from hot summers and relatively cool winters.¹²⁴ Upzoning on the West Coast is

116. Ilya Somin, *Beyond NIMBY vs. YIMBY—How Current Homeowners Can Benefit from Zoning Deregulation*, REASON: VOLOKH CONSPIRACY (June 15, 2022, at 16:27 ET), <https://reason.com/volokh/2022/06/15/beyond-nimby-vs-yimby-how-current-homeowners-can-benefit-from-zoning-deregulation/> [https://perma.cc/4K5Y-YB7D].

117. Daniel Parolek, *What is Missing Middle Housing and Why Is it Important?*, in MISSING MIDDLE HOUSING: THINKING BIG AND BUILDING SMALL TO RESPOND TO TODAY'S HOUSING CRISIS 7, 14–15 (2020).

118. Melissa Dittmann Tracey, *Survey: Buyers May Pay More to Live in Walkable Communities*, NAT'L ASS'N OF REALTORS: REALTOR MAG. (June 27, 2023), <https://www.nar.realtor/magazine/real-estate-news/survey-buyers-may-pay-more-to-live-in-walkable-communities> [https://perma.cc/QA4W-6LN2].

119. GRAY, *supra* note 18, at 100.

120. *Id.* (explaining that a typical Vermont resident consumes six times as much gasoline per year as the typical Manhattan resident).

121. Zeebuyth & Moore, *supra* note 28, at 73.

122. GRAY, *supra* note 19, at 103–04 (“[B]ecause California’s famously temperate climate minimizes the need for energy-intensive climate control . . . every single one of California’s major cities—Los Angeles, San Diego, San Francisco, San Jose, and Sacramento—finds itself among the fifteen most energy-efficient cities in the country.”).

123. *Id.* at 104.

124. *Id.* This Note does not address the environmental costs of development itself, including reduced tree canopy and increased impervious surface on upzoned lots.

crucial to prevent this migration pattern to less green but more affordable cities.

Upzoning to permit middle housing can improve housing supply and prices, allow one to build equity and generational wealth, and promote sustainability, all while accommodating existing urban infrastructure.¹²⁵ The recent middle housing legislation in Oregon, California, and Washington implements distinct strategies to enable middle housing and allow these benefits to unfold.

II. ZONING REFORM ON THE WEST COAST

A. Oregon

Oregon was the first state to recognize the need for zoning reform, passing a landmark middle housing law, House Bill 2001 (“HB 2001”), in 2019.¹²⁶ Oregon has a uniquely favorable precedent for state regulation of local zoning, tracing back to a 1973 anti-sprawl law, Senate Bill 100 (“SB 100”), that paved the way for this middle housing law.¹²⁷ SB 100 allowed the state to subordinate local land regulation to broader statewide land use goals.¹²⁸ A new state commission, the Land Conservation and Development Commission (“LCDC”), was created and assigned responsibility for adopting and overseeing local implementation of these goals.¹²⁹ One of the goals adopted by the LCDC was “Goal 10,” entitled “Housing,” with the purpose of “provid[ing] for the housing needs of citizens of the state.”¹³⁰ Goal 10 requires that “[b]uildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type

Reconciling these lot-level impacts with the benefits of increased housing density merits its own analysis.

125. See Zeebuyth & Moore, *supra* note 28, at 75 (explaining it is typically easier for existing urban infrastructure to accommodate new middle housing than new multi-story apartment buildings).

126. See H.B. 2001, 80th Legis. Assemb., 2019 Reg. Sess. (Or. 2019) (codified at OR. REV. STAT. § 197.312(1) (2019), current version at OR. REV. STAT. § 197A.395(1) (2025)); Adams-Schoen & Sullivan, *supra* note 111, at 195–96.

127. See Michael Andersen, *Eight Ingredients for a State-Level Zoning Reform*, SIGHTLINE INST. (Aug. 13, 2021), <https://www.sightline.org/2021/08/13/eight-ingredients-for-a-state-level-zoning-reform/> [<https://perma.cc/K224-PMHE>].

128. Robert Liberty, *Exclusionary Zoning Reform: How Oregon Translated Policy into Reality*, 57 WILLAMETTE L. REV. 171, 180 (2021).

129. *Id.* at 180–81.

130. See *id.* at 174; OR. ADMIN. R. 660-015-0000(10) (1974).

and density.”¹³¹ Goal 10 has been supplemented by complementary statutes, including, *inter alia*, provisions prohibiting local governments from using home-rule charters to exclude multi-family housing from residential zones.¹³²

This established hierarchy allowed HB 2001 to pass both the House and Senate with bipartisan support.¹³³ HB 2001’s purpose was to reduce barriers to developing middle housing, including duplexes, triplexes, quadplexes, cottage clusters, and townhouses.¹³⁴ The bill used localities’ population sizes as the key factor for the development rules. The law, as amended since its passage,¹³⁵ requires that medium cities with populations greater than 2,500, but less than 25,000, allow the development of duplexes on all lots zoned for residential use that permit detached single-family dwellings.¹³⁶ Medium-sized cities’ local governments may allow middle housing types beyond duplexes.¹³⁷ Large cities with populations of 25,000 or more, and each county or city within a metropolitan service district, are similarly required to permit duplexes on all lots zoned for residential use, thereby allowing for the development of detached single-family dwellings.¹³⁸ Cities of this size must also allow the development of *all* middle housing types enumerated in the law in the same areas, including duplexes.¹³⁹ Between these requirements, at the time of its passage, the law upzoned municipalities comprising 68% of the state’s population to permit middle housing development.¹⁴⁰

Local governments in Oregon were required to revise their comprehensive plans in accordance with these requirements—by June

131. OR. ADMIN. R. 660-015-0000(10) (1974).

132. Liberty, *supra* note 128, at 183; OR. REV. STAT. § 197.312(1) (2025).

133. See Halley Potter, *A Bipartisan Vision for the Benefits of Middle Housing: The Case of Oregon*, CENTURY FOUND. (Dec. 21, 2023), <https://tcf.org/content/report/a-bipartisan-vision-for-the-benefits-of-middle-housing-the-case-of-oregon/> [<https://perma.cc/TW35-TNMM>].

134. H.B. 2001, 80th Leg. Assemb., 2019 Reg. Sess. § 2(1) (Or. 2019) (“‘Cottage clusters’ means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard. . . . ‘Townhouses’ means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.”).

135. See OR. REV. STAT. § 197A.420 (2025).

136. *Id.* § (3).

137. *Id.* § (7)(b).

138. *Id.* § (4)(a).

139. *Id.* § (2).

140. Potter, *supra* note 133; see also *Cities and Counties Affected by HB 2001*, OREGON.GOV (Feb. 2021), https://www.oregon.gov/lcd/UP/Documents/HB2001_Map.pdf [<https://perma.cc/ZMG6-Z4C5>] (displaying a map of counties and cities impacted by HB 2001).

30, 2021, for large cities and by June 30, 2022, for medium cities—following the LCDC’s model middle housing ordinance adopted by the end of 2020.¹⁴¹ HB 2001 took a flexible approach, granting local governments leeway for how they want to regulate the siting and design of middle housing required under the law, so long as the regulations did not discourage the development of all middle housing types permitted in the area through unreasonable costs or delay.¹⁴²

B. California

California became the second state to enact a middle housing law when Governor Newsom signed Senate Bill 9 (“SB 9”) in 2021, with the law going into effect in 2022.¹⁴³ This bill is known as the California Housing Opportunity and More Efficiency (“HOME”) Act, part of the Senate Housing Package of bills, “Building Opportunities for All,” developed through a multi-year effort to address the state’s housing crisis.¹⁴⁴

California has a history of restricting housing development. In response to the growing housing shortage in the late twentieth century, California passed statutes, such as the Housing Element Law and the Housing Accountability Act, which failed to address this concern and instead turned the housing system into “an energy- and money-guzzling bureaucratic maze.”¹⁴⁵ A 2015 report by the Legislative Analyst’s Office further identified local cities as the government body with the most control over development.¹⁴⁶

Following the 2015 report, the state legislature took proactive measures to limit local control over housing development, including SB 9.¹⁴⁷ This bill states that “ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is

141. H.B. 2001, 80th Legis. Assemb., 2019 Reg. Sess. § 3(1)–(2) (Or. 2019) (codified at OR. REV. STAT. § 197.758 (2019), current version at OR. REV. STAT. § 197.420A (2025)). The bill further required local governments to consider ways to increase the affordability of middle housing by considering additional ordinances and policies when amending their comprehensive plans. *Id.* § 3(4).

142. *Id.* § 2(5).

143. See SB 9, CAL. YIMBY, <https://cayimby.org/legislation/sb-9/> [<https://perma.cc/RF37-GJQK>] (last visited Oct. 29, 2025).

144. *The California HOME Act*, CAL. SEN.: FOCUS, <https://web.archive.org/web/20241202112353/https://focus.senate.ca.gov/sb9> [<https://perma.cc/C8H7-F8B3>] (last visited Oct. 29, 2025).

145. Stefan Ecklund, Note, *Too Close to Home?: The Constitutionality of California’s S.B. 9*, 56 LOY. L.A. L. REV. 981, 984 (2023).

146. *Id.* at 985.

147. *Id.*

used in . . . the California Constitution.”¹⁴⁸ This section further provides that the Act’s sections “apply to all cities, including charter cities.”¹⁴⁹ The bill provides prescriptive requirements for developments that, if met, are subject to a ministerial review process.¹⁵⁰

As of 2025, California law provides that local agencies “shall ministerially approve,” without discretionary review, a parcel for an urban lot split into two new parcels of approximately equal lot areas when the parcel is located within a single-family residential zone in an urbanized area or cluster, as designated by the United States Census Bureau.¹⁵¹ Further, proposals for a housing development containing two residential units within the same location parameters shall be considered ministerially, without discretionary review or a hearing, so long as all requirements are met.¹⁵² In effect, SB 9 upzoned urban lots previously zoned single-family to permit the development of up to four units by dividing a parcel into two and developing duplexes or two single-family units on each parcel.¹⁵³ The law subjects development to an owner occupancy requirement, requiring that the site has not been occupied by a tenant in the last three years.¹⁵⁴ This requirement functions as an anti-displacement measure for tenants, while also reducing the market power held by institutional investors.¹⁵⁵ Detailed location carveouts are also enumerated in the law. As enacted, SB 9 excluded homes in historic districts, landmarks, and environmentally sensitive areas.¹⁵⁶

Local agencies in California are allowed to impose objective zoning, subdivision, and design review standards, so long as they do not physically preclude the construction of two units on either resulting

148. S.B. 9, 2021 Leg., Reg. Sess. § 4 (Cal. 2021), 2021 Cal. Stat. 4137.

149. *Id.*

150. See 2021 Cal. Stat. 4130. The ministerial review process established by this bill exempts projects approval from the California Environmental Quality Act (“CEQA”) requiring an environmental impact report before approval. *Id.*

151. CAL. GOV’T CODE § 66411.7(a) (West 2025).

152. *Id.* § 65852.21(a).

153. Andrew Khouri & Ari Plachta, ‘Upzoning’ in my Backyard? California Bill Won’t Turbocharge Home Building, Study Says, L.A. TIMES (July 21, 2021, at 16:05 PT), <https://www.latimes.com/business/story/2021-07-21/sb9-housing-bill-uc-berkeley-impact-study-projects-modest-home-building> [<https://perma.cc/S39R-FELX>].

154. CAL. GOV’T CODE §§ 65852.21(a)(3)(C), 66411.7(a)(3)(D)(iv) (West 2025).

155. *The California HOME Act*, *supra* note 144.

156. *Support SB 9 (Atkins)*, CAL. YIMBY, <https://cayimby.org/wp-content/uploads/2021/05/SB-9-One-Page-Fact-Sheet-53.pdf> [<https://perma.cc/6W8C-GDCJ>] (last visited Nov. 1, 2025). In October 2025, the Legislature passed Assembly Bill 1061 to broaden SB 9’s application to historic districts. Now, a property must be a *contributing structure* within a historic district—rather than merely within a historic district—to meet the historic district exclusion. Assemb. B. 1061, 2025 Leg., Reg. Sess. § 1 (Cal. 2025) (amending CAL. GOV’T CODE § 65852.21 (West 2025)).

parcel or result in a unit size of less than 800 square feet.¹⁵⁷ Further, local agencies may require setbacks of up to four feet from the side and rear lot lines¹⁵⁸ and one off-street parking space unless the parcel is located within a one-half mile walking distance from a high-quality transit corridor or major transit stop.¹⁵⁹ The SB 9 approach decreases local bureaucratic hoops that hinder housing development through the objective, ministerial approval process imposed, as well as by setting heightened criteria that localities must follow as they update their zoning standards in accordance with the law.

C. Washington

Washington completed the three West Coast states' middle housing legislative efforts in 2023 when House Bill 1110 ("HB 1110") passed and took effect.¹⁶⁰ This bill updated the Growth Management Act ("GMA"),¹⁶¹ enacted in 1990, requiring fast-growing cities to adopt comprehensive plans to manage their quickly growing populations.¹⁶² The GMA establishes various goals, such as reducing sprawl, encouraging efficient transportation, providing affordable housing, and managing property rights, that act as a guide for all cities' comprehensive plans.¹⁶³

HB 1110's purpose is to increase the amount of middle housing development in an effort to provide housing options for people of various income levels.¹⁶⁴ The bill supports the state's goal of providing one million new homes by 2044 in response to the limited housing options and current inability to meet affordability objectives for future residents.¹⁶⁵ The bill adopted a population and transit-oriented approach to upzoning.

HB 1110 provides that cities with populations of 75,000 or more must allow the development of at least four units per lot, and at least six units per lot within a quarter-mile walking distance of a major transit stop, or if two units are affordable, on all lots zoned predominantly for residential

157. CAL. GOV'T CODE § 65852.21(b)(2)(A) (West 2025); Ecklund, *supra* note 145, at 1008.

158. CAL. GOV'T CODE § 65852.21(b)(2)(B)(ii), 66411.7(c)(3)(B) (West 2025).

159. *Id.* §§ 65852.21(c)(1)(A), 66411.7(e)(3).

160. *Middle Housing*, MUN. RSCH. & SERVS. CTR. (Dec. 18, 2025) [hereinafter *Middle Housing*], <https://mrsc.org/explore-topics/housing-homelessness/housing/middle-housing> [https://perma.cc/KQ7F-LETP].

161. *Id.*

162. WASH. REV. CODE § 36.70A.040 (2025); *Growth Management Act Basics*, MUN. RSCH. & SERVS. CTR. (Oct. 13, 2025) [hereinafter *Growth Management Act Basics*], <https://mrsc.org/explore-topics/planning/gma/growth-management-act-basics> [https://perma.cc/9K7W-9A63].

163. WASH. REV. CODE § 36.70A.020 (2025); *Growth Management Act Basics*, *supra* note 162.

164. H.B. 1110, 68th Leg., 2023 Reg. Sess. § 1 (Wash. 2023).

165. *Id.*

use.¹⁶⁶ Cities with fewer than 75,000 but at least 25,000 people must allow the development of at least two units per lot, and at least four units per lot within a quarter-mile walking distance of a major transit stop, or if one unit is affordable, on all lots zoned predominantly for residential use.¹⁶⁷ Finally, cities with populations “of less than 25,000 . . . within a contiguous urban growth area with the largest city in a county with a population of more than 275,000” must allow “the development of at least two units per lot on all lots zoned predominantly for residential use.”¹⁶⁸

As of 2025, cities must update their comprehensive plans to comply with the law either at the time of their next periodic comprehensive plan update, or one year after their next implementation progress report if they reach a new population threshold under the law, whichever is later.¹⁶⁹ HB 1110 affords some local flexibility to siting and design,¹⁷⁰ and cities may apply objective development regulations, including retaining tree canopy and retention requirements to ensure compliance with existing ordinances.¹⁷¹ However, there are more prescriptive requirements given the additional parking mandates, requiring that cities cannot require off-street parking on lots within a half mile of a major transit stop and can only allow one parking space maximum for lots smaller than 6,000 square feet and two parking spaces maximum for lots greater than 6,000 square feet.¹⁷² The Department of Commerce provided guidance to cities as they updated their comprehensive plans through the Department’s model middle housing ordinance.¹⁷³

III. LEGAL CHALLENGES

The West Coast’s recent legalization of middle housing development in many areas that were formerly zoned only for single-family housing

166. *Id.* § 3(1)(b) (codified at WASH. CODE. REV. § 36.70A.635(1)(b) (2023)); *see also* WASH. CODE. REV. § 36.70A.030(5), (27) (2025) (defining “affordable housing” and “major transit stop”).

167. WASH. CODE. REV. § 36.70A.635(1)(a) (2025).

168. WASH. CODE. REV. § 36.70A.635(1)(c) (2025); *see also id.* § 36.70A.030(49) (defining “urban growth areas” as those designated by a county pursuant to section 36.70A.110).

169. *Id.* § 36.70A.635(11); *see also id.* § 36.70A.635(12) (explaining cities may be granted extensions under limited exceptions).

170. Dan Bertolet, *Washington’s 2023 Middle Housing Bill, Explained*, SIGHTLINE INST. (Jan. 3, 2023), <https://sightline.org/2023/01/03/washingtons-2023-middle-housing-bill-explained/> [<https://perma.cc/A73A-ANWZ>].

171. WASH. CODE. REV. § 36.70A.635(6)(b) (2025).

172. *Id.* § 36.70A.635(6)(d)–(f).

173. *See* GROWTH MGMT. SERVS., WASH. DEP’T OF COM., USER GUIDE FOR MIDDLE HOUSING ORDINANCES 4 (2024), <https://deptofcommerce.app.box.com/s/dip01jnz8i0o2eeuy9v8n39kcm1uc4mk> [<https://perma.cc/4TCE-SGUD>].

represents a shift towards upzoning to alleviate the region's housing crisis. However, these laws have been controversial and will achieve their purpose only if they survive legal challenges.

A. *The Home Rule Doctrine*

State authority often preempts local land use decisions where legislation serves a matter that concerns the state as a whole, such as regional land use planning, the environment, or affordability.¹⁷⁴ Jurisdictions that apply the home rule doctrine, however, permit cities to incorporate under a charter that gives them immunity from such state preemption of local regulation.¹⁷⁵ State middle housing legislation may run into trouble under this doctrine, as these middle housing laws apply to charter cities.¹⁷⁶

In some states, cities can adopt their own charter, which gives them quasi-state-like authority to pass laws without an express delegation of authority from the state and to avoid preemption of such local laws.¹⁷⁷ This authority is granted in a state's constitution.¹⁷⁸ This so-called home-rule creates two types of cities in states that recognize it: charter cities and general law cities.¹⁷⁹ Charter cities have ultimate authority over "municipal affairs," whereas general law cities—those without such a charter—are governed by the state's general laws.¹⁸⁰ California, Oregon, and Washington are all home rule states with charter cities.¹⁸¹ California has the most of any state: 126 of the state's 482 cities are charter cities, containing 58% of the state's population.¹⁸²

Considering this ingrained history of charter cities, it is unsurprising that California's SB 9 already faced a home-rule challenge in 2024. In

174. Kenneth Stahl, *Home Rule and State Preemption of Local Land Use Control*, 50 URB. LAW. 179, 183 (2020).

175. *Id.* at 185.

176. *Id.* at 183.

177. *Id.* at 185.

178. *Id.*

179. See *Charter Cities: A Quick Summary for the Press and Researchers*, CAL. CITY FIN., <https://www.californiacityfinance.com/CharterCitiesandGeneralLaw.pdf> [<https://perma.cc/9XZA-SLVP>] (last visited Oct. 29, 2025).

180. *Id.*

181. NESTOR DAVIDSON ET AL., NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY, at 11 n.14 (2020), <https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf> [<https://perma.cc/4CNJ-ACXY>].

182. Kota Suzuki, *'Charter' Cities Are Gaining Popularity in California, but Voters Are Worried About New Taxes*, S.F. CHRON. (Nov. 20, 2024), <https://www.sfchronicle.com/california/article/charter-city-tax-voters-19907027.php> [<https://perma.cc/Z6WN-53SA>].

March 2022, five charter cities sought to invalidate SB 9, alleging that “SB 9 violates the California Constitution because it is neither reasonably related to its stated concern of ensuring access to affordable housing nor narrowly tailored to avoid interference with local government.”¹⁸³ California’s home-rule provides that “the power of a charter city to govern its municipal affairs must give way when the state enacts a statute that is ‘reasonably tailored to the resolution of a subject of statewide concern.’”¹⁸⁴ The court found that the legislature unambiguously stated that SB 9’s purpose was “ensuring access to affordable housing.”¹⁸⁵ Though affordable housing is a valid statewide concern,¹⁸⁶ the court’s decision hinged on whether permitting middle housing was narrowly tailored and reasonably related to SB 9’s “affordable” purpose.¹⁸⁷

The court ultimately ruled that SB 9 was unconstitutional as applied to the five petitioner charter cities because the law was neither reasonably related to nor narrowly tailored to the purpose of affordable housing, since there was no evidence presented that the upzoning that the law permits would result in any increase in the supply of below-market-rate housing.¹⁸⁸ The Governor responded to the court’s ruling by signing Senate Bill 450 (“SB 450”) into law in September 2024.¹⁸⁹ SB 450 expands SB 9’s purpose to include addressing the shortage of housing supply, not just affordable housing.¹⁹⁰ The Attorney General appealed the trial court’s decision, which remained pending at the time SB 450 was enacted.¹⁹¹ In November 2025, the court of appeals reversed the trial court’s judgment in favor of the charter cities and remanded the matter because SB 450’s amended language created an intervening change in law that the trial court must consider when evaluating SB 9’s constitutionality.¹⁹² If the trial court’s holding is not reversed, SB 9 would

183. *City of Redondo Beach v. Bonta*, No. 22STCP01143, 2024 WL 1860434, at *1–2 (Cal. Super. Ct. Los Angeles Cnty. Apr. 22, 2024).

184. *Id.* at *3 (quoting *Cal. Fed. Savings & Loan Ass’n. v. City of Los Angeles*, 812 P.2d 916, 918 (Cal. 1991) (en banc)).

185. *Id.* at *5.

186. *Id.* at *4.

187. *Id.* at *6–8 (defining “affordable” to mean below market-rate housing).

188. *Id.* at *1, *7–8.

189. *See* S.B. 450, 2024 Leg., Reg. Sess. (Cal. 2024).

190. *See id.* § 4; *SB 450—Strengthening SB 9*, CAL. YIMBY, <https://cayimby.org/legislation/sb-450/> [<https://perma.cc/QF5B-9TDN>] (last visited Oct. 28, 2025).

191. *City of Redondo Beach v. Bonta*, No. B338990, 2025 WL 3158685, at *3 (Cal. Ct. App. Nov. 12, 2025).

192. *Id.* at *4.

be unconstitutional in all California charter cities, including Los Angeles and San Diego.¹⁹³

This case against SB 9 likely would have been avoidable in the first place if the law originally had a more carefully worded purpose, such as one focused on increasing housing supply or reducing barriers to development, instead of using the word “affordable.” Oregon and Washington’s middle housing laws have not yet faced home rule challenges. Favorable precedent of state law preempting municipal zoning decisions and the more narrowly defined purposes of these laws could potentially insulate them from home rule challenges and serve as a lesson to other states drafting middle housing legislation.¹⁹⁴

Oregon’s home rule grants cities the right to enact their own charter, subject to the state’s constitution and criminal laws.¹⁹⁵ Additionally, initiative and referendum powers are “reserved to the qualified voters of each municipality as to all local, special, and municipal legislation.”¹⁹⁶ All of Oregon’s cities operate under a charter.¹⁹⁷ Despite this apparent power that Oregon’s home rule would offer to cities, the state retains express authority to preempt local laws that relate to matters of statewide concern.¹⁹⁸ Implementing and enforcing land use regulations and comprehensive plans are predetermined matters of statewide concern by statute.¹⁹⁹ Because HB 2001 updates state land use objectives by upzoning single-family areas, any home rule challenge is likely expressly preempted.²⁰⁰

Washington’s home rule provides that cities may self-govern under a charter,²⁰¹ enforcing “local police, sanitary, and other regulations” so long as they “are not in conflict with general laws.”²⁰² A local law is

193. Liam Dillon, *Law that Ended Single-Family Zoning is Struck Down for Five Southern California Cities*, L.A. TIMES (Apr. 29, 2024, at 03:00 PT), <https://www.latimes.com/homeless-housing/story/2024-04-29/law-that-ended-single-family-zoning-is-struck-down-for-five-southern-california-cities> (on file with the Rutgers University Law Review).

194. See *supra* notes 126–34, 160–65 and accompanying text.

195. OR. CONST. art. XI, § 2.

196. OR. CONST. art. IV, § 1, cl. 5.

197. *Home Rule 101*, LEAGUE OF OR. CITIES, <https://www.orcities.org/application/files/4617/1700/1308/Home-Rule-101-updated-8-18-23.pdf> [<https://perma.cc/A35T-PJTL>] (last visited Nov. 8, 2025).

198. Adams-Schoen & Sullivan, *supra* note 111, at 246–47.

199. OR. REV. STAT. § 197.013 (2025).

200. See Adams-Schoen & Sullivan, *supra* note 111, at 246–47.

201. WASH. CONST. art. XI, § 4; see also *id.* § 10 (providing the procedure for municipal incorporation).

202. WASH. CONST. art. XI, § 11; see also Hugh D. Spitzer, “Home Rule” vs. “Dillon’s Rule” for Washington Cities, 38 SEATTLE U. L. REV. 809, 810 n.5 (2015) (explaining Washington’s home rule constitutional provisions in further detail).

subordinate to state law where the legislature has indicated an intent to preempt the field or where there is a direct conflict.²⁰³ To determine whether a local law conflicts with a general law, courts look to whether the local law “forbids what a state law permits”²⁰⁴ or whether the local law “may not be harmonized”²⁰⁵ with state law.²⁰⁶ In the event of a conflict, state law will prevail.²⁰⁷ Here, HB 1110 functions as an update to the GMA such that any city required to plan under the GMA would then lack home rule authority due to this legislative preemption.²⁰⁸ Even if a city were to attempt to bring a challenge or implement an ordinance that fails to sufficiently upzone with the standards set forth in HB 1110, the state law would likely triumph under Washington’s home rule doctrine.

These three states’ home rule precedents and middle housing laws illustrate the importance of tailoring any form of state-level zoning reform to a state’s home rule precedent. States with stricter home rule doctrines requiring heightened scrutiny, or those lacking any express preemptions, must ensure the scope of any proposed middle housing bill is carefully tailored to the stated purpose. States with favorable precedent preempting localities’ zoning laws will face fewer hurdles in their upzoning efforts to permit middle housing development.

B. The Takings and Contracts Clauses

A subtle variation between each state’s approach is worth noting: whether the law addresses existing homeowner association (“HOA”) covenants limiting communities to single-family homes. Covenants exist independently of local land-use laws and likewise have the power to restrict certain developments, including middle housing.²⁰⁹ HOAs vastly outnumber local governments, and covenants are typically far more

203. *State v. Kirwin*, 203 P.3d 1044, 1047 (Wash. 2009) (en banc); see also ASS’N OF WASH. CITIES, YOU HAVE IT, USE IT: HOME RULE IN WASHINGTON 10 (2021), <https://wacities.org/docs/default-source/resources/sochomerulereport2021.pdf> [<https://perma.cc/U9MC-WNBG>] (providing a detailed report addressed to Washington municipalities about how to use their home rule powers).

204. *Kirwin*, 203 P.3d at 1047.

205. *Lawson v. City of Pasco*, 230 P.3d 1038, 1040 (Wash. 2010) (en banc).

206. ASS’N OF WASH. CITIES, *supra* note 203, at 10.

207. *Chem. Bank v. Wash. Pub. Power Supply Sys.*, 666 P.2d 329, 340 (Wash. 1983) (en banc).

208. See *Middle Housing*, *supra* note 160; *Growth Management Act Basics*, *supra* note 162.

209. Brian J. Connolly, *The Black Box of Single-Family Zoning Reform*, 65 B.C. L. REV. 2327, 2379 (2024).

restrictive than local land use regulations.²¹⁰ Washington and California have some of the highest population rates living in HOAs, 31.7% and 36.7% respectively, while Oregon is on the low end at 13.8%.²¹¹ Existing, and potentially future, covenants may thwart middle housing bills' efficacy, but some states are proactively addressing this issue.

Oregon and Washington cautiously addressed covenants in their zoning reform efforts, providing that the laws do not apply retroactively to existing covenants, but covenants enacted after the legislation may not prohibit development of middle housing styles that the new laws permit.²¹² California's law, on the other hand, remains silent on how it applies to covenants.²¹³ This silence poses legal ambiguity as to whether the law applies retroactively to invalidate existing covenants that prohibit the development allowed under SB 9 and whether HOAs remain free to pass new bylaws to prevent this type of development moving forward.²¹⁴ In practice, some localities in California have jumped at this chance to preserve their neighborhoods' character, with some cities urging HOAs to "act quickly" to prohibit lot splitting and duplexes permitted under the law.²¹⁵ This practice may exacerbate wealth divides already seen under Washington's law, where the preservation of existing covenants means that some of the wealthiest neighborhoods in and around Seattle retain single-family zoning, while surrounding areas upzone.²¹⁶

210. Ken Stahl, *The Power of State Legislatures to Invalidate Private Deed Restrictions: Is It an Unconstitutional Taking?*, 50 PEPP. L. REV. 579, 582 (2023).

211. Tony Mariotti, *HOA Stats: Average HOA Fees & Number of HOAs by State*, RUBYHOME (Nov. 25, 2025, at 09:15 ET), <https://www.rubyhome.com/blog/hoa-stats/> [<https://perma.cc/R4E3-NXHL>].

212. Gerald Korngold, *Repealing Single-Family Zoning Is Not Enough: A Proposal for Removing Existing Parallel Private Covenants for Violating Public Policy*, 89 MO. L. REV. 1, 40 (2024) (citing OR. REV. STAT. § 94.776 (2022); WASH. REV. CODE §§ 64.38.150, 64.38.160, 64.90.340, 64.90.35 (2023)).

213. JAKE WEGMANN ET AL., UC BERKELEY CTR. FOR CMTY. INNOVATION, MISSING NO LONGER? TAKING STOCK OF LOCAL AND STATEWIDE MIDDLE HOUSING REFORMS IN CALIFORNIA 24 (2024), <https://www.aducalifornia.org/wp-content/uploads/2024/12/Missing-No-Longer.pdf> [<https://perma.cc/395S-6R89>].

214. *Id.*

215. *Id.* at 24–25 (“[A]n association’s [covenants, conditions, and restrictions] may operate as a last line of defense against lot-splitting and construction of additional dwelling units Association managers and boards of directors should act quickly to ensure the proper prohibitions and restrictions are in place.”).

216. David Gutman & Daniel Beekman, *WA’s New Ban on Single-Family Zoning Exempts Some of Seattle’s Wealthiest Neighborhoods*, SEATTLE TIMES (Apr. 23, 2023, at 06:00 PT), <https://www.seattletimes.com/seattle-news/politics/was-new-ban-on-single-family-zoning-exempts-some-of-seattles-wealthiest-neighborhoods> [<https://perma.cc/E7QH-P8Y7>].

Washington and Oregon's carveouts for existing covenants were likely a method to mitigate the risk of state liability under the U.S. Constitution's Takings Clause and potentially the Contract Clause.²¹⁷ There is an argument that these states should go further, having the new legislation void the enforceability of single-family covenants altogether.²¹⁸ To do so through constitutional challenges, however, is largely ill-advised given the current murky state of takings law.²¹⁹ A better approach—though not without risks—is to attempt to render existing covenants unenforceable under the long-standing doctrine that covenants can be invalidated when they conflict with important public policies.²²⁰

IV. OUTCOMES, LESSONS, AND HOW TO MOVE FORWARD

A. *Outcomes*

Meaningful change to housing production is not an overnight process; rather, U.S. housing supply changes very slowly.²²¹ Upzoning is a long-term solution to boost housing supply *over time*.²²² These three middle housing laws are, in essence, enabling laws limiting barriers to development.²²³ The effects will be gradual, as “[o]nly a small percentage of lots turn[] over each year,” construction moves slowly, and builders need time to gain experience with new housing laws to take full advantage of them.²²⁴

Bend, Oregon, became one of the first cities in its state to comply with HB 2001 in fall 2021.²²⁵ By January 2022, Bend reported 650 new housing units under construction, up from sixty-two homes built in the previous six months.²²⁶ Portland passed the Residential Infill Project

217. Korngold, *supra* note 212, at 24 n.117, 40–47; *see also* Stahl, *supra* note 210, at 586 (explaining that if a state legislative override of covenants interferes with a homeowner's right “to enforce their private property rights through the HOA, the state could be liable under the Constitution's Takings Clause, which prohibits the state from taking private property without compensation, or potentially the Contract Clause, which prohibits the government from impairing the obligation of contracts”).

218. Korngold, *supra* note 212, at 47.

219. *Id.* at 58; *see also* Stahl, *supra* note 210, at 611 (claiming takings law is a “conceptual muddle”).

220. Korngold, *supra* note 212, at 58; *see* Stahl, *supra* note 210, at 627–28.

221. Connolly, *supra* note 209, at 2388.

222. *See* Khouri & Plachta, *supra* note 153.

223. *See* Potter, *supra* note 133.

224. *Id.*

225. *Id.*

226. *Id.*

(“RIP”) to meet the new requirements.²²⁷ In the first year after RIP’s implementation, 271 middle housing units were permitted in formerly single-dwelling zones.²²⁸ This comprised 73% of the new units permitted in these zones, dominating the number of single-dwelling permits issued.²²⁹ Fourplex units further comprised 76% of the middle housing permits issued.²³⁰ Newer homes meeting the RIP adopted standards sold for an average of \$117,000 less than larger detached single-family homes built in the four years before RIP took effect.²³¹ A 2025 progress report on RIP reflected that middle housing has become the most common housing type being built in formerly single-dwelling zones, and market-rate middle housing units sold for an average of \$250,000 to \$300,000 less than market-rate detached houses in 2023 to 2024.²³² HB 2001’s flexible design standards enabled Portland to take an incremental approach, focusing on the floor area ratio (“FAR”) requirements for new structures and additions.²³³ FAR for new structures increases depending on the number of units being built, and accordingly is smallest for single-family units.²³⁴ While RIP has not yet produced ground-breaking numbers, they reflect a trend in the right direction.

227. See Christian Britschgi, *Portland Legalized ‘Missing Middle’ Housing. Now It’s Trying to Make It Easy to Build.*, REASON (June 13, 2022, at 07:00 ET), <https://reason.com/2022/06/13/portland-legalized-missing-middle-housing-now-its-trying-to-make-it-easy-to-build/> [<https://perma.cc/SVM5-3PYH>].

228. *New Study Shows Promising Housing Production Results from the Residential Infill Project (RIP)*, CITY OF PORTLAND (July 5, 2023, at 13:00 ET), <https://www.portland.gov/bps/planning/rip/news/2023/7/5/new-study-shows-promising-housing-production-results-residential> [<https://perma.cc/BN49-NENR>].

229. *Id.*

230. *Id.*

231. See *id.* Notably, almost 100% of middle housing units had at least two bedrooms, and 24% of units had at least three bedrooms, which offers choices for growing families. *Id.*

232. *Portland Sees Significant Production in Middle Housing Resulting from Recently Adopted Zoning Changes*, CITY OF PORTLAND (Feb. 4, 2025, at 10:00 ET), <https://www.portland.gov/bps/planning/rip2/news/2025/2/4/portland-sees-significant-production-middle-housing-resulting> [<https://perma.cc/23WA-LGFW>].

233. See *Residential Infill Options - How Does Floor Area Ratio (FAR) Affect Your Project?*, CITY OF PORTLAND, <https://www.portland.gov/ppd/zoning-land-use/residential-infill/residential-floor-area-ratio> [<https://perma.cc/33RF-YRGH>] (last visited Nov. 1, 2025).

234. *Id.* FAR is the relationship between lot size and the amount of permitted development on the lot. *Understanding Floor Area Ratio (FAR) in Single Dwelling Zones*, CITY OF PORTLAND, <https://www.portland.gov/ppd/zoning-land-use/residential-infill/floor-area-ratio-far> [<https://perma.cc/22V6-3BT6>] (last visited Nov. 1, 2025). This incremental approach incentivizes more dense housing by allowing more square footage for middle housing—which appeals to developers—and disincentivizes building large, expensive single detached houses. See MELISSA WINKLER, UP FOR GROWTH, RESIDENTIAL INFILL PROJECT (PORTLAND, OREGON) 2 (2020), <https://upforgrowth.org/wp-content/uploads/2022/08/policy-brief-july-2020.pdf> [<https://perma.cc/62B5-NGQW>].

Washington's HB 1110's effects remain largely unknown, as most cities are still in the implementation phase, working to update their Comprehensive Plans in accordance with the law.²³⁵ Spokane, however, served as a trailblazer with zoning reform efforts already in motion as HB 1110 was making its way into law.²³⁶ In 2022, Spokane adopted an interim ordinance to allow for immediate middle housing development until its permanent Comprehensive Plan updates went into effect in 2023.²³⁷ Spokane took upzoning one step further than Portland, allowing "any number of units that can reasonably fit on a site" while adopting straightforward dimensional standards of lot coverage and setbacks, rather than FAR, to govern development scale.²³⁸ A record-setting number of processed permits resulted: Spokane permitted 984 multi-family units in 2023, over double the 470 similar units permitted in the previous year.²³⁹

The Seattle City Council passed its final Comprehensive Plan legislation late in 2025.²⁴⁰ Despite compliance with HB 1110, the One Seattle Plan Zoning Update ("One Seattle") presents a sharp step down

235. See Angela A. Hill, *HB 1110: The End of Single-Family Zoning in Washington?*, SUMMIT L. GRP.: SUMMIT L. BLOG (June 27, 2025), <https://www.summitlaw.com/law-blog/hb-1110-the-end-of-single-family-zoning-in-washington> [https://perma.cc/3A78-QYZ3].

236. Spokane is in eastern Washington and is the second-largest city in Washington. *Spokane County Profile*, WASH. STATE (Dec. 2025), <https://esd.wa.gov/jobs-and-training/labor-market-information/reports-and-research/labor-market-county-profiles/spokane-county-profile> [https://perma.cc/ACX6-JA57].

237. *Building Opportunity and Choices for All*, CITY OF SPOKANE, <https://my.spokanecity.org/housing/building-opportunity/> [https://perma.cc/E94M-RPF6] (last visited Oct. 29, 2025).

238. Anthony Gill, *Spokane's Permanent Middle Housing Rules Should Set a Statewide Standard*, URBANIST (Nov. 30, 2023), <https://www.theurbanist.org/2023/11/30/spokanes-permanent-middle-housing-rules-should-set-a-statewide-standard/> [https://perma.cc/K7X2-DWK4]. Some of Spokane's changes to its building code include: No longer requiring parking for new residential structures within one-half mile of a transit stop, removing lot density caps for lots less than two acres in size, reducing lot size minimums, expanding the "Unit Lot Subdivision process" to make it more flexible, implementing "footprint and impervious surface maximums," increasing building height allowances, and reducing front and rear setbacks for certain zones. *Building Opportunity for Housing*, CITY OF SPOKANE, <https://my.spokanecity.org/projects/shaping-spokane-housing/building-opportunity-for-housing/> [https://perma.cc/2ESN-QTTR] (last visited Nov. 1, 2025).

239. Steven MacDonald, *Record Number of Permits in Spokane During Past 3 Years*, CITY OF SPOKANE (Feb. 7, 2024, at 14:10 ET), <https://my.spokane.city.org/news/stories/2024/02/05/record-number-of-permits-in-spokane-during-past-3-years/> [https://perma.cc/FB7K-PN26].

240. *City Council Passes Final Comprehensive Plan Legislation*, SEATTLE CITY COUNCIL: BLOG (Dec. 16, 2025), <https://council.seattle.gov/2025/12/16/city-council-passes-final-comprehensive-plan-legislation/> [https://perma.cc/K842-PTFA].

from Spokane's approach. The development standards involve restrictive FAR densities, low lot coverage allowances, and large setback requirements.²⁴¹ One of Seattle's restrictive design standards is likely to fail to bring about the meaningful change proposed in HB 1110 because they do not allow for efficient land use or financially viable development.²⁴²

California has produced very little new housing since SB 9's enactment.²⁴³ This law was projected to enable the production of 700,000 new market-feasible homes throughout the state;²⁴⁴ however, only 266 projects were permitted or completed throughout the entire state in the first two years after the law's enactment.²⁴⁵ As of the end of 2023, the state saw 660 total applications, of which "409 were for a lot split only, 242 for a duplex only, and 9 for both a lot split and duplex."²⁴⁶ These numbers are astonishingly low. Not only is California the West Coast state facing the most pressing housing supply and affordability crisis, but new development is needed even more now after the recent devastating wildfires. In just the first month of 2025, two fires catapulted California to its second most destructive fire year in the state's history, damaging over 16,000 homes and structures in the Los Angeles area.²⁴⁷

B. Lessons Learned

Each middle housing law carries unique successes and failures to learn from. Oregon and Spokane, Washington showed the most development success. These flexible approaches serve as regulatory models for how other states and cities can design middle housing standards that enable economically and architecturally viable development. Although Washington's approach is logical in theory—a transit-oriented approach could alleviate the burden of car-dependency

241. See Seattle, Wash., Ordinance 127,375 (Dec. 16, 2025).

242. See Letter from Clifford Carl Cawthon, Advocacy & Policy Manager, Habitat for Humanity Seattle-King & Kittitas Cntys., to Bruce Harrell, Mayor, Seattle, Rico Quirindongo & Tammy Morales (May 14, 2024), <https://www.habitatskc.org/habitatskkcs-response-letter-to-the-one-seattle-draft-comprehensive-plan/> [<https://perma.cc/ZC75Z6TB>].

243. WEGMANN ET AL., *supra* note 213, at 2.

244. Muhammad Alameldin & David Garcia, *State Law, Local Interpretation: How Cities Are Implementing Senate Bill 9*, U.C. BERKELEY: TERNER CTR. FOR HOUS. INNOVATION, (June 8, 2022), <https://turnercenter.berkeley.edu/research-and-policy/state-law-local-interpretation-senate-bill-9/> [<https://perma.cc/J96N-Z78Y>].

245. WEGMANN ET AL., *supra* note 213, at 1–2.

246. *Id.* at 2 n.1.

247. Jeremia Kimelman, *The LA County Fires Devastated Homes in the Wildland Urban Interface. Here's What That is*, CALMATTERS (Jan. 28, 2025), <https://calmatters.org/environment/wildfires/2025/01/la-county-fires-wildland-urban-interface/> [<https://perma.cc/K4MU-MYL7>].

plaguing many Western states—the overly prescriptive design standards pose challenges to meaningful and practical development. California’s lot split and duplex regime has proved relatively futile in practice. SB 9 essentially discourages middle housing development by design.²⁴⁸ The owner-occupancy requirement, while well intentioned, prohibits those who have the financial means to invest in new projects—professional developers—from creating change.²⁴⁹ By permitting only a duplex on each lot, the law limits an owner from obtaining the greater profit margin offered by fourplexes,²⁵⁰ which are needed to secure project financing.²⁵¹ Observing outcomes and responses to the West Coast middle housing bills in their first few years particularly highlights two lessons. First, the need for procedural reform, and second, for well-drafted legislation to prevent legal challenges.

1. Streamlining Procedures

Despite its limited success to this point, SB 9 was not a failure. While Oregon and Spokane’s development successes serve as regulatory models, the permitting process remains a procedural hurdle that stifles development. California highlights the need for procedural reform by emphasizing a ministerial review process, something the other states neglect. Lengthy permitting processes undermine the efficacy of upzoning by increasing financing and construction costs.²⁵² Reducing delay and uncertainty in the procedural phase of development will expedite housing production and further reduce housing costs.²⁵³

Oregon still allows local government siting and design regulation of middle housing, so long as the permitting does not discourage middle housing development through “unreasonable costs or delay.”²⁵⁴ Localities

248. See Jason Ward, Opinion, *How California’s Duplex Law Was Designed to Fail*, L.A. TIMES (Feb. 10, 2023, at 03:01 PT), <https://www.latimes.com/opinion/story/2023-02-10/california-affordable-housing-los-angeles-laws> (on file with the Rutgers University Law Review).

249. *Id.*

250. See generally Sara Khoury, *How Many Units Should My Multi-Family Rental Have? Pros & Cons of Duplexes, Triplexes & Quadplexes*, METROCITY PROP. GRP.: BLOG (Aug. 21, 2023, at 15:26 ET), <https://www.ottawarealestatecentral.com/blog/multi-family-home-sizes-guide/> [<https://perma.cc/7JSZ-7BB9>] (discussing factors for prospective real estate investors to consider, including the variables involved in a property’s profitability).

251. See generally *What Is the Ideal Profit Margin in Property Development?*, PROP. MASTERMIND (Nov. 5, 2024), <https://www.propertymastermind.com.au/what-is-the-ideal-profit-margin-in-property-development/> [<https://perma.cc/T3RU-ULDZ>] (providing background on typical profit margin requirements for obtaining development financing).

252. Connolly, *supra* note 209, at 2398.

253. *Id.* at 2398–99.

254. OR. REV. STAT. § 197A.420(5)(a) (2025).

may require site plan and design reviews, including that a lot owner seeking a middle-housing permit must provide notice to neighboring property owners within 100 feet of the property, followed by a public comment period before a city issues an administrative decision.²⁵⁵ This unnecessarily complex bureaucracy perpetuates an artificial housing shortage in Oregon, where builders cannot secure permits fast enough to meet the demand.²⁵⁶ Cities' failure to timely finish initial plan reviews causes several months of delay to even begin construction.²⁵⁷ HB 2001 has begun to see success in cities like Bend and Portland, but absent a more streamlined permitting process, middle housing development remains hindered from reaching its full potential to improve the housing market.

Similarly, Washington provides that middle housing is subject to the same development review processes that apply to single-family houses.²⁵⁸ Localities are permitted to impose design review on middle housing; however, it must be objective and administrative only,²⁵⁹ meaning that it is not subject to approval by a design board.²⁶⁰ Washington sought to shorten permitting delays by passing House Bill 1293 ("HB 1293")²⁶¹ and Senate Bill 5290 ("SB 5290")²⁶² in conjunction with HB 1110. HB 1293 requires "clear and objective" design standards and a maximum of one public meeting per project,²⁶³ while SB 5290 mandates a specific time-frame local governments must follow for issuing final decisions.²⁶⁴ The results have yet to be seen as localities will adopt these requirements along with updating their Comprehensive Plans in 2025, but Washington

255. See, e.g., BEND, OR., DEV. CODE § 4.3.700(B)(2) (2025).

256. Mick Harris, *Slow Permitting Keeps Builders on the Sidelines Despite Demand*, JD SUPRA (Aug. 10, 2022), <https://www.jdsupra.com/legalnews/slow-permitting-keeps-builders-on-the-9128983/> [<https://perma.cc/5J6T-BU68>].

257. See *id.*

258. WASH. REV. CODE § 36.70A.635(6)(a)–(c) (2025).

259. *Id.* § 36.70.635(b).

260. Carmel Gregory, *The Missing Middle Bill 1110 and What it Means for Washington State*, CG ENG'G, <https://cengineering.com/2023/06/missing-middle/> [<https://perma.cc/2HHJ-3DA7>] (last visited Oct. 29, 2025).

261. H.B. 1293, 68th Leg., 2023 Reg. Sess. (Wash. 2023), 2023 Wash. Sess. Laws 1758 (codified in scattered sections of RCW ch. 36.70A).

262. S.B. 5290, 68th Leg., 2023 Reg. Sess. (Wash. 2023), 2023 Wash. Sess. Laws 1793 (codified in scattered sections of RCW ch. 36.70A).

263. Ray Dubicki, *Missing Middle Housing, ADU, and Design Review Reforms Pass Second Chamber*, URBANIST (Apr. 12, 2023), <https://www.theurbanist.org/2023/04/12/missing-middle-housing-adu-and-design-review-reforms-pass-second-chamber/> [<https://perma.cc/N85P-BX73>].

264. Carl Schroeder & Shannon McClelland, *Deadline to Establish Different Permit Timelines Under SB 5290 Looms*, ASS'N WASH. CITIES (June 8, 2024), <https://wacities.org/advocacy/News/advocacy-news/2024/06/08/deadline-to-establish-different-permit-timelines-under-sb-5290-looms> [<https://perma.cc/U7K4-7P33>].

is in desperate need of this expedited review, considering the average permit approval timeline is six and a half months, which can add over \$51,000 in production costs.²⁶⁵

California reduces these procedural hurdles with the ministerial review process.²⁶⁶ This provides that localities must ministerially approve projects so long as the proposed housing development meets the criteria set forth in the law.²⁶⁷ Discretionary review, public notification, or hearings are not permitted, meaning that if you meet the objective standards, you get your permit.²⁶⁸ SB 450, which was signed in 2024 to strengthen SB 9's purpose,²⁶⁹ additionally imposed a timeline that jurisdictions must approve or deny SB 9 applications within sixty days.²⁷⁰

This expedited review process has shown success in previous housing reform efforts to permit ADU development in California. In 2002, the state permitted ADU development through a ministerial review process.²⁷¹ It was not until after 2016, however—following two additional bills that imposed objective zoning standards and required jurisdictions to complete their ministerial review within 120 days—that statewide ADU permit numbers began to flourish.²⁷² The streamlined process created predictable development conditions, producing over 100,000 ADU permits in the years since.²⁷³ If California further upzones its development standards to more closely mirror Oregon's design approach by removing the owner occupancy requirement, the ministerial review process—coupled with the sixty-day review timeline—affords great potential for middle housing development in California that could lead to ADU-level permit numbers.

Streamlining proceduralism is a bipartisan problem. With political polarization running rampant,²⁷⁴ matters that appear apolitical in

265. Traci Tenhulzen, Opinion, *Streamlined Permitting Will Help Get More People into Housing*, SEATTLE TIMES (Sep. 10, 2023, at 12:01 ET), <https://www.seattletimes.com/opinion/streamlined-permitting-will-help-get-more-people-into-housing/> [https://perma.cc/TQW4-95DX].

266. See CAL. GOV'T CODE § 65852.21(a) (West 2025).

267. *Id.*

268. *Id.*

269. See S.B. 450, 2024 Leg., Reg. Sess. § 4 (Cal. 2024).

270. See S.B. 450, 2024 Leg., Reg. Sess. § 1 (Cal. 2024) (codified at CAL. GOV'T CODE § 65852.21(a)(h)(1) (West 2024)).

271. WEGMANN ET AL., *supra* note 213, at 12.

272. *Id.*

273. *Id.*

274. See *Latest Vanderbilt Unity Index Shows the U.S. Continuing Its Trend Toward Increased Political Polarization*, VAND. UNIV.: MYVU NEWS (Feb. 14, 2024, at 15:29 ET), <https://news.vanderbilt.edu/2024/02/14/latest-vanderbilt-unity-index-shows-the-u-s-continuing-its-trend-toward-increased-political-polarization/> [https://perma.cc/J2ZN-PZDC].

nature, like building a house, are often politicized. Constraining proceduralism brings a unique common ground between progressives and libertarians. The libertarian ideal favors the expansion of property rights and scaling back government interference,²⁷⁵ while progressives depend on active government to protect individual rights.²⁷⁶ A lengthy permitting process full of costs and delays serves neither party's agenda.²⁷⁷ Rather, proceduralism "favor[s] the status quo," and even more, it "systematically favors inaction over action."²⁷⁸ Middle housing bills are shaking up the status quo of single-family zoning. However, their full potential will only be unlocked if states adopt both well-designed regulatory frameworks enabling practical development *and* streamlined procedures to ensure development does not get clogged in the permitting stage.

The bipartisan alignment in favor of reducing procedural barriers may leave room for federal government action.²⁷⁹ In 2024, the Biden-Harris Administration proposed the Department of Housing and Urban Development's Pathways to Removing Obstacles to Housing ("PRO Housing") grant program to support state and local governments' removal of housing permitting procedures that increase housing costs.²⁸⁰ Now, even President Donald Trump responded in an interview that building permits were a "[t]remendous [restriction]" to achieving lower home prices, further stating that "[z]oning is like . . . it's a killer."²⁸¹ Imposing timelines to expedite reviews of development permits has been successful in proliferating development at the state level.²⁸² Congress

275. David E. Bernstein & Ilya Somin, *The Mainstreaming of Libertarian Constitutionalism*, 77 LAW & CONTEMP. PROBS. 43, 67–68 (2014).

276. See *id.* at 69; Nicholas Bagley, *The Procedure Fetish*, 118 MICH. L. REV. 345, 363 (2019).

277. See Bagley, *supra* note 276, at 363.

278. *Id.* at 368–69.

279. See Conor Dougherty, *The Surprising Left-Right Alliance That Wants More Apartments in Suburbs*, N.Y. TIMES (Mar. 12, 2024), <https://www.nytimes.com/2024/03/09/business/economy/yimby-housing-conference.html> (on file with the Rutgers University Law Review) (explaining how Democrats and Republicans have different views of the government, but housing density is an issue leading both sides to arrive at the same conclusion).

280. *Reforming Permitting Requirements to Lower the Cost of Building New Housing and Increase Housing Affordability*, WHITE HOUSE (Aug. 13, 2024), <https://bidenwhitehouse.archives.gov/cea/written-materials/2024/08/13/reforming-permitting-requirements-to-lower-the-cost-of-building-new-housing-and-increase-housing-affordability/> [<https://perma.cc/WC8Y-79UA>]. This proposal sought to encourage by-right permitting, which decreases the time and fiscal costs associated with discretionary permitting. *Id.*

281. Bloomberg Businessweek, *The Donald Trump Interview Transcript*, BLOOMBERG (July 16, 2024, at 17:00 ET), <https://www.bloomberg.com/features/2024-trump-interview-transcript> [<https://perma.cc/SBM7-89PD>].

282. See *supra* text accompanying notes 268–72.

could propose a time limit for how long a government has to either approve or deny a permit, providing that if it does not take action within this time limit, the permit is deemed approved.²⁸³ This would ensure that states with middle housing laws already in place, or those seeking to implement them, are fully optimizing the law's intended purpose: to promote timely middle housing development. Additionally, new grant programs aimed at promoting middle housing development, such as federal grants that generally fund affordable housing, could encourage state and municipal governments to welcome this reform.²⁸⁴

2. Avoiding Legal Obstacles

The home-rule challenge to SB 9 demonstrates the importance of tailoring proposed middle housing bills earlier in the legislative process to ensure they will apply to charter cities as well. This is particularly relevant for states lacking express state preemption over land-use decisions;²⁸⁵ however, SB 9's current fate as it applies to certain charter cities need not be overblown. For home rule states today, "it is relatively rare . . . for a court to rule that a charter city is immune against a state assertion of supremacy, and courts have never held that a subject matter is so wholly committed to local governments that the state can never preempt municipal authority in that area."²⁸⁶ Courts have typically weighted the standard "defining the line between municipal and statewide affairs" in favor of state preemption.²⁸⁷

Professor Kenneth Stahl has articulated some key judicial guidelines used to resolve home rule cases:

First, the court will give significant weight to a determination by the state legislature itself that a matter is of statewide rather than purely local concern, though such a determination is not conclusive. Second, the dividing line between statewide and municipal affairs is not fixed, and so a matter that was at one time local in nature can become a matter of statewide concern. Third, courts will consider the need for state-wide uniformity in

283. *NAHB Announces a 10-Point Plan to Tame Shelter Inflation, Ease the Housing Affordability Crisis*, NAT'L ASS'N OF HOME BUILDERS (May 1, 2024), <https://www.nahb.org/news-and-economics/press-releases/2024/05/nahb-announces-a-10-point-plan-to-tame-shelter-inflation-ease-the-housing-affordability-crisis> [<https://perma.cc/5VAD-4FFG>].

284. Zeebuyth & Moore, *supra* note 28, at 82–83.

285. *See supra* text accompanying notes 195–200 (discussing Oregon's express authority to preempt land use and comprehensive plans as matters of statewide concern).

286. Stahl, *supra* note 174, at 188.

287. *Id.*

the regulation of a particular matter. Fourth, if local regulation has significant impacts outside local borders, it is likely to be considered a statewide matter. Fifth and finally, courts may consider whether a particular matter has traditionally been regulated at the state or municipal level.²⁸⁸

Many of these factors broadly favor upzoning single-family districts. The middle housing bills at issue here have declared housing supply a statewide issue, particularly as demand has increased over time, given the West Coast's population growth. Local land-use decisions have impacts beyond city limits, and if cities within a region fail to permit sufficient housing, the lack of supply causes a widespread increase in housing prices.²⁸⁹

California's trial court ruling on SB 9 is a relatively anomalous approach to charter cities' powers. California's judicial procedure starts with the presumption that local ordinances are presumptively valid, shifting the burden of proof to the party arguing that state law should apply.²⁹⁰ By contrast, other states approach the legislation with the presumption that "the state statute supersedes the home rule authority" or that the "subject is preempted whenever it is of significant concern to the State."²⁹¹ The need for statewide uniformity and concerns about extraterritorial effects weigh heavily in the home rule analysis. For example, the Colorado Supreme Court has held that citizens have a valid interest in statewide landlord-tenant regulations because "[u]niformity in landlord-tenant relationships . . . fosters informed expectations by the parties," thereby "increas[ing] the quality and reliability of housing."²⁹² Further, while the extraterritorial impacts of single-family zoning plague entire states, the impact could even be viewed as national, considering the exodus of residents moving from the West Coast to other regions of the country in pursuit of affordable housing.²⁹³ These factors favor that states can continue drafting middle housing bills made to withstand judicial scrutiny; however, state legislatures should be keenly aware of

288. *Id.* at 188–89 (footnotes omitted).

289. *See id.* at 194.

290. Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 86 DENV. U. L. REV. 1337, 1350 (2009).

291. *Id.* at 1350–51 (internal citations omitted) (explaining that Colorado courts start with the presumption of state supremacy if the matter is of mixed local and statewide concern and that Illinois courts preempt a subject when it is of significant concern to the State).

292. *Id.* at 1352 (quoting *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 38 (Colo. 2000) (en banc)).

293. *See supra* text accompanying notes 123–24.

any judicial hurdles that may apply in a home rule challenge on a state-by-state basis.²⁹⁴

State legislatures proposing new middle housing bills must use caution to address the law's applicability to HOA restrictions. Forward-looking prohibitions of private covenants against middle housing development, like those included in Washington's and Oregon's laws, provide clarity to HOAs and prevent ambiguity that would allow HOAs to adopt new bylaws in an attempt to restrict development otherwise permitted under a new middle housing bill.²⁹⁵ Zealous states may attempt—though not without risk—to void the enforceability of single-family covenants altogether, even those that preexist the middle housing bill, under the argument that they conflict with important public policies around increasing affordable housing opportunities, given that the connection between affordability, supply, and restrictive zoning has been proven.²⁹⁶

CONCLUSION

American cities are plagued by the single-family zoning epidemic. The West Coast presents a sobering reality of what happens when zoning restricts housing supply such that it cannot meet the demand; however, these states are paving the way for other states facing a similar crisis for how to begin undoing the damage. Moving forward, states must ensure middle housing bills are designed to give maximum flexibility to municipalities so they can adopt economically viable development plans. Further, state legislatures must ensure that proposed laws are tailored with each state's home rule precedent in mind. On the state and federal levels, both parties can work together to streamline the permitting process. Upzoning may not be the end-all, be-all of housing affordability and supply, but Tony Soprano was right when he poignantly highlighted that God isn't making any more land.²⁹⁷ These enabling laws allow states

294. See Patrick Morse, *Trumped Zoning: Constitutionality of Zoning Preemption (Oregon's HB 2001) Under Ohio's Home Rule Amendment*, 49 CAP. U. L. REV. 153, 165–78 (2021) (providing that the framework of a home rule challenge in Ohio requires a statute must adopt a comprehensive regulatory framework to “apply to all parts of the state alike and operate uniformly,” directly regulate land rather than limiting municipal power, and regulate citizens conduct directly, and concluding that the Ohio legislature would need to draft a middle housing bill more carefully than Oregon's HB 2001).

295. See *supra* text accompanying notes 212–16.

296. See *supra* text accompanying notes 212–16; Korngold, *supra* note 212, at 56–57.

297. See *supra* text accompanying note 1. Available land is decreasing due to rising sea levels, and a four-to-eight-inch rise in sea level on the West Coast is expected in the next few decades. 2022 *Technical Report*, U.S. EARTH INFO. CTR.: U.S. SEA LEVEL CHANGE,

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711

to do more with the land already in existence, so those of us in A.J.'s generation can one day buy homes of our own.