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Land Use Reform at the State Level

A Survey of Recent Changes

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What Do We Mean When We Refer to Land Use Laws?

- Land use laws generally consist of those laws and regulations that 1) govern the use of private land and form of structures and 2) establish procedures for obtaining permission for certain uses or activities on land.
- Most land use laws are enacted at the state and local levels, with relatively limited involvement by the federal government.

Land Use Laws Can Be Divided Into Three Primary Categories

Technical Regulations: These include health and safety regulations, often produced by expert committees and adopted at the state or national level, such as building codes, fire codes, street standards and stormwater ordinances.

Planning and Zoning Regulations: Governing how land can be used or the size of structures that can be built within a certain designated area, these are adopted by localities pursuant to state enabling legislation.

Procedural Regulations: Those rules which establish how applications to use land or build structures are approved, such as by a zoning board or planning

Brief History of State Involvement In Zoning Reform

- 1920s: Federal Department of Commerce Issues Standard State Zoning Enabling Act, “hands the keys to the car” to localities, upheld in 1926 *Euclid v. Ambler* decision
- 1970s-1980s: States such as MA (Chapter 40B) and CT (Section 8-30g) pass builder’s remedy laws allowing deed-restricted housing to circumvent local zoning
- 2016-present: New era of market-based state reforms begins in CA with ADU (accessory dwelling unit) laws (SB 1069)



Why State Intervention?

- Awareness of the exclusionary effects of local zoning has grown
- Housing crisis has become a nationwide phenomenon
- With localities perceived as slow to act, states have been increasingly willing to reclaim authority over *zoning* and *procedure* from local jurisdictions



Common Examples of Reform

- Legalization of ADUs
- Minimum Lot Size Reform
- Legalization of small multifamily
- Reduction of Parking Minimums
- Streamlining Permitting Process
- “Shot Clock” Bills

2023: A Watershed Year for Reform

Table 1. Policies Considered and Bills Passed in 2023 for Selected Housing Policy Areas

POLICY	STATES WHERE A BILL CONCERNING THE POLICY WAS INTRODUCED	BILLS PASSED (AS OF JUNE 30)
Easier permitting for accessory dwelling units	AZ, CO, HI, ID, ME, MA, MN, MT, NH, NJ, NM, NY, NC, RI, TX, VT, VA, WA	ID: H. 166 ME: L.D. 1706 MT: S.B. 528 WA: H.B. 1337
Legalization of duplex, triplex, or fourplex housing in single-family zones	AZ, CO, MA, MN, MT, NH, NM, NY, OR, VT, WA	MT: S.B. 323 VT: S. 100 WA: H.B. 1110
Zoning for high density near transit	AZ, CO, CT, MA, NJ, NY, RI, WA	RI: S.B. 1052
Relaxation of parking minimums for most housing types	AZ, CO, ME, MD, MA, MT, NJ, NY, OK, VT, WA	MT: S.B. 245, S.B. 382 VT: S. 100
Relaxation of minimum lot size requirements	AZ, ME, MA, MT, NY, NC, RI, TX, VT, WA	MT: S.B. 382 RI: S.B. 1032 VT: S. 100
Streamlining of the permitting process	AZ, FL, ME, MA, MN, MT, NY, OR, RI, SC, TX, VT, VA, WA, WI	FL: S.B. 512 MT: H.B. 211, S.B. 407, S.B. 382 NJ: A. 573 RI: S.B. 1032, S.B. 1034, S.B. 1050, S.B. 1053 TX: H.B. 14 VT: S. 100 WA: H.B. 1293, S.B. 5412, S.B. 5290 WI: A.B. 266
"Shot clock" for permitting	AZ, AR, FL, MN, NJ, NY, NC, TX, WA	AR: H.B. 1207 TX: H.B. 3697, H.B. 3699
Relaxation of aesthetic mandates	AZ, IA, MN, MT, WA	MT: S.B. 407 WA: H.B. 1293
Mandates to plan for housing, including "fair share" schemes	AZ, CO, CT, HI, MA, MN, MT, NH, NJ, NY, OR, RI, TX	MT: S.B. 382 OR: H.B. 2889 RI: S.B. 1033
Allowing more residential uses in commercial zones	AZ, FL, MD, MN, MT, NC, OR, RI, WI	FL: S.B. 102 MT: S.B. 245 OR: H.B. 2984, H.B. 3395 RI: S.B. 1035 WI: A.B. 268

Source: Authors' tabulation and analysis.

Note: We did not track bills introduced in California.

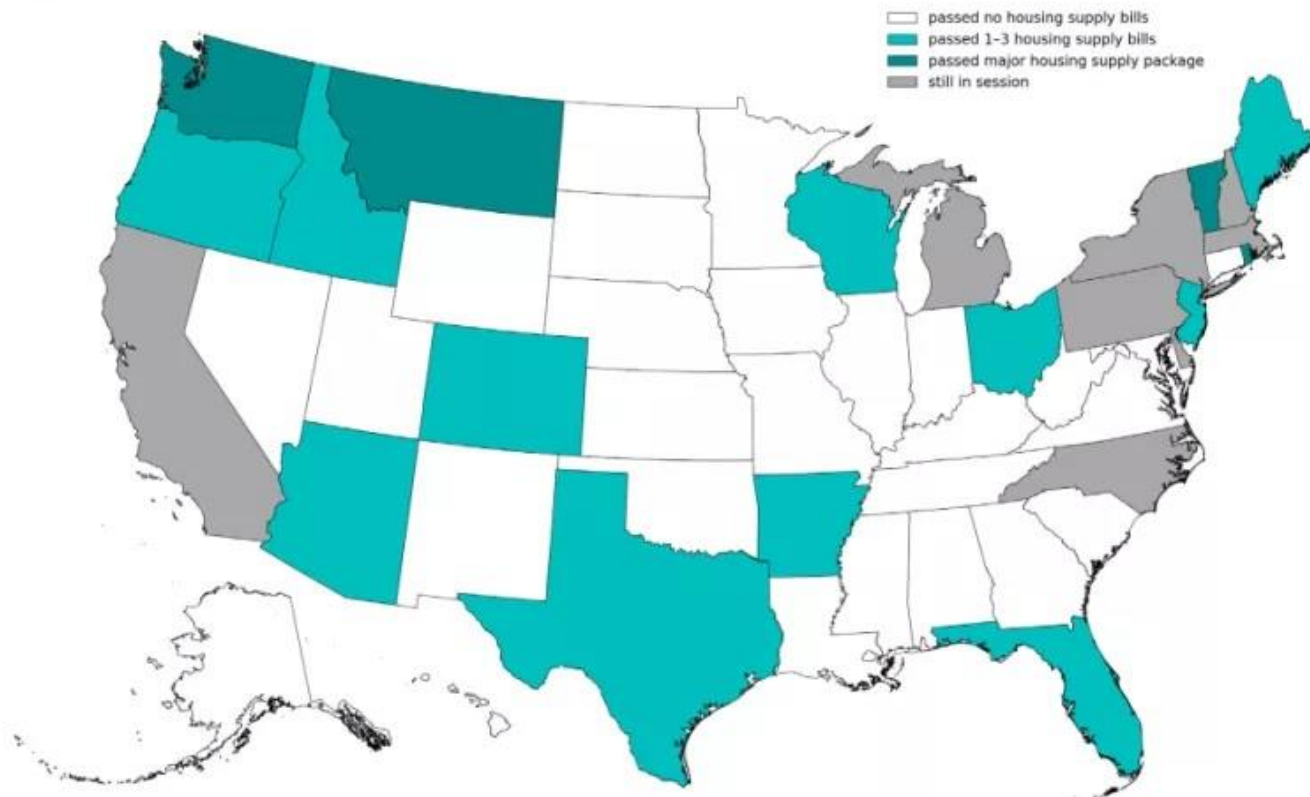


California: Its Own Animal

Since 2016, California has adopted over 100 laws intended to increase housing production. Highlights include:

- Strengthening the 1969 Housing Element Law, Fair Housing laws, the 1979 Density Bonus Law and the 1982 Housing Accountability Act
- Establishing CEQA exemptions
- Encouraging ADUs
- Streamlining procedures (5 hearing rule and increased ministerial approvals)
- Reducing parking minimums
- Establishing CEQA exemptions

Figure 1. States Where Housing Supply Bills Passed in 2023, through June 30



Source: Authors' tabulation and analysis. State boundary shapefile: IPUMS NHGIS, University of Minnesota, <https://www.nhgis.org/>.

States With Notable Successes

- Montana
- Rhode Island
- Washington
- Vermont

States Where Ambitious Proposals Failed

- New York
- Colorado

Several smaller bills > one ambitious bill?

Major reform packages in NY and CO failed, while MT passed 7 smaller bills

Other Reforms

Some states have also passed or proposed changes to *technical standards*, including such reforms as:

- Enabling “single stair” apartment buildings (Washington, Senate Bill 5491)
- Allowing multifamily buildings with up to four dwelling units to be subject to the residential building code rather than the more onerous commercial building code (North Carolina, House Bill 488/SL 2023-108)

Looking Forward

- Housing crisis: record high home prices and rents are focusing bipartisan attention on housing matters
- Snowball effect: the example of California shows tendency of reforms to multiply over time as effect of new legislation becomes apparent
- Expectation: reforms to land use law will continue to be an important part of many states' legislative agendas in the coming year

Thank you

Questions or Comments?



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Appendix

Breaking Ground: An Examination of Effective State Housing Reforms in 2023, www.mercatus.org/research/policy-briefs/breaking-ground-examination-effective-state-housing-reforms-2023.

Four Elements of a Successful Housing Task Force: Lessons from the Montana Miracle, www.mercatus.org/research/policy-briefs/four-elements-successful-housing-task-force-lessons-montana-miracle

New Pathways to Encourage Housing Production: A Review of California's Recent Housing Legislation
<https://turnercenter.berkeley.edu/wp-content/uploads/2023/04/New-Pathways-to-Encourage-Housing-Production-Evaluating-Californias-Recent-Housing-Legislation-April-2023-Final-1.pdf>