

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

October 9, 2021

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** October 15, 2021, Subcommittee Hearing entitled, “Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity”

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The Subcommittee on Housing, Community Development, and Insurance will hold a hybrid hearing entitled, “Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity” on Friday, October 15, 2021 at 12 pm ET via Cisco Webex. There will be one panel with the following witnesses:

- **Sheryll D. Cashin**, Carmack Waterhouse Professor of Law, Civil Rights and Social Justice, Georgetown University
- **Richard D. Kahlenberg**, Senior Fellow, The Century Foundation
- **Dora Leong Gallo**, President and CEO, A Community of Friends
- **Thomas Silverstein**, Associate Director of Fair Housing & Community Development Project, Lawyers’ Committee for Civil Rights Under Law
- **TBD**

### Background

The United States is in the midst of an affordable housing crisis of historic proportions where households across the income spectrum and in every community—including urban, suburban, and rural—are affected by an undersupply of housing, rising housing costs, housing instability, and homelessness. Over the years, research has shown how restrictive and exclusionary local zoning policies exacerbate these trends.<sup>1,2</sup> Historically, zoning policies, among other local regulations and development practices, have been used to create and perpetuate racial and economic segregation.<sup>3</sup>

Determined by state, county, and municipal governments, local zoning policies and practices are a form of land use management that differentiate intended land uses across geographical areas—either residential, commercial, industrial, and conservation uses or mixed uses.<sup>4</sup> Zoning policies establish local building standards, such as the minimum amount of land required to construct on, determine the types of buildings that can be constructed in a given area, how many parking units are required per development,

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<sup>1</sup> References to “restrictive” and “exclusionary” zoning in this memo are intended to differentiate between distinct and varying effects of zoning, where “restrictive zoning” limits the amount and types of housing that can be produced based on land use regulation, and “exclusionary zoning” results in the limitation of certain populations of people and communities from accessing or benefiting from affordable, equitable housing opportunities in the neighborhoods of their choice.

<sup>2</sup> Cecilia Rouse et al., *Exclusionary Zoning: Its Effect on Racial Discrimination in the Housing Market*, The White House (Jun. 17, 2021).

<sup>3</sup> Sheryll Cashin, *It’s Time to Dismantle America’s Residential Caste System*, Politico (Sep. 12, 2021); See also Hannah Hoyt and Jenny Schuetz, *Flexible Zoning And Streamlined Procedures Can Make Housing More Affordable*, Harvard Joint Center for Housing Studies (May 19, 2020).

<sup>4</sup> The Supreme Court’s 1926 decision in *Village of Euclid, Ohio, et al. v. Ambler Realty Company* upheld the constitutionality of local zoning and that the Village of Euclid’s zoning ordinance did not exceed its local government authority.

and how many bedrooms are required in residential units. However, the purposes and effects of zoning regulations have evolved over time.

Some of the earliest zoning policies in the U.S. were intended to improve the health and safety of residents.<sup>5</sup> With the rise of industry and agrarian-to-urban population shifts, there were instances where the proximity of harmful industry activity to residential areas led to disastrous fires and other hazardous events.<sup>6</sup> However, such policies were often artificial standards that resulted in creating, preserving, and entrenching racial, ethnic, and economic segregation.<sup>7</sup> Many zoning policies in force today continue to act as artificial barriers to housing production and access to opportunity.<sup>8</sup>

### **Restrictive Zoning as a Barrier to Housing Availability and Affordability**

Some restrictive zoning regulations have been found to increase development costs and the price of housing. One study suggests that zoning accounted for more than 10 percent of housing costs in eight high-cost markets.<sup>9</sup> The price of Manhattan condominiums were estimated to be 50 percent higher than they would be without restrictive zoning policies.<sup>10</sup> However, in other instances, “upzoning,” which is generally understood to mean deregulation of zoning, has resulted in increased prices and limited new development activity outside of what would have already occurred in a more regulated environment.<sup>11</sup> The variations in the effects of different zoning policies, whether restrictive or deregulatory, demonstrate that there are other variable and nuances influencing the cost of housing.

Not accounting for existing supply and demand imbalances, one estimate found that 4.6 million new apartment units would need to be added to the U.S. housing stock by 2030 to keep pace with new demand.<sup>12</sup> Based on current demand, the National Low Income Housing Coalition estimates that for the 10.8 million extremely low-income renters, there is an absolute shortage of 3.4 million affordable and available housing units that cost 30% or less of their income.<sup>13</sup> This is the only income segment of the rental market that experiences an absolute shortage. As a result, the average minimum-wage earner in the U.S. must work two jobs to afford a 2-bedroom market-rate apartment.<sup>14</sup> Over the years, developers have highlighted that while zoning reforms are important, such reforms cannot ensure that increased housing production will serve households inadequately served by the market in the absence of subsidies provided by government.<sup>15</sup>

**Single-Family Zoning:** Single-family zoning is a type of land-use zoning that restricts the construction of any housing type other than single-family homes. This results in multifamily housing and other middle housing types, such as townhomes, duplexes, triplexes, affordable dwelling units (ADUs), or manufactured housing, that provide higher density and greater affordability, from being constructed in many areas.<sup>16</sup> In many localities, this has not only resulted in an undersupply of housing, but it has also

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<sup>5</sup> Yonah Freemark, [The Role of Race in Zoning: A History & Policy Review](#), Urban Institute (Sep. 2021).

<sup>6</sup> Joseph Schilling and Leslie S. Linton, [The Public Health Roots of Zoning](#), American Journal of Preventative Medicine (2005).

<sup>7</sup> *Supra* note 5; See also, Richard Rothstein, [The Color of Law: A Forgotten History of How Our Government Segregated America](#) (2019).

<sup>8</sup> Solomon Greene, [Can We Deregulate Ourselves out of the Affordable Housing Crisis?](#), The Urban Institute (Jul. 1, 2019).

<sup>9</sup> Sungwon Lee, [The Influence of Urban Form on GHG Emissions in the U.S. Household Sector](#), Journal of Energy Policy (2014).

<sup>10</sup> Edward L. Glaeser, [Why is Manhattan So Expensive? Regulation and the Rise in Housing Prices](#), Chicago Journals (October 2005).

<sup>11</sup> Richard Florida, [Does Upzoning Boost the Housing Supply and Lower Prices? Maybe Not.](#), City Lab (Jan. 31, 2019).

<sup>12</sup> Hoyt Advisory Services, [U.S. Apartment Demand – A Forward Look](#) (May 2017).

<sup>13</sup> National Low Income Housing Coalition, [The Gap: A Shortage of Affordable Rental Homes](#) (Mar. 2021).

<sup>14</sup> National Low Income Housing Coalition, [Out of Reach: The High Cost of Housing](#) (2021).

<sup>15</sup> [The Future of Housing In America: Increasing Private Sector Participation In Affordable Housing](#), Hearing Before the H. Committee on Financial Services, 114th Cong. (2015); See also *Supra* note 8

<sup>16</sup> National Association of Homebuilders, [What is the “Missing Middle” of Housing?](#) (Accessed on Oct. 7, 2021).

functioned to block lower and middle-income households, disproportionately households of color, people with disabilities, and single mothers with children, from accessing housing and economic opportunity.<sup>17</sup>

In recent years, several localities, including the State of California and the City of Minneapolis, have passed legislation and ordinances to eliminate single-family zoning with the hopes of facilitating housing production.<sup>18</sup> However, some groups have cautioned that eliminating single-family zoning without complementary reforms or prior analysis of who such deregulation stand to benefit—or disadvantage—can exacerbate or create new exclusionary outcomes.<sup>19</sup> For example, “in many predominantly Black and Latinx neighborhoods, there is no shortage of homes available for rents or monthly mortgage payments below subsidized rents under the Low-Income Housing Tax Credit program. In such neighborhoods, reducing barriers to higher density development is unlikely to increase access for low-income families and, instead, has the potential to fuel real estate speculation and displacement.”<sup>20</sup>

### **Exclusionary Zoning as a Barrier to Fair Housing Access**

History and research have shown that restrictive and exclusionary zoning policies perpetuate a bifurcated housing and financial system, separate and unequal school systems, and disparate health outcomes.<sup>21</sup> After a 1917 Supreme Court’s decision in *Buchanan v. Warley*, there was a shift in zoning policy approaches. At that time, the Supreme Court ruled that a City of Louisville zoning ordinance, which prohibited Black residents from purchasing homes in White neighborhoods, was unconstitutional as it infringed on 14<sup>th</sup> amendment rights. However, because the ruling applied only to legal statutes, the real estate industry and private actors began including racially restrictive covenants in housing deeds and purchase contracts.<sup>22</sup> Many of these covenants continue to exist.<sup>23</sup> Years later, the passage of the Fair Housing Act of 1968 (FHAct) and subsequent amendments to the law, which made housing discrimination illegal based on race, color, sex, religion, national origin, disability, and familial status, gave the Department of Housing and Urban Development (HUD) and the Department of Justice authority to review and combat housing discrimination, including through local discriminatory zoning policies.<sup>24</sup> Despite existing case law and federal civil rights protections, many localities continue to codify seemingly non-discriminatory zoning ordinances, such as through minimum lot sizes, density restrictions, that may have the effect of excluding members of protected classes under the FHAct.<sup>25</sup>

***Affirmatively Furthering Fair Housing:*** The mandate to affirmatively further fair housing (AFFH) is a central mandate of the FHAct, which is intended to require recipients of federal housing funding to proactively address structural barriers to housing and affirmatively expand access to opportunity for people of protected classes. Some have seen AFFH as a promising tool to address exclusionary zoning policies across the country.<sup>26</sup>

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<sup>17</sup> Jacqueline Rabe Thomas, [Separated by Design: How Some of America’s Richest Towns Fight Affordable Housing](#), ProPublica (May 22, 2019); See also Laurie Goodman et al., [Manufactured homes could ease the affordable housing crisis. So why are so few being made?](#), The Urban Institute (Jan. 29, 2018).

<sup>18</sup> The Urban Institute, [How Communities Are Rethinking Zoning to Improve Housing Affordability and Access to Opportunity](#) (Jun. 12, 2019).

<sup>19</sup> Alexander Von Hoffman, *Single-Family Zoning: Can History Be Reversed?*, Harvard Joint Center for Housing Studies (Oct. 5, 2021).

<sup>20</sup> Alliance for Housing Justice, [Principles for Equitable Zoning Reform](#) (Jul. 23, 2021).

<sup>21</sup> Michael Lens, [Low-Density Zoning, Health, And Health Equity](#), *Health Affairs* (Sep. 30, 2021).

<sup>22</sup> Kriston Capps, [Breaking 'the Backbone of Segregation': After 100 years, the Supreme Court decision "Buchanan v. Warley" still haunts us.](#), City Lab (Nov. 5, 2017).

<sup>23</sup> Sara Clemence, [Is There Racism in the Deed to Your Home?](#), The New York Times (Aug. 17, 2021).

<sup>24</sup> Elizabeth Winkler, [‘Snob zoning’ is racial housing segregation by another name](#), Washington Post (Sep. 25, 2017).

<sup>25</sup> Jonathan Rothwell and Douglas S. Massey, [The Effect Of Density Zoning On Racial Segregation In U.S. Urban Areas](#), *Urban Affairs Review* (Jul. 1, 2019); See also Joseph Gyourko and Raven Molloy, [Chapter 19 - Regulation and Housing Supply](#), *Handbook of Regional and Urban Economics*, Volume 5B (2015); See also [Fair Housing Trends Reports](#) published by the National Fair Housing Alliance compile annual zoning complaints and litigation under the Fair Housing Act.

<sup>26</sup> U.S. House Financial Services Committee, [Waters Provides Recommendations to President-Elect Biden on Trump Actions to Reverse](#) (Dec. 4, 2020); See also National Fair Housing Alliance, [National Fair Housing Alliance Applauds the Biden Administration for Advancing Housing Equity](#) (Jul. 13, 2021); See also Tracy Jan, [HUD to reinstate Obama-era fair housing rule gutted under Trump — minus the ‘burdensome’ reporting requirement](#) (Jun. 9, 2021).

Beginning in July 2015 under the Obama administration, HUD’s implementing regulation required that jurisdictions receiving federal housing grants conduct assessments of fair housing in their districts and create locally tailored plans to address such impediments. Because the regulation provided communities with data and greater clarity on planning strategically through their housing, some believed it would help redress systemic disinvestment in communities of color and address zoning laws that unfairly exclude low-income people, families of color, persons with disabilities, and other historically excluded populations.

In 2020, the Trump Administration’s AFFH proposal weakened reporting requirements. It was seen as encouraging widespread housing development through the deregulation of local housing markets without requiring that jurisdictions ensure location, availability, and accessibility of housing for members of protected classes.<sup>27</sup> As HUD looks to propose final AFFH rulemaking under the Biden administration, Congress and other stakeholders have called on the Biden administration to reinstate the 2015 rule in order to strengthen fair housing assessments and redress barriers to housing opportunity, including through local zoning policies.<sup>28</sup>

**Zoning Board Representation:** Across housing and financial services sectors, the topic of diversity, equity, and inclusion has been brought to the forefront. Ensuring that individuals with decision-making power represent the needs of the people they serve, and make policy decisions on behalf of, is a core concept of democratic governance. However, in many communities, zoning boards are not democratically elected but rather are appointed positions.<sup>29</sup> Additionally, zoning boards often reflect constituencies that have historically sought to maintain special interests through restrictive and exclusionary zoning policies.<sup>30</sup> In fact, a recent report from the Louisiana Fair Housing Action Center found that zoning governance entities in New Orleans give deference to unelected, private neighborhood groups that are often not representative of marginalized populations.<sup>31</sup> In another study, a survey of North Carolina’s county planning boards, which are authorized by the state to create and amend zoning ordinances, found that over 66 percent of the counties “have all-white planning boards or planning boards with just one nonwhite member. Over 40 percent of the counties interviewed have all-white planning boards,” and over 35 percent have virtually all-white male boards.<sup>32</sup> While racial and ethnic diversity varies across counties, the most recent U.S. Census Bureau data show that people of color make up nearly one-third of the State of North Carolina’s population.<sup>33</sup>

## Zoning Reforms

While zoning reform has become an increasingly attractive tool for policymakers to address housing issues, it is not a silver bullet solution. Without proper analysis and safeguards, zoning reform is not guaranteed to ensure greater housing production, let alone increased supply that is more affordable or equitable.<sup>34</sup> In order to effectuate holistic zoning reforms that result in both affordable and equitable outcomes in housing and community investments, some have urged that more national-level data on zoning and a federal oversight role may be needed.<sup>35</sup> The intent, approach, and results of zoning reforms vary widely. As such, stakeholders recently wrote a letter to the Biden administration and Congressional

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<sup>27</sup> The Hill, [HUD has become an obstacle to fair housing](#) (Mar. 3, 2020).

<sup>28</sup> *Supra* note 26

<sup>29</sup> Louisiana Fair Housing Action Center, [Delayed Until Downsized or Denied: Neighborhood Associations Lead the Charge Against Affordable Housing and Perpetuate Segregation in New Orleans](#) (Oct. 7, 2021).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Allen Buansi, [Planning Boards Inclusion Report](#), UNC Center for Civil Rights (2020).

<sup>33</sup> U.S. Census Bureau, [QuickFacts: North Carolina; United States](#) (Accessed on Oct. 7, 2021).

<sup>34</sup> Debby Goldberg and Morgan Williams, [Zoning is not the answer to all our housing problems](#), National Fair Housing Alliance (Nov. 7, 2019).

<sup>35</sup> Graham MacDonald et al., [We need better zoning data to address pressing housing and development issues](#), The Urban Institute (Jan. 15, 2019); See also Richard D. Kahlenberg, [Tearing Down the Walls: How the Biden Administration and Congress Can Reduce Exclusionary Zoning](#), The Century Foundation (Apr. 18, 2021).

leadership cautioning that, as policymakers across federal, state, and local governments look to reform and eliminate zoning policies, such reforms should be considered holistically across localities to ensure reforms do not result in the mere shift of restriction and exclusion across geographies, populations, and markets.<sup>36</sup> The House Financial Services Committee’s housing title of the Build Back Better Act includes \$7.5 billion for planning and implementation grants to communities to develop, evaluate, and improve local or regional housing strategies such as zoning regulations.

In 2018, the Minneapolis City Council eliminated single-family zoning, becoming the first city in the nation to do so. The change was accompanied by increased funds, the rescission of parking requirements, and an inclusionary zoning mandate that 10% of new housing development serve moderate-income households.<sup>37</sup> In September 2021, Governor Newsom signed laws eliminating single-family zoning across the State of California in hopes of facilitating more housing production and addressing the state’s affordability crisis.<sup>38</sup> While the elimination of single-family zoning is a seemingly positive step, there is limited longitudinal data showing the effects of such deregulation across local housing contexts. Early analyses of Minneapolis’ reform have found minimal increases in housing production, let alone other outcomes related to affordability or equity.<sup>39</sup>

In 2021, the City of Boston became the first major U.S. city to adopt AFFH in its zoning ordinance after City Councilmember Lydia Edwards, introduced the amendment in 2019. The new zoning law adopts HUD’s 2015 definition of AFFH and requires certain developers to conduct assessments that are approved by the city’s Interagency Fair Housing Development Committee. Developers must assess and demonstrate the impact of proposed developments on historical exclusion and any risk for resident displacement. Developers are subject to certain pre-approved AFFH interventions and may opt into additional interventions. Interventions include deepening affordability, partnering with Public Housing Authorities, and marketing and access preferences for voucher holders, first-generation homebuyers, among others.<sup>40</sup>

## Legislation

- **H.R. 2126, “Housing Supply and Affordability Act” (Blunt Rochester)** is a bill that would allow HUD to award grants for the development and implementation of housing plans, including zoning reforms.
- **H.R. 2768, “American Housing and Economic Mobility Act” (Clever)** is a bill that would provide \$10 billion in competitive grants to encourage local governments to eliminate zoning restrictions.
- **H.R. 3198, “Yes In My Backyard Act” (Kilmer)** is a bill that would require Community Development Block Grant (CDBG) recipients to submit plans to track land use policies.
- **H.R. 4497, “Housing Is Infrastructure Act” (Waters)** is a bill that would provide over \$600 billion for fair, affordable, and accessible housing infrastructure, including \$15 billion for competitive grants that are available to units of local government on a competitive basis to eliminate exclusionary, restrictive zoning and land uses, and to responsibly streamline development processes that advance fair housing and support the creation of affordable housing.

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<sup>36</sup> *Supra note 20*

<sup>37</sup> Richard D. Kahlenberg, [How Minneapolis Ended Single-Family Zoning](#), The Century Foundation (Oct. 24, 2019).

<sup>38</sup> Jon Healey and Matthew Ballinger, [What just happened with single-family zoning in California?](#), Los Angeles Times (Sep. 17, 2021).

<sup>39</sup> James Brasuell, [Zoning Reforms Underwhelm in Minneapolis as Development Market Holds Course](#), Planetizen (Sep. 2, 2020).

<sup>40</sup> Boston Planning and Development Agency, [BPDA - Affirmatively Furthering Fair Housing Zoning Amendment, Informational presentation](#) (Dec. 17, 2020).