

LET BUILDERS BUILD: AN AUDIT OF AND PROPOSAL FOR IOWA’S METROPOLITAN HOUSING SHORTAGE

ABSTRACT

Conventional municipal zoning practices place burdens on development that have led to affordable housing shortages across the country. Yet, states are hesitant to address the issue until they are faced with the results of a century’s worth of exclusionary zoning ordinances. Empirical studies from areas with high populations and high gross domestic product (GDP) have illustrated the detrimental impact of unencumbered municipal zoning on housing affordability over the past 100 years. Recently, legal scholars and economists alike have started advocating for state intervention policies that broaden the scope of affordable housing solutions from the municipal model to a regional or state approach. States battling the worst effects such as California and Massachusetts have started implementing policies that reflect the need to pull back zoning authority to the state level. Most policies, however, implement inclusionary zoning—further regulating an already overregulated market and stifling development.

This Article makes the case for Iowa to get ahead of the curve. Metropolitan regions in Iowa are growing in population and GDP. History tells us that continuing to employ decentralized zoning will result in a dwindling affordable housing stock and further exacerbate issues of economic mobility, economic development, and cultural integration. By utilizing the prevalence of tax increment financing for economic development projects and applying preemptive measures where necessary, the Iowa Legislature can avoid wasteful subsidies and promote zoning standards that emphasize the general welfare of metropolitan communities.

TABLE OF CONTENTS

I. Introduction	36
II. Municipal Land Use Regulation Constrains Affordable Housing Development	37
A. Understanding Relevant Land Use Authority	37
B. Why Localized Land Use Fails Communities	40
C. Current Regulation’s Effect on the Housing Market	43
III. The State Intervention Approach to Affordable Housing	47
A. Political Considerations	48
B. State Displacement of Municipal Authority	49
1. Clawback Regulation	49
2. Deregulation and Preemption.....	118
3. By-Right Development	53

C. Inclusionary Zoning	54
IV. Iowa's Status Quo	58
A. State Zoning Law	58
B. Tax Increment Financing	60
C. The City of Des Moines: A Call To Action	63
V. Zoning and Tax Increment Financing Reform In Iowa.....	64
A. Condition Tax Increment Financing on a Municipal Housing Plan	65
B. Placing Partial Tax Increment Financing Proceeds in Trust for Housing Subsidies.....	66
C. Preemption for By-Right Development of Affordable Housing.....	67
D. State Audits to Ensure Compliance	67
VI. Conclusion.....	68

I. INTRODUCTION

Iowa metropolitan areas are facing a looming affordable housing crisis. But this is not unique to Iowa. Across the country, metropolitan regions find themselves needing to address their lack of affordable housing units and the myriad of side effects it creates. Interestingly enough, Iowa's affordable housing statistics are considered among the best in the nation.¹ However, an analysis of demographic trends and current land use policy reveals that Iowa is headed for the same fate as other states. Currently, Iowa faces a deficit of 65,926 affordable rental units in the state.² Further, roughly 100,000 renter households are considered "extremely low income."³ So while Iowa may rank amongst the best states for affordable housing in the nation, it is more of a vanity statistic than an indication of a healthy housing ecosystem.

This Article uses empirical data, past and present policy, and economic theory to support the contention that Iowa should enact legislation to intervene with municipal zoning authority. The need for intervention is premised on three economic realities. First, localized zoning constructs significant barriers to economically efficient housing development. Second, said barriers to development are the main source of rising housing prices. Third, the current zoning system and other mainstream policies, namely inclusionary zoning, are only exacerbating the issue. Finally, this Article will put forth a proposal for Iowa to effectively navigate

1. See generally *Housing Needs by State: Iowa*, NAT'L LOW INCOME HOUS. COAL., <https://nlihc.org/housing-needs-by-state/iowa> [https://perma.cc/4LKR-JP8P].

2. *Id.*

3. *Id.* "Extremely low income" households are those making between 0 percent and 30 percent of the area median income. *Id.*

demographic shifts which forecast further affordable housing shortages. This Article does not address the issue of housing shortages in rural Iowa, as that issue is distinct from the challenges facing metropolitan areas and requires aptly tailored solutions in its own right.

Part II will explore the origins of our current zoning system, its pitfalls, and the economic impact on display in states that have been feeling the effects longer than Iowa. Part III compares the different policy approaches implemented by states, analyzing their viability through economic, legal, and political lenses. Part III argues for deregulatory state intervention as a necessary component to any sustainable solution. Part IV outlines current land use policy in Iowa. Part V concludes with the Author's policy proposal that utilizes preemption and non-traditional tax increment financing as a means to encourage and fund affordable housing in metropolitan Iowa.

II. MUNICIPAL LAND USE REGULATION CONSTRAINS AFFORDABLE HOUSING DEVELOPMENT

The control of city zoning is bottom-up. Although zoning is a state police power, almost every state in the country has delegated zoning authority to municipalities. Every state faces a shortage of low-to-moderate income housing, yet legislatures remain reluctant to impose upon local authority. This Part explores the origins of municipal zoning authority, why the current localized approach is failing, and the resulting impact on housing affordability.

A. Understanding Relevant Land Use Authority

Zoning policy, in conjunction with city planning, was first proposed with the goal of separating incompatible land use for the benefit of society as a whole. As one scholar explains, the point of zoning is to mitigate negative externalities of nonresidential uses on residential neighborhoods.⁴ But as this Article later acknowledges, zoning has been utilized as a means to a number of different ends which do not always align with its stated intent.⁵ At its worst, zoning was used as a means to racial and economic segregation.⁶ Now zoning acts as a safeguard for property values by prioritizing property tax revenues for the city and house values for homeowners.⁷

Zoning regulations in the United States were created in response to the

4. Anika Singh Lemar, *The Role of States in Liberalizing Land Use Regulations*, 97 N.C. L. REV. 293, 307 (2019).

5. See discussion *infra* Part II.C.

6. Lemar, *supra* note 4, at 319, 352.

7. *Id.* at 294–95.

advancement of cities and the heightening prevalence of automobiles and skyscrapers.⁸ Originally appearing in Los Angeles and New York City in the early twentieth century, zoning ordinances quickly became a fundamental part of municipal governance.⁹ These ordinances replaced the less structured methods previously used to dictate land use.¹⁰ New York's Zoning Commission was the first authoritative body created to prescribe the use of privately owned real estate.¹¹ Expectedly, landowners were quick to challenge the authority of the city's self-proclaimed power.¹²

In 1924, Secretary Herbert Hoover's Department of Commerce issued A Standard State Zoning Enabling Act (SZEa).¹³ The purpose of the Act was to ensure safety and a basic quality of life in cities as populations across the country continued to rise.¹⁴ Through language which encompassed any perceivable government justification, the SZEa encouraged states to pass their authority on to municipalities to regulate land use in their respective jurisdiction.¹⁵ Accompanying the authority to create such ordinances was the police power to enforce them.¹⁶ States quickly adopted the model act.¹⁷ With an eye toward litigation, the drafters believed their model was constitutionally sound and would pass muster when that day came.¹⁸

The Supreme Court first addressed a state's right to impose zoning ordinances in 1926 through the dispute of *Village of Euclid v. Ambler Realty Co.*¹⁹ The landmark decision grants states broad authority to restrict land use and imposes a high standard on parties seeking relief on the grounds of due process or equal protection under the Fourteenth Amendment.²⁰ The *Euclid* Court mirrored the SZEa language, deciding that a zoning ordinance is constitutional so long as it is not "clearly arbitrary and unreasonable, having no substantial relation to public

8. WILLIAM A. FISCHER, ZONING RULES! THE ECONOMICS OF LAND USE REGULATION 163 (Lincoln Inst. of Land Pol'y 2015).

9. *Id.*

10. *Id.*

11. STANISLAW J. MAKIELSKI, THE POLITICS OF ZONING: THE NEW YORK EXPERIENCE 1 (Columbia Univ. Press 1966).

12. *See, e.g., Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

13. A STANDARD STATE ZONING ENABLING ACT (U.S. DEP'T OF COM. 1926).

14. *See id.* at iii–iv.

15. *Id.* at 4–5.

16. *Id.* at 6.

17. *Id.* at iii (foreword by Herbert Hoover).

18. *Id.* at iii–iv.

19. *See generally* 272 U.S. 365 (1926).

20. *Id.* at 384.

health, safety, morals, or general welfare.”²¹

Effectively, the *Euclid* Court’s decision cemented single family homes as the top priority for zoning.²² Professor Anika Singh Lemar aptly illustrates the effect of the *Euclid* decision.

The most fundamental feature of Euclidean zoning, so named for the case *Village of Euclid v. Ambler Realty Co.*, is a rejection of mixed-use districts.²³ In addition, Euclidean zoning establishes a hierarchy of residences, excluding multifamily housing from single-family zones but permitting single-family housing in multifamily zones. The basic American zoning ordinance is a pyramid. At the top are the most restrictive zones, which permit only single-family residences. As you go down the pyramid, each zone permits the uses permitted in the more restrictive zones above. As a result, single-family residences are permitted in every zone. At the bottom are the most inclusive zones, which permit everything above plus potentially noxious uses, such as heavy industry and junkyards.²⁴ The *Euclid* decision did little to change zoning practices in Iowa, as the state supreme court had endorsed restrictive local zoning ten years prior in *City of Des Moines v. Manhattan Oil Co.*²⁵

Iowa first delegated zoning powers to municipalities in 1917.²⁶ Chapter 138 of the Iowa Code allowed for cities meeting certain standards, typically related to population, to create restricted residential zones.²⁷ In *City of Des Moines v. Manhattan Oil Co.*, the defendants challenged the constitutionality of Chapter 138 on the grounds of improper exercise and improper delegation of state police power.²⁸ The court also emphasized that property rights are subject to the regulation of the municipal corporation in which they reside.²⁹ While the SZE and the *Euclid* decision were still years in the future, the stage in Iowa was set for unfettered municipal regulation.

Currently, Iowa’s municipal zoning is codified in I.C.A. Chapter 414.³⁰ While the rhetoric has evolved and been modeled on the SZE and Euclidian era zoning standards, the sentiment of unquestioned municipal authority remains

21. *Id.* at 395.

22. Lemar, *supra* note 4, at 307.

23. See 272 U.S. 365 (1926).

24. Lemar, *supra* note 4, at 306 n.55.

25. *City of Des Moines v. Manhattan Oil Co.*, 184 N.W. 823 (Iowa 1921).

26. IOWA CODE ch. 138 (1917).

27. *See id.*

28. *City of Des Moines*, 184 N.W. at 826.

29. *Id.* at 827.

30. IOWA CODE ANN. § 414.1 (West 2021).

largely intact.³¹ A 2018 iteration of section 414.1 prohibits zoning regulations from restricting rental occupancy based on familial relationships.³² This is notable for two reasons. First, the amendment is symbolic of the type of off-target solutions seen around the country.³³ The amendment does much to appease political groups calling for reform but does nothing to address the underlying economic forces which prevent housing from being built and sold affordably.³⁴ The other notable aspect is the legislature's willingness to restrain municipal zoning power.³⁵ The Author's proposal is predicated on the state's willingness to intervene.

To summarize, traditional, informal land use regulations were supplanted by modern day municipal zoning around 1910.³⁶ Soon thereafter the Department of Commerce recommended states delegate their police powers to local governing bodies to regulate property use as they see fit.³⁷ Eleven states adopted the federal model within one year of publication.³⁸ After the Supreme Court found for the Village of Euclid, Ohio in *Village of Euclid v. Ambler*, there was no question as to the absolute power of municipalities to restrict land use for ostensibly any justification they deemed beneficial.³⁹ Iowa's approach has paralleled the majority of states, both legislatively and judicially.⁴⁰ Therefore, Iowa is also facing the same implications of localized zoning control—lack of affordable housing.

B. Why Localized Land Use Fails Communities

The result of localized land use authority is poignant. The current system further exacerbates underrepresentation of low-income households in the political process, constructs unnecessary constraints on efficient development, and curbs economic mobility. Due to the delegation of authority in the state zoning enabling acts and judicial support of municipal control, affordable housing is—and will continue to be—unattainable for many Iowans.

The concept of checks and balances is ingrained in the fabric of our country. Municipal zoning grants extreme power to local politicians and the courts have

31. *See id.*

32. IOWA CODE ANN. § 414.1(b) (West 2018).

33. *See* discussion *infra* Part II.B.

34. *See generally* IOWA CODE § 414.1(b) (2021).

35. *See id.*

36. *See* FISCHER, *supra* note 8, at 163.

37. A STANDARD STATE ZONING ENABLING ACT 4–5 (U.S. DEP'T OF COM. 1926).

38. *See id.* at iii (foreword by Herbert Hoover).

39. *See* 272 U.S. 365 (1926).

40. *See generally* IOWA CODE § 414.1 (2021).

historically granted deference to localities.⁴¹ But the political process is not without fault.⁴² On a national, or even statewide scale, government decision makers are tasked with appealing to the interests of their constituents. It is feared that special interest lobbies are often able to influence candidates with contributions or their voting bloc.⁴³ Far more concerning; however, is the impact of that influence on a local level. Each dollar or vote is worth exponentially more when races may be consistently won by a few hundred ballots or less.⁴⁴ Now consider the impact of family ties, friendships, and relationships with colleagues. When municipalities are tasked with determining land use, their decision makers are particularly vulnerable to community influences, specifically to a group that scholars have labeled “homevoters.”⁴⁵ Moving the forum for development from the local to state level equalizes lobbying opportunities.⁴⁶ Affordable housing advocates and affected parties are often underrepresented at the local level because of their lack of property ownership.⁴⁷ Moreover, many of the people affected by housing shortages may not live in the jurisdiction due to already high costs.⁴⁸ Allowing developers, organizations, and low-income households to combine lobbying efforts at the state level provides decision makers with a more accurate representation of both sides of the issue.⁴⁹

Around 1970 economists observed a shift in the mindset of homebuyers.⁵⁰ Houses are now treated as an investment as opposed to a consumer good.⁵¹ William Fischel, an expert on local government economics, claims this switch created a new political class known as homevoters.⁵² With much of their net worth invested in their house, homevoters became very active in detesting development that might cause their property value to fall.⁵³ Thus, the “Not In My Backyard” phenomenon was born.

41. Ashira Pelman Ostrow, *Judicial Review of Local Land Use Decision: Lessons from RLUIPA*, 31 HARV. J. L. & PUB. POL’Y 717, 719–21 (2008).

42. *See id.* at 719–20.

43. Tim Lau, *A Bid to Counter Big Money in Politics is Gaining Steam*, BRENNAN CTR. JUST. (Jan. 15, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/bid-counter-big-money-politics-gaining-steam> [<https://perma.cc/MP53-BKZK>].

44. *See generally id.*

45. *See* FISCHEL, *supra* note 8, at 163.

46. *See* Lemar, *supra* note 4, at 345–47.

47. *See id.* at 346–47.

48. *Id.*

49. *See id.*

50. FISCHEL, *supra* note 8, at 163.

51. *Id.*

52. *Id.*

53. *Id.* at 164.

“Not In My Backyard” (NIMBY) syndrome is defined in relation to land use as “an emotional, parochial, and self-serving community reaction which increases the cost of higher, more rational decision-making authorities of locating ‘locally unwanted land uses’ (LULUs).”⁵⁴ These tactics are implemented through single-family structure requirements, minimum square foot requirements, and other economic thresholds which box out low-income households.⁵⁵ NIMBY, and its effect on local politics more generally, is considered to be one of the most significant contributing factors to greater land use controls; thus, higher development costs and an unaffordable housing supply.⁵⁶ The result of unaffordable housing creates a slew of disparate impacts on poor households—most notably economic immobility.⁵⁷

The argument for the importance of economic mobility is synonymous with the argument for affordable housing. In order to create socially and economically thriving communities which provide equal opportunities to all citizens, people must be able to house themselves affordably.⁵⁸ The lack of adequately dispersed affordable housing means many low-income households fall victim to the metropolitan sprawl.⁵⁹ The metropolitan sprawl reveals the effect of restrictive zoning ordinances in suburbs driving up housing prices.⁶⁰ As a result, low-income households are boxed in to inner city communities or forced out to the fringe of a region.⁶¹ Exclusion from the suburbs creates issues surrounding employment, transportation, education, diversity, and ultimately perpetuates generational poverty.⁶² Further, affordable housing is the most cost-effective way to increase

54. Mark N. Wexler, *A Sociological Framing of the NIMBY (Not-in-my-Backyard) Syndrome*, INT’L REV. MOD. SOCIO., Spring 1996, at 91.

55. See Anika Singh Lemar, *Zoning as Taxidermy: Neighborhood Conservation Districts and the Regulation of Aesthetics*, 90 IND. L.J. 1525, 1554–55 (2015).

56. See FISCHER, *supra* note 8, at 271 (explaining the political role of homeowners in the municipal zoning).

57. THE WHITE HOUSE, HOUSING DEVELOPMENT TOOLKIT 5 (Sept. 2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf [<https://perma.cc/6KSM-H997>] [hereinafter THE WHITE HOUSE].

58. *Why do Affordable Homes Matter?*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/explore-issues/why-we-care> [<https://perma.cc/GH5X-BLSD>] (explaining the link between unaffordable housing intergenerational poverty and economic mobility).

59. See FISCHER, *supra* note 8, at 289–90.

60. *Id.*

61. See *id.* at 291.

62. MARGERY AUSTIN TURNER ET AL., OPPORTUNITY NEIGHBORHOODS: BUILDING THE FOUNDATION FOR ECONOMIC MOBILITY IN AMERICA’S METROS v (Feb. 2018), https://www.mobilitypartnership.org/sites/default/files/opportunity_neighborhoods_paper_1.pdf.

economic mobility.⁶³ Harvard economist Raj Chetty's study on childhood poverty, economic mobility, and affordable housing found that children whose family moved away from lower poverty neighborhoods before age 13 were more likely to get a college education, more likely to get married and have children with a father present, and earn 31 percent more in annual income.⁶⁴ Extrapolating out these results one can infer the positive generational impacts of affordable housing accessibility across all communities.⁶⁵

In the local land use arena, political appeasement of homevoters takes the form of impact fees, approval times, minimum land and construction thresholds, and high transactional costs passed on to developers.⁶⁶ The effect of the dubious costs placed on developers is the prevention of Coasean bargaining.⁶⁷ When developers are disadvantaged in the community bargaining process, homevoters dictate development.⁶⁸ Development left in the hands of homevoters, as we know, is guided by high property assessments and home values, resulting in exclusionary zoning and higher cost of housing.⁶⁹ Recall that zoning authority is granted to the states, and therefore the municipalities, to promote "public health, safety, morals, or general welfare."⁷⁰

C. Current Regulation's Effect on the Housing Market

Theoretically, restrictive municipal zoning ordinances have been at odds with economists since their inception. However, it was not until relatively recently that enough empirical data had been amassed for scholars to observe the impact of restricted development on the housing market. Studies examining municipal zoning ordinances have produced three key indicators which link municipal zoning authority to affordable housing shortages.⁷¹ First, higher degrees of regulation are

63. See generally FISCHEL, *supra* note 8.

64. See Raj Chetty et al., *Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility* 31–36 (NAT'L BUREAU ECON. RSCH., Working Paper No. 19844, 2014). This study does not address the likelihood or impact of having a mother or same-sex partner present.

65. See *id.*

66. See Edward L. Glaeser & Joseph Gyourko, *The Impact of Zoning on Housing Affordability* 11 (NAT'L BUREAU ECON. RSCH., Working Paper No. 8835, 2002).

67. FISCHEL, *supra* note 8, at 237.

68. See *id.*

69. *Id.*

70. *Vill. Of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

71. See, e.g., Joseph Gyourko et al., *A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index*, URB. STUD., Mar. 2008, at 693, 693.

implemented in less populated areas.⁷² The second finding identifies regulation, not cost of construction, as the main contributor to increasing prices.⁷³ Finally, economists recognized a strong positive correlation between wealth and regulation in a given region.⁷⁴ Viewed together, these findings portray the detrimental impact of overregulating the marketplace and the need for less-restrictive measures imposed on developers. Considering Iowa's shifting demographic statistics, it is evident that Iowa is likely to see increased regulation and therefore a greater affordable housing deficit.

One of the most notable comprehensive studies on land use regulation to date is the Wharton Residential Land Use Regulatory Index (WRLURI).⁷⁵ Using data from over 2,600 participating jurisdictions, the WRLURI relies on an 11 factor formula to measure the effect of regulation on the housing market in every state.⁷⁶ Subindex values were selected to encompass measurements of state and local political involvement, development approval rates, supply restrictions, approval times, and other variables which offer a holistic image of land use regulation in the state.⁷⁷ Many of the prevailing theories on land use economics have been validated through this study.⁷⁸ The publication draws information from around the country and analyzes data regionally.⁷⁹ Deeper analysis centers on hyper-regulated markets on the coasts, therefore information regarding Iowa is often grouped into the Midwest region.⁸⁰ In this Article the study is used to identify why cities zone restrictively, and the resulting impact, to caution such practices in Iowa. Statistics specific to Iowa will usually refer to the Greater Des Moines Area or the state as a whole and will be supplemented as available and necessary.

The first notable observation by land use economists is that regulation has a negative correlation with population density.⁸¹ "The fact that the densest communities are not the highest regulated strongly suggests that the motivation for land use controls is not a fundamental scarcity in the sense that these places are 'running out of land.'"⁸² Fischel illustrates the abundance of available land by dividing the United States population by four, into households, then giving each

72. *Id.*

73. Glaeser & Gyourko, *supra* note 66, at 5.

74. Gyourko et al., *supra* note 71, at 699.

75. *Id.* at 693.

76. *Id.* at 693, 698.

77. *Id.* at 704–14.

78. *Id.*

79. *See id.*

80. *See id.* at 695.

81. *Id.* at 693.

82. *Id.*; *see also* FISCHEL, *supra* note 8.

household one square acre parcel.⁸³ If we were to do this, only four percent of the continental United States land would be residential.⁸⁴ In other words, land's value is driven up by forces other than supply and demand. Land availability is hardly a concern to Iowa metropolitan city planners.⁸⁵ The continued implementation of exclusionary zoning ordinances forces developers to find less regulated land further from the city center or construct housing at prices higher than the market demands.⁸⁶ These practices leave Iowa workers to choose between searching for more affordable housing further from their job or spending significant amounts of their income on housing.

To ensure housing prices are driven by regulatory constraints, rather than natural market forces, we must also consider the price of construction. In 2002 Joseph Gyourko, the founder of the Wharton Index, and Edward Glaeser turned a critical eye toward housing economics to determine if there was an affordable housing shortage; and if so, why?⁸⁷ They focused exclusively on housing supply, theorizing that the difference between costs of production and housing prices is a more relevant indicator than how many people are unable to afford a house.⁸⁸ Understanding that land, even in densely populated areas, is abundant, Gyourko and Glaeser found that conventional zoning, impact fees, and slow approval processes are what hinder construction efforts, not the actual cost of building housing structures.⁸⁹ Former President Barack Obama's White House agreed.⁹⁰ In a White House release entitled "Housing Development Toolkit", the administration outlines the affordable housing problem and a list of solutions that municipalities should implement to reverse course.⁹¹ The White House paper also relies on building versus retail housing prices to illustrate harmful municipal practices, acknowledging that "Researchers have also documented a sharp increase in the gap between home prices and construction costs, with stringent housing regulations now driving cost increases previously shaped by construction costs and quality improvements."⁹² The report further explains that barriers to housing development stem primarily from the local level.⁹³ However, many municipalities

83. FISCHEL, *supra* note 8, at 1–2.

84. *Id.* at 1–3.

85. *See* DES MOINES, IOWA, MUN. CODE ch. 134 (2020).

86. *See id.*

87. Glaeser & Gyourko, *supra* note 66, at 1–2.

88. *Id.* The study was structured to make sure the United States is experiencing a "housing problem" and not a "poverty problem." *Id.*

89. *Id.* at 11.

90. THE WHITE HOUSE, *supra* note 57, at 2.

91. *See id.* at 2–3.

92. *Id.* at 5.

93. *Id.* at 6.

continue to promote zoning policies which emphasize property value over affordable housing.⁹⁴

Recently, the city of Des Moines passed a zoning ordinance with many earmarks of exclusionary zoning practices.⁹⁵ The change requires new construction in the city to have full basements, garages, driveways and minimum lot sizes of 7,500 to 10,000 square feet.⁹⁶ Not only do these regulations stunt production of housing in general, but they guarantee that the housing which does get built is out of reach to low-income households.⁹⁷ The Workforce Development Leader for the Home Builders Association of Greater Des Moines predicts that any household with an annual income of less than \$90,000 will not be able to afford housing built pursuant to these the new standards.⁹⁸ For context, the median household income in Des Moines in 2019 was \$53,525.⁹⁹ This city action is perplexing as there are currently almost 58,000 cost-burdened households in the Greater Des Moines Area, and Polk County will require an additional 57,000 new housing units in the next 20 years.¹⁰⁰

Gyourko and Glaeser's final observation is a positive relationship between concentration of wealth and education, and the level of regulation.¹⁰¹ This is evident in Iowa as well as nationally. According to the Cato Institute's study on land use freedom by state, Iowa ranks as the 7th freest state in the country as of

94. *See generally id.*

95. *See* DES MOINES, IOWA, MUN. CODE ch. 134 (2020).

96. *See id.*; Kriston Capps, *With Zoning Change, Des Moines Hopes to Lure Suburbanites*, BLOOMBERG (Aug. 2, 2019), <https://www.bloomberg.com/news/articles/2019-08-02/with-zoning-changes-des-moines-says-no-to-density>.

97. *See* Glaeser & Gyourko, *supra* note 66, at 16.

98. Capps, *supra* note 96 (quoting Brandon Patterson).

99. *QuickFacts: Des Moines, Iowa*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/desmoinescityiowa/PST045219> [<https://perma.cc/SZ3Q-9SMZ>].

100. THE VA. CTR. FOR HOUS. RSCH. AT VA. TECH, DOWNTOWN WORKFORCE HOUSING STUDY 2 (2018), <https://www.capitalcrossroadsvision.com/wp-content/uploads/2019/05/Workforce-Housing-Study-VCHR-Final-Draft.pdf> [hereinafter THE VA. CTR. FOR HOUS. RSCH.] (cost burdened is used to define households spending over 30 percent of household income on rent).

101. Edward Glaeser et al., *Urban Growth and Housing Supply* 19 (NAT'L BUREAU ECON. RSCH., Working Paper No. 11097, 2005).

2018.¹⁰² That ranking is up from 9th, which was held by Iowa in 2002.¹⁰³ In the same time period, Iowa's GDP per capita ranking increased from 33rd to 21st.¹⁰⁴ By comparison, New York ranks 46th in land use freedom and 1st in GDP per capita.¹⁰⁵ California ranks 48th in land use freedom and 5th in GDP per capita.¹⁰⁶ Arkansas ranks 5th in land use freedom and 49th in GDP per capita.¹⁰⁷ As Iowa's GDP continues to rise due to their hospitable business environment and increasingly skilled workforce, greater municipal land use regulation should be expected.¹⁰⁸

In conclusion, the problem is not the scarcity of land, nor is the cost of labor or materials to build housing structures at an affordable rate. Rather, the burden on developers from overbearing land use regulations from local governments primarily cause the difference in cost of construction and retail pricing. Paired with demographic trends which suggest Iowa will experience further municipal regulation, current law will only make housing less affordable with time.

III. THE STATE INTERVENTION APPROACH TO AFFORDABLE HOUSING

Recently, affordable housing has become a major topic on all levels of political discourse. Iowa Governor Kim Reynolds announced affordable housing development as one of her main priorities during her 2021 condition of the state address.¹⁰⁹ Policy solutions are being implemented from the city of San Francisco to the state of Iowa, and even on a federal level with varying degrees of success.¹¹⁰ With such a difference in location, demographic, socioeconomics, and governing bodies, it is hard to understand how this problem persists so consistently across

102. *Iowa*, CATO INST., <https://www.freedominthe50states.org/land/iowa> [https://perma.cc/VR7M-RAAX]. The study takes into account variables such as local rent control, land use litigation, WRLURI findings, eminent domain, and other less relevant statistics. See also *How It's Calculated*, CATO INST., <https://www.freedominthe50states.org/how-its-calculated> [https://perma.cc/C5TZ-YASZ].

103. *Iowa*, *supra* note 102.

104. *Useful Stats: Per Capita Gross State Product, 1998–2018*, STATE SCI. & TECH. INST. (May 16, 2019), <https://ssti.org/blog/useful-stats-capita-gross-state-product-1998-2018> [https://perma.cc/4RLE-TAW9] [hereinafter *Useful Stats*].

105. See *id.*; see also *Iowa*, *supra* note 102.

106. See *Useful Stats*, *supra* note 104; see also *Iowa*, *supra* note 102.

107. See *Useful Stats*, *supra* note 104; see also *Iowa*, *supra* note 102.

108. See Gyourko et al., *supra* note 71, at 698–99.

109. *Read Gov. Kim Reynolds 2021 Condition of the State Speech*, DES MOINES REG. (Jan. 12, 2021), <https://www.desmoinesregister.com/story/news/politics/2021/01/12/read-iowa-gov-kim-reynolds-2021-condition-state-speech-full-text-transcript/6637040002/>.

110. See Benjamin Powell & Edward Stringham, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*, REASON PUB. POL'Y INST., Apr. 2004, at 1, 2, 5.

metropolitan and rural areas. As presented in Part II, the current method used to regulate land is at odds with our economic system and restricts development from keeping up with the current need. To that end, it is the Author's belief that any proposed solutions which do not mitigate restrictive regulations will at best provide short-term, partial relief to the affected population and at worst continue to waste government funding on subsidized piecemeal solutions which do not address the core of the issue. This Part will argue for dampening municipal authority via state intervention and compare it to competing policy.

A. Political Considerations

An issue so impactful and prolific quickly becomes politicized. Typically, deregulation and emphasis on less government spending is regarded as a republican ideology. On the contrary, the democratic platform often encompasses more social programs and allocation of government funds to support current domestic hardship. The solution to this problem will need to encompass a healthy dose of both to be successful. One obstacle to providing a balanced approach from state decision makers is political optics.¹¹¹

There are three main constituencies that politicians must appeal to in the land use lobby: citizens, developers, and municipalities. Both municipalities and citizens advocate for local control. Municipalities view their ability to govern land use as an inherent power, making any attempt to clawback authority to the state level feel like an attack on local autonomy.¹¹² This alone provides obstacles to state imposed land use regulation, particularly in a conservative state like Iowa.¹¹³ It is notable that the homevoter class typically views state land use policy through the lens of the municipality, as this is their vehicle toward exercising control as well.¹¹⁴ The second constituency is affected citizens. Historically distant from the political process, this group is still underrepresented.¹¹⁵ Those who are set to benefit from government allocations often view support in terms of dollars spent, and that is what many state leaders elect to do. Whether these optics are at the core of reasoning for politicians is speculative, though it is hard to believe that the economic consequences of municipal regulation have not been considered. This Part will provide context to the two schools of thought at the center of housing development policy.

111. See Lemar, *supra* note 4, at 338 (discussing motivation for states' lack of action in response to local concerns).

112. *Id.* at 304–05.

113. See *id.*

114. See FISCHER, *supra* note 8, at 212–15.

115. See Lemar, *supra* note 4, at 338–39.

B. State Displacement of Municipal Authority

There are four types of state intervention into municipal land use regulation.¹¹⁶ Professor Singh Lemar points out that two of them supplement municipal regulatory action and two displace it.¹¹⁷ Displacement regulations, which encompass clawback and deregulatory interventions respectively, are state actions used in response to affordable housing shortages in a minority of states.¹¹⁸ Though a larger number of states have preempted certain regulations of specific land uses.¹¹⁹ The former enacts statutes which condition a municipality's exercise of state police power based on adhering to certain zoning practices put forth in the legislation, therefore "clawing back" the power to regulate land use to the state.¹²⁰ The latter prohibits regulation of certain land uses outright.¹²¹ The clearest delineation between the two approaches is that clawback regulations attempt to channel municipal authority as opposed to the preemptive nature of deregulation.

1. Clawback Regulation

Clawback intervention is more common than state sanctioned deregulation and is observable in its most extreme form through a case coming out of New Jersey in 1975.¹²² *Southern Burlington County, NAACP v. Township of Mt. Laurel* addressed the issue at the core of metropolitan sprawl concerns—exclusionary zoning.¹²³ Mount Laurel was a rural, quickly turning suburban, town on the outskirts of Camden, New Jersey.¹²⁴ With slowing industrial activity and an increase in civil unrest, Camden's large working class endured many hardships.¹²⁵ Those with the means to leave opted for suburban developments in towns like Cherry Hill and Mount Laurel.¹²⁶ Low-income households, however, were unable to afford to move out of Camden due to the lack of low cost housing available in

116. *Id.* at 300.

117. *Id.*

118. *Id.* at 302–03.

119. *Id.* at 320. Over thirty states have deregulated manufactured housing zoning in some capacity, though the majority of them have no other meaningful restrictions on municipalities regulation of housing. *Id.*

120. *Id.* at 302.

121. *Id.* at 303.

122. *See* S. Burlington Cnty. NAACP v. Twp. of Mount Laurel, 336 A.2d 713 (N.J. 1975).

123. *Id.* at 716.

124. Mount Laurel Doctrine, FAIR SHARE HOUS. CTR., <https://fairsharehousing.org/mount-laurel-doctrine/> [<https://perma.cc/TG5U-F4T3>].

125. *See id.*; *see also* HOWARD GILLETTE, JR., CAMDEN AFTER THE FALL: DECLINE AND RENEWAL IN A POST-INDUSTRIAL CITY ch. 2 (Univ. of Pa. Press 2005).

126. Edward C. Burks, *Camden: An Exodus of Whites*, N.Y. TIMES, June 25, 1972.

surrounding suburbs.¹²⁷ Camden's shifting demographics represent what economists call the "white flight" phenomenon.¹²⁸ US Census statistics reported an increase of almost 40 percent in black residents in Camden, while the white population fell by 30 percent.¹²⁹ Simultaneously, the population of Cherry Hill more than doubled to over 64,000 with a population that was 98.7 percent white.¹³⁰ When the plans for Mount Laurel's development and their intent to include zero affordable housing units became public, class action litigation ensued.¹³¹

In *Mt. Laurel I*, the New Jersey Superior Court found that affordable housing opportunity for low to moderate income persons is explicitly linked to the general welfare.¹³² Thus, exclusionary zoning, which requires a minimum lot size requirement on *all* properties in the township, is outside the scope of the state police power delegated to the municipality.¹³³ The Supreme Court of the United States affirmed, clearing up any confusion about a state's ability to clawback land use authority beyond a shadow of a doubt.¹³⁴

A few states have limited local zoning authority via statutory enactment in order to preserve or create affordable housing following the *Mt. Laurel* decision.¹³⁵ Massachusetts and Connecticut both enacted statutes in the late twentieth century which attempt to remedy the misuse of local zoning ordinances to stymie affordable housing development.¹³⁶ Connecticut, for example, does this by creating a zoning appeals process which requires municipalities to show substantial public interests which outweigh the benefit of affordable housing development in the area.¹³⁷ Moreover, if a substantial public interest is evidenced in the zoning commissions denial, they must offer the developer the ability to remedy such harm

127. See generally GILLETTE, JR., *supra* note 125, at 40.

128. *White Flight*, LEXICO, https://www.lexico.com/en/definition/white_flight [<https://perma.cc/NA5C-T69S>]. "White Flight" is "[t]he phenomenon of white people moving out of urban areas, particularly those with significant minority populations, and in suburban areas." *Id.*

129. Burks, *supra* note 126.

130. *Id.*

131. See generally *S. Burlington Cnty. NAACP v. Twp. of Mount Laurel*, 336 A.2d 713 (N.J. 1975).

132. *Id.* at 725.

133. *Id.*

134. *Twp. of Mount Laurel v. S. Burlington Cnty. NAACP*, 423 U.S. 808 (1975) (denying certiorari).

135. Lemar, *supra* note 4, at 303.

136. *Id.*

137. Act of June 29, 1989, Pub. Act No. 89-311, 1989 CONN. ACTS 790, 790-92 (codified as amended at CONN. GEN. STAT. §§ 8-30g to 8-30j (2021)).

in their plan and grant the development conditioned on the necessary changes.¹³⁸ Clawback interventions address broad policy issues, putting state checks on local governments or re delegating the authority to a separate governing body.¹³⁹ Deregulation interventions, discussed below, displace local zoning controls and leave the powers to regulate unused, but on very narrow land uses.¹⁴⁰

2. *Deregulation and Preemption*

Deregulation intervention is preemptive by nature.¹⁴¹ Instead of adding layers of oversight to ensure responsible zoning practices by municipalities, deregulation simply limits regulations that local governments may impose.¹⁴² Professor Singh Lemar outlines four land use categories which states most often apply deregulatory interventions.¹⁴³ The specific categories of regulations she observed regard family day care homes, manufactured housing, residential alternative energy infrastructure, and group homes;¹⁴⁴ however, for the purpose of this Article it is only necessary to note the deregulatory nature and not the specific application. Operationally, the state enacts legislation which tried to balance the functionality of the specific land use with the residual impacts that individual communities wish to mitigate.¹⁴⁵ Politically, deregulating niche categories of land use is an easier feat because it does not call the totality of municipal land use authority into question.¹⁴⁶

The benefit of deregulation as a remedy is perhaps best displayed by the treatment of manufactured housing. Manufactured housing offers a low-cost option to many low-income and moderate-income earners.¹⁴⁷ However, due to the aesthetic preference of homevoters and local officials, manufactured housing is zoned separately from single-family housing although functionally it serves the same purpose.¹⁴⁸ Typically, manufactured housing is zoned only in undesirable parts of society.¹⁴⁹ The purpose for relegating manufactured houses to multifamily,

138. Kaufman v. Zoning Comm'n, 653 A.2d 798, 809 (Conn. 1995).

139. Lemar, *supra* note 4, at 304.

140. *See id.*

141. *See id.*

142. *Id.* at 304–05.

143. *Id.* at 305–06.

144. *Id.* at 306.

145. *Id.* at 316–17, 319.

146. *See id.* at 319–20.

147. Ann. M. Burkhart, *Taxing Manufactured Homes*, TAX LAW., Summer 2014, at 909, 910.

148. *Id.* at 913.

149. Lemar, *supra* note 4, at 318.

commercial, or industrial zones is to maintain single family property values—only perpetuating the difficulty of cultivating an affordable housing market.¹⁵⁰ Over half of states have preempted local regulation of manufactured housing in some capacity.¹⁵¹ True deregulation was implemented in Nevada in 1999.¹⁵² The state legislature enacted a law defining single family residence to include manufactured housing.¹⁵³

In Massachusetts, preemption has been used effectively as a deterrent to exclusionary zoning.¹⁵⁴ Chapter 40B of the Massachusetts General Laws, enacted in 1969, establishes an appeals process which threatens state preemption of local zoning if the city in question does not have at least 10 percent of housing units affordable to low-income and moderate-income earners.¹⁵⁵ The statute allows developers to apply for a comprehensive permit from the local zoning board of appeals—allowing them to build new developments which meet a minimum quota of affordable units.¹⁵⁶ The permit allows developers to bypass certain regulatory and permit requirements.¹⁵⁷ If the permit is denied, the developer may appeal to a state board who is tasked with determining the validity of the zoning board of appeals decision.¹⁵⁸ In jurisdictions where affordable units surpass 10 percent, the state board grants deference to the local decision.¹⁵⁹ If the local housing is not above the 10 percent mark, the state board may overturn the local decision and preempt local ordinances.¹⁶⁰ While the appeals process is itself a clawback intervention, the threat of outright preemption has at least in part been responsible for the number of cities meeting the ten percent threshold increasing over tenfold (from 4 to 44 between 1972 and 2014) since the law was enacted.¹⁶¹

150. *Id.* at 319–20.

151. *Id.* at 320 (citing Amy J. Schmitz, *Promoting the Promise Manufactured Homes Provide for Affordable Housing*, 13 J. AFFORDABLE HOUS. & CMTY. DEV. L. 384, 395 (2004)).

152. *See generally* NEV. REV. STAT. § 278.02095 (2021).

153. *Id.*

154. John Infranca, *The New State Zoning: Land Use Preemption amid a Housing Crisis*, 60 B.C. L. REV. 823, 837–39 (2019).

155. *Chapter 40B: The State's Affordable Housing Law*, CITIZENS' HOUS. PLAN. ASS'N (Jan. 2014), https://www.chapa.org/sites/default/files/40%20B%20fact%20sheet_0.pdf [perma.cc/AW2A-A92N].

156. MASS. GEN. LAWS ch. 40B, §§ 20–23 (2021).

157. *Id.* § 21.

158. *Id.*

159. 760 MASS. CODE REGS. 56.07(8)(a) (2021).

160. *Id.*

161. Infranca, *supra* note 154, at 838.

3. *By-Right Development*

“By-right” zoning lowers the cost for development by streamlining application processes and weakening exclusionary zoning ordinances while still accounting for public input.¹⁶² In practice, this approach requires a housing plan prescribing the community’s intentions for all levels of housing and where to build them.¹⁶³ By-right zoning municipalities can alleviate the scrutiny of public comment and provide clarity to developers and citizens by relying on the standards set forth in the plan.¹⁶⁴ Through defining the types of buildings desired at a community level, as opposed to the minimum of what a project must include, by-right zoning lessens project-by-project politics which often halts affordable housing progress.¹⁶⁵ When properly employed, by-right zoning allows developers to lower costs by accounting for less risk and faster approval times, citizens to be more aware of the community when choosing where to live, and the state to provide more affordable housing opportunities.¹⁶⁶

Application of by-right zoning is best illustrated in Massachusetts’ Chapter 40R and California’s “Housing Element” code.¹⁶⁷ The essential element to any by-right enactment is a sufficient plan. California’s Housing Element includes “[a]n assessment of housing needs and an inventory of resources and constraints.”¹⁶⁸ The analysis from municipalities must include details evaluating “population and employment trends, land prices, construction costs, the availability of financing, and constraints, including zoning, on the development of housing at all income levels.”¹⁶⁹ Further, the locality must provide “[a] statement of the community’s goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing, as well as a timeline for taking specific actions.”¹⁷⁰ Holistic plans like the housing element allow for states to get creative with the carrots and sticks of encouraging affordable housing development at a

162. Karen Parolek, *How to Get By-Right Zoning Right*, OPTICOS (Nov. 17, 2016), <http://opticosdesign.com/blog/how-to-get-by-right-zoning-right/> [https://perma.cc/AD45-ZG98].

163. *Id.*

164. *See id.*

165. *See id.*

166. *Id.*

167. MASS. GEN. LAWS ch. 40R (2021); CAL. GOV’T CODE § 65300 (2021).

168. *See* CAL. GOV’T CODE § 65583 (2021).

169. *See* Infranca, *supra* note 154, at 842.

170. *Id.* (quoting CAL. GOV’T CODE § 65583 (2021)); *see also* CAL. GOV’T CODE § 65300 (2021).

local level.¹⁷¹ Massachusetts prefers to incentivize.¹⁷² Chapter 40R rewards municipalities who zone for “smart growth zoning districts”, by making them eligible for funding from the state’s Smart Growth Housing Trust Fund.¹⁷³ The use of incentives as opposed to preemptive mandates shows respect for local decision making.¹⁷⁴ Chapter 40R in conjunction with Chapter 40B has been moderately successful in Massachusetts.¹⁷⁵ From its inception in 1972, the legislative action is credited with the production of 70,000 housing units.¹⁷⁶

State interventions, while not always popular, are legally sound and lessen community homeowner’s ability to exclude affordable housing.¹⁷⁷ Displacement interventions generally shift the primary goal of zoning from protecting property values toward one that is more housing centric.¹⁷⁸ This Article does not argue strictly for a singular method of displacement as the solution to the affordable housing shortage in Iowa. Part IV will implement clawback, deregulation, and by-right principles into one policy proposal. Rather, the claim is that a displacement is necessary to solve the underlying problem causing the shortage of affordable housing—regulatory constraints on efficient development. While non-displacement policies may aid in bolstering Iowa’s affordable housing stock, alone they are nothing more than a short-term fix accompanied by a large paycheck.

C. Inclusionary Zoning

Inclusionary zoning is the most utilized policy response to affordable housing shortages nationwide.¹⁷⁹ Inclusionary zoning, named in opposition to exclusionary zoning, either mandates or gives incentives for developers of market-rate housing to provide some units at below-market prices.¹⁸⁰ Inclusionary practices vary in a number of ways: whether it is mandatory or voluntary, what type of development is included, resident requirements, required share of

171. See Infranca, *supra* note 154, at 855.

172. MASS. GEN. LAWS ch. 40R, § 1 (2021).

173. See generally *id.*

174. Letter from Gov. Charles D. Baker to Mass. H.R (Dec. 11, 2017) (discussing H.B. No. 4075).

175. Infranca, *supra* note 154, at 838.

176. *Id.*

177. See discussion *supra* Part III.

178. See discussion *supra* Part III.B.

179. Lance Freeman & Jenny Schuetz, *Producing Affordable Housing in Rising Markets: What Works?*, CITYSCAPE, 2017, at 217, 221.

180. See *Common Incentives and Offsets in Inclusionary Housing Policies*, NAT’L HOUS. CONF., <https://nhc.org/policy-guide/inclusionary-housing-the-basics/common-incentives-and-offsets-in-inclusionary-housing-policies/> [<https://perma.cc/4RE7-PLMZ>] [hereinafter *Common Incentives*].

developments, length of affordability requirements, and cost offsets.¹⁸¹ As a result of differing implementation methods, economic impact varies as well.¹⁸²

Inclusionary zoning passes the political optics hurdle which has proven more difficult for displacement policy.¹⁸³ Municipalities are satisfied as they remain autonomous in zoning regulation.¹⁸⁴ Citizens see an active effort to facially increase affordable housing opportunities in high-income areas. Developers are still dominated by homevoters in the local political arena.¹⁸⁵ Inclusionary zoning represents a well-intentioned response to the lack of affordable housing and its resulting economic immobility, constructive segregation, and lack of access to resources by poor households.¹⁸⁶ However, economists observe the impact on the housing market and find that that inclusionary zoning actually isn't all that effective in creating more affordable housing or mitigating the effects of exclusionary policies.¹⁸⁷

While there are no impact studies done specifically on Iowa's housing stock, economic theory and studies of larger metropolitan areas are in agreeance about the detrimental reality of inclusionary zoning practices.¹⁸⁸ Robert Ellickson, Professor at Yale Law School, explains that inclusionary zoning acts as a tax on new developments when it sets a price ceiling for properties which must be sold or rented at below-market rates.¹⁸⁹ He theorizes that these practices will reduce the housing supply and cause an uptick in the costs for available market rate properties.¹⁹⁰ But Professor Ellickson isn't the only one. A survey of 211 American economists revealed that 98 percent agree that "[a] ceiling on rents reduces the

181. Freeman & Schuetz, *supra* note 179, at 221.

182. Antonio Bento et al., *Housing Market Effects of Inclusionary Zoning*, CITYSCAPE, 2009, at 7, 9.

183. In conversation, Steve Gaer, the Mayor of West Des Moines spoke to the position of municipalities on different state intervention policies. Interview with Steve Gaer, Mayor of West Des Moines, Iowa (Mar. 10, 2021). Thank you, Steve, for your knowledge and time.

184. *Id.*

185. WILLIAM A. FISCHEL, *THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES* 16 (Harvard Univ. Press 2001).

186. *See generally* Freeman & Schuetz, *supra* note 179.

187. *See generally* FISCHEL, *supra* note 8.

188. Emily Hamilton, *Inclusionary Zoning and Housing Market Outcomes*, MERCATUS CTR. 7 (Mercatus Ctr. Working Paper, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3463432; Robert C. Ellickson, *The Irony of Inclusionary Zoning*, 54 S. CAL. L. REV. 1167, 1168 (1981); *see also* Bento et al., *supra* note 182, at 8.

189. Ellickson, *supra* note 188, at 1170.

190. *Id.*

quantity and quality of housing available”.¹⁹¹ The ceiling on rents refers to the below-market rate price developers must apply in jurisdictions with inclusionary zoning standards.¹⁹²

Iowa is relatively new to inclusionary zoning practices, with the first local ordinance passing in Iowa City in 2016.¹⁹³ The best and most common case study on inclusionary zoning economics comes from California, as its implementation was earliest and remains the most prevalent.¹⁹⁴ With 50 years since inception and bountiful academic observation, the Bay Area produces the clearest image of what can be expected from the adoption of inclusionary zoning standards in metropolitan areas.

The San Francisco Bay Area is perhaps the biggest proponent of inclusionary zoning and has championed the effort since its inception in 1971.¹⁹⁵ Despite the claims of activists and academics alike, the outcome of inclusionary zoning policies have fallen far short of the expectations and needs of the region.¹⁹⁶ As of 2010 there were fifty jurisdictions in the Bay Area employing inclusionary zoning policies.¹⁹⁷ From 1973 to 2010 these jurisdictions produced less than 7,000 affordable units.¹⁹⁸ That is 228 units per year, and adjusted for time of enactment, each city in the Bay Area produces fewer than 15 affordable units per year.¹⁹⁹ In 2001, the Association of Bay Area Governments estimated a need of 133,195 affordable units for low-to-moderate income households between 2001 and 2006.²⁰⁰ At the current production rate, their chosen strategy would take 100 years to meet the five year goal.²⁰¹ However, lack of production is not the only negative impact on the housing market.

Inclusionary zoning methods have high costs for all parties involved. The philosophical debate of who should be burdened with development costs for low-income households is not one this Article participates in, and really there is no

191. J.R. Kearl et al., *A Confusion of Economists?*, AM. ECON. REV., May 1979, at 28, 30.

192. Bento et al., *supra* note 182, at 8.

193. *Affordable Housing Action Plan*, CITY OF IOWA CITY, <https://www.icgov.org/affordablehousingactionplan> [<https://perma.cc/P6C6-5NYG>].

194. *See generally* FISCHER, *supra* note 8, at 165.

195. Benjamin Powell & Edward Stringham, “*The Economics of Inclusionary Zoning Reclaimed: How Effective are Price Controls?*”, 33 FLA. ST. U. L. REV. 471, 476 (2005).

196. *Id.*

197. Powell & Stringham, *supra* note 110, at 2.

198. *Id.*

199. *Id.*

200. ASS’N BAY AREA GOV’TS, REGIONAL HOUSING NEEDS DETERMINATION FOR THE SAN FRANCISCO BAY AREA: 2001 – 2006 HOUSING ELEMENT CYCLE 33 (June 2001).

201. Powell & Stringham, *supra* note 110, at 6.

need. State and local governments, developers, and citizens not in the targeted demographic all experience financial loss. State and local governments forego tax revenue by lower value assessments of property with price controls.²⁰² The Bay Area study found that involved jurisdictions lost over \$553 million of government revenue between 1973 and 2010.²⁰³ Developers are burdened with lost revenue between market-value and mandated price controls on each unit.²⁰⁴ In the same Bay Area study, the total cost for all inclusionary units in participating jurisdictions is \$2.2 billion.²⁰⁵ Next, and most ironically, inclusionary zoning makes market-priced homes more expensive.²⁰⁶ Out of the 50 jurisdictions cited in the Bay Area study, it is estimated that specifically inclusionary zoning caused the price of new homes in the median city to increase by \$22,000 to \$44,000.²⁰⁷ Finally, the supply of new homes built in general, not just price controlled, is restricted by inclusionary zoning.²⁰⁸ In 45 Bay Area cities with Inclusionary policies, the average city produced 31 percent less new construction units the year following implementation.²⁰⁹

These statistics should be particularly concerning for Iowa's growing counties in or near metropolitan areas. Namely, Polk, Dallas, Warren, Story, Johnson, and Linn counties who experienced over 7 percent growth over the last decade.²¹⁰ As employment opportunities and workers increase in those regions, so does the demand for workforce housing. The San Francisco Bay Area study provides nearly 40 years of data suggesting that inclusionary zoning is not a solution to affordable housing needs and is actually detrimental to local housing efforts.²¹¹

Iowa is facing, and will continue to face, affordable housing shortages in metropolitan regions of the state.²¹² In addressing this issue, the state needs to encourage the removal of barriers to efficient development in order to solve the underlying supply shortage as opposed to subsidizing unnecessarily expensive

202. *Id.* at 23.

203. *Id.*

204. *Id.*

205. *Id.* at 16.

206. *Id.* at 17.

207. *Id.* at 4.

208. *Id.* at 20.

209. *Id.*

210. *2020 Population and Percent Change from 2010 in Iowa Counties*, IOWA.GOV, <https://www.iowadatacenter.org/data> [<https://perma.cc/C75E-WM74>] (data retrieved from Census Bureau population estimations between April 1, 2010 and July 1, 2019.).

211. *See* Powell & Stringham, *supra* note 110, at 6.

212. *See* Capps, *supra* note 96.

development.²¹³ State displacement interventions stop local politics from continuing to prioritize the property values and preferences of homeowners above the general welfare. Paired with supplemental funding from the cities and an equitable approach to zoning, Iowa can create a housing market which works for low-income housing while still considering each stakeholder's interest. Further, state intervention will conserve vital tax dollars which can be used to supplement other social projects. It is imperative that Iowa does not allow municipalities to adopt inclusionary zoning standards which force unnecessary costs onto developers and taxpayers.²¹⁴ These methods not only promise disappointing production but higher market-value prices and a lower housing supply, which will only exacerbate the issue.

IV. IOWA'S STATUS QUO

This Part will provide a snapshot of where relevant Iowa policy is currently. By outlining state zoning law, tax increment financing, and recent municipal zoning ordinances enacted in Iowa's Des Moines Metropolitan Area, the Part provides an audit of Iowa specific regulation and a baseline for the proposed changes in Part V.

A. State Zoning Law

Current state-enacted land use restriction in Iowa is minimal. The majority of land use regulation remains decentralized, making Iowans vulnerable to the aforementioned threats of overzealous zoners.²¹⁵ Further, state and local appropriations continue to be applied without regard for the forces which create economic pitfalls leading to foregone tax revenues and budget cuts to public programs.²¹⁶ In Part III, this Article outlines the two common schools of thought for states regarding housing shortages: state displacement interventions and inclusionary zoning. While both policies are aimed at requiring cities to ensure some sort of affordable housing units are available for residents, they differ in deciding which catalyst drives those results.²¹⁷ Displacement intervention is centered on the premise that removing barriers which interrupt demand driven development will allow for housing to be built closer to the cost of construction.²¹⁸

213. See discussion *infra* Part V.

214. See discussion *supra* Part IV.B.

215. See generally *Iowa*, *supra* note 102.

216. See *Fiscal Note: SF 295: Economic Assistance, Housing*, LEGIS. SERVS. AGENCY, <https://www.legis.iowa.gov/docs/publications/FN/1212341.pdf> [https://perma.cc/D83A-CYW3]; IOWA CODE § 8.54 (2021).

217. See discussion *infra* Part III.

218. See FISCHER, *supra* note 8; see also Powell & Stringham, *supra* note 110.

Of course, some projects will still require subsidies. If state displacement intervention is the stick, inclusionary zoning is the carrot.²¹⁹ Inclusionary zoning subsidizes developers to build subject to the restrictive zoning ordinances of the city but requires a certain number of units to be sold or rented at below-market rate prices.²²⁰ As presented above, inclusionary zoning further disrupts an economically efficient housing market, leading to lower housing production, higher cost of market rate homes, and ultimately less affordable housing.²²¹ In Iowa, one can observe limited intervention policies representing both displacement and inclusionary policies, though the inclusionary policy was self-imposed by a municipality.

Two state intervention strategies can be used to remedy exclusionary zoning ordinances by municipalities.²²² As of now, Iowa does not employ either clawback or deregulation measures to restrict city zoning in a material way.²²³ Together, Chapter 18B and Chapter 414 of the Iowa Code control land use planning and city zoning parameters.²²⁴ Section 18B.1(6) states that local entities “should encourage diversity in the types of available housing, support the rehabilitation of existing housing, and promote the location of housing near public transportation and employment centers.”²²⁵ Section 18B.2(c)(2)(d) promotes “smart planning” by listing that municipalities “shall” consider “plans to ensure an adequate housing supply that meets both the existing and forecasted housing demand. . . [and] provide a range of housing choices that meet the needs of the residents of the municipality” when developing or amending their comprehensive or land use plans.²²⁶ But the statute goes on to state that municipalities “may” include the information in the report, resulting in many cities without a comprehensive plan for housing.²²⁷ Chapter 414 makes specific reference to certain regulation topics

219. In conversation, Eric Burmeister, President of the Polk County Housing Trust, identified both positive and negative consequences as essential elements to any successful affordable housing policy. Interview with Eric Burmeister, President of the Polk County Housing Trust (Mar. 17, 2021). Thank you, Eric, for your time, knowledge, and commitment to affordable housing efforts.

220. See *Common Incentives*, *supra* note 180.

221. See Ellickson, *supra* note 188, at 1169–70.

222. Lemar, *supra* note 4, at 300.

223. See generally IOWA CODE § 414.1 (2021).

224. *Id.* ch. 18B.

225. *Id.*

226. *Id.* § 18B.2(c)(2)(d).

227. See *id.*; Eric Burmeister explained the nature of housing plans in many metropolitan communities in Central Iowa. Interview with Eric Burmeister, President of the Polk County Housing Trust (Mar. 17, 2021). He noted that while many municipalities have housing

they appear to restrict, such as preempting a municipality from setting maximum rental unit restrictions or zoning manufactured housing separately from single family homes.²²⁸ However, these statutes do not override local ordinances that provide minimal space for multifamily structures or set minimum lot sizes and set-back requirements.²²⁹ In practice, these restrictions do not stop cities from excluding multifamily and manufactured units out of the suburbs.²³⁰ Iowa's statutory restrictions on cities are largely irrelevant to local zoning boards when drawing zones and developing city plans due to soft language and deferential treatment granted to localities.²³¹ With municipal regulations left unchecked, state taxpayers are left to pay for the economic fallout.

Inclusionary zoning has recently been employed in Iowa City by the city itself.²³² As part of the city's comprehensive plan for developing affordable housing, the action called for a 10 percent quota of new construction in the Riverfront Crossings District.²³³ This quota represents the first of its kind in the state.²³⁴ The 2020 update from the Iowa City Neighborhood and Development Services reports agreements entered for the development or fee receipt in lieu of units at a total of 53.²³⁵ While it is still too soon to observe effects of the policy, it is notable that a city in Iowa has turned to inclusionary practices.

B. Tax Increment Financing

There are two different methods used to subsidize affordable housing. One approach, often used in Iowa, subsidizes development and redevelopment of affordable housing options.²³⁶ The other method subsidizes the households directly.²³⁷ The vast majority of money that directly subsidizes citizens in Iowa is

considerations in their comprehensive plan, they often do not have a specific housing plan that they can "pull off the shelf." *Id.*

228. IOWA CODE ch. 414 (2021).

229. *Id.*

230. *See generally id.*

231. *See generally id.*

232. *Affordable Housing Action Plan*, *supra* note 193.

233. Memorandum from Tracy Hightshoe, Iowa City Neighborhood Dev. Servs. Dir. (Jan. 9, 2020).

234. Emily Thaden & Ruoniu Wang, *Inclusionary Housing in the United States: Prevalence, Impact, and Practices* 5 (Lincoln Inst. Land Pol'y, Working Paper No. WP17ET1, 2017) (showing Iowa having zero jurisdictions zoned for inclusionary zoning in 2015).

235. *Affordable Housing Action Plan*, *supra* note 193.

236. *Fiscal Note: SF 295: Economic Assistance, Housing*, *supra* note 216.

237. 24 C.F.R. § 982.1 (2021).

supplied through federal funding.²³⁸ Federal subsidies are available for developers as well.²³⁹ Empirically, Iowa's lawmakers are more likely to rely on the federal government's low-income housing aid programs to help households directly and enact state-based incentives for developers.²⁴⁰

Legislation currently proposed in Iowa provides tax incentives and appropriations relating to affordable housing, disaster housing assistance, redevelopment, and an eviction prevention program.²⁴¹ The proposal, SF 295, also addresses redevelopment of old housing stock, which is a necessary component of the solution.²⁴² Allocation of state funding is encouraging in a frugal state like Iowa,²⁴³ however, the bill does not address strict zoning requirements in metropolitan regions.²⁴⁴ Without loosened restrictions on Iowa's developers, the state will have to continue subsidizing development each time low-to-moderate income housing demand rises.²⁴⁵ This inefficient allocation of funds will likely force Iowa to cut funding levels to other critically important functions of state government such as education, public health, and infrastructure.²⁴⁶

Tax increment financing (TIF) is a major subsidy for commercial and industrial development in Iowa.²⁴⁷ Cities and counties use this financing mechanism to entice developers to build projects they believe will increase tax revenue.²⁴⁸ TIF is currently codified in Iowa under Chapter 403 as a means for urban renewal.²⁴⁹ In the simplest terms, cities use TIF to spur development by

238. *Federal Rental Assistance Fact Sheets*, CTR. BUDGET POL'Y PRIORITIES (Jan. 19, 2022), <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#IA> [<https://perma.cc/S26M-9UHW>].

239. 26 U.S.C. § 42.

240. *See Fiscal Note: SF 295: Economic Assistance, Housing*, *supra* note 216; *Federal Rental Assistance Fact Sheets*, *supra* note 238.

241. *Fiscal Note: SF 295: Economic Assistance, Housing*, *supra* note 216.

242. *Id.*

243. LEGIS. SERVS. AGENCY, ANALYSIS OF THE GOVERNOR'S BUDGET RECOMMENDATIONS: FY 2022 AND FY 2023 9 (Jan. 14, 2021), <https://www.legis.iowa.gov/docs/publications/LAGR/1208817.pdf> [<https://perma.cc/QNL3-82SD>].

244. *Fiscal Note: SF 295: Economic Assistance, Housing*, *supra* note 216.

245. *Id.*

246. *Cf., e.g.*, Memorandum from David Roederer, Iowa Dep't Mgmt. Dir. (Apr. 10, 2018).

247. SIERRA CLUB: IOWA CH., A PRIMER ON TAX INCREMENT FINANCING (TIF) 7, <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/iowa-chapter/good-government/TIFPrimer.pdf> [<https://perma.cc/EK4V-MLCF>] [hereinafter SIERRA CLUB: IOWA CH.].

248. *See generally id.*

249. IOWA CODE § 403.19 (2021).

returning the net benefit in tax revenue created by a project to the developer for the number of years set out in the TIF agreement.²⁵⁰ If the tax revenue on a property was 1 before any development occurred, but is appraised at 2 after development, the developer will reap the benefits of the net gain of 1 for the duration of the term agreement.²⁵¹ TIF is a controversial topic in Iowa where there are more TIF districts than any other state in the nation.²⁵² The debate stems from the delayed burden on city taxpayers to subsidize development in their communities, and whether TIF funding for developers who would likely build anyway should qualify.²⁵³ Regardless of the criticism, Iowa municipalities shelled out hundreds of millions of dollars in foregone property taxes on TIF project financing in FY20 alone.²⁵⁴ Beneficiaries of the tool included Microsoft, Wells Fargo, and Wellmark, which further raises suspicions from critics claiming TIF is abused in Iowa.²⁵⁵ Though the Iowa Code calls for TIF as a means to rejuvenate economically disparaged areas, only 11 percent of the \$8.1 billion spent on TIF between 2000 and 2012 went towards blighted areas.²⁵⁶ The remainder funded economic development projects.²⁵⁷ Utilizing the net gain on property taxes from TIF projects to fund housing efforts in specific cities would increase the reliability of funding and encourage municipalities to zone according to housing needs.²⁵⁸

Plans for subsidizing low-to-moderate income housing in Iowa utilizing TIF is regulated in Iowa Code section 403.22.²⁵⁹ The statute prohibits cities with a population of 15,000 or more from using TIF to finance housing developments without providing a percentage of the increment greater than or equal to the percentage of low-to-moderate income residents in the jurisdiction.²⁶⁰ However, the regulation goes on to lower that figure to 10 percent of total costs of the project if the project could not otherwise be completed.²⁶¹ Unfortunately, municipalities rarely use TIF to finance housing development, therefore section 403.22 generates

250. SIERRA CLUB: IOWA CH., *supra* note 247, at 1.

251. *Id.*

252. *Id.* at 8.

253. *See id.*

254. Memorandum from Timothy McDermott, Iowa Legs. Servs. Agency Interim Dir. (Feb. 15, 2021).

255. SIERRA CLUB: IOWA CH., *supra* note 247, at 9.

256. *Id.* at 6.

257. *Id.*

258. *See id.*

259. IOWA CODE § 403.22 (2021).

260. *Id.* § 403.22(1)(a).

261. *Id.*

minimal funding for subsidized housing options in Iowa metropolitan areas.²⁶²

C. *The City of Des Moines: A Call To Action*

The case for state imposed metropolitan zoning action, as opposed to continuing the current decentralized model, is best illustrated by the recent zoning plan adopted by the city of Des Moines.²⁶³ The zoning and planning package was part of a broader initiative by Des Moines called PlanDSM which was set in motion in 2016.²⁶⁴ PlanDSM's approach to zoning emulates typical practices by prioritizing property values—often at the expense of the lower class.²⁶⁵ Goal three of the plan, entitled “Sustainable Community,” calls for efforts to remove blight, modernize old housing stock, remove properties not up to code, and revitalize retail and commercial areas.²⁶⁶ The claim is that residents will enjoy results including greater housing options, curb appeal, and protected or enhanced property value.²⁶⁷ Listed as “On the Horizon” for the years 2017 through 2021 were 43 different line items, one of which being downtown and city-wide affordable housing.²⁶⁸ It is difficult to reconcile the disjunctive goals of affordable housing and enhanced property value in light of the specific zoning ordinance outlined below. Any questions of the plan's intent were answered in the 2020 Zoning Ordinance which drew heavy criticism for introducing a number of requirements on new construction that will drive the price of housing in Des Moines significantly.²⁶⁹ Des Moines' plan advocates for increased tax revenues, higher standards of living, and a desire to compete with the suburbs for housing the downtown workforce.²⁷⁰ Critics are curious how low-to-moderate income earners are supposed to continue to live in Des Moines if the majority of new construction is not affordable to

262. See generally SIERRA CLUB: IOWA CH., *supra* note 247, at 9 (providing policy recommendations that affect Iowa's TIF law).

263. *City of Des Moines Comprehensive Plan*, PLANDSM 3, 36 (2016) (accessible at *City of Des Moines is Planning for 2040 and Beyond*, PLANDSM, <https://plandsm.dsm.city> [<https://perma.cc/6YWK-RVM5>]); *Des Moines Strategic Plan 2016–2031*, GUIDEDSM, <https://guidedsm.dsm.city> [<https://perma.cc/PD9W-WKLC>].

264. *City of Des Moines Comprehensive Plan*, *supra* note 263.

265. See generally *id.*

266. *Id.* at 23, 73.

267. *Id.*

268. *Strategic Plan 2016–2021–2031, CITY OF DES MOINES* 25, <https://guidedsm.dsm.city/system/resources/W1siZiIsIjIwMTYvMTIvMjEvODhnc3I3Nmp3OV9DRE1fU3RyYXRIZ2ljX1BsYW5fMjAxNi8yMDIxXzIwMzEucGRmIl1d/CDM%20Strategic%20Plan%202016-2021-2031.pdf> [<https://perma.cc/35GT-TUKL>].

269. See Capps, *supra* note 96.

270. See generally *id.*

households earning less than \$90,000 per year.²⁷¹ To make matters worse, Des Moines City is currently housing more low-income earners than any other city in the Greater Des Moines Area, more than doubling poverty rates in surrounding cities.²⁷² The desire to raise property values and compete for higher income households is a prime example of the issues created by decentralized zoning.²⁷³ With the number of households set to rise and little being done to ensure workforce and affordable housing development, low-to-moderate income earners in the Des Moines metro will see even larger portions of their income allocated to housing or be forced to move.²⁷⁴

V. ZONING AND TAX INCREMENT FINANCING REFORM IN IOWA

This Part will recommend policy solutions for Iowa to effectively navigate the growing affordable housing shortage. The proposal is aimed at mitigating locally imposed barriers to affordable development and advocating for TIF as a means to subsidize low-to-moderate income housing projects. In this analysis we will see changes that offer an avenue for the state legislature to preserve and encourage market demand housing development while lessening governmental waste. In doing so, the proposal will integrate two essential elements of housing policy: state intervention of municipal land use and practical funding opportunities. In total, the proposed policy will: (1) require cities to draft and file a housing plan with the state every five years and amend Iowa's TIF statute to condition utilization of TIF on filing a sufficient housing plan; (2) require a percentage of the net increment to be placed in trust for the city to subsidize workforce and affordable housing; (3) offer by-right development for low-to-moderate income housing projects to the developer of the TIF increment generating property; and (4) restrict access to funds in the TIF trust unless the funds are used to subsidize workforce housing infrastructure or affordable housing in general at a minimum density requirement.

The recommendations warrant brief note to justify their motivations. The goal of the proposed policy is to have Iowa metropolitan areas strive for and attain both workforce and affordable housing. Not only are workforce statistics a key indicator toward housing needs, but workforce housing is essential to a city's

271. *Id.*

272. 2020 PROFILE OF IOWA, IOWA FINANCE AUTHORITY 948 (finding that Des Moines had 33,899 citizens in poverty in 2019—more than 16 percent of the population. Surrounding cities such as Ankeny and Urbandale have poverty rates of around five percent. *Id.* at 188, 1936.) (<https://www.westernes.com/iapdfs/draft/Volume%20IV.pdf> /)[<https://perma.cc/AR4X-QHWU>].

273. *See, e.g.,* Lemar, *supra* note 4.

274. *Compare QuickFacts: Des Moines, Iowa, supra* note 99 *with* Capps, *supra* note 96.

economic development.²⁷⁵ Supplying housing options for working class citizens, as well as low-to-moderate income earners in and around areas of employment is a matter of the general welfare of the community.²⁷⁶ Accounting for workforce housing needs in suburban economic centers promotes economic mobility, economic development, and enriches Iowa's social and cultural ecosystem.²⁷⁷ The policy proposals below aim to ensure localities further these ends. Moreover, this Article approaches affordable housing as a regional issue which requires a regional solution. Finding ways to implement a centralized authority without impeding too far into municipal autonomy is essential to the passage and impact of a successful policy.

Iowa's lawmakers are uniquely positioned to utilize the prevalence of TIF financing in the state to encourage and fund cost-conscious housing development.²⁷⁸ The cumulative effort would require cities to adequately plan for low income and workforce housing, increase funds set aside for subsidizing projects in the respective city, streamline approval processes for applicable projects, and mitigate exclusionary zoning practices.²⁷⁹ These ends are dependent on cities continuing to utilize TIF financing for economic development. Being that Iowa's municipalities spent \$346.6 million in 2019 on foregone tax increments, many cities should acquiesce.²⁸⁰ This approach aims to strike a middle ground between preempting municipal regulation outright and subsidizing irresponsible zoning efforts. By conditioning TIF usage on adequate zoning for housing projects and tying subsidy dollars to cities with new development, municipalities are still offered a choice. However, if they want to subsidize commercial or industrial properties that pay low-income wages, they will now need to subsidize housing for those workers to live in their city or forfeit significant amounts of money sitting idle in trust.

A. Condition Tax Increment Financing on a Municipal Housing Plan

Amending Chapters 18B and 403 of the Iowa Code to mandate a housing portion of the comprehensive plan serves multiple purposes. First, it ensures cities are taking inventory of units and forecasting future needs. Second, the plan will serve as guidance for development. Eric Burmeister, President of the Polk County

275. See THE VA. CTR. FOR HOUS. RSCH., *supra* note 100.

276. E.g., *Why do Affordable Homes Matter?*, *supra* note 58; GILLETTE, JR., *supra* note 125.

277. See *Why do Affordable Homes Matter?*, *supra* note 58.

278. See generally SIERRA CLUB: IOWA CH., *supra* note 247, at 9–10 (discussing policies to reform TIF in Iowa).

279. See *id.*

280. *Id.* at 7.

Housing Trust, listed getting cities to create housing plans as one of the top priorities of the organization.²⁸¹ Third, having a written plan allows local decision makers political cover when fielding criticism from homevoters.²⁸² Lastly, this plan will serve as the trigger for a city opting into TIF financing capabilities.

The legislative mechanics require amendments to Chapters 18B, 403, and 414 of the Iowa Code. In Iowa Code section 18B.2(2) the language “may” should be replaced by “shall,” mandating the comprehensive plan provide a record of the smart plan considerations.²⁸³ Further, this chapter should ensure that a city’s vision for affordable housing is described in sufficient detail to allow for by-right development for low-to-moderate income properties. Section 403.19 should be amended to require the posting of a housing plan pursuant to Iowa Code section 362.3 to access TIF financing capabilities.²⁸⁴ The housing plan should be comprehensive, requiring actionable steps which can be measured to ensure the plan is utilized and not just a formality. The legislature has a quality template in California’s “housing element.”²⁸⁵ The statute should require update or renewal of the plan following Iowa Code section 362.3 notice procedures every five years.²⁸⁶

B. Placing Partial Tax Increment Financing Proceeds in Trust for Housing Subsidies

Section 403.22, the statute governing TIF and low-to-moderate income assistance requirements, should be rewritten to include a percentage of all TIF projects, not just residential ones.²⁸⁷ This would draw a greater number of communities to opt in due to the extensive use of TIF as well as increase the amount of funding available for development subsidies. Further, there should be a flat rate of each increment going into trust. This would mitigate any competitive advantages for cities which already have more economic development and a higher concentration of wealth. The intent is to allow commercial development to subsidize housing for the workers they will employ. Further, the funding will be derived from the community and recycled back to the community—lessening the number of taxpayers who wouldn’t benefit from the project.

In order to implement these changes, section 403.22 needs to expand the

281. Interview with Eric Burmeister, President of the Polk County Housing Trust (Mar. 17, 2021).

282. *See id.*

283. *See* IOWA CODE § 18B.2(2) (2021).

284. *See id.* § 403.19; *id.* § 362.3.

285. Infranca, *supra* note 154.

286. *See* IOWA CODE § 362.3 (2021).

287. *See id.* § 403.22.

applicability of low-to-moderate income assistance requirements to any TIF financed property.²⁸⁸ This section should include a flat rate of 10 percent of each TIF increment being placed in trust for housing development. The acceptable methods of spending funds from the special trust should be narrowed. Currently the statute allows for funding from a city's trust to directly subsidize households.²⁸⁹ While impactful on a micro level, these subsidies are complicit in the affordable shortage. Instead, section 403.22(2) should limit allocation of the funds to development subsidies.²⁹⁰ This money should be used as subsidies to developers or pay for the city to build the infrastructure in areas zoned for high density single family or multifamily housing. Section 403.22 should place a five-year cap from the time of their last development for a developer to build by-right and apply for subsidies from the trust.²⁹¹ Further, the development is only eligible for subsidy and by-right development if the price is 80 percent or less of the city's median cost or rent. Notably, these changes should be made for metropolitan communities. Section 403.22 classifies the highest population cities as those with a population above 15,000, an appropriate figure to tailor the legislation to metropolitan areas.²⁹²

C. Preemption for By-Right Development of Affordable Housing

Amending Chapter 18B in the manner regarded above is necessary to enable by-right development. Chapter 414 must add a provision that allows developers to build in zones facilitating the 80 percent price point. If no zones in the municipality allow for the affordable construction, then the statute will preempt zoning regulations and instead defer to the prescriptive guide published by the city pursuant to the proposed Chapter 18B amendment.²⁹³ Cities will have a say in what their ideal workforce and affordable housing looks like but nonetheless be unable to create zoning ordinances to exclude those projects. Recall that this tradeoff is predicated on the municipality having opted into utilizing TIF financing.²⁹⁴

D. State Audits to Ensure Compliance

Finally, all withdrawals from the trust will be subject to an annual audit by the state auditor pursuant to Iowa Code section 403.23 to ensure funds are used for

288. *See id.* § 403.22.

289. *See id.* § 403.22(2).

290. *See id.*

291. *See id.*

292. *Id.*

293. *See* IOWA CODE ch. 18B (2021).

294. *See* discussion *supra* Part IV.B.

the development of impactful housing opportunities.²⁹⁵ If the state audit reveals that funds sit idle in trust 10 years after the conclusion of the increment generating project, meaning the developer opted not to utilize their by-right housing subsidy and another 5 years have passed, the money will be forfeited to the state's general fund.

To illustrate, City X has zoning ordinances that require minimum lot sizes that make small, more affordable single-family home development unviable in most of the jurisdiction. Moreover, the majority residential areas of City X are zoned for low-density, single-family housing. If City X has opted into TIF financing and utilizes this option for economic development, they will have reported a housing plan to the state as part of their comprehensive plan. When stating its preference in the Chapter 18B housing plan, the city will disclose the type of low-to-moderate income or workforce housing options in different communities within their jurisdiction. If any of the developers who have previously participated in TIF financing with a development in the city wish to construct low-to-moderate income housing within the city, they will be able to apply for subsidies from the trust up to the amount of the 10 percent generated by the property from their previous TIF agreement with the city. Once granted, the developer will know what kind of housing is acceptable based on the city's housing plan. If the city signaled that townhomes and duplexes are most suitable to the community where the developer owns land, the developer will enjoy an expedited application project if their proposal includes townhomes and duplexes that reasonably coincide with the wishes of City X's Chapter 18B plan. So long as these properties are beneath the 80 percent price point, local zoning ordinances will be preempted to allow the construction.

VI. CONCLUSION

The current zoning structure is failing Iowans. Euclidian-Era zoning practices stop developers from producing housing units for low-to-moderate income earners at a rate that satisfies market demand. Metropolitan communities as a whole are egregiously harmed as a result. Moreover, by disallowing economically integrated communities, the current municipal zoning standard stifles economic mobility and increases generational poverty. The state, and therefore the taxpayer, ultimately subsidizes many of those individuals through social programs. The members of those communities are more likely to be funneled into those programs if they are cost burdened due to housing prices. State lawmakers can avoid the social and economic pitfalls by conditioning municipal TIF financing accessibility on compliance with state affordable housing controls.

295. See IOWA CODE § 403.22 (2021).

2021]

Audit and Proposal for Iowa's Housing Shortage

69

In doing so, the municipality will be able to leverage favorable terms for economic development, but not without accounting for the housing needs of the diverse workforce those developments will employ. State tax dollars spent or foregone on allocations which do not mitigate local control will only have short-term impact. Without addressing the underlying market disruption, no solution will be sustainable.

The state of Iowa is at a critical turning point. The legislature may decide to stay with the devil they know and allow decentralized regulation to produce the same results that has facilitated the housing shortage here and in every other state. Conversely, they could take bold action and employ economically sound land use principles that circumvent archaic zoning and inefficient state spending. Some Iowans may be inconvenienced by drastic change, but that is far outweighed by the impact that inaction will have on the future of Iowa, low-income Iowa families, and their lineage.

*Zachary Krawiec**

* J.D., M.B.A., Drake Law School, 2022. Thank you to Natalie Lynner for her guidance and Eric Burmeister and Steve Gaer for their willingness to share their experiences and insight on local land use regulation. "The fact that the market is not doing what we wish it would do is no reason to automatically assume that the government would do better." Thomas Sowell.